

**General terms and conditions of performance of construction work  
for VW Poznań Sp. z o.o.  
(as at 25.05.2018)**

<b><u>1.</u></b>	<b><u>DEFINITIONS.....</u></b>	<b><u>2</u></b>
<b><u>2.</u></b>	<b><u>SCOPE OF APPLICABILITY OF TERMS AND CONDITIONS .....</u></b>	<b><u>2</u></b>
<b><u>3.</u></b>	<b><u>APPLICABLE LAW .....</u></b>	<b><u>3</u></b>
<b><u>4.</u></b>	<b><u>REQUEST FOR PROPOSALS AND OFFERS.....</u></b>	<b><u>3</u></b>
<b><u>5.</u></b>	<b><u>CONTRACTOR'S DETAILED DUTIES RELATING TO OFFER PREPARATION .....</u></b>	<b><u>3</u></b>
<b><u>6.</u></b>	<b><u>ACTIONS PRECEDING SUBMISSION OF OFFER .....</u></b>	<b><u>5</u></b>
<b><u>7.</u></b>	<b><u>CONTRACT CONCLUSION .....</u></b>	<b><u>5</u></b>
<b><u>8.</u></b>	<b><u>SCOPE OF CONTRACT / AMENDMENTS .....</u></b>	<b><u>5</u></b>
<b><u>9.</u></b>	<b><u>INVOICES; PAYMENT TERMS .....</u></b>	<b><u>6</u></b>
<b><u>10.</u></b>	<b><u>COMPLIANCE WITH THE LAW.....</u></b>	<b><u>7</u></b>
<b><u>11.</u></b>	<b><u>DESIGNER AND INVESTOR'S SUPERVISION.....</u></b>	<b><u>7</u></b>
<b><u>12.</u></b>	<b><u>DELIVERY OF THE CONSTRUCTION SITE.....</u></b>	<b><u>7</u></b>
<b><u>13.</u></b>	<b><u>DUTY TO COOPERATE .....</u></b>	<b><u>7</u></b>
<b><u>14.</u></b>	<b><u>COLLABORATION BY VWP .....</u></b>	<b><u>8</u></b>
<b><u>15.</u></b>	<b><u>DELIVERIES BY VWP .....</u></b>	<b><u>8</u></b>
<b><u>16.</u></b>	<b><u>SUBCONTRACTORS AND FURTHER SUBCONTRACTORS.....</u></b>	<b><u>8</u></b>
<b><u>17.</u></b>	<b><u>DIFFICULTIES AND OBSTACLES .....</u></b>	<b><u>9</u></b>
<b><u>18.</u></b>	<b><u>ASSIGNMENT OF RECEIVABLES .....</u></b>	<b><u>9</u></b>
<b><u>19.</u></b>	<b><u>REFRAINING FROM MUTUAL CONSIDERATION. SET-OFF .....</u></b>	<b><u>9</u></b>
<b><u>20.</u></b>	<b><u>UNFAIR COMPETITION. LIABILITY OF COLLECTIVE ENTITIES .....</u></b>	<b><u>9</u></b>
<b><u>21.</u></b>	<b><u>COPYRIGHT AND INDUSTRIAL PROPERTY RIGHT; CONFIDENTIALITY; ADVERTISING .....</u></b>	<b><u>10</u></b>
<b><u>22.</u></b>	<b><u>OTHER OBLIGATIONS OF THE CONTRACTOR .....</u></b>	<b><u>11</u></b>
<b><u>23.</u></b>	<b><u>DOCUMENTATION OF CONSTRUCTION WORK. ....</u></b>	<b><u>12</u></b>
<b><u>24.</u></b>	<b><u>AMENDMENTS TO THE CONTRACT .....</u></b>	<b><u>12</u></b>
<b><u>25.</u></b>	<b><u>TOOLS .....</u></b>	<b><u>13</u></b>
<b><u>26.</u></b>	<b><u>ACCEPTANCE OF CONSTRUCTION WORK .....</u></b>	<b><u>13</u></b>
<b><u>27.</u></b>	<b><u>TRANSFER OF RISK .....</u></b>	<b><u>14</u></b>
<b><u>28.</u></b>	<b><u>DEADLINES; DELAY .....</u></b>	<b><u>14</u></b>
<b><u>29.</u></b>	<b><u>CONTRACTOR'S LIABILITY FOR DEFECTS AND FAULTS.....</u></b>	<b><u>15</u></b>
<b><u>30.</u></b>	<b><u>LIABILITY / CIVIL LIABILITY INSURANCE / SECURITY.....</u></b>	<b><u>16</u></b>
<b><u>31.</u></b>	<b><u>PERSONAL DATA PROTECTION .....</u></b>	<b><u>16</u></b>
<b><u>32.</u></b>	<b><u>FINAL PROVISIONS .....</u></b>	<b><u>16</u></b>
<b><u>33.</u></b>	<b><u>SEVERABILITY CLAUSE.....</u></b>	<b><u>16</u></b>
<b><u>34.</u></b>	<b><u>PLACE OF PERFORMANCE. COMPETENT COURT .....</u></b>	<b><u>16</u></b>
<b><u>35.</u></b>	<b><u>VOLKSWAGEN GROUP REQUIREMENTS REGARDING SUSTAINABILITY IN ITS RELATIONSHIPS WITH BUSINESS PARTNERS .....</u></b>	<b><u>17</u></b>
<b><u>36.</u></b>	<b><u>GENERAL REQUIREMENTS OF VOLKSWAGEN POZNAŃ FOR BUSINESS PARTNERS WITH RESPECT TO ENVIRONMENTAL PROTECTION.....</u></b>	<b><u>17</u></b>

## General terms and conditions of performance of construction work for VW Poznań Sp. z o.o. (as at 25.05.2018)

### 1. Definitions

Any time the terms specified below are used in these General terms and conditions of performance of construction work for Volkswagen Poznań Sp. z o.o., they shall be understood as:

#### 1.1 Terms and conditions

These General terms and conditions of performance of construction work for VWP.

#### 1.2 Construction work

Construction work shall mean construction as well as work of reconstruction, expansion, erection, repair or demolition of a building or structure within the meaning of the Act of 7 July 1994 - Building Law, along with all related work, including such as should be expected of a Contractor acting with due diligence and subject to the best interests of the principal.

#### 1.3 Contract for Construction Work

Contract for construction work shall be understood as the contract referred to in article 647 of the Civil Code. Orders shall also be deemed as contracts.

#### 1.4 Design

Design shall mean design documentation along with all other documents and information concerning the performance of Construction Work.

#### 1.5 Contractor

Contractor shall mean an entity, also within the meaning of art. 43<sup>1</sup> of the Civil Code, who makes an offer to conclude a contract or to whom VWP sends a request for proposals or an order to purchase goods.

#### 1.6 Construction Site

Construction Site shall mean the place where Construction Work is performed by a Contractor or sub-contractors retained by it.

#### 1.7 Defects or failures

Defects or failures shall mean any discrepancy in the completed Construction Work as referred to the Design, list of services, technical conditions of performance of Construction Work and other documents attached to the Construction Work contract, recommendations by VWP, investor's or design supervision, administrative bodies or applicable regulations, building art and due diligence.

#### 1.8 Buildings and structures

Buildings and structures mean Buildings and structures within the meaning of the Act of 7 July 1994 - Building Law.

### 1.9 Written form

Written form shall mean written form within the meaning of art. 78 of the Civil Code under the Terms and Conditions specify otherwise.

An equivalent to written form shall be also a statement made by VWP or the Contractor by fax or e-mail.

