

## Special Terms and Conditions for Rental of IT Hardware (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 of Special Terms of Conditions of Contract

- 1.1 The Special Terms and Conditions set forth below ("**STC**") shall apply to rental of IT Hardware
- 1.2 The company within the BMW Group which actually places the order for the rental of IT Hardware 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 Hardware**" refers to the totality or parts of the physical equipment of electronic data processing systems, including, in particular, servers, personal computers, printers, network components and peripherals, including associated systems and operating system software and accompanying documentation (e.g. user manuals and certificates).

### 2. Service Provision

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

- 2.1 The scope of the IT Hardware under the present contract is shown in BMW's Purchase Order.
- 2.2 The Contractor shall supply the IT Hardware on the agreed date to BMW in a condition which is ready for operation, together with all further documentation required for its use.

Unless otherwise agreed, the place of performance shall be at the location of BMW.

The signature on the consignment note by an authorised representative of BMW shall not constitute any confirmation that the IT Hardware is complete or free of defects. The Contractor shall bear the costs of shipping and packaging.

- 2.3 The Contractor shall ensure that the IT Hardware is certified for use as designated in BMW's Purchase Order and in the country of use referred to therein. BMW may, where necessary, make copies of the documentation and may also retain them upon expiry of this contract.

### 3. Installation

To the extent the Contractor has undertaken to install IT Hardware and the Parties have made no agreements to the contrary, then by way of supplementation to Clause 3 of the GTC, the following shall apply:

- 3.1 At the time of delivery, the Contractor shall set up the IT Hardware and install, integrate and configure it.
- 3.2 The Contractor shall request the necessary conditions precedent for proper installation of the IT Hardware (e.g. network connections, loading aids, rooms) from BMW in writing, so that BMW is able to perform its duties of cooperation, if any, and (if BMW is not required to cooperate) shall procure these conditions precedent itself.
- 3.3 Upon BMW's request, the Contractor shall dispose of packaging for IT Hardware it has supplied free of charge.

### 4. Installations and Extensions

- 4.1 BMW may link portions of the IT Hardware with its other devices, elements or additional facilities (such as working memory) and/or fit such devices, elements or additional facilities into portions of the IT Hardware, without consent of the Contractor ("**Installations and Extensions**"). The

Installations and Extensions shall be done in a professional fashion and only by appropriately trained personnel.

- 4.2 The portions of the IT Hardware affected by the Installations and Extensions shall be returned to the Contractor at the end of the rental period as is, except where restoration of installations and extensions or removal thereof is associated with disproportionate expense and effort for the Contractor. BMW shall have no claim against the Contractor for compensation of potential increase in value.

### 5. Transfer and Subleasing

- 5.1 Transfers or subleasing of the IT Hardware within the BMW Group or to third parties engaged by the BMW Group ("**BMW Service Providers**") is permitted.
- 5.2 Subleasing to other third parties shall require the Contractor's consent. The Contractor may only refuse consent for good cause.

### 6. Maintenance

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

- 6.1 During the term of the rental, the Contractor maintains the IT Hardware in a condition suited for the contractually stipulated use, and shall perform the maintenance and repair works necessary for this purpose.
- 6.2 Unless otherwise agreed, the place of performance for maintenance work shall be the location of BMW. Where necessary, the Contractor may perform the works at its own workshops. The Contractor must notify BMW in advance of the relocation of IT Hardware to another place, and it may only do so after any data media which may have been installed on it by BMW have been deleted. Alternatively, the relocation thereof may only be undertaken where the data media remain at BMW's business premises.
- 6.3 The Contractor shall dispose of replaced hardware parts and system components, and shall completely destroy any Data contained thereon, such that no reconstruction of such Data is possible. The Contractor shall confirm the destruction thereof to BMW in writing upon request. Excepted from the disposal are system components which are designated as "Non-Returnable". System components designated as "Non-Returnable" shall pass to BMW's possession and ownership in exchange for reasonable compensation, crediting the compensation previously paid by BMW.
- 6.4 The Contractor shall coordinate maintenance work with BMW in advance and plan it such that BMW's use of the IT Hardware is not adversely affected. The Contractor shall make agreement with BMW on maintenance windows in a timely manner prior to carrying out such maintenance.
- 6.5 Troubleshooting
  - a) BMW shall notify the Contractor of malfunctions, system or system component outages and other problems ("**Faults**") in connection with a defined operating process.
  - b) The Contractor is required to localise, analyse and remediate the Fault. Where the remediation of a Fault requires very substantial maintenance work, the Contractor shall, upon BMW's request, furnish BMW with a temporary substitute or workaround solution free of charge; in respect of the foregoing, the Contractor shall take account of agreed Service Levels.
- 6.6 Where the Service Provision also includes securing the backup of BMW Data by the Contractor, it shall backup the Data prior to carrying out the maintenance work, in line with BMW's instructions, and shall subsequently restore the Data.

