

## Special Terms and Conditions for the provision of development services (status 03/2020)

**This is an English translation of the German STC and for convenience only.**

### 1 Scope and contract components

- 1.1 The following Special Terms and Conditions ("**STC**") shall apply to orders for the provision of development services for the BMW Group.
- 1.2 The company within the BMW Group which actually places the order for development service shall, hereinafter, be known as "**BMW**". The other party to the contract shall hereinafter be known as the "**Contractor**".
- 1.3 The present STC shall supplement the "General Terms and Conditions for Indirect Purchasing" ("**GTC**"), as from time to time amended. The GTC shall apply, including its definitions, unless these STC otherwise provide for a separate rule or specify a different rule in derogation from the GTC.

### 2 Provision of service by the Contractor

By way of supplementation to Clause 3 of the GTC, the following shall apply:

- 2.1 The development services to be provided by the Contractor shall be specified in a project specification ("Lastenheft") or a service agreement ("Leistungsvereinbarung") (hereinafter uniformly referred to as "**LV**").
- 2.2 The modalities to be observed by the Contractor during the provision of the service and any contributions to be made by BMW are specified in the service level agreement ("Leistungsschnittstellenvereinbarung or Schnittstellenvereinbarung") (hereinafter uniformly referred to as "**SV**").
- 2.3 LV and SV in their respective final versions and all other appendices and documents referred to in the contract are an integral part of the contract.
- 2.4 The relevant tasks and activities in terms of supply described in connection with the LV or SV do not constitute an assignment of a series supply to the Contractor. In the event that the Contractor is assigned with a series supply by BMW or another BMW Group company, the relevant tasks and activities in terms of supply described in the LV or SV shall be deemed to have been bindingly agreed.
- 2.5 Insofar as contributions to be made by BMW are provided for in the LV or SV, BMW shall be entitled to involve third parties in the provision of these contributions. The Contractor is obliged to work together with these third parties to the best of his ability and to inform BMW immediately if there are any indications of possible service disruptions on the part of the third parties which could jeopardize the duly performance of this contract. At the request of BMW, the Contractor shall also work together with the aforementioned third parties at their location (e.g. "Resident Engineering") unless there are important reasons to the contrary.
- 2.6 The parties shall mutually agree on an information system in order to ensure an efficient exchange of information.
- 2.7 BMW is entitled to obtain information on the overall development status and test results at the premises of the Contractor during normal business hours and without impairing the Contractor's operations after consultation with the Contractor. The Contractor shall permit BMW to inspect the available final and provisional tangible and intangible results obtained by the Contractor during the execution of the development project ("**Work Results**") at any time; these shall include in particular inventions, design drafts, copyrights, technical company or business secrets, in particular know-how, documentation, reports, software, samples, models and data, with the exception of BMW data within the meaning of clause 15 GTC).
- 2.8 If the concrete result of the development project ("**Development Result**", which contains existing technologies and Work Results) contains functionalities (in particular software and its parameterization) which are suitable for bypassing or violating legal norms, the Contractor must inform BMW of this in writing immediately after becoming aware of it, but at the latest before acceptance, unless the Contractor was not aware of the suitability of the functionalities for bypassing or violating legal norms or BMW already knew this.
- 2.9 The Contractor undertakes to select and monitor qualified personnel with the greatest care in order to achieve the contractual objectives and to ensure to the best of his ability the continuity of the composition of the personnel required during the term of the contract. This applies in particular to the project manager.
- 2.10 The Contractor undertakes to carry out the development services in such a way that the specifications, cost targets and cost requirements agreed in the contract or safety and quality requirements to be observed otherwise are met. The Contractor shall perform the assumed development services to the best of its ability with the utmost care, taking advantage of the latest state of the art in science and technology and utilizing its existing know-how acquired during the term of the contract.