#### 1.10 Request for proposals

A request for proposal is an invitation sent to a Contractor by VWP to place offers within an offer contest organised by VWP.

### 2. Scope of applicability of Terms and Conditions

#### 2.1

These Terms and conditions apply to all Construction Work contracts, including all actions related to or preceding the conclusion of such contracts. These Terms and conditions further apply to preparation and submission of offers by the Contractor in response to requests for proposals.

#### 2.2

Unless agreed otherwise, the Terms and conditions shall apply in their most current version. A current version of the Terms and conditions shall be provided to the Contractor before conclusion of a contract. The current version of Terms and conditions shall at any time be available in electronic version at:

[www.volkswagen-poznan.pl](http://www.volkswagen-poznan.pl)

#### 2.3

Unless VWP and the Contractor agree otherwise in writing, the use of any Contractor's contract templates is excluded. No Contractor's contract templates will be used even if VWP did not directly object to their exclusion. Acceptance by VWP of Construction Work without clear reservations or making by VWP payment for completed Construction Work without objection shall by no means be deemed as acceptance of any Contractor's contract templates. VWP employees are not empowered to include any Contractor's contract template, even in part, in the Construction Work contract or to accept applicability thereof unless otherwise provided in their power of attorney.

#### 2.4

In case of conflict between the provisions of the contract concluded by VWP with the Contractor and the wording of these Terms and conditions, the contractual provisions shall prevail.

#### 2.5

In case of conflict between the provisions of enclosures to the contract, enclosures with a higher number shall prevail in the order detailed in item 2.6 of the Terms and conditions. If the enclosures to the contract are not numbered or are at the same sequential level as specified in item 2.6 of the Terms

and conditions, then those enclosures will prevail which are more recent.

### 2.6

For the purposes of interpretation of contracts between VWP and the Contractor, the following sequence of documents constituting the contract shall apply:

- contract / order placed by VWP,
- minutes from negotiations between VWP and the Contractor; priority shall be given to the minutes most recent to the date of contract conclusion,
- these Terms and conditions,
- request for proposals by VWP,
- technical conditions and quality standards relating to Construction Work.

### 3. Applicable law

Polish law, unless agreed otherwise, shall apply to all contracts subject to these Terms and conditions.

### 4. Request for proposals and offers

#### 4.1

All requests for proposals made by VWP shall be deemed valid only when made in writing.

#### 4.2

If along with a request for proposals, VWP sends an offer form used by VWP, the Contractor shall be obliged to submit an offer on the form.

#### 4.3

Offers shall be made either in Polish or in German. The offer shall be complete and contain all information that is required to assess if the method and conditions to perform Construction Work offered by the Contractor comply with the requirements specified in the request for proposal. With respect to offers submitted on the offer forms used by VWP, the Contractor shall provide all information required by VWP in the offer. Along with its offer, the Contractor shall submit a written statement that it has read and accepts these Terms and conditions.

#### 4.4

If in its request for proposals, VWP has strictly specified the requirement to be satisfied buildings and structures, the Contractor shall be obliged to identify any discrepancies between the requirements specified in the request for proposals by VWP and the submitted offer and reasons for deviation from the requirements or conditions specified by VWP. A list of such deviations shall be attached to the offer submitted by the Contractor.

#### 4.5

Responses to requests for proposals as well as offers and attachments to those responses or offers shall be submitted by the Contractor to VWP free of charge. VWP may at any time request submission by the Contractor or additional information or docu-

ments related to the offered Construction Work free of charge.

### 4.6

The offer shall clearly specify the currency and the price. All prices shall be net of VAT as provided in the applicable law unless explicitly specified otherwise. Unless specified otherwise, the prices specified in the offer shall also include costs of loading, transport, dispatch, packaging, insurance, unloading, erection and the required tests to accept materials and Construction Work as well as travel costs and lodging of persons who provide the Services until final inspection of Construction Work at the premises of VWP or the VWP plant designated in the request for proposals as well as costs of documentation and training.

Unless agreed otherwise, all prices in the offer shall be lump-sum prices covering all work, materials and actions required to complete the subject of the contract in accordance therewith even if any specific work, materials or actions are not explicitly listed.

### 4.7

Offers shall be submitted to the address designated in the request for proposals, quoting the reference number of the request for proposals and offer number.

### 4.8

Requests for proposals made by VWP expire when the Contractor fails to submit an offer within two weeks from receipt of the request for proposals unless the request for proposals specifies another deadline. If VWP fails to provide the Contractor with an order within that time, the offer shall be deemed as not accepted.

### 5. Contractor's detailed duties relating to offer preparation

#### 5.1

As soon as received from VWP, the Contractor shall be obliged to inspect the completeness and cohesion of documents received from VWP in connection with the submitted request for proposals. Any missing documents and information shall be reported by the Contractor in writing to the unit of VWP from which the request for proposals was received latest within 3 working days from receipt thereof.

#### 5.2

The Contractor shall prepare the offer on the basis of applicable law and the offer shall cover all deliveries and services required for correct performance of Construction Work, in compliance with best practices and best available technology and providing the highest quality and security standards and so that VWP achieves the intended economic effect.

#### 5.3

The Contractor who acquires materials, raw materials, equipment, etc. from third parties as required to

perform Construction Work shall be obliged to inform VWP of those third parties in order to ensure appropriate quality. Such third persons shall be identified in the Contractor's offer. For valid reasons, VWP may refuse its consent to purchases by the Contractor of materials, raw materials or equipment required to perform Construction Work from third parties identified by the Contractor. In this situation, VWP may identify other third persons from whom the Contractor will acquire materials, raw materials, equipment, etc., required to perform Construction Work.

### 5.4

Unless agreed otherwise, VWP allows submission of variant or alternative offers, deviating from the conditions specified in the request for proposals. However, if a variant or alternative offer is submitted, this should clearly be noted.

#### 5.4.1

Variant or alternative offers submitted by the Contractor shall be clearly and univocally marked as deviating from the conditions specified in the request for proposals. Submitting a variant or alternative offer, the Contractor shall retain the structure and layout (including numbering of each item) as expected of an offer in the request for proposals. If due to the content of such variant or alternative offer, preservation of the structure or layout expected in the request for proposals is not possible, the Contractor shall clearly mark all such deviations in the submitted offer.

#### 5.4.2

Subject to the above provisions, variant or alternative offers have to provide in particular the following information:

- descriptions, detailed and structural drawings that will provide for explicit, clear and verifiable identification of all details of such variant or alternative offer,
- measurement calculations of structural parts or other major parameters of buildings and structures ensuring their verification,
- accurate and explicit descriptions of modified items with unit prices and total price – the specification of the prices will be used solely to evaluate the offer.

#### 5.4.3

Submission by the Contractor of a variant or alternative offer shall be deemed as an assurance by the Contractor that the variant and alternative offer submitted by it is completely equivalent in terms of legal, technical and time aspects to an offer submitted in compliance with the content of the request for proposals.

#### 5.4.4

If in development of a variant or alternative offer the Contractor accepted documentation developed by VWP as a basis of the variant or alternative offer, the Contractor shall make appropriate modifications to the documentation at its own expense as well as

make or have made at its own expense of all required tests and verifications in order to ensure the correctness of the documentation modified by the Contractor. The above modifications may not breach any copyright or industrial property rights held by VWP with reference to the documentation provided to the Contractor by VWP.

### 5.4.5

In case of any modifications to the VWP documentation provided to the Contractor, the Contractor shall be obliged ensure that representatives of VWP and representatives of entities, if any, that developed the VWP documentation, can participate in all work related to modifying the documentation. The Contractor shall be responsible for all costs related to such participation of the persons referred to above in work related to modifying the documentation.

