

BMTS TECHNOLOGY GmbH & Co.KG

Additional Purchasing Terms and Conditions for Products regarding Open Source Software

of BMTS TECHNOLOGY GmbH & Co. KG and its affiliated companies (hereinafter referred to as: “BMTS”)

1. Scope

a) These terms apply to business-to-business transactions with regard to the acquisition/licensing of software and hardware with integrated software (= embedded software) in any code form (e.g. source code, object code, executable...) (“**Contract Products**”). These terms apply in particular when you (“**The Supplier**”) are:

- licensing software and/or technology to BMTS that includes OSS components;
- designing software and/or technology for BMTS that will include OSS components;
- selling and/or otherwise providing to BMTS a hardware product that has OSS components (1) bundled with it; (2) installed on it (e.g. incorporated into firmware as part of the product); or (3) distributed separately, but intended to be used with the product;
- providing BMTS with OSS components in conjunction with services for BMTS or its partners or customers;

b) These terms exclude deviating general terms & conditions used by the supplier, even if BMTS accepts contract products with knowledge of such supplier’s general terms & conditions.

2. Definitions

a) “**Open Source Software**” or “**OSS**” or “**OSS Component**” in this document designates software (1) under a license agreement,

- which is approved by the Open Source Initiative and/or Free Software Foundation and listed on either’s website; and/or

- which allows distribution or provision of access to the software only, if material and/or information (e.g. license texts, copyright/author notices, source code or written offer for the same, makefiles, scripts, other software...) or links to material and/or information (“**Additional OSS Material**”) are provided along with the software or are otherwise disclosed (“**OSS License**”); or

(2) which is (allegedly) free software, dedicated to the public domain or otherwise gratis (“**Free Software**”).

b) “**Copyleft Terms**” designate an OSS license which requires modifications or derivative works of the OSS component to be under the terms of such OSS license, such as the GNU General Public License version 2 and Mozilla Public License version 1.1 and others.

3. Agreement about OSS, Copyleft Terms, Obligations of the Supplier

a) OSS may only be included in the contract products if explicitly agreed between the parties in writing (incl. fax, e-mail) and to the extent listed in an ANNEX OSS signed by BMTS. In addition, software under copyleft terms may only be part of the contract products if specifically agreed between the parties in writing (incl. fax, e-mail). In case the supplier intends to add, update or modify OSS components and/or OSS licenses in the contract products, the supplier will ask for BMTS prior written approval on the intended changes on an updated ANNEX OSS, which BMTS shall not withhold unreasonably – in doubt, BMTS decides. *** Not clear for me***

b) The **ANNEX OSS** shall contain the following information on OSS components included in the contract products or relevant to the use thereof: (1) OSS component name, version number and URL of

BMTS TECHNOLOGY GmbH & Co.KG

- origin, (2) name and version number of the OSS License/indication if "Free Software" is respectively applicable.
- c) The supplier will fully comply with all obligations associated in any way with any OSS included in the contract products (including e.g. OSS licenses and copyright law) ("**OSS Obligations**") and will provide all **Additional OSS Material** and especially the following material and information in a common file format (which BMTS may *May here means the same as 'might'* specify) upon each delivery of a development state and final state for each copy of the contract product or its software or upon request by BMTS :
- (1) A **list of the OSS Components** with: (a) OSS component name and version number, (b) name and version number of the OSS license(e.g. GNU Lesser General Public License v2.1)/indication if "Free Software" is respectively applicable, (c) the origin of the OSS component, (d) copyright-notices and content of the notice file (if e.g. Apache License), (e) license text respective permission note, (f) information if OSS component was modified (g) info on any possible Copyleft Terms, (h) type of linking (dynamic/static);
 - (2) A file ("**compulsory info document**") containing the OSS component file names, the respective licensing texts and copyright/author notices of each OSS component with reasonable headings and a table of contents at the beginning;
 - (3) An **archive file of all OSS source code files** and of all other software (including e.g. makefiles, scripts...) and instructions for building the source code into installable object code (including e.g. "Complete Corresponding Source Code" if required). BMTS needs to provide on distribution of the contract product according to the OSS license.
- d) The Supplier will fulfil its obligations mentioned in Section 3.c) in a way that allows BMTS to distribute each single contract product in full compliance with BMTS OSS obligations. If an OSS license requires so, all **Additional OSS Material** and especially the material and information designated in Section 3.c)(2) + (3) must accompany each contract product in an easily readable format (printed/CD or other standard data carrier/documentated program function to display), which BMTS may specify in writing.
- 4. Supplier's OSS warranties and representations, only agreed OSS, complete info, no license violation/incompatibility, Copyleft Terms**
- Without limitation to any other rights of BMTS, the supplier warrants and represents that
- a) no OSS, other than **agreed** according to Section 3.a), is contained in the contract products;
 - b) material and information it provides pursuant to Section 3. is **complete and accurate**;
 - c) each OSS component included in contract products or relevant to the use thereof does not and will not:
 - (1) **violate** the terms of the OSS licenses for such OSS components by the manner in which the OSS component is used or connected with or interacts with other OSS components or proprietary software;
 - (2) require that any **proprietary software** used in the contract products or a BMTS product will be subject to the terms of an OSS license by the manner in which the OSS component is used or connected with or interacts with such proprietary software according to the intended use of the contract products;
 - d) the supplier has fully **complied** with all of the terms of the OSS licenses by which the supplier is bound with regard to using, processing, editing and passing on the OSS components included in

BMTS TECHNOLOGY GmbH & Co.KG

the contract products or which are relevant to the use thereof provided for under the contract;

- e) the supplier **follows all instructions by BMTS** to protect the proprietary software used in the contract product or a BMTS product according to the intended use of the contract products, especially those aiming to protect against the effect of **Copyleft Terms**.

5. Supplier's OSS Remedies

Without limitation to any other rights of BMTS: If the Supplier breaches its obligations set forth in Section 3. or its warranties and representations set forth in Section 4., the supplier shall, within the agreed development and delivery dates and immediately upon its having knowledge thereof,:

- a) replace not agreed upon OSS-components with agreed software and correct or complete any false or incomplete material and information pursuant to Sections 3. and 4.a);
- b) deliver to BMTS any software not provided in contravention of Section 3.c)(3);
- c) remedy any violations of the warranties of Sections 4.c) to e).

6. Supplier's OSS Indemnification

Without limitation to any other rights of BMTS, the supplier shall indemnify BMTS for all costs, expenses and damages caused by the non-compliance or untimely compliance, whether by act or omission, with

- a) OSS licenses or copyright law in relation to the contract products or
- b) the obligations established for the supplier in Section 3. or
- c) by the violation of the representations and warranties agreed in Section 4. or the remedy of the consequences thereof agreed in Section 5.

BMTS TECHNOLOGY GmbH Co.KG
Stuttgart, 04.05.2018

Änderungs Historie

Version	Datum	Bearbeiter	Beschreibung
V1.0	19.04.2016	Maximilian Grimm	Ersterstellung
V1.1	04.05.2018	Maximilian Grimm	Änderung auf BMTS TECHNOLOGY