### 3 Changes

By way of supplementation to Clause 4 of the GTC, the following shall apply:

- 3.1 Changes shall be documented in a form determined by BMW.
- 3.2 In order to compensate for additional costs resulting from changes, the Contractor assures BMW its support in introducing measures to reduce part prices.

### 4 Acceptance

By way of supplementation to Clause 5 of the GTC, the following shall apply:

- 4.1 If the ordered development services involve several individual projects (e.g. several vehicle derivatives), the respective individual project shall be accepted separately. Partial acceptance within the individual projects is excluded.
- 4.2 A defect within the meaning of Clause 5.2 of the GTC shall in particular also include security-relevant flaws in the source code, in particular software accesses not approved by BMW, which facilitate an intervention in the software contained in the Development Result by hackers or other unauthorized persons or enable manipulations.

### 5 Deadlines

By way of supplementation to Clause 4 and 7 of the GTC, the following shall apply:

- 5.1 BMW shall be entitled to change an agreed deadline with due consideration of the interests of the Contractor.
- 5.2 Any postponement caused by the Contractor must be justified by the Contractor and approved in writing by BMW.
- 5.3 In case BMW does not make contributions, or does so incompletely or late, the Contractor shall inform BMW of this fact. The Contractor shall inform BMW of any delays resulting from contributions not made by BMW in accordance with the contract or of any threat of such delays. If missing, incomplete or delayed contributions by BMW are not notified in writing by the Contractor to BMW's main contact person immediately or at the latest within ten working days of becoming aware of them, BMW can no longer be held responsible for incomplete, delayed or non-existent contributions.
- 5.4 If it is apparent that the Contractor will not meet an agreed deadline or if he has already missed an agreed deadline ("**Missed Deadline**"), BMW may choose one or more of the following steps:
  - a) BMW may, together with the Contractor, document the responsibility for the Missed Deadline and appropriate countermeasures and agree with the Contractor on a reasonable extension of time.

- b) BMW may itself or with the help of third parties provide support to remedy the failure to meet the deadline, in particular in the form of support by problem-solution teams ("PLT") or quality management parts ("QMT"), logistics quality system ("LQS"), value stream management and/or external service providers and the Contractor shall cooperate in this. The Contractor shall reimburse BMW for the actual costs incurred for remedial measures; this shall not apply if the failure to meet the target is due to circumstances for which the Contractor is not responsible or BMW could not consider specific remedial measures to be necessary. Irrespective thereof, overall responsibility for the Development Result remains with the Contractor.

- c) BMW may reduce the scope of the development project contracted for to a reduced set of services and shall then reimburse the Contractor only for this set of services. The Contractor shall reimburse BMW for any additional costs incurred in achieving the originally agreed development result; this shall not apply if the missed deadline is due to a circumstance for which the Contractor is not responsible.

"Apparent" within the aforesaid meaning is deemed to be present in particular where one or more of the escalation criteria are given in accordance with the overview published on the BMW Partner Portal of the BMW Group at <https://b2b.bmw.com> Login > Collaboration > Escalation process of the BMW Group. BMW will supply the overview upon request.

- 5.5 Clause 5.4 shall also apply if it is apparent that the Contractor will not achieve a quality target agreed in particular in the LV and the SV by the time of the planned acceptance.
- 5.6 In all other respects, the statutory rules governing default, possible obligations of the Contractor to rectification and possible claims for damages by BMW in excess thereof shall remain unaffected.