### 5.5

If the materials that are to be used in the construction of buildings or structures or the equipment to be installed at the buildings or structures, specified in the description of Construction Work were not additionally marked as "or equivalent", then the Contractor shall be obliged to apply the materials or equipment specified in the description of Construction Work. If the materials that are to be used in the construction of buildings or structures or the equipment to be installed at the buildings or structures, specified in the description of Construction Work were additionally marked as "or equivalent", then the Contractor may apply equivalent materials or equipment solely subject to prior consent by VWP. The Contractor who intends to use equivalent materials or equipment shall provide VWP with all information and documents concerning such materials and documents so that they can be tested. Testing of equivalent materials and equipment by VWP shall be made at the expense of the Contractor and shall be without prejudice or shall not exclude the responsibility of the Contractor for performance of Construction Work in a correct timely and correct manner subject to the required quality.

### 5.6

Along with its offer, the Contractor shall provide VWP with a list of subcontractors that it intends to retain a portion of the services covered by the Construction Work contract. The list shall in particular describe the work to be performed by Contractor's subcontractors in connection with the performance of the Construction Work contract.

### 5.7

The Procurement Department of VWP is required to provide its written consent for the Contractor to retain the designated subcontractors. Failure to provide consent by VWP to retain subcontractors identified by the Contractor shall be deemed as no consent by VWP to retain subcontractors.

### 5.8

VWP may request the Contractor to designate other subcontractors. The Contractor shall designate other subcontractors within 7 days from request of VWP.

### 5.9

If the request for proposals specifies maintenance contracts for the equipment installed by the Contractor as part of performance of the Construction Work contract, the Contractor shall attach to its offer drafts of appropriate maintenance contracts both for its own maintenance services and for maintenance services to be performed by its subcontractors. Conclusion of any maintenance contract requires a separate order by VWP.

### 5.10

Unless the request for proposals specifies otherwise, the Contractor shall attach to its offer a performance schedule of Construction Work developed on the basis of the Design.

## 6. Actions preceding submission of offer

### 6.1

Before submitting its offer, the Contractor shall be obliged to:

#### 6.1.1

subject to agreement with the representative of the Professional Department of VWP designated in the request for proposals – of a date, inspect the Construction Site, its documentation and surrounding, make a visual inspection of the Construction Site and its surrounding, in particular with respect to:

- site topography and nature, including sub-surface conditions and geological conditions,
- hydrological and climatic conditions,
- volume and nature of temporary work and construction and installation work as well as materials and equipment required to perform Construction Work,
- measures required to gain access to and develop the Construction Site,
- possibility to arrange site facilities,
- possibilities of power and water supply,
- condition of access roads,
- possibility to organise site facilities for temporary equipment, including sanitary facilities,

#### 6.1.2

determine if the scope and nature of Construction Work, means of communication, infrastructure of the surrounding and conditions at the Construction Site provide for performance of Construction Work,

#### 6.1.3

determine if the Design and its assumptions are complete and compliant with the law, in particular with regulations concerning safety and environment protection and Polish Standards,

### 6.1.4

determine if the performance of Construction Work does not require any additional licenses, permits or consents and if such permits or consents are required, the Contractor shall obtain such licenses, permits and consents on its own and at its own expense.

### 6.2

The Contractor shall be liable for all effects of failing to perform the actions listed in item 6.1 with due diligence subject to its experience and professional nature of its activity. In particular the Contractor's offer shall be deemed to provide for all circumstances resulting from correct performance by the Contractor of all actions specified in item 6.1 of these Terms and conditions.

## 7. Contract conclusion

### 7.1

Contracts for Construction Work shall be made in writing.

### 7.2

Contracts for Construction Work are deemed concluded when delivered by VWP. Such delivery may also be made by fax or e-mail writing.

### 7.3

Orders under EUR 10 000 may be submitted by e-mail without signature by the Procurement Department of VWP.

## 8. Scope of contract / amendments

### 8.1

Contracts for Construction Work covers performance by the Contractor of all Construction Work in a manner ensuring correct and faultless operation of buildings and structures and performance by the Contractor of all other work related to preparation to operation and use of buildings and structures. Construction Work shall cover all work required for appropriate, correct and faultless operation of buildings and structures even if not specified explicitly in the request for proposals or order.

### 8.2

If during the performance of Construction Work it turns out that the scope of work to be performed will have to be modified or that it is necessary to incur additional costs that were not provided for in the contract and not covered by the agreed remuneration, the Contractor shall be obliged to notify the Procurement Department of VWP thereof forthwith and submit a corresponding offer of an annex to the contract for Construction Work. The Contractor shall have the above right only when:

- even when exercising due diligence the Contractor could not have foreseen at the time

when the offer was submitted the needs to incur such additional costs, or

- the costs result from a decision of a competent state authority.

### 8.3

All modifications to contractual terms and conditions shall be made in a written annex.

### 8.4

The offer of an annex to the order shall be subject to the relevant provisions concerning the offer.

### 8.5

All additional work covered in the offer of an annex to the Construction Work contract may be performed only when the annex has been signed. The above does not apply to work that is required to be performed in order to protect human life or health or to prevent material damage to the property of VWP or third parties.

### 8.6

Should a dispute arise between VWP and the Contractor if performance of such additional work is necessary for correct performance of the Construction Work contract or if such work as is to be performed on instructions of VWP falls within the scope of the Construction Work contract or if the parties fail to reach the remuneration, the Contractor shall be obliged to perform such work subject to its right to pursue its claims in accordance with the applicable law. Agreement of the parties on the amount of additional remuneration shall be concluded at a later date and VWP shall take all reasonable efforts to verify the grounds of the remuneration demanded by the Contractor.

### 8.7

VWP shall be entitled to modify the scope, method and timeframes to perform the Construction Work contract and to instruct the Contractor accordingly. When making such modifications, VWP shall take into account technical and personnel resources of the Contractor. The lack of possibility to perform instructions of VWP to the extent specified in this item shall be notified by the Contractor to the Procurement Department of VWP forthwith in writing specifying reasons for such lack of possibility to perform instructions of VWP. Item 32 of these Terms and conditions shall apply accordingly.

## 9. Invoices; payment terms

### 9.1

Invoices for completed Construction Work shall be issued by the Contractor and sent to the address designated in the order of VWP. The invoice shall specify the tax identification number (NIP), Contractor's identification number assigned by VWP, order number and date, additional information agreed by VWP and the Contractor as well as the contractual remuneration for the performance of Construction Work with a separate amount of VAT.

### 9.2

The Contractor shall attach all documents required for settlement to the invoice.

### 9.3

Unless agreed otherwise, payments for completed Construction Work shall be made in accordance with the approved payment schedule. After completion of each milestone specified in the payment schedule, the Contractor shall issue a partial invoice. Payment for a partial invoice shall be made subject to confirmation by the Professional Department of completion of the relevant work.

If a downpayment has been agreed, the downpayment shall be made subject to delivery of a time unlimited, irrevocable, unconditional bank guarantee, payable on first demand, for the amount of the agreed downpayment. The guarantee shall be returned when final settlement has been made for the Construction Work contract. The wording of guarantee and a list of entities that may issue a bank guarantee acceptable to VWP is available from the Procurement Department of VWP.

### 9.4

Final invoice may be issued subject to final acceptance of work performed by the Contractor in compliance with item 26 of these Terms and conditions.

### 9.5

Subject to the provisions of items 9.2 - 9.4 of these Terms and conditions, partial invoices and the final invoice may be issued by the Contractor only after submission to VWP of a written confirmation that the Contractor has paid all its obligations to subcontractors and further subcontractors, retained by the Contractor to perform Construction Work.

