

Special Terms and Conditions for the Purchase 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 purchase of Standard Software by 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 Standard Software 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 shall 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 standard market fee, in the alternative: for a reasonable fee,
 - b) offer induction and training events on site in exchange for a standard market fee, or in the alternative 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. The risk of accidental destruction and accidental deterioration shall pass to BMW at such time as delivery occurs. It shall be deemed the equivalent of delivery to BMW if BMW is in default of acceptance. In the event that the Software is delivered to BMW on data storage media, the Contractor shall bear the costs of shipping and packaging and, in addition, the costs of providing the Software for downloading.
- 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, listing all of the Software products of the Contractor which it is required to differentiate 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 differentiated 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 the 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 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 duties of the Contractor under Clauses 3.1, 3.2 and 3.4 shall not apply as soon as the Contractor is no longer obliged to provide Software maintenance or the Contractor has received a notification from BMW that it is no longer using the Software with final effect.

4. Contractor's Duty to Provide Software Maintenance

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

- 4.1 During the first twelve (12) months following delivery of the Software pursuant to Clause 2.2, the contractor shall provide Software maintenance. To such extent, the Software maintenance shall be deemed fully and finally compensated by the agreed compensation.
- 4.2 If, prior to expiry of the maintenance period under **Clause** 4.1 hereof, the Contractor receives a notification in which BMW requests continuation of the maintenance, the Contractor shall be obliged to provide maintenance for the Software for a period of up to four (4) further years from expiry of the

maintenance period, in exchange for payment of a standard market compensation, or in the alternative, in exchange for payment of reasonable compensation constituting a standard market percentage of the agreed purchase price, or in the alternative, a reasonable percentage of the agreed purchase price.

- 4.3 The Software maintenance under **Clause 4.1** includes, in particular, 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 an irrevocable, transferable, permanent right of use to the Software 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 it 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.
- 5.3 In respect of Clause 69c (3) (2) of the German Copyright Act [German acronym: UrhG] and in other respects pursuant to Section 17 (2) UrhG, BMW shall have the unrestricted right to sell the Software, together with documentation. The

foregoing right shall also apply to Software provided by download, to old versions of the program and to OEM versions, and includes the right to provide the Software for hire.

6. Warranty

By way of supplementation to Clause 12 of the GTC, the following shall apply:

- 6.1 Where negotiations on a claim e.g. for subsequent performance (in particular: for remediation of a defect) are pending between the Parties, or where the facts and circumstances giving rise to such claim are pending, the limitations period shall be suspended until one of the Parties refuses to continue negotiations. The limitations period shall end no earlier than three (3) months from the end of the suspension period.

- 6.2 The limitations period shall begin to run afresh if the Contractor acknowledges the claim to BMW.

7. The Exit of any Entity from the BMW Group

- 7.1 Where any entity or partial entity exits the BMW Group, BMW assigns the right to use the Software to such entity or such partial entity/to the successor in function or successor-at-law of the entity or partial entity if and to the extent the Software has already been used within such entity or partial entity.

- 7.2 To the extent the entity or partial entity within the meaning of Clause 7.1 hereof exits within the period as described in Clause 4.1, the Contractor shall, at the request of BMW, have an obligation to perform Software maintenance free of charge for the remainder of that term likewise to the exited entity/partial entity.

In all further and other respects, the Contractor shall, upon request of BMW, perform the Software maintenance Services for the entity/partial entity it has performed prior to the exit of the entity on the same terms and conditions, for a period of at least twelve (12) months from the date the entity exits from the BMW group. The Contractor hereby disclaims its right to exercise ordinary termination to such extent. The costs for provision of Software maintenance to BMW shall be correspondingly reduced by the scope of the rights of use assigned/transferred to the exiting entity or exiting partial entity.