## 7. Formal Acceptance and Functional Testing

- 7.1 For purposes of formal acceptance, BMW shall test the IT Hardware in test and trial operations to verify that it is complete and functional in line with BMW's Purchase Order. The Contractor shall support BMW in doing so upon request.
- 7.2 Where material defects arise during the test and trial operation the Contractor shall supply another item of IT Hardware free of defects to enable functional testing. In all further and other respects, BMW shall confirm the provision of the IT Hardware. Non-material defects shall not constitute an obstacle to successful testing for purposes of formal acceptance.

## 8. Compensation

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

- 8.1 Unless otherwise agreed, prior to successful testing by BMW in line with Clause 7.2 hereof, the agreed compensation shall not be due and payable by BMW. In derogation from the first sentence hereof, the due date for payment shall arise no later than at the end of the contract term or, if the compensation is measured in intervals, upon expiry of the individual intervals.
- 8.2 Absent BMW's prior written consent, the Contractor shall not be authorised to assign claims against BMW or to permit third parties (e.g. leasing companies, banks) to collect them or to transfer its rights and obligations individually or in their entirety to any third party. BMW may only refuse consent under Clauses 9.9 of the GTC and 8.2 of these STC for good cause.
- 8.3 BMW shall not interact with leasing providers, banks or similar third parties by telephone, email or any other form. Payment of the agreed compensation shall be made exclusively to the Contractor.

## 9. Warranty

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

- 9.1 The Contractor hereby warrants to BMW that it is authorised to rent the IT Hardware to BMW. Clauses 12.2 and 12.3 of the GTC shall not apply.

## 10. Rights of Use in respect of Operating and System Software

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

- 10.1 At such time as it provides the IT Hardware to BMW, the Contractor grants BMW a non-exclusive, irrevocable right of use to the system and operating software contained within the IT Hardware, which is limited in time to the contract term but unlimited in geographical and substantive scope ("**Software**").
- 10.2 The right of use granted by the Contractor to BMW shall, in particular, include the following rights beyond BMW's right to use the Software:
- configuration and maintenance of the Software, including by third parties for the BMW Group,
  - use of bug fixes and patches provided by the Contractor and of new program versions such as updates, upgrades and new releases of the Software, as well as updated documentation replacing or supplementing Software previously provided to BMW (referred in the aggregate as "**Updates**"),
  - provision of the Software to all of the BMW Group companies and use by all such companies, provided that BMW itself is entitled to use the Software.
  - provision of the Software to and use by third parties for purposes of the BMW Group in the sense of an extended workbench,

- use of the Software by third parties at any location, and including on systems not belonging to the BMW Group, where such use is for the purposes of the BMW Group.

- 10.3 The provisions under Clauses 13.3 to 13.5 of the GTC shall not apply.

