

Special Terms and Conditions for Rental of Standard Software (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 the rental of Standard Software by the BMW Group and the maintenance of Standard Software by the Contractor provided that the Software is not intended for or planned for deployment in motor vehicles.
- 1.2 The company within the BMW Group which actually places the order for the rental and the maintenance of Standard Software 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 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, "**Standard Software**" refers to software that covers a precisely defined scope of application, is a commercially available product and was not developed specifically for use at BMW.

2. Service Provision

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

- 2.1 The scope of the Standard Software under the present contract ("**Software**") is shown in BMW's Purchase Order.
- 2.2 The Contractor shall deliver the Software, including documentation, to BMW for downloading and shall notify BMW of the access data (in particular: user names, attendant passwords and possible licence keys) and, upon request by BMW, in addition provide a suitable data storage medium to BMW.
- 2.3 Upon request of BMW, the Contractor shall
 - a) install the Software in exchange for a reasonable fee, and
 - b) offer induction and training events on site in exchange for a reasonable fee, enabling the BMW Group to use the Software in a comprehensive and competent manner.
- 2.4 Unless otherwise agreed, the place of performance shall be BMW's premises. In the event that the Software and data storage media are handed over to BMW, the Contractor shall bear the cost of shipping and packaging and, in addition, the costs of making the Software available for downloading.

A countersignature on the consignment note by an authorised representative of BMW shall not constitute any confirmation of the completeness of the Software or acknowledgement that it is free of defects.
- 2.5 Where, as a result of loss, accidental deletion or similar events during the contract term, BMW no longer has any version of the Software capable of being operated, the Contractor shall have an obligation to furnish a copy of the Software to BMW free of charge.
- 2.6 At such time as the Software is delivered to BMW and following every change to the scope of the Software, the Contractor shall label the copies of the Software provided to BMW with version numbers and Stock Keeping Units ("**SKU**").
- 2.7 Clauses 3.12 and 3.14 of the GTC shall not apply.

3. Ongoing Reporting Obligations of Contractor

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

- 3.1. Upon request by BMW, the Contractor shall, throughout the contract term, supply a product catalogue to BMW each year free of charge, listing all of the Software products the Contractor is required to distinguish within BMW's Software asset management ("**SAM**") and, in particular, listing all of the versions and variants (e.g. editions) including the SKUs for the Software, which are distinguishable from the Contractor's perspective.
- 3.2. The Contractor shall forward to BMW, initially at the time of delivery and subsequently at six month intervals throughout the contract term, the inventory and quantity data for the Software supplied on the basis of its product catalogue ("**Reporting Data**") to BMW free of charge, as follows:
 - a) broken down by respective BMW Group entity within Germany and abroad, and
 - b) on contracts which encompass both Hardware and Software, broken down by Hardware and Software.

The forwarding of the Reporting Data must be undertaken in machine-readable form in accordance with BMW's format requirements, which must satisfy the purposes of the SAM in use within the BMW Group.

- 3.3. The acceptance or receipt of the Reporting Data provided by the Contractor shall not constitute any acknowledgement by BMW of the Reporting Data in terms of its correctness or completeness.
- 3.4. Upon request by BMW, the Contractor shall, during the contract term, ensure that the BMW Group is at all times able to ascertain the scope of the use of the Software automatically. To this end, the Contractor shall furnish signatures to BMW free of charge, by which BMW is able to identify the components of the product catalogue using commercially available tools and processes and ensure that
 - a) the versions and variants (e.g. editions) listed in the product catalogue, including the SKUs of the Software, are automatically identifiable,
 - b) no tools prescribed by the Contractor are required to be used but rather the software asset management tools commercially available shall suffice, and
 - c) to the extent additional information is required to ascertain usage, such information shall be limited to established information, e.g. number of CPUs or number of CPU cores.
- 3.5. The Contractor's duties to discharge its obligations under Clauses 3.1, 3.2 and 3.4 during the contract term are deemed fully and finally compensated by the agreed compensation paid to the Contractor.

4. Contractor's Duty to Provide Software Maintenance

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

- 4.1. Throughout the contract term, the Contractor shall be obliged to maintain the Software at no additional cost.
- 4.2. The duty to provide Software maintenance shall, in particular, include the duty to provide all new program versions and bug fixes, updates, upgrades and all new releases of the Software.

