

Special Terms and Conditions for the Purchase 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 and Definitions

- 1.1 The Special Terms and Conditions ("**STC**") set forth below shall apply to the purchase of standard IT Hardware by BMW Group and the maintenance of standard hardware by the Contractor provided that the hardware 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 IT Hardware and the maintenance of standard 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.
- 2.3 Unless otherwise agreed, the place of performance shall be the location of BMW. The risk of accidental destruction and accidental deterioration shall pass to BMW at the time of delivery. The Contractor shall bear the costs of shipping and packaging.
- 2.4 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.

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. Maintenance

To the extent the Contractor is obliged to perform maintenance services under the Purchase Order and no agreements in

derogation herefrom have been made, then by way of supplementation of Clause 3 of the GTC, the following shall apply:

- 4.1 As from the time of delivery, the Contractor shall have a duty to provide maintenance, and in particular to maintain and repair the IT Hardware. This duty of maintenance shall end at such time as BMW resiles from the Hardware Purchase Agreement. Any other rights of termination with respect to maintenance are neither limited nor disclaimed hereby. Rights of use of BMW which the Contractor may have granted shall remain unaffected by any termination of the maintenance.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 At such time as the duty of maintenance comes to an end, irrespective of the reason for this, the Contractor shall,
 - a) fully hand over to BMW the IT Hardware and any Data sets of BMW wherever such hardware or Data sets are in the Contractor's possession, and
 - b) fully hand over to BMW all documents and documentation required for installation, further operations and use of the IT Hardware.

5. Formal Acceptance and Functional Testing

- 5.1 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.

5.2 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.

6. Compensation

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

Unless otherwise agreed, prior to successful testing by BMW in line with Clause 5.2 hereof, the agreed compensation shall not be due and payable by BMW.

7. Warranty

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

7.1 To the extent the Contractor has received a manufacturer's warranty with respect to the IT Hardware, the transfer of such manufacturer's warranty to BMW shall constitute a portion of the Contractor's material obligations under the contract. The Contractor shall furnish its declaration regarding the scope of the warranty and with respect to assertion of claims thereunder together with the IT Hardware. The foregoing shall also apply with respect to the Contractor's declaration with respect to the terms of warranty extensions or insurance policies, if any have been agreed. BMW may assert warranty claims directly *vis-à-vis* the manufacturer or, if the Contractor is the holder of the warranty claim, via the Contractor.

7.2 The prescription period with respect to BMW's warranty claims against the Contractor shall begin to run at such time as the IT Hardware and manufacturer's warranty are physically delivered to BMW, provided that the Contractor has received a manufacturer's warranty with respect to the IT Hardware.

7.3 Where negotiations with respect to a claim, e.g. for subsequent performance (in particular: for remediation of a defect or with respect to the circumstances giving rise to the claim) are ongoing between the Parties, the prescription period shall be deemed suspended until one Party refuses to continue the negotiations. Prescription shall arise no earlier than three months from the end of such suspension.

7.4 The prescription period shall begin to run afresh if the Contractor acknowledges the claim to BMW.

8. Rights of Use in Respect of Operating and System Software

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

8.1 At such time as it delivers the IT Hardware to BMW, the Contractor grants BMW an permanent, non-exclusive, irrevocable right of use to the system and operating software contained within the IT Hardware ("**Software**"), which shall be unlimited in geographical and substantive scope.

8.2 The right of use granted by the Contractor to BMW shall include, beyond BMW's right to use the Software, the following specific rights:

- a) configuration and maintenance of the Software (including by third parties) for the BMW Group,
- b) 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, and updated documentation, replacing or supplementing Software which was previously provided (referred in the aggregate as "**Updates**"),
- c) provision of the Software to all BMW Group companies, and use by all such companies, wherever BMW itself is entitled to use the Software.
- d) provision of the Software to and use by third parties for purposes of the BMW Group, in the sense of an extended workbench,

e) 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

f) use of the Software delivered to BMW independent of the IT Hardware delivered with it, on other hardware or on virtual systems, provided that no third party rights constitute obstacles to this.