### 9.6

Unless agreed otherwise, the payment term will be 30 days from the date of the invoice. If an invoice has been issued incorrectly, upon a request of VWP, the Contractor shall issue a corresponding corrective VAT invoice or a correcting note.

### 9.7

Payment for a partial invoice or the final invoice shall be without prejudice to any remedies to which VWP is entitled, including also in relation to statutory warranty for defects in completed Construction Work.

### 9.8

In case of incorrect performance of the Construction Work contract by the Contractor, VWP shall be entitled to suspend payment or a part thereof until the contract has been performed correctly.

### 9.9

The contractual price (remuneration) shall be paid by bank transfer.

The name of the bank and account number shall be provided by the Contractor under separate cover

before deliveries are commenced. Any change of the bank or account number shall be notified by the Contractor forthwith, latest within 3 working days. Letters concerning changes to the bank account of the bank shall be signed by persons authorised to represent the Contractor and shall provide information on the authorised contact person. The information referred to in the preceding sentences shall be provided by the Contractor in writing. Failure by the Contractor to provide the above information shall relieve VWP from any liability for the correctness of bank transfers.

### 9.10

If VWP finds out that the Contractor fails to perform its obligations to its subcontractors, the Contractor authorises VWP herewith to pay the overdue remuneration due to the subcontractors from the Contractor in accordance with art. 647<sup>1</sup> of the Civil Code and subject to conditions specified in these Terms and conditions, the Construction Work contract and the contracts between the Contractors and its subcontractors. The provisions of this item apply accordingly to payment of remuneration due to further subcontractors from a subcontractor.

### 9.11

All payments made by VWP directly to subcontractors and further subcontractors as part of joint responsibility for payment of remuneration, as specified in § 647<sup>1</sup> of the Civil Code, shall be deducted from the remuneration due to the Contractor in the full amount of such payment. The Contractor herewith authorises irrevocably VWP to make such contractual deductions on its behalf.

## 10. Compliance with the law

When performing the goods purchase contract, the Contractor shall be obliged to comply with the law and decrees of competent authorities. The obligation applies primarily to such designing, fabrication of Construction Work, including site marking and fencing that they meet all safety requirements, quality standards and do not breach the regulations concerning OH&S, environment protection or third party rights. The Contractor shall be fully liable for all penalties or personal and property damage resulting from breach of such regulations and standards.

## 11. Designer and investor's supervision.

### 11.1

VWP shall designate persons to perform designer and investor's supervision on its behalf. Among the persons designated by VWP to perform supervision there will be one resident engineer within the meaning of art. 25 of the Act – Building Law. The scope of authority of resident engineers is specified in the Act – Building Law.

## 12. Delivery of the Construction Site

### 12.1

The investor shall deliver the Construction Site to the Contractor within the agreed timeframe. The delivery of the Construction Site shall be confirmed in a take-over protocol of the Construction Site. The protocol shall specify the date and time of delivery of the Construction Site, its condition at delivery and other additional information agreed by the parties.

### 12.2

The take-over protocol of the Construction Site shall be signed by authorised representatives of VWP and the Contractor.

## 13. Duty to cooperate

### 13.1

The Contractor shall be obliged to inform VWP forthwith of all material matters concerning the performance of the Construction work contract and to ensure the participation of its duly authorised representative in all negotiations concerning the performance of the Construction Work contract.

### 13.2

In connection with the performance of the Construction Work contract the Contractor shall be obliged to take into account and respect all rights of VWP as well as regulations and decrees in force at the premises of VWP. In particular it shall be obliged to provide appropriate guidelines to all persons acting on its behalf in the performance of the contract in order to ensure correct performance of the Construction Work contract.

### 13.3

The Contractor shall be obliged to arrange all procedures related to the performance of the Construction work contract so that they do not interrupt current operations of VWP.

### 13.4

In case of modification to completion deadlines of any milestone in the Construction Work contract of the final completion deadline, the parties shall agree new completion deadlines of the duties resulting from the contract. The above provisions shall be without prejudice to any remedies of VWP to demand repair of damage resulting from failure to comply with the deadlines by the Contractor.

### 13.5

If Construction Work is performed by more than one Contractor, each contractor shall be obliged to take all reasonable measures to facilitate timely and correct performance of Construction Work by the other contractors. All disputes in this respect shall be immediately notified to the Professional Department of VWP. In such situation VWP shall be entitled to take decisions on further performance of work.

### **13.6**

Upon request by VWP, the Contractor shall immediately remove from performance of Construction Work each person employed by the Contractor who in any way poses hazard to timely or quality performance of any Construction Work. The above request shall be reported by VWP as an entry to the site log along with grounds therefor.

### **13.7**

The provision of item 13.6 of these Terms and conditions shall apply also to subcontractors and further subcontractors; in this case, the above provision will apply if despite the elapse of 14 days from such demand by VWP, the subcontractor or further subcontractor continues to pose hazard to timely or quality performance of work.

## **14. Collaboration by VWP**

### **14.1**

VWP shall be entitled to monitor on an ongoing basis the method of performing the Construction Work contract by the Contractor or its subcontractors. The right shall be exercised by VWP by authorised persons who – subject to the applicable law – may be present at the premises of the Contractor or its subcontractors.

### **14.2**

The Contractor shall be obliged to provide VWP or persons designated by VWP with all plans, drawings, etc. concerning Construction Work. VWP may verify such plans, drawings, etc. Verification of the documents by VWP may in no case be treated as confirmation of their correctness and compliance with the law and building art and does not relieve the Contractor from its liability for defects in Construction Work.

## **15. Deliveries by VWP**

### **15.1**

If under the contract for Construction Works VWP itself or through any third parties supplies any materials, raw materials or equipment or provides specific services to the Contractor, the Contractor shall be liable for checking thoroughly the quality and quantity of these materials, raw materials, equipment or services and their consistency with the Design and for reporting to a person in charge of technical issues on the part of VWP immediately in writing of all and any detected defects and failures, and particularly of those that may hamper or prevent proper performance of the contract.

### **15.2**

The Contractor shall store the materials provided by VWP in appropriate conditions ensuring properties of the materials and possibility of correct performance of Construction Work. For storage of the

materials delivered by VWP, the Contractor shall not be entitled to any additional remuneration.

### **15.3**

The materials provided to the Contractor by VWP shall be stored separately from other materials collected by the Contractor. The materials shall be durably and visibly marked as property of VWP. The materials may be removed from the storage place only subject to prior written consent of VWP unless such transfer is necessary to perform Construction Work or to prevent damage or destruction to the materials.

### **15.4**

The Contractor shall be fully liable for the materials entrusted by VWP to the market value of such entrusted materials. The Contractor shall be further obliged to insure the entrusted materials against fire, flood and theft and other damage.

### **15.5**

At the request of VWP, the Contractor shall take an inventory.

## **16. Subcontractors and further subcontractors**

### **16.1**

The Contractor shall perform the Construction Work contract with its own resources. Exceptionally and subject to the requirements specified in items 5.7 and 5.8 of these Terms and conditions and legal provisions, the Contractor may retain subcontractors to perform a portion of Construction Work.

### **16.2**

The Contractor may propose only such subcontractors who have appropriate experience and know-how, hold resources to perform the work, who are reliable and are not in arrears with payment of public liabilities, including taxes.

### **16.3**

Contracts may be concluded between the Contractor and a subcontractor solely subject to written consent by the Procurement Department of VWP. The Contractor shall submit to the Procurement Department of VWP contracts concluded with subcontractors within maximum 3 working days from conclusion thereof. Within 5 working days from receipt of such contract, VWP may agree to its content. If no reply is given, this shall be deemed as refusal by VWP. The above provision also applies to all amendments in the contracts with subcontractors.