### 6 Software

Where and insofar as the Development Result contains software, in addition to clauses 2.8, 3.14 and 13.5 of the GTC the following shall apply:

- 6.1 In accordance with the LV, the Contractor shall utilize the BMW AUTOSAR Core, consisting of the BMW system software and the AUTOSAR stack compatible with it. In respect of such use, the "BMW Terms and Conditions of Use for BMW System Software in BMW AUTOSAR Core" in effect at the time of contracting (hereinafter the "AUTOSAR Terms of Use") shall apply, and shall constitute an integral part of this contract. The AUTOSAR Terms of Use can be accessed under the following path: BMW Partner Portal of the BMW Group <https://b2b.bmw.com> /> Login /> Applications /> ASCENT / ASCENT Wiki / Pro-

jects / BMW AUTOSAR Core; BMW will also supply the AUTOSAR Terms of Use upon request of the Contractor. BMW shall only furnish the BMW system software to the Contractor after it has previously completed and signed the AUTOSAR Terms of Use and forwarded them to the BMW contact responsible for the project in question.

## 7 Confidentiality

By way of supplementation to Clause 17 of the GTC, the following shall apply:

- 7.1 The information covered by the confidentiality obligations include, in particular
- a) non-public trade secrets, know-how as well as any other results of the respective other party, exchanged in connection with the project,
  - b) the description of the project,
  - c) the envisaged time schedules, target requirements and ideas of the respective other party for the execution of the project,
  - d) any other non-public information, in particular knowledge about circumstances or procedures within the company that one party obtains in relation to the other party in connection with the project (e.g. also during an audit or meeting), and
  - e) any other documentation and information of the respective other party, that is marked as confidential or considered confidential because of the type of information or the circumstances of its transfer.
- 7.2 In connection with inventions the parties shall ensure that no events that destroy novelty within the meaning of § 3 German Patent Act (Patentgesetz) shall prevent or jeopardize the grant of any patent.
- 7.3 If the Contractor is a state or state-recognised university ("University"), the following shall apply in deviation from clause 17 of the GTC and clause 7.1 of these STC: The Contractor shall be entitled to publish the Work Results obtained by him in the course of the development services in scientific publications if and to the extent that the publication is made in the course of fulfilling the Contractor's obligations to promote science by law and BMW has approved the planned publication in advance in writing.

BMW shall respond to requests for approval as defined in clause 7.3 within a reasonable period of time, but no longer than ten (10) weeks after delivery of the text intended for publication. BMW shall only withhold its consent to publication if essential interests of BMW may be affected by such publication. Essential interests shall be affected in particular if company- or project-related results or information that is harmful to novelty with regard to the granting of industrial property rights are to be published.

In the event of a conflict between clause 17 of the GTC and clause 7.1 of these STC, clause 7.3 of these STC shall take precedence.

## 8 IP Rights and Work Results

By way of supplementation to Clause 13 of the GTC, the following shall apply:

- 8.1 If the Contractor is aware of patents, utility patents and industrial designs, design rights, copyright and related intellectual property rights and ancillary rights including rights to databases, other commercial or intellectual rights of protection, irrespective of whether they are at an application stage or have already been registered, and technical business secrets, including, in particular, Know-how and inventions (single and jointly referred to as „**IP Rights**“) of third parties which may be adverse to the Development Result being striven for and for which he cannot acquire the necessary rights of use, the Contractor must notify BMW thereof without undue delay after becoming aware thereof and must obtain BMW's decision on how to proceed.
- 8.2 The ownership of IP rights of the Contractor achieved before the start of the project or outside of the project ("**Background IP**") remains unaffected by these STC.
- 8.3 The Contractor shall disclose Background IP to BMW without undue delay insofar as they are to be used in the probable Development Result. The Contractor shall further inform BMW of the extent to which the Contractor is restricted in its use of said Background IP.
- 8.4 Insofar as IP Rights can be registered for the Work Results, BMW shall particularly be entitled to register IP Rights at home and abroad at its own discretion and on its own behalf, to pursue these rights and to drop them at any time.
- 8.5 The Contractor shall provide BMW with the requisite information for the prosecution of intellectual property rights, where required, to assist BMW with the application.
- 8.6 The Contractor shall make unlimited use of inventions made by his employees during the execution of this development project to an unlimited extent against the inventor; the Contractor shall transfer the right to the invention to BMW AG as soon as the Contractor can dispose of it and BMW AG shall accept this transfer. In the event that it is not BMW AG but another company of the BMW Group that orders the development services on the basis of these STC, BMW AG shall be represented by this company vis-à-vis the Contractor in the acquisition in accordance with this clause 8.6.
- 8.7 In case the Contractor is a University it is obliged to include employees who fall within the scope of Sec. 42 No. 2 Law on Employees' Inventions ("Gesetz über Arbeitnehmererfindungen") in the provision of services only after they have undertaken vis-à-vis BMW to report all employee inventions in connection with the project to the University in accordance with Sec. 5 Law on Employees' Inventions and not to exercise their right under Sec. 42 No. 2 sentence 1 Law on Employees' Inventions.

