

## Special Terms and Conditions for Manufacturing, Supplying, Installing and Fitting Production Equipment (Version 05/2017)

**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 Elements of Contract

By way of supplementation to Clause 1 of the GTCs, the following shall apply:

- 1.1 The Special Terms and Conditions ("**STC**") set forth below shall apply to orders by the BMW Group for manufacturing, supplying, installing and fitting production equipment.
- 1.2 The present STCs shall supplement the "General Terms and Conditions of the BMW Group for Indirect Purchasing" ("**GTC**"), as from time to time amended. The GTCs shall apply unless these STCs otherwise provide for a separate rule or specify a different rule in derogation from the GTCs
- 1.3 In the event of any conflict between the GTCs and these STCs, these STCs shall take precedence over the GTCs.

### 2. Additional Duties

- 2.1 In addition to the measures specified in Clause 3.6 of the GTCs, the Contractor shall undertake the following without additional compensation:

- procurement of all required devices, auxiliary materials and equipment free to the site of use,
- cleaning of construction site and restoration of the construction site to the original assembly states,
- removal of waste arising in the course of carrying out the order,
- adequate lighting at the worksite,
- securing of working areas in respect of accidents, damage, theft and the like.

- 2.2 The Contractor hereby warrants that supply of spare parts for machines and equipment shall be assured for a period of ten years from the date of formal acceptance.

- 2.3 Where actions are to be performed on BMW's premises, BMW shall, upon request of the Contractor, provide the following services free of charge in support of the Contractor's performance of the order:

- electricity, where such is not being used for purposes of heating
- water and compressed air, to the extent this is operationally possible,

- foundation, masonry and lifting working (excluding anchorages), roof work, provision of primary power up to the electrical cabinet.
- water drainage from a central point

- 2.4 Provided that the Contractor creates or modifies software in the course of performing its services, then by way of supplementation to Clause 3.10 of the GTCs, the following shall apply:

The Contractor shall, upon request of BMW, enter into a separate escrow agreement for deposit of the software in escrow and the deposit of associated source codes and documentation within the meaning of Clause 3.10 of the GTCs with such escrow agent as BMW shall designate. BMW shall be entitled to designate the escrow agent in its reasonable discretion. The Contractor is entitled to object to its designation of an escrow agent for good cause if the escrow agent designated by BMW is unsuitable. Unless otherwise agreed, BMW shall bear the costs of the escrow agent. The Contractor shall in all further and other respects bear its own costs arising as a result of the escrow.

- 2.5 Where any changes in the Contractor's equity, shareholding or ownership structure occur, the Contractor shall notify BMW promptly upon learning thereof via its supplier database (lieferantenstammdaten@bmw.de) as well as the responsible BMW Procurement Department, wherever this might have a material impact on contract relations with BMW.

A matter shall be regarded as having a 'material impact' in particular where the change constitutes a 'Change of Control', in the course of which the Contractor becomes subject to control by a competitor of the BMW Group. A 'Change of Control' shall be deemed to include the sale of all or substantially all of the Contractor's assets, merger or consolidation of the Contractor with or into another corporate entity, organisation or person, the acquisition of the Contractor by another corporate entity, organisation or person, or any change of ownership in respect of more than 50% of the voting rights in the Contractor, by way of one or more associated transactions.

The Contractor's contractual duties and BMW's resulting claims are neither precluded nor limited by this Clause 2.5.

- 2.6 Where, prior to conclusion of the services owing under the Contract, the Contract is terminated, the Contractor shall furnish BMW and any suc-

cessor designated by BMW (hereinafter referred to in the aggregate as the "Successor") with any and all reasonable support in order to facilitate orderly and seamless transition of the performance of the services to the Successor ("Termination Support"). The agreed compensation shall constitute full and final compensation for the costs of Termination Support.

The Contractor shall, as a part of the Termination Support, actively support the provision of all information to the Successor and shall make available to the Successor all information which the Successor may reasonably request. This shall, in particular, include:

- a. Active support in respect of Know-How transfers from the Contractor to the Successor.
- b. Provision of all relevant documents, information, documentation etc required for continuing the performance of the services (in the cases of electronic data, in the form requested by the Successor).
- c. Support by employees deployed by the Contractor for performance of the services.