### **16.4**

The Contractor shall be fully liable for actions of its subcontractors and is obliged to verify if the subcontractors comply with the law, in particular with respect to labour law and product safety. In its contracts with subcontractors, the Contractor shall be obliged to require the subcontractors to comply with

the above regulations. Breach of the duty to control the compliance and imposing an obligation on the subcontractors to comply with the law shall be treated as material breach of the contract by the Contractor. In such situation VWP may – subject to designating an appropriate time to remedy the breach by the Contractor – terminate the Construction Work contract in whole or in part unless this is impossible in view of applicable law.

### 16.5

If the Contractor entrusts the performance of a portion of Construction Work to subcontractors without notify the Procurement Department of VWP as specified in this item or without prior written consent of VWP, the Contractor shall pay VWP an immediately payable contractual penalty of PLN 200,000.00 for each case of unauthorised retaining of a subcontractor. The penalty may be deducted from receivables of the Contractor from VWP resulting from performance of the Construction Work contract. The Contractor herewith authorises irrevocably VWP to make such contractual deductions on its behalf. VWP reserves the right to claim damages in excess of the above contractual penalty.

### 16.6

Subcontractors shall be obliged to perform the entrusted work solely with their own resources, without being entitled to further entrust such work to further subcontractors unless the Procurement Department of VWP in specific instances and upon a written request of a subcontractor, approved by the Contractor, provides its prior written consent thereto. The request of the subcontractor for consent to retain a further subcontractor and to contracts between subcontractor and further subcontractor, to which the Procurement Department of VWP consented, shall be subject to the provisions of items 16.2 - 16.5 of these Terms and conditions. In the contract concluded with subcontractors, the Contractor shall be obliged to incorporate provisions that should such subcontractor entrust the performance of a part of construction work to further subcontractors without the consent of the Procurement Department of VWP, then VWP may demand directly the Contractor or the subcontractors to pay a contractual penalty as specified in item 16.5 of these Terms and conditions.

### 17. Difficulties and obstacles

All difficulties or obstacles affecting correct performance of the Construction Work contract shall be reported by the Contractor forthwith to the Procurement Department of VWP in writing. Failure to report such difficulties and obstacles will result in the Contractor losing all rights to any related remedies.

#### 17.1

VWP shall not be liable to the Contractor for any difficulties and obstacles caused by other contractors working for VWP.

### 18. Assignment of receivables

#### 18.1

Without prior written consent of VWP, the Contractor may not transfer its receivables from VWP under a Construction Work contract to any third party or authorise any third party to claim such receivables.

### 19. Refraining from mutual consideration. Set-off

#### 19.1

Any restriction to the right of VWP to refrain from performing mutual consideration in favour of the Contractor or restriction of the possibility for VWP to set-off mutual claims shall be ineffective in relation to VWP.

#### 19.2

The Contractor authorises VWP to make deductions, including contractual deductions, of all receivables due to VWP from the Contractor against all receivables due to the Contractor from VWP.

### 20. Unfair competition. Liability of collective entities

#### 20.1

The Contractor shall be obliged to ensure that its employees or other persons acting on its behalf pursuant to other legal relationship, will not perform any acts to the damage of VWP as designated in chapter 2 of the Act of 16 April 1993 on counteraction to unfair competition (Dz. U. of 2003, No. 153, item 1503, as amended).

#### 20.2

In connection with the performance of the goods purchase contract, the Contractor shall be obliged to comply with the following rules:

- by its behaviour (action, acceptance or omission) it may not breach the applicable law. The duty applies also to employees, representatives of the Contractor and other persons acting on its behalf or in its name and applies in particular to such behaviour that may result in committing offences specified in art. 16 of the Act of 28 October 2002 on liability of collective entities for prohibited acts (Dz.U. 2002, No. 197, item 1661, as amended). The above applies in particular such prohibited acts as: breach of confidence, capital fraud, posing problems in following claims, money laundering, maintenance of unreliable documents, posing problems to public tenders, bribery and paid protection, fraud, falsification of documents, attestation of untruth, use of attested untruth, computer sabotage, fiscal offences against tax liabilities and accounting for subsidies or subventions, fiscal offences against customs duties or rules of foreign trade in goods or services, export of hazardous waste contrary to applicable regulations, breach of company secrets, copying of products, falsification of currency, falsification of value marks;

- it shall be obliged to take all reasonable measures to protect the reputation of VWP and to avoid all actions and omissions that could impair the reputation of VWP;
- it shall be obliged to act within the framework of the tasks assigned to it (and granted power of attorney and other authority). Any deviation from the scope of entrusted tasks (or granted power of attorney and other authority) is possible solely subject to prior written consent of VWP;
- it shall be obliged to notify directly the Management of VWP or a person designated in writing by the Management of VWP of each fact known to it if as a result of such fact the interests of VWP may be harmed or endangered in any way. This in particular refers to information on any prohibited acts that may be committed on connection with performance of duties entrusted by VWP.

### 20.3

Upon each request by VWP, the Contractor shall return all letters and documents that confirm or certify its authority or authorisation of other people to act on behalf of VWP. Request to return such documents shall be equivalent to revoking such authority unless provided otherwise in the request. Such document shall be returned latest after completion of the actions specified therein unless the original document had been submitted to a competent body of administration or court. In such situation, it is necessary to provide an official confirmation that the original of such document had been submitted as specified above.

### 20.4

Further powers of attorney may be granted by the Contractor is permitted only when so provided in the original power of attorney. Any further power of attorney shall be notified in writing to the Legal Department of VWP.

### 20.5

The Contractor may not, without the prior written consent of VWP, hire any employees of VWP or of any temporary agency operating for VWP or conclude any civil law agreements with any such employees in order to perform any contracts for construction works for VWP.

### 20.6

The parties agree clearly that any breach of the above rules and duties may be treated as a basis of Contractor's liability to VWP. The Contractor is aware that breach of the above rules may form a basis to terminate the agreement it has with VWP (or any other legal relationship).

VWP reserves the right to claim damages in accordance with the law as a result of breach of the rules or obligations specified in these Terms and conditions.

## 21. Copyright and industrial property right; confidentiality; advertising

### 21.1

VWP or Volkswagen AG hold all rights, including intellectual property rights, in particular to all drawings, sketches, calculations and other documents as well as models and templates provided to the Contractor in connection with conclusion of the contract. The subjects of such rights may not be disclosed to third parties without prior written consent of VWP. The Contractor may use them solely in order to perform the contract concluded with VWP and after completion of the contract they shall be returned forthwith to VWP without a separate request on the part of VWP.

### 21.2

Before providing the Contractor with confidential information or special protection information, VWP will be entitled to conduct a payable inspection in the Contractor's place with regard to information protection. The inspection will be conducted by the Security Department of VWP and/or a third party indicated by VWP.

The Contractor shall be obliged to treat all information, documents and other objects provided to the Contractor by VWP in connection with preparation of an offer, conclusion and performance of the contract as a secret of VWP within the meaning of art. 11.4 of the Act of 16 April 1991 on counteraction to unfair competition (Dz.U. of 2003, No. 153, item 211, as amended). The confidentiality obligation shall survive the completion of the contract by the Contractor unless such information, documents or other objects constitute secrets of VWP are not generally accessible or known.

### 21.3

The Contractor shall further be obliged to keep the fact of having concluded the contract with VWP in confidence unless the applicable law requires disclosing the fact to persons who have statutory authority to obtain such information. The Contractor may publish information on collaboration with VWP for advertising purposes solely subject to prior written consent of VWP. Such consent will be granted by VWP solely for a specific advertising action detailed by the Contractor in its request to VWP.

