

# Standard Terms and Conditions for the companies of the B.B.W. Group

(B.B.W. Industrieservice GmbH, B.B.W. Industrieservice Sachsen GmbH,  
B.B.W. Automotive GmbH)



## § 1 Binding nature of these Standard Terms and Conditions

(1) B.B.W. Group (hereinafter referred to as "B.B.W." in short) shall render services and shall make delivery (hereinafter collectively referred to as "PERFORMANCE") exclusively on the basis of these Standard Terms and Conditions (hereinafter referred to as "Standard Terms and Conditions"). The Standard Terms and Conditions shall apply with respect to any quotes and contracts made in the context of current and future business relationships even if no reference is made explicitly again to the Standard Terms and Conditions. These Standard Terms and Conditions shall be deemed to have been accepted in commercial business once the agreed PERFORMANCE was accepted.

(2) B.B.W. herewith expressly objects to the application of the contractor's deviating standard terms and conditions, if any, unless B.B.W. an explicit written agreement as to application of the respective deviating terms of the contractor's standard terms and conditions exists between the contracting parties.

## § 2 Quote and conclusion of contract

(1) B.B.W. is a service provider above all active in the field of quality assurance in the automotive industry and it provides the contractor with technical support services within the framework of a contract for service (Dienstvertrag).

(2) The contractor will receive from B.B.W. a quote or offer for services with respect to the PERFORMANCE requested. Should such quote or offer meet the contractor's approval, the quote or offer will be accepted by the contractor.

(3) The individual scope of PERFORMANCE can be seen from the basic agreement, the individual order and the other performance specifications, like the business presentation, for instance.

(4) Should an engineering contract (Werkvertrag) by contrast be concluded between the parties, B.B.W. shall owe the agreed PERFORMANCE and the contractor shall owe the agreed pay for engineering services. An acceptance test of the PERFORMANCE must be performed by the contractor. The PERFORMANCE shall only be subjected to an acceptance test after the PERFORMANCE was fully completed and possession was delivered to the contractor. B.B.W. will find an agreement on a joint acceptance date with the contractor and a record of delivery and acceptance report will be drawn up and signed by both parties. Should the parties not succeed in finding an agreement on a joint delivery and acceptance date despite B.B.W. appropriately having made reference to the necessity of finding an agreement on such a date in text format (i.e. in writing, by e-mail or by fax) and the PERFORMANCE have been taken into operation by the contractor unprotesting and without complaining for four weeks, the PERFORMANCE shall be deemed to have been accepted by the contractor as proper and free of defects within four weeks of the date of the contractor taking it into operation – within six weeks of delivery of the PERFORMANCE, however, at the latest, should no justified complaints have been uttered by the contractor within this period.

(5) Changes in or deviations from the described PERFORMANCE with respect to content and/or organisation may be made before the PERFORMANCE is rendered or whilst the PERFORMANCE is rendered unless these changes and deviations would change the essential core of the PERFORMANCE.

(6) Any dates that may be specified for the rendering of PERFORMANCE shall as a general rule be of a non-binding nature and merely constitute approximate indications unless B.B.W. explicitly committed itself to them and referred to them in text format as "binding".

## § 3 Consideration

(1) The contractor has the duty to pay the consideration for PERFORMANCE mentioned in the individual order or the quote plus the applicable statutory rate of value-added tax.

(2) B.B.W. has the right to request the payment of advances on costs and expenses. B.B.W. also has the right to invoice PERFORMANCE already rendered by submitting partial invoices.

(3) B.B.W.'s prices shall apply from the registered office where B.B.W. is based, as applicable. Unless otherwise agreed by contract, payment must also be made if partial delivery was made. The terms of payment specified in the invoice shall apply.

(4) Should B.B.W. staff incur travel, journey, accommodation expenses or other costs or expenses, these costs and expenses shall be itemised accordingly in the applicable price list, as valid, or in the quote and will be billed to the contractor.

(5) Should no specific term of payment have been indicated in the invoice, amounts shall fall due by day 14 following the invoice date at the latest, without deductions. In case of a delay in payment, interest on arrears totalling eight percentage points p.a. above the base rate shall be charged.

