

Annex 1.1 to GPC IT Part M Definitions

Attachments

are the documents designated as such which are attached to and supplement the performance specification.

Annexes

are the documents designated as such which are attached to and supplement the GPC-IT Part M.

Appendices

are the documents attached to and supplementing the Annexes.

Supervisory authorities

are all authorities and other bodies with a supervisory function over the Customer or the Business Partners or their respective business activities, in particular the Federal Financial Supervisory Authority and the Deutsche Bundesbank.

Customer

is the natural or legal person commissioning the Services in accordance with the order or call-off.

Contractor

is the party providing the Services under the Contract.

Provision by Customer

are materials or performance, including software, supplied by the Customer and used, processed or integrated by the Contractor for the Customer's order.

Business Partners

are companies that are affiliated with the Customer pursuant to § 15 Stock Corporation Act (*AktG*), as well as specific entities working with these companies (e.g. importers, dealers, contract parties and authorised workshops) that receive the Services via the Customer. The affiliated companies can be viewed at <https://www.daimler-truck.com> -> Investors -> Reports -> Annual Report. Business Partners that are not affiliated companies determined by the Contract, in particular from the order of the Customer, unless otherwise agreed.

Key figures

is the agreed quality level of specific Services.

Performance specification

is the description of the Contractor's performance and Services contained in an annex to the order.

Party or Parties

Depending on the context, a Party is either the Customer or the Contractor; the Parties refers to both the Customer and the Contractor.

Penalty

(i) in connection with service levels or key figures, is a lump-sum amount for a reduction in case of the non-performance of service levels and key figures by the Contractor; (ii) in all other cases, is a contractual penalty in accordance with § 339 *et seq.* Civil Code (*BGB*).

Services

are the performance bindingly agreed in the Contract, in particular in the order, performance specification or elsewhere, which are provided by the Contractor, namely cloud IT services of any kind (e.g. SaaS, PaaS, IaaS) and related performance, including any additions, improvements, replacements or changes to this performance during the term of the respective Contract.

Service Level

is the level of quality of certain services, if any, described in the performance specification or elsewhere in a binding and appropriately designated manner, the failure of which will result in a financial compensation claim becoming due.

Software

is any computer programme together with associated documentation used in connection with the relevant services.

Subcontractors

are the vicarious agents engaged by the Contractor to perform their obligations under this Contract, including any employees thereof.

Contract

is the order (purchase order or call-off order) accepted by the Contractor with legal effect together with all its annexes, attachments and appendices.

Works

are written or other works protected by copyright, such as databases, programmes, software adaptations including the commented source and object code, programme lists, programming tools, procedures, user manuals, reports, drawings and other written documentation as well as machine-readable texts and files.

Annex 1.2 to GPC IT Part M Audit Rights

This *Annex* describes the audit rights that the *Customer* and the *Business Partners* have in relation to the *Services* provided by the *Contractor*.

1. Ongoing monitoring and control of performance specification

The *Contractor* shall enable the *Customer* to check the provision of the *Services*. Insofar as deficiencies are identified during any such checks, the *Customer* shall inform the *Contractor* thereof so that the *Contractor* can take necessary corrective measures. The *Contractor* shall carry out ongoing internal controls of the *Services* (audit as well as identification and elimination of deficiencies), document such accordingly and inform the *Customer* of deficiencies and the measures taken to eliminate such.

2. Right to audit

The *Customer* shall be entitled to verify the correct and proper performance of the Contract by the *Contractor* and to carry out corresponding audits at its own expense subject to prior notification being given in good time, such being conducted during the normal hours of business and within a reasonable scope. In this context, the *Customer* shall receive from the *Contractor* all relevant information and documentation required to check the correct and proper performance of the Contract by the *Contractor*, as well as - at the *Customer's* request - access to the sites at which the *Services* are provided. The information shall be provided at short notice, but at the latest within ten (10) working days of the *Customer's* request, in consultation between the *Customer* and the *Contractor*.

The *Customer* may, at its own expense, call in third parties bound by a duty of confidentiality for the audits. The *Contractor* undertakes to support such audits to a reasonable extent.

Should an audit reveal any deficiencies, the *Customer* shall inform the *Contractor* thereof and request the *Contractor* to comment.

The foregoing also applies with respect to *Subcontractors* used by the *Contractor* to provide the *Services*.

3. ISAE 3402 Report

The provisions of this clause 3 shall apply by agreement to *Services* which are provided by the *Contractor* as part of the IT operation *Services* of IT applications. This includes all contractually defined/commissioned IT basis infrastructure *Services* and processes (including data centre infrastructure, hardware, operating systems and other system software/system platforms, administration network components including admin LAN firewalls, admin LAN switches, firewall management systems of the admin LAN), the *Services* and processes for the database management systems and middleware components used by the IT systems as well as the operation of the applications (e.g. SAP basis). For these services, controls are to be set up that are oriented towards COBIT; in relation to the IT basis infrastructure, the following topics are involved

- AI4 Enable Operations
- AI6 Change Management
- AI7 Install and Accredite Solutions and Changes
- DS1 Define and Manage Service Levels
- DS5 Ensure Systems Security
- DS8 Manage Service Desk and Incidents
- DS9 Manage the Configuration
- DS11 Manage Data
- DS12 Manage Facilities
- DS13 Manage Operations

Controls for the area of database management system, middleware and application support include