### 21.4

Pursuant to art. 11.4 of the Act of 30 June 2000 – Industrial property right, the parties agree that VWP shall be solely entitled to patents to inventions or protection rights for utility models as well as the right to register industrial models with reference to inventions and models developed in connection with the performance of the Construction Work contract. The Contractor shall be obliged to incorporate corresponding provisions in its contracts with employees or other persons who are involved in the performance of Construction Work contracts.

### 21.5

The Contractor shall provide VWP with complete documentation related to the models and inventions referred to in item 21.4 of these Terms and conditions.

### 21.6

The Contractor shall transfer forthwith to VWP all copyright as long as such rights relate to works developed in connection with the performance of Construction Work contracts. As soon as acquired, such rights shall be forthwith transferred by the Contractor to VWP. Remuneration for transfer of such rights to VWP is incorporated in the remuneration for Construction Work.

### 21.7

If in the performance of the Construction Work contract, the Contractor uses objects or software protected under copyright to industrial property right held by third parties, it shall take all reasonable efforts to prevent breach of such rights. The Contractor shall be fully liable for any claims for damages or other claims raised by third parties related to infringement of their rights.

### 21.8

Breach by the Contractor of the provisions of items 21.1-21.7 hereof shall be deemed as a material breach of the contract between the Contractor and VWP which will constitute grounds for termination of the contract by VWP with immediate effect.

### 21.9

If as a result of breach by the Contractor of third party rights referred to in item 21.7 of these Terms and conditions, an authorised third party claims from VWP damages to repair damage resulting from such breach, the Contractor shall be obliged to remedy such breach. The above shall be without prejudice to the right of VWP to claim compensation to such extent as the breach of such rights caused damage to the operation of the business of VWP or breached its personal rights.

### 21.10

All means of production manufactured by the Contractor on the basis of data or documents provided by VWP, such as swages, moulds, templates, models, standards, tools, welding templates, programs, etc. may be used by the Contractor solely for the performance of orders placed by VWP. The Contractor may not use such means of production for its own purposes or offer or provide access thereto to third parties.

### 21.11

All technical documentation (drawings, plans, calculations, spare part lists, programs, etc.) which in particular may be required for assembly, operation, use, repair, fabrication or obtaining the required permits, shall be provided to VWP by the Contractor at the right time in the number of counterparts as required by VWP and in appropriate format. Such

documentation will be delivered latest at the time agreed in the contract.

## 22. Other obligations of the Contractor

### 22.1

The Contractor shall be obliged to perform Construction Work in accordance with the best know-how, subject to the applicable regulations and principles of community life, the Design and in compliance with the instructions given by VWP, resident engineers and other persons representing VWP.

### 22.2

The Contractor shall verify completeness and correctness of the documents provided to it by VWP in connection with the Construction Work contract. The verification must be performed in advance before commencement of Construction Work by the Contractor. Any missing elements or errors shall be reported by the Contractor forthwith to the Procurement Department of VWP and in agreement with VWP it will make appropriate modifications or additions to those documents.

### 22.3

The Contractor shall be obliged to inspect the quality of Construction Work before inspection by VWP. This in particular applies to Construction Work performed by subcontractors or further subcontractors. The Contractor shall in particular be obliged to verify if Construction Work has been performed in compliance with the Design and building art and if it can be used as specified in the contract or as commonly accepted for buildings or structures of the specific kind as well as if the documentation related to Construction Work is complete. The scope and content of quality inspection of Construction Work by the Contractor may be specified in the contract between the parties. The Contractor shall be obliged to perform quality inspection in compliance with the type and use of the buildings and structures and best available know-how.

### 22.4

The Contractor shall apply and enhance or update its quality assurance system to keep up with most recent technical know-how, appropriate for the type and properties of the buildings and structures performed by the Contractor under the Construction Work contract.

### 22.5

Additionally, the Contractor's duties shall include in particular:

#### 22.5.1

provision of lodging and transport for employees of the Contractor and transport of building materials;

#### 22.5.2

taking all actions required to comply with the law in connection with the contract and counteract to all

events that could result in a breach of the applicable law in connection with the contract.

### 22.5.3

safe storage of building materials and equipment at places agreed with VWP, in accordance with producers' instructions and protect them against damage, contamination and theft until the Work is fully and finally accepted by VWP;

### 22.5.4

protecting completed Construction Work against damage until the Work is fully and finally accepted by VWP;

### 22.5.5

ensuring order at the Construction Site and in its surrounding and removal of waste in compliance with the law; ensuring cleanliness in public roads and pedestrian pathways that may be contaminated in connection with the performed work until the Work is fully and finally accepted by VWP;

### 22.5.6

training employees with respect to OH&S regulations and adhering to the regulations concerning environment protection, labour protection, fire regulations and internal regulations of VWP;

### 22.5.7

upon each request of VWP, submission within maximum 21 days, certificates showing no tax arrears and confirming timely payment of mandatory social insurance premiums;

### 22.5.8

upon each request of VWP, submission within maximum 7 days, written confirmations from subcontractors and further subcontractors, retained by the Contractor to perform Construction Work concerning full and timely payment of the remuneration due to them. In case of doubt as to the authenticity of a submitted document, VWP may request submission within 7 days of the relevant certificate in writing with signatures certified by a notary;

### 22.5.9

performing Construction Work in a manner preventing any damage to other companies and third persons;

### 22.5.10

timely and correct performance of its obligations to its counterparties, in particular in relation to subcontractors and suppliers.

### 22.5.11

provision of access at any time of the Construction Site and the site log when so requested by representatives of VWP,

### 22.5.12

provision of access to representatives of VWP to documents concerning purchases of building materials and equipment and subcontractor services.

### 22.5.13

regular submission to representatives of VWP evidence of admittance to marketing and use in construction industry of materials and technical equipment (attestations or certificates of used materials and equipment) and upon request submission of expert opinions concerning the performed Construction Work. When such expert opinion shows non-compliance of the used materials or performance of work in compliance with the requirements of the Construction Work contract, the costs of such expert opinion shall be covered by the Contractor.

## 22.6

The waste materials produced by the Contractor on the area of VWP during the performance of the agreement – with the exception of scrap metals, including non-ferrous metals and cables – will remain its property and must be removed by it at its cost.

## 23. Documentation of Construction Work.

### 23.1

The Contractor shall be obliged to maintain the site log in a legible and chronological manner, including working drawings, notes and other documents, in compliance with the law and it shall in particular record all facts and circumstances that occur during the performance of Construction Work.

## 24. Amendments to the contract

### 24.1

If VWP nominates a site manager in connection with the Construction Work contract, the manager shall not be entitled to commission on behalf of VWP of any additional work or to make any arrangements modifying the contractual terms and conditions. Such authority is held solely by the Procurement Department.

### 24.2

If during the performance of the contract it is found out that for technical or other reasons modifications are required to the agreed properties of buildings or structures, either party shall be obliged to notify the other thereof in writing.

### 24.3

If during the performance of the Construction Work it is found out that modification to the scope of performed work is required, either party shall be obliged to notify the other thereof in writing.

### 24.4

The offer of a modification to the contract shall be subject to the relevant provisions concerning the offer.

### 24.5

All modifications to the scope of the contract require an annex (modification to the order) to the Construction Work contract. The above does not apply to work that is required to be performed in order to protect human life or health or to prevent material damage to the property of VWP or third parties.

### 24.6

VWP may demand modification to the method of performance of the services, also after conclusion of the contract with the Contractor.