acceptance of the Development Result in accordance with the GTC and these STC.

8.8 BMW grants the Contractor a non-exclusive, worldwide right of use, unlimited in terms of time and territory, to the transferred or licensed Work Results and IP rights based thereon, which are included in the Development Result, in accordance with the following provisions:

- a) This right of use is royalty-free for research and development purposes.
- b) For a commercial utilization of these Work Results in cases, which stand in no connection with land vehicles, the right of use is granted to customary market conditions.
- c) BMW reserves the right to a reasonable period of exclusivity for the commercial exploitation of these Work Results in cases in connection with land vehicles. As for the rest BMW agrees to provide any manufacturer of land vehicles with non-exclusive and of direct or indirect services on the part of the Contractor to this manufacturer to grant comprehensive rights of use to these Work Results at customary market conditions.

8.9 The Contractor shall be obliged to inform BMW within a reasonable period of time of any intended use, specifying the intended type and scope of use.

8.10 The Contractor shall address the notifications provided for in this Clause 8 to the BMW Patent Department: "BMW AG, Patentabteilung, 80788 München".

8.11 The provisions in this Clause 8 take precedence over any provisions on confidentiality or retention of title ("Eigentumsvorbehalt").

## **9 Quality**

9.1 The Contractor undertakes to inform BMW in writing without delay if there are any indications that a quality problem has arisen.

## **10 Warranty, limitation period**

By way of supplementation to Clause 12.1 and without prejudice to Clause 13 of the GTC the following shall apply:

10.1 The Contractor warrants that the Development Result is free from material defects and defects in title and, in particular, that the Development Result is suitable for the use presumed in accordance with the LV and the tender documents.

10.2 Claims for material defects against the Contractor shall lapse three years after acceptance of the Development Result in accordance with the GTC and these STC. Claims for defects in title shall lapse three years after the end of the year in which they arose and BMW becomes aware of the circumstances giving rise to the claim or should have become aware of them without gross negligence, but at the latest ten years after

## **11 Term of contract, termination**

By way of supplementation to Clause 6 of the GTC, the following shall apply:

11.1 If the content of individual provisions of these GTC extends beyond the end of the contract, these provisions shall remain effective even after the end of the contract. This applies in particular to the provisions contained in Clauses 7 (Confidentiality) and 8 (IP Rights and Work Results).

11.2 In the event of termination or other ending of the contract, all items provided to the Contractor by BMW, including all drawings and other documents, data carriers, devices and tools, shall be returned to BMW, irrespective of whether they have been processed or unprocessed.

## **12 Miscellaneous**

12.1 Insofar as details are not expressly regulated in these terms and conditions, the regulations governing contracts for work ("Werkvertragsrecht") shall apply in addition.

12.2 In case a third party asserts a claim against a BMW Group company abroad for compensation for personal injury and/or damage to property due to a product defect ("Produkthaftung") or due to an infringement of property rights, the BMW Group company may, at its discretion, initiate the necessary procedural measures at the foreign court of competent jurisdiction in order to enforce any claims for indemnification or regress against the Contractor. In such a case, the rights and obligations of the parties shall be governed exclusively by the law applicable at the place of jurisdiction.