5. Rights of Use for the Software

Clauses 13.3 to 13.5 of the GTC are hereby replaced by the following provisions:

- 5.1. At such time as it delivers the Software to BMW, the Contractor grants to BMW a right of use to the Software which is limited to the contract term, and which is unlimited in geographic or substantive scope.
- 5.2. The right of use of BMW granted to BMW by the Contractor shall, in particular, include the following rights:
 - a) storage and installation of the Software on IT systems,
 - b) permanent and temporary duplication of the Software and the related documentation for use thereof in line with the contract, in particular including the right to load the Software into working memory, to display and to run the Software,
 - c) to load, execute and process BMW's own data sets using the software,
 - d) utilisation of the Software in any hardware environment (in particular, including hardware replacement and substitute computers),
 - e) use of the Software on production, integration and test systems,
 - f) use of the Software on backup and emergency systems (hot/cold standby),
 - g) use of all language versions of the Software,
 - h) use of new program versions provided in connection with Software maintenance such as bug fixes, updates, upgrades and new releases.
 - i) use of older versions of the Software from the same edition within the scope of use provided under the contract ("**Downgrade Right**"), without any obligation to give notice of such use to the Contractor or the manufacturer,
 - j) use of the Software for contract data processing for the benefit of third parties,
 - k) provision of the Software to all of the BMW Group entities and use thereof at all such entities to the extent that BMW itself is entitled to use the same, including by way of cloud computing, on servers or server clusters of any kind, by means of application service provision or as Software as a Service,
 - l) provision of the Software to and use of it by third parties for purposes of the BMW Group in the sense of an extended workbench, and
 - m) use of the Software by third parties at any location and on systems not belonging to the BMW Group for purposes of the BMW Group, and
 - n) provision of the Software to any service provider and the installation, loading into working memory, running and other duplication of the Software on hardware of such service provider, if and to the extent that such service provider assumes the operations of the IT centre for a BMW Group entity, e.g. by way of outsourcing, or performs IT centre services such as software hosting.

6. Change of Scope of the Use or Functionality and Exit of Any Entity from the BMW Group; Option to Acquire a Licence

- 6.1. Where the scope of contractual use or functions of the Software is reduced for BMW during the contract term, BMW shall have the right to modify the compensation payable to take account of this change in the scope of use or function. BMW's further statutory or contract rights shall neither be limited nor precluded hereby.
- 6.2. In the event that any entity or partial entity exits the BMW Group during the contract term, the Contractor is, now and in advance, deemed to offer to such exiting entity or partial entity that it may continue the rental agreement on the same

terms and conditions (including maintenance free of charge), if and to the extent the Software has hitherto already been used at such entity or partial entity. It shall be the responsibility of each of the Parties to advise in writing the exiting entity or partial entity of this offer upon receiving notice of its exit. The Contractor shall, upon giving such notice, remain bound by its offer in line with the first sentence hereof until expiry of a period of four weeks from receipt of such notice. The period of the binding offer shall end, irrespective of knowledge of the Contractor and any notification, upon expiry of two calendar months from the date the entity or partial entity exits the BMW group or at such time as the rental agreement between BMW and the Contractor comes to an end.

7. Contract Term and Contract Termination Option to Acquire a Licence

- 7.1. The contract term is shown in BMW's Purchase Order. An extension of the contract term is only effective with BMW's prior written consent.
 - 7.2. BMW shall have the right to use the Software on the same terms and conditions on a monthly basis in each case, for a term of twelve (12) months at a maximum beyond the end of the contract term.

Such continuation is, in particular, deemed to serve the purpose of enabling BMW to replace the Software by an alternative software product or to modify the services for which BMW uses the Software such that BMW is no longer required to rely on it. The exercise of this right shall require a declaration by BMW to the Contractor.
- In the event of any termination of this contract by extraordinary notice of termination, the Contractor is deemed to grant BMW a reasonable winding up period for the purpose referred to in the foregoing sentence.
- 7.3. Upon expiry of the agreed contract term or where either Party exercises ordinary termination of the rental agreement, or in the event of extraordinary termination by BMW, BMW shall have the right to acquire a licence for the Software for a fee, with credit given for previously paid fees, subject to the following proviso:

a) Provided that the Contractor has offered to sell third parties licenses to the Software within the last six months prior to the expiry of the agreed contract term or notice of ordinary termination of the rental agreement, the Contractor shall offer a contract with the following substance to BMW at the time the Agreement comes to an end, on an irrevocable and legally binding basis:

aa) The Contractor undertakes that it shall procure for BMW a licence to the Software which shall not be limited in time but which shall in other respects at least comport with the scope of use under the rental agreement and also the scope of use under the STC for the Purchase of Standard Software and (if BMW has received the Software on data storage media) shall procure for BMW proprietary title and possession of such data storage media.

bb) BMW hereby undertakes that it shall pay reasonable compensation for the licence, with credit given for the fees previously paid for use of the Software.

cc) The Parties are in agreement that BMW shall be granted the right of use pursuant to sub-section aa) and shall become the proprietary owner of the data storage medium pursuant to sub-section aa).

dd) In further and other respects, the STC for the Purchase of Standard Software and the GTC shall apply.

b) The Contractor shall consider itself bound by this offer until a period of four weeks following termination of the rental agreement has elapsed.

c) This contract shall arise upon BMW's timely acceptance of this offer. BMW shall be entitled to declare its acceptance thereof already prior to termination of the rental agreement.