### 24.7

If such modification affects the remuneration agreed earlier for Construction Work, then the parties shall agree new remuneration. Such new remuneration shall be agreed to cover all additional costs and any savings made by the Contractor in connection with the amended manner of contract performance.

### 24.8

If due to the time when a modification to the performance of the contract is made, the Contractor is not able or it is very difficult to keep the completion deadline of Construction Work, the parties shall agree a new completion deadline of Construction Work. The new completion deadline of Construction Work shall provide for interests of both parties.

## 25. Tools

VWP may provide the Contractor with tools necessary to perform Construction Work. The tools shall remain the property of VWP and the amount of remuneration for such provided tools shall be included in the remuneration agreed by the parties. The Contractor shall be obliged to use the tools solely to perform the contract with VWP. The Contractor shall be obliged to enter into an insurance contract covering the provided tools with cover against fire, flood and theft and to transfer to VWP all claims due to the Contractor under such insurance contracts. Additionally, the Contractor shall be obliged to perform all repairs to such provided tools at its own expense. The Contractor shall notify the Professional Department of VWP forthwith of any damage to the tools.

## 26. Acceptance of Construction Work

### 26.1

Notification by the Contractor of readiness for inspection shall mean that the performed services are compliant with the contract and they contain no defects or faults.

The Contractor shall be obliged to notify representatives of VWP by entry to the site log of completion of specific Construction Work and other work per-

formed at the Construction Site (including hidden and temporary work) and of readiness for inspection in order to enable VWP to inspect each Construction Work. The Professional Department shall be notified of the above in writing.

### 26.2

The parties may agree a date of a preliminary inspection preceding final inspection as well as dates of interim inspections. A request for inspection of Construction Work shall be made within the timeframe specified in the performance schedule referred to in item 28.2 of these Terms and conditions.

### 26.3

Completion of each stage of Construction Work shall be confirmed by the Professional Department of VWP on the basis of an interim inspection protocol and an entry to the site log. VWP reserves the right to refuse acceptance in a situation when during an inspection it is found out that a stage of Construction Work is not ready for inspection as the work was not completed. An interim inspection or trial commissioning do not constitute a confirmation of completion of the Construction Work contract and are not deemed acceptance of Construction Work by VWP.

### 26.4

If any defects or faults are detected, a record of divergences shall be made from the interim inspection. Such record of divergences shall specify *inter alia*:

- detected defects and faults and the deadline to remedy them,
- determination of delay in performing construction work.

Remedy of defects and faults shall be without prejudice to commencing and performance of other construction work unless this is prevented by technological reasons.

When such defects and faults are remedied, the Contractor shall notify readiness for inspection of the stage of construction work. Item 26.1 shall apply accordingly.

### 26.5

The final inspection protocol shall be evidence of completion of Construction Work. The inspection shall be performed by a commission composed of duly authorised representatives of the parties to the contract.

Final inspection of construction work shall be completed latest within 14 days from notification to the Professional Department of VWP of completion of all construction work.

Latest 14 days before commencement of the final inspection, the Contractor shall provide the Professional Department of VWP with documents related to the scope of completed work.

### 26.6

If any defects or faults are detected, a record of divergences shall be made from the final inspection, specifying *inter alia*:

- defects and faults detected during inspection and the deadline to remedy them,
- determination of delay in performing construction work.

When the defects and faults are remedied, the Contractor shall notify its readiness for final inspection. Items 26.1 and 26.5 shall apply accordingly.

### 26.7

The Contractor agrees to perform all work recommended by competent authorities during the procedures related to obtaining the occupancy permit. The Contractor may not demand any remuneration if the need to perform such work is due to incorrect performance of the contract, including non compliance with the documentation and building art and the applicable regulations and Polish Standards.

### 26.8

Latest 14 days before inspection date, the Contractor shall provide VWP with complete as-made documentation in three copies, as specified in item 26.5 of these Terms and conditions.

### 26.9

All costs related to repeated inspection of Construction Work or a part thereof shall be covered by the Contractor. If during a repeated inspection it turns out that the Contractor has failed to remedy the detected defects and faults or that new defects or faults are detected, VWP may have the defects and faults remedied by a third parties at the expense and risk of the Contractor.

### 26.10

If the contract provides for trial commissioning or another form of verification of correct performance of Construction Work, such operation will be performed subject to agreement with VWP at the expense and risk of the Contractor. Should VWP provide the Contractor with its personnel to perform such trial, the Contractor shall be responsible for all damage to those persons in connection with the performed trial. The Contractor shall be further liable for all damage caused to the property of VWP by the performed trial unless caused by wilful material breach of the operation of Construction Work by the personnel of VWP provided the Contractor has dutifully and exhaustively instructed the personnel of VWP with such operating rules. The Contractor shall be obliged to prove the above circumstances.

### 26.11

If as part of performance of Construction Work, the Contractor installs equipment or machines that require training of the personnel of VWP, the Contractor shall hold such training at its own expense. Latest 10 working days before the planned training, the Contractor shall agree with VWP the duration of such training and obtain consent of VWP to hold

such training. Such training may not produce any problems to current operations by VWP.

### 26.12

If possible and permissible, VWP may use the buildings or structures during the trial commissioning and other tests for its own production.

### 27. Transfer of risk

All benefits and risk related to Construction Work shall be transferred to VWP when the final inspection protocol of Construction Work is made in compliance with item 26.5 of these Terms and conditions.

### 28. Deadlines; delay

#### 28.1

The completion deadline of Construction Work is binding upon the Contractor.

#### 28.2

The Contractor is obliged to submit to the Professional Department of VWP a final performance schedule of Construction Work latest within 5 working days from conclusion of the contract unless agreed otherwise. The performance schedule has to be approved by the Professional Department of VWP. VWP may provide its reservations to the Contractor with respect to the performance schedule. The Contractor shall be obliged to incorporate justified reservations made by VWP and modify the performance schedule accordingly.

#### 28.3

If during the performance of the Construction Work contract it is necessary to modify the contractual deadlines, the Contractor shall agree such negotiations with the Procurement Department. In such circumstances, items 28.4 and 32 shall apply.

#### 28.4

If the Contractor is late with the performance of Construction Work, it shall pay to VWP a contractual penalty of 0.3% of the net contract value for each day of delay.

VWP reserves the right to claim damages in accordance with the law and related to delays in performance of work by the Contractor, in particular damages related to damage suffered as a result of production interruption, in excess of the contractual penalty specified above.

#### 28.5

If as a result of force majeure, VWP is not able to inspect Construction Work at the agreed time, the Contractor shall not be entitled to any claims for damages from VWP due to delay in inspecting Construction Work. In this situation, the Contractor may not demand that VWP performs its reciprocal contractual obligation. Force majeure within the meaning of these Terms and conditions shall be understood as all unforeseeable, unavoidable and major

events, such as natural catastrophes, war, riots, unrest, administrative measures, etc. As far as possible, VWP shall notify the Contractor of the anticipated duration of force majeure circumstances. For the duration of such obstacles, the Contractor shall adequately protect Construction Work at its own expense and risk.

### 28.6

VWP shall be relieved from its obligation to inspect Construction Work in whole or in part and will be authorised to terminate the contract in this respect within two months from expiry of force majeure circumstances if Construction work due to the delay caused by force majeure within the meaning of item 28.5 of these Terms and conditions have been become unnecessary for VWP – subject to economic aspects.

## 29. Contractor's liability for defects and faults

### 29.1

The Contractor shall be liable for defects and faults in Construction Work in compliance with the applicable law, including related to statutory warranty in case of contracts for specific work.

