

Special Terms and Conditions for IT Project Services (Status 11/2018)

**This is an English translation of the German STC and for convenience only.
Only the German version of these STC is legally binding.**

1. Scope and Definitions

- 1.1 The Special Terms and Conditions ("**STC**") set forth below shall apply to IT Project Services contracted for by the BMW Group, where they are not intended or planned for deployment in motor vehicles.
- 1.2 The company within the BMW Group which actually places the order for the IT Project Services 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.
- 1.4 Within the meaning of these STC, "**IT Project Services**" refers to all services for IT projects, in particular development, maintenance and adaptation of customised software, configuration maintenance and adaptation of standard software, conceptual services, analyses and documentation services.

2. Service Provision

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

- 2.1 The scope of the IT Project Services to be provided by the Contractor, together with complete description of the scope of services, the testing and formal acceptance criteria, the deadlines and Service Levels to be adhered to, the description of the environment, the necessary contents of any documentation (hereinafter the "**Services**") and the materials to be provided and cooperation to be furnished by BMW shall be stipulated in BMW's Purchase Order.
- 2.2 The type and quality of the Services to be provided:
 - a) The Contractor shall comply with the standards applied by BMW (e.g. ITPM, ITIL) and shall ensure that all employees deployed by it within the technical sphere have suitable qualifications. The Contractor shall perform the Services in line with the state of the art and conformity with recognised quality and market standards.
 - b) The Contractor is responsible for providing all legally and commercially suitable and necessary resources in material and staffing regards (including facilities, equipment, data services and software).
 - c) The Contractor shall also be responsible for procuring all such licences, approvals, consents and permits required for the provision of the Services pursuant to the requirements of law or demanded from its sub-contractors or third parties engaged by it.

3. Place of Performance

- 3.1 Unless otherwise agreed, the place of performance shall be the location of the Contractor. The Contractor shall perform the agreed services at its locations as designated for this purpose, which shall have the corresponding technical and organisational provisions. Safety precautions such as fire safety, disaster protection and access controls must comport at least with the requirements of law.
- 3.2 The Contractor may only relocate the place of performance in whole or in part with BMW's prior written consent.

4. Cooperation and Client Supplied Resources

- 4.1 BMW shall provide the collaboration and BMW resources as described in its Purchase Order ("**Client Supplied Resources**"). In particular, BMW shall procure access to

BMW's systems and premises for the Contractor to the extent this is required to enable it to perform the Services in question. The Contractor shall comply with BMW's site rules, security rules and other general policies applicable to external users.

- 4.2 BMW shall furnish all Client Supplied Resources to the Contractor solely for purposes of enabling it to perform the Services. The Contractor shall utilise such Client Supplied Resources with the requisite degree of care and shall comply with the terms of use thereof.
- 4.3 BMW's obligation to provide Client Supplied Resources shall end upon the expiry of the contract term. BMW may terminate provision of any resources with immediate effect if
 - a) the Contractor breaches material contract obligations with respect to the Client Supplied Resources; or
 - b) the Contractor utilises the Client Supplied Resources in a manner in breach of the contract, and in particular, provides them to third parties without authorisation.
- 4.4 The Contractor shall, notwithstanding any failure by BMW to comply with its duties of collaboration or provision of Client Supplied Resources, undertake all reasonable efforts to render the respective Services in line with the contract.
- 4.5 Where BMW does not perform duties of cooperation, or does not fully perform them or performs them only belatedly, the Contractor shall promptly alert BMW upon learning thereof. The Contractor shall inform BMW wherever delays arise based on BMW's failure to discharge duties of cooperation, or failure to do so in line with the contract, or where there is a risk of corresponding delays.
- 4.6 Where BMW furnishes Services to the Contractor based on contracts between BMW and third parties ("**Third Party Supplied Resources**"), this shall be based on BMW's Purchase Order in line with Clause 2.1 of these STC. With respect to Third Party Supplied Resources, BMW grants the Contractor a right of use which is non-exclusive and non-transferable, to the extent and for so long as
 - a) the Contractor requires this in order to perform the Services in line with the contract, and
 - b) this is permitted in line with agreements existing with third parties on the use of the Third Party Supplied Resources.

This right of use is granted on a gratuitous basis, except where the BMW Purchase Order specifies fees therefor. Where the provision of any Third Party Supplied Resources requires the consent of a third party, the Parties shall endeavour jointly to obtain the grant of permission.

5. Sub-contractors

By way of supplementation to Clause 3.5 of the GTC, the following shall apply:

- 5.1 Approved sub-contractors shall be recorded in an Annex to BMW's Purchase Order, including the scope of their sub-contract. BMW may revoke its consent to the deployment of a sub-contractor if it is revealed that the sub-contractor is not or will not be in a position to perform its obligations or if it has breached any material duty owed by the Contractor. The induction of the new sub-contractor shall be performed at the cost and expense of the Contractor.
- 5.2 The Contractor is required to ensure, by means of appropriate contractual arrangements with its sub-contractors that such sub-contractors shall in each case comply with the standards, guidelines and procedures agreed in BMW's Purchase Order, irrespective of whether these are the standards, guidelines and procedures of BMW or of the Contractor.

6. Compensation

By way of supplementation to Clause 9 of the GTC, the following shall apply:

- 6.1. Compensation shall be paid following formal acceptance, or (where no formal acceptance is envisaged in light of the characteristics of the Services, or where the contract does not require formal acceptance of the Services for payment to fall due) upon complete Service Provision, unless otherwise agreed. With respect to partial services, the foregoing shall apply *mutatis mutandis*, such that compensation shall only fall due upon complete provision of the respective partial services. Where the compensation is determined in line with intervals of time, the Contractor shall invoice BMW in each case for its Services after rendering them, in line with the agreed invoicing schedule.
- 6.2. BMW may withhold a reasonable amount of contract penalties, damages for default, additional expense or any agreed security from the compensation owed to the Contractor, and may, where applicable, offset them in line with the rules of applicable law.

7. Rights of Use

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

- 7.1. Where the Contractor deploys protected works such as software and databases in order to render its Services, the Contractor shall ensure that BMW Group is entitled to use such works, if and to the extent this is necessary in order to render or to receive such Services. The foregoing shall also apply in respect of third parties engaged by BMW Group if and to the extent necessary in order to enable BMW's use thereof or where such third parties perform a contribution to BMW Group's use of the Services.

8. Information Security

By way of supplementation to Clause 16 of the GTC, the following shall apply:

- 8.1. The Contractor shall ensure that access to BMW's IT systems in connection with the provision of the Contractor's Services is only permitted by persons holding corresponding access rights accordingly granted by BMW. The disclosure of access data (e.g. passwords) to enable access to such IT systems to third parties, in particular to sub-contractors, shall only be permitted with BMW's prior written consent. As soon as any authorised person is no longer engaged in performing the contract, the Contractor shall promptly notify BMW thereof.
- 8.2. The Contractor shall undertake, at its own cost and expense, such necessary technical and organisational measures (e.g. training sessions) such that no impairments of BMW's IT systems or cases of misuse by the Contractor's employees and third parties engaged by it may arise.

9. Applicable Law

By way of supplementation to Clause 22 of the GTC, the following shall apply:

The Parties hereby agree that Clauses 631 et seq. of the German Civil Code shall apply to the Contractor's Services under the present contract.