### 3. Transfer of Title to Production Equipment

Where the transfer of title to production equipment has been agreed with the Contractor, as a prerequisite to a down-payment, the Contractor shall (depending on the agreement in the purchase order) document its intentions and its entitlement to a transfer of title prior to or respectively at the time of delivery, by executing the corresponding transfer agreement, which may be downloaded from the path <https://b2b.bmw.com /> Departments /> Purchasing indirect material /> Purchasing Conditions> and which BMW shall forward to the Contractor, and the Contractor shall forward the executed documents together with the invoice via the agreed means of transfer (eInvoicing or post) to BMW's Audit Unit.

### 4. Documentation in Respect of Formal Acceptance

Clause 5.1, sentence 2 of the GTCs are more precisely specified as follows:

At the time of Formal Acceptance, the documents listed in Clause 2.8 of BMW's Production Equipment Rules on Documentation must be handed over. BMW's Production Equipment Rules on Documentation may be downloaded from the following path: <https://b2b.bmwgroup.net /> My Workplace /> My Applications /> DMS /> Directories /> UEVS /> Technologieübergreifende Standards /> Vorschriften /> Betriebsmittelvorschriften> and will be forwarded by BMW to the Contractor upon request.

### 5. Handling of BMW Data upon Completion of the Contract

Clause 15.8 of the GTCs is hereby replaced by the following provision:

The Contractor shall, upon request, destroy all BMW Data at the end of the Contract in such a way that a reconstruction of such data is impossible, and shall promptly confirm to BMW upon request in written form that it has carried out such destruction. The foregoing shall not apply if and to the extent the BMW Data are subject to statutory or otherwise mandatory duty of retention (e.g. for reasons of product liability) or in order to discharge further Contract obligations to BMW.

### 6. IT Production End Device

Where the production equipment contains IT components which are temporarily or permanently linked to the BMW Group's production network ("**IT Production End Devices**"), the requirements in respect thereof shall be governed by the "Production Equipment Rules on IT Security, Production End Devices (IT-PEG)" as specified in BMW's Tender Documents, which may be downloaded from the path <https://b2b.bmwgroup.net /> My Workplace /> My Applications /> DMS /> Directories /> UEVS /> Technologieübergreifende Standards /> Vorschriften /> Betriebsmittelvorschriften> (or shall be forwarded by BMW upon request). In particular, in respect of IT Production End Devices, the following provisions shall apply:

6.1 The IT Production End Devices must generally be fitted with the most recent version of the respective operating system at the time of delivery. Where this is not possible or unreasonable, the Contractor shall promptly inform BMW and shall agree to an upgrade arrangement in order to update the operating systems.

6.2 The Contractor hereby warrants to BMW that the IT Production End Devices do not contain any configuration settings or software (e.g. applications, services, local accounts and system components) which BMW has not requested or the Contractor has not explicitly offered and BMW has not accepted in writing in the individual case (**Undesired Content**). A list of potentially Undesired Content may be downloaded from the BMW Groups partner portal path [https://b2b.bmw.com /> Funktionsbereiche /> Einkauf indirektes Material /> Einkaufsbedingungen /> Anlagen und Merkblätter \(Maschinen und Anlagen\)](https://b2b.bmw.com /> Funktionsbereiche /> Einkauf indirektes Material /> Einkaufsbedingungen /> Anlagen und Merkblätter (Maschinen und Anlagen)) or will be forwarded to the Contractor upon request.

All Undesired Content must be removed / deactivated no later than when the IT Production End Devices are connected to the BMW Group's production network.



- 6.3 As of the time of delivery but in any event prior to connection of the IT Production End Devices to the BMW Group's production network, the Contractor must provide verification of performance of a standard vulnerability scan (**Scan**) according to the current state of the art. Necessary components of such Scans include, in particular, a complete port scan and a complete review of vulnerabilities. The IT Production End Device must pass the Scan without any functional impairments or critical vulnerabilities. Where these criteria are not met, this must be documented and coordinated with BMW.

The reports, verifications and agreements required under this Clause must be coordinated with BMW's Office of IT Security in Production (itpeg\_security@bmw.com).

## 7. Miscellaneous

Where, in respect of the performance of services, the Contractor has made a wrongful agreement or otherwise committed conduct constituting an impermissible restraint of competition within the meaning of the applicable competition rules, then it shall pay damages to BMW equal to 8% of the net invoice amount of the scope of deliveries affected by such competition law violation, unless the Contractor is able to furnish evidence that BMW has not incurred any losses or that the amount of its losses is less. This obligation shall also survive any termination or the conclusion of the services. Any other contract or statutory claims of BMW or claims beyond the foregoing shall remain unaffected hereby; in particular, BMW may assert a higher amount of damages upon furnishing proof thereof.