### 29.2

The rights under statutory warranty expire 36 month from final acceptance date.

### 29.3

If the Contractor performs Construction Work incorrectly, VWP shall enable the Contractor to remove the defects within timeframes designated by VWP. If the Contractor is unable to comply with the demand of VWP in the timeframe designated by VWP, then VWP may terminate the contract. Any resultant costs shall be borne by the Contractor. VWP shall be entitled to deduct (also contractually) any costs related to remedy of irregularities from the amounts due to the Contractor from VWP.

### 29.4

If the Contractor again performs Construction Work incorrectly, VWP shall be entitled to terminate the contract without designating the Contractor any additional timeframe to perform Construction Work without any defects. Any resultant costs shall be borne by the Contractor. VWP shall be entitled to deduct (also contractually) any costs related to remedy of irregularities from the amounts due to the Contractor from VWP.

### 29.5

If despite ineffective expiry of the time designated to the Contractor by VWP in accordance with item 29.3 of these Terms and conditions VWP does not terminate the contract, then VWP may remedy or have the defects remedied by a third party. Any resultant costs shall be borne by the Contractor. VWP shall be entitled to deduct (also contractually) any costs

related to remedy of irregularities from the amounts due to the Contractor from VWP.

### 29.6

If despite adherence to the obligations specified in item 22 of these Terms and conditions, defects and faults in Construction Work are detected only after commencement of operation of the building or structures, then VWP may demand damages from the Contractor for additional outlays related to defective performance of Construction Work; if such defective performance of Construction Work results in interruptions to production at VWP, VWP may claim contractual penalties as specified in item 28.4 for each case of the production suspension.

### 29.7

When the defects and faults in Construction Work performed by the Contractor may cause or pose direct threat to human life or health or may cause major material damage, VWP shall be entitled to immediately remedy or have the defects and faults remedied at the Contractor's expense and risk. Any defects shall be notified as soon as possible by VWP to the Contractor and as much as possible shall ensure Contractor's participation in remedying such defects and faults.

### 29.8

Unless agreed otherwise, the Contractor shall provide VWP with a quality warranty for Construction Work and all other work covered by the Construction Work contract. The warranty shall cover Construction Work and all other work performed by the Contractor and subcontractors retained by it as well as all materials used in such work. The warranty period shall be as follows:

- 10 years for foundations, roof and related elements,
- 5 years for other Construction Work and all other work and the building materials and accessories,
- for other materials, devices and equipment in compliance with the corresponding producer's warranties.

### 29.9

The warranty shall begin on the day when the building or structure is taken over by VWP on the basis of a final inspection protocol.

### 29.10

Should any defects or faults be detected during the warranty period, VWP shall demand that the Contractor remedies them within a designated time and at its own expense. If such defects and faults are not remedied within the designated time, VWP may have the defects and faults remedied by a third party at the expense of the Contractor.

### 29.11

In order to secure any claims of VWP against the Contractor under statutory and contractual warranty, the Contractor shall pay to VWP a security deposit

of 10% of the value of Construction Work; VWP shall be irrevocably authorised herewith by the Contractor to deduct the security deposit from any payments to the Contractor in the amount of 10% of each invoice issued by the Contractor. The security deposit shall be refunded to the Contractor after expiry of the contractual and statutory warranty period. The security deposit may be substituted with an irrevocable, unconditional, time-unlimited and non-challengeable bank guarantee payable upon a first written demand of VWP. The wording of guarantee and a list of entities that may issue a bank guarantee acceptable to VWP is available from the Procurement Department of VWP.

### 29.12

In case of incorrect performance of Construction Work, VWP shall be entitled to claim reduction of remuneration for incorrect performance of Construction Work and a claim to correct the resultant damage. If as a result of incorrect performance of Construction Work, production is interrupted at VWP, VWP may claim contractual penalties as specified in item 29.6 for each case of production interruption. The Contractor shall be further obliged to indemnify and hold VWP harmless against all claims for damages due to defective performance of Construction Work that may be made by third parties and to repair the resultant consequential damage.

## 30. Liability / Civil liability insurance / Security

### 30.1

Unless in these Terms and conditions other liability rules have been agreed, the Contractor shall be obliged to compensate for the damage suffered by VWP directly or indirectly due to defective performance of Construction Work, breach by the Contractor of administrative regulations concerning safety or for any other reason for which the Contractor is responsible, even if that was not due to its wilful misconduct.

### 30.2

The Contractor shall be obliged to insure the performed contractual Construction Work with respect to Contractor's civil liability covering damage resulting from third party actions or from natural disasters, in particular natural calamities as well as with respect to liability for accidents at the construction site. The Contractor shall insure construction work against building risks.

### 30.3

Additionally, the Contractor shall enter into accident insurance contract for its employees and civil liability insurance contract with respect to the Contractor's business which will include and fully cover the situations specified in item 30.2 of these Terms and conditions.

### 30.4

VWP shall be liable to the Contractor solely for damage caused as a result of wilful misconduct.

## 31. Personal data protection

If the Contractor receives access to personal data when providing the contractual services, he will observe the applicable data protection regulations, in particular process personal data exclusively for the purpose of providing the contractual services (purpose), ensuring that his employees have access to the data only to the extent necessary and commit its employees in writing to data secrecy and instructs them about the data protection regulations to be observed and is able to prove this to us on demand. The Contractor guarantees to protect personal data according to the state of the art. In case of processing personal data by the Contractor on behalf of VW - before the Contractor has access to personal data from VW - to complete the respective required data protection agreement, which is provided by VW for this purpose. The Contractor warrants that the processing of personal data attributable to VW or VW's customers will take place only within the territory of Poland, a member state of the European Union or a state party to the Agreement on the European Economic Area. Deviations from this shall be expressly agreed in writing between VW and the Contractor and shall be subject to the condition of concluding any contracts required for this purpose.

## 32. Final provisions

All modifications of the legal relationship between VWP and the Contractor shall be made in writing.

## 33. Severability clause

Should any provision of these Terms and conditions and other agreements between the parties become or may be invalid or ineffective in the future, this shall not affect the validity of the other provisions of the contract. The above applies to any contractual gaps respectively.

## 34. Place of performance. Competent court

### 34.1

Unless the parties have agreed otherwise the offices of VWP shall be the place of performance of the obligations resulting from Construction Work contract.

### 34.2

Any disputes shall be resolved by a court of law competent for the registered office of VWP. However, VWP may file its claims in a court of law competent for the Contractor's registered office.

### 34.3

In case of disputes, the Polish version of these General Terms and Conditions of Purchas shall apply.

**35. Volkswagen Group requirements regarding sustainability in its relationships with business partners**

**35.1**

"The Volkswagen Group Requirements for Sustainability in Relations with Business Partners (Code of Conduct for Business Partners)" shall constitute a part of the contract, valid and applicable upon the conclusion of the contract.

If the contract terms and conditions, including "The Volkswagen Group Requirements for Sustainability in Relations with Business Partners (Code of Conduct for Business Partners)," are not attached to the offer or an order, they can be obtained from [www.vwgroupsupply.com](http://www.vwgroupsupply.com).

**35.2**

In accordance with compliance rules laid down by Volkswagen, prior to establishing business relations all prospective contractors are vetted to verify their good repute. Within this scope, every potential contractor shall undertake to cooperate and, in particular, to provide accurate and true replies.

**36. General requirements of Volkswagen Poznań for Business Partners with respect to environmental protection**

**36.1**

The valid version of the General requirements of Volkswagen Poznań for Business Partners with respect to environmental protection will be available at any time in electronic version at: <http://www.volkswagen-poznan.pl>