## § 4 Term and termination

(1) The time indicated in the individual order and/or the quote is decisive when it comes to the term of contract. Should no specific period be indicated in the order or quote, the contracting parties may give notice of termination of the contract taking effect at the end of the month two (2) months after the date notice was given (2-months' notice). This rule shall not affect the right of either party to terminate the contract for cause with immediate effect. Should the contractor's company be dissolved or discontinued or should a petition for bankruptcy/insolvency have been filed regarding the assets of the contractor and/or the assets of its shareholders, in or out of court, B.B.W. has the right to terminate the contract for cause with immediate effect.

(2) Notice of termination needs to be given in writing. However, the period of notice shall be deemed to have been complied with if a fax is sent in advance and the fax message is subsequently confirmed by the original being sent by post.

(3) B.B.W. may terminate the contract before the start of PERFORMANCE if B.B.W. for cause, e.g. force majeure, is unable to render the PERFORMANCE. In this case the contractor shall be notified of B.B.W.'s inability without undue delay.

(4) B.B.W. further has the right to terminate the contract with immediate effect (i.e. without having to observe the period of notice) without becoming liable to pay damages in case of the prevalence of force majeure or any other disruptive events that were unforeseeable at the time the contract was concluded (e.g. all kinds of operating failures and business disruptions, problems with the procurement of materials or energy, delays in transportation, strikes, legal lock-outs, action by public authorities as well as late delivery by B.B.W.'s suppliers) which may not be attributed to B.B.W. and which make it unreasonably more difficult if not impossible for B.B.W. to render the PERFORMANCE unless such obstruction is merely of a temporary nature. In case of obstructions of a temporary nature, the dates of performance shall be postponed by the duration of the obstruction plus a reasonable start-up period.

## § 5 Collection of data and data secrecy

(1) The contractor grants B.B.W. the right to use and store its personal data and during the term of contract B.B.W. agrees to comply with the applicable data secrecy provisions when using and storing such personal data. Should B.B.W. have to process personal data in the context of operational support, the applicable data secrecy provisions shall be complied with and appropriate action shall be taken to backup data. B.B.W. shall inform all the staff involved in the rendering of services about the obligations agreed with the contractor.

(2) Even after the contract was terminated, the contractor will not mind B.B.W. sending the contractor informative material.

## § 6 Use of the B.B.W. customer portal (CIS)

While using the customer portal, the contractor receives reports on a regular basis. These reports will be sent via E-Mail and are also legal, without signature. The time limit for filing an objection is 3 working days, after receiving the report. After this time, the information of the report counts as correct and accepted.

## **§ 7 Contractor's duty to cooperate**

(1) To the extent this is required for the purpose of execution of PERFORMANCE, the contractor agrees to cooperate in due time, in particular to assume the task of specifically briefing B.B.W., to supply the required documents and to create any other pre-conditions, to provide the required information and specific description of the defect including illustrative documentation and reference the points which must be taken into consideration by B.B.W. to avoid damage being caused to the parts and components connected to the parts, and to inform B.B.W. in text format about circumstances that may be relevant for the performance of tests or inspections, analyses and/or processing activities in an expert and proper manner. Should the contractor fail to do so in due time and/or in breach of agreements and/or requirements, B.B.W. shall also be indemnified against any additional time or cost incurred. B.B.W. has the right to render the PERFORMANCE at a later time or request that the contractor indemnify B.B.W. against the additional time and costs incurred by B.B.W. as a result of the contractor's delay in complying with its duty to cooperate.

(2) The contractor has the duty to describe the defect in detail and completely as well as to analyse the failure; should the contractor fail to do so or fail to do so in due time and loss or damage be incurred as a result, B.B.W. may not be held liable for this loss or damage.

## **§ 8 Confidentiality**

B.B.W. undertakes to treat any information, data/dates, documents, own or joint development results and any other business-related information disclosed or divulged by the contractor – information that is identified as "confidential" in particular – as confidential, to refrain from reproducing it and to refrain from giving third parties access to it in whatever way or format.