## 11. Contract Term and Termination

- 11.1 The contract term is shown in BMW's Purchase Order; rent shall begin no earlier than on the date of operational readiness. An extension of the contract term shall only be effective with BMW's prior consent. Unless otherwise agreed in the BMW Purchase Order, upon the expiry of the rental term for the IT Hardware, the rental term for all devices, elements and additional facilities by which the IT Hardware was extended following its initial provision, shall likewise end.
- 11.2 BMW has the right to continue the rental period for individual portions of the IT Hardware beyond the end of the contract term, on unchanged terms and conditions, or to purchase parts of the IT Hardware, in particular data media labelled as "Non-Returnable" at a fair market price, crediting the compensation previously paid by BMW. To this end, the Contractor shall prepare an offer upon request of BMW.
- 11.3 BMW is entitled to terminate the rental of a portion of the IT Hardware prior to expiry of the rental term by making a one-time termination payment.

## 12. Collection and Return

- 12.1 Upon expiry of the rental term, the Contractor shall collect the IT Hardware from BMW at its own cost. The foregoing shall also include the costs of disassembly, packaging and reshipping of the IT Hardware. Excepted from the return are system components designated as "Non-Returnable", and which are being assumed by BMW pursuant to Section 11.2.
- 12.2 The Contractor shall ensure that any BMW Data contained on the IT Hardware are fully deleted or destroyed so that no reconstruction of such Data is possible. The Contractor shall confirm the same in writing to BMW upon request.
- 12.3 Upon request by BMW, the Contractor shall accept the return of portions of the IT Hardware which were purchased by BMW pursuant to Clause 11.2 in line with Clause 12.1.
- 12.4 The Contractor is required beginning three (3) months prior to the end of the rental term, to create an overview of those portions of the IT Hardware which BMW must return to it, and to forward the same to BMW. The Contractor shall agree and coordinate collection with BMW and enter into an agreement on the return dates.
- 12.5 BMW shall satisfy its duty to return the IT Hardware by making the IT Hardware ready for collection by the Contractor on the agreed return date. The Contractor shall confirm its receipt of the IT Hardware to BMW.
- 12.6 BMW may also discharge its duty to return the IT Hardware by providing to the Contractor items of the same type and quality for collection on the agreed return date, e.g. replacement devices of equal value of the same manufacture and type as the original device, or equivalent peripherals (monitors, other accessories) which may also be produced by different manufacturers from the original peripherals except where a replacement at equivalent value is unreasonable to the Contractor.
- 12.7 For so long and to the extent that BMW culpably fails, within ten (10) business days from the agreed return date, to make the IT Hardware or portions thereof ready for collection by the Contractor and thus fails to discharge its duty to return the IT Hardware, or fails to discharge its duty in a timely manner, BMW shall be obliged to pay to the Contractor a *pro rated* amount of remuneration for its use per month or partial month, equal to the compensation applicable to the portion of the IT Hardware which was not made ready for collection or not made ready for collection in a timely manner.
- 12.8 At the time of return, the Parties shall create a record stipulating the completeness of the IT Hardware which is being returned as well as any damage thereto.

- a) Customary traces of wear on items of rental property shall not entitle the Contractor to demand a payment going beyond the agreed compensation.
- b) In the event that the Parties are unable to agree at the time of the return of the IT Hardware whether such IT Hardware evidences any damage going beyond ordinary traces of wear, the Parties shall engage an independent third party (e.g. IHK) to prepare an expert report on the condition of the IT Hardware which has been returned. Each of the Parties shall bear one half of the costs for preparation of the expert's opinion.
- c) Any potential claims for damages by the Contractor for damage to the IT Hardware going beyond the customary traces of wear shall be limited to the market value of the affected portions of the IT Hardware as of the date they are returned, except where BMW is liable for the damage due wilful intent or gross negligence.

### **13. Miscellaneous**

By way of supplementation to Clause 21 of the GTC, the following shall apply:

- 13.1 With respect to parts of the IT Hardware which have been the subject of a call-off order in BMW's Purchase Order, no rental certificates or other separate rental contracts will be concluded or signed. BMW's Purchase Order together with its annexes and the declaration of acceptance of Purchase Order by the Contractor shall constitute the sole contract basis.
- 13.2 BMW is not obliged to insure the IT Hardware.