## **§ 9 Warranty**

(1) In case of defects in PERFORMANCE, B.B.W. shall assume warranty to the effect that the defect is rectified by way of supplementary performance. Should supplementary performance fail in two instances, the contractor has the right to rescind the contract. B.B.W. only has the duty to perform subsequent improvement and/or substitute delivery if the contractor in turn has fully complied with its contractual duties. The contractor's claims for damages for defects in PERFORMANCE shall be excluded.

(2) The contractor must notify B.B.W. in text format of patent defects without undue delay, however, within one (1) week at the latest. Should the contractor fail to do so, the contractor's associated warranty claims shall become void. Should a defect only be manifested at a later time, notice of defect must be given without undue delay, however, within one (1) week of discovery at the latest. Should the contractor fail to do so, the PERFORMANCE shall be deemed to have been accepted by the contractor also with respect to this defect. Otherwise, section 377 para. 5 German Commercial Code (HGB) shall apply.

(3) No warranty shall apply if the defect was caused because the contractor or third parties made inappropriate use of the PERFORMANCE. Furthermore, no warranty shall be assumed with respect to PERFORMANCE that the contractor itself changed or expanded and if the contractor failed to observe the operating instructions or modified the products.

(4) Warranty claims existing with respect to hidden defects according to section 8 of these Standard Terms and Conditions shall lapse under the statute of limitation within one (1) year of passage of risks and/or acceptance unless a longer warranty period is prescribed by preemptory law. In this case the longer warranty period prescribed by preemptory law shall apply.

## **§ 10 Liability**

(1) Should the PERFORMANCE be rendered at the contractor's premises, the contractor shall be responsible for the equipment at the premises and for the compliance with safety and security rules and regulations as well as rules for accident prevention. B.B.W. shall not be liable for objects contributed by the contractor.

(2) Claims for damages for all kinds of loss or damage, regardless of the legal title, shall be excluded unless B.B.W. and/or its legal representatives or vicarious agents acted with intent or gross negligence or unless the claims for damages are the result of the absence of assumption of a guarantee. In the latter case, liability shall be limited to loss or damage covered by the guarantee. Liability for fatal injuries, bodily injury and injury to health that may be attributable to B.B.W. for shall not be excluded either.

(3) In case of loss or damage caused by ordinary negligence, B.B.W. shall only assume liability if material duties (so-called cardinal duties) were breached when performing the contract. In this case liability shall be limited to loss or damage typical and foreseeable;

indemnification against consequential loss or damage like lost profits and lost use and enjoyment shall be excluded.

(4) The provisions of this section may not be applied to claims governed by the provisions of the product liability act. What shall also remain unaffected is liability prescribed by preemptory law, if applicable.

(5) B.B.W. shall not assume liability for the intended success of the PERFORMANCE.

## **§ 11 Set-off, retaining lien and assignment**

(1) It is not permitted for the contractor to set off its counterclaims against B.B.W.'s claims unless these counterclaims have obtained legal force or are undisputed; this rule shall apply accordingly when it comes to exercising a retaining lien.

(2) The claims against B.B.W. may not be assigned unless consent to assignment was given by B.B.W. in text format; therefore, claims may exclusively be asserted against B.B.W. by the contractor itself.

## **§ 12 Written form**

Supplements, changes and collateral agreements shall only be valid if made in writing. Oral collateral agreements shall only become effective after they were confirmed in writing.

## **§ 13 Place of performance, place of jurisdiction and choice of law**

(1) B.B.W.'s registered office concerned shall be the place of performance of any obligations directly or indirectly arising from this contract – incl. the duty to pay.

(2) If the contractor is a fully-qualified merchant, a legal entity under public law or special fund under public law – B.B.W.'s registered office, however, has the right to commence an action before a court that has jurisdiction over the contractor's registered office or one of its branch establishments.

(3) Contractual relationships between the parties shall be governed by German law, excluding the UN Sales Convention (CISG), even if the contractor's company has a registered office abroad.

## **§ 14 Final provisions**

Should one or several clauses of the contract be or become invalid and/or unenforceable, the validity of the remaining clauses shall remain unaffected. The invalid and/or unenforceable clause shall be replaced by a provision that most closely reflects the intended purpose of the provision both in a legal and commercial way unless this would imply a material change in the substance of the contract; the same rule shall apply should no explicit contractual arrangement have been included to cover a circumstance that needs to be covered by contractual arrangement.