- AI6 Change Management
- DS5 Ensure Systems Security
- DS8 Manage *Service* Desk and Incidents
- DS11 Manage Data
- DS13 Manage Operations

The *Contractor* shall support the *Customer* in complying with the requirements based on the Accounting Law Modernisation Act (*BiMoG*) and its Internal Control System (ICS) based thereon as well as the relevant auditing standards and shall provide the *Customer* with all information required for these purposes. In particular, the *Contractor* shall have an "ISAE 3402" report prepared by an independent auditor in accordance with the control requirements agreed between the Parties at the beginning of each calendar year so that the *Customer* can properly fulfil its own reporting obligations. In principle, the ISAE 3402 report must cover the entire calendar year and be submitted to the *Customer* by 15.01 of the following year at the latest. In order to comply with the internal procedures and the requirements of the *Customer's* auditor, the *Contractor* shall provide the *Customer* with a first ISAE 3402 report to cover the period from 01.01 - 30.06 by no later than 25.07 of each calendar year.

The second ISAE 3402 report must cover the period from 01.07 to at least 15.12 Alternatively, this second report may be replaced by a roll-forward letter in which the *Contractor's* auditor confirms the continuing effectiveness of the controls, either by confirming the constancy of the processes, organisation or technology or by demonstrating the effectiveness of the controls in the event of significant changes in the processes, organisation or technology. If the first ISAE 3402 report includes deficiencies/weaknesses and a remediation plan, this procedure also requires a re-testing/update letter in which an independent auditor attests to the completion and effectiveness of the remediation. This re-testing/update letter must be submitted by the *Customer* by mid-December.

In addition, the *Contractor* must inform the *Customer* of any changes made to the internal processes relating to the control requirements as well as any significant deficiencies or material weaknesses that have occurred so that any necessary corrective measures can be taken immediately.

4. Communication with supervisory authorities

Communication with supervisory authorities is the sole responsibility of the *Customer* in the relationship between the Parties. If a supervisory authority contacts the *Contractor* in connection with the contract, the *Contractor* will - unless this is unlawful - inform the *Customer* of this without undue delay and act in accordance with the *Customer's* instructions that then follow. The *Contractor* shall assist the *Customer* and the *Business Partners* to the best of its ability in dealing with all enquiries - of whatever nature - made by such supervisory authorities in connection with the Contract and shall provide the *Customer*, upon request, with all information required for these purposes.

5. Special requirements for *Services* for Banking Act (*KWG*) institutions

Special audit and instruction rights of the *Customer* are described in Annex 1.3 "Special Requirements for *Services* for Banking Act (*KWG*) Institutions", which apply if a Business Partner using the *Services* is active in the financial services sector or *Services* of the *Customer* are used in the financial services sector or the *Customer* is active as an outsourcing company within the meaning of § 25a (2) Banking Act (*KWG*) and other regulations for Business Partners in the financial services sector and wishes to use the *Contractor* as a sub-contractor.

Annex 1.3 to GPC IT Part M' Special Requirements for Services for Banking Act (KWG) Institutions

1. General

The provisions of this *Attachment* shall apply to *Services* which are provided by agreement for the benefit of a *Customer* or *Business Partner* which is an institution within the meaning of the Banking Act (KWG).

2. Supplement GPC-IT Part M clause 5 "Personnel and Subcontractors"

2.1 Reliability of the staff employed

Clause 5.1 of GPC-IT Part M is supplemented by the following clause 5.1.1:

The *Customer* or the relevant *Business Partner* shall control and regularly check the reliability of the personnel working for it. The *Contractor* therefore undertakes - insofar as the possibility of access to customer data of the *Business Partner* exists in connection with the provision of the performance - to employ only reliable personnel. Unreliable persons are in particular those persons with a criminal record due to violation of data protection regulations, property offences and/or finance offences. If the *Contractor* becomes aware during the term of the *Contract* of any such criminal offences committed by the personnel deployed by it, the *Contractor* must inform the *Customer* or the *Business Partner* concerned of such. The *Contractor* shall also be obliged to inform the *Customer* or the *Business Partner* without undue delay of the name, address and date of birth of the personnel deployed if there is reasonable suspicion that such have violated data protection and/or criminal law provisions with regard to customer data of the *Customer* or *Business Partner*.

2.2 Engaging Subcontractors (GPC-IT Part M clause 5.2)

Clause 5.2.1 of GPC-IT Part M is replaced by the following provision:

The *Contractor* is entitled to transfer the provision of the *Services* to a *Subcontractor* only with the prior written consent of the *Customer* in accordance with clause 12 of the GPC- IT Part A - General Section.

In the event of an intended subcontracting to a *Subcontractor* of the *Contractor*, the *Contractor* shall also provide the *Customer*, at the latter's request, with information on the *Subcontractor's* technical, material, personnel and financial resources. The reservation of consent extends to the content of the *Contract* in relation to the third party. In the event of subcontracting, the *Contractor* shall be obliged to conclude only such contractual agreements that are in compliance with the relevant statutory provisions as well as the provisions of this *Contract*.

Clause 5.2.5 of GPC IT Part M is replaced by the following provision:

The *Customer* may demand the replacement of an approved *Subcontractor* for the reasons stated in clause 5.2.1 as not amended by this Annex 1.3 if these reasons only occur or become known to the *Customer* after the approval of the relevant *Subcontractor*. Clause 5.2.1 in the unamended version shall then apply accordingly to the replacement of the *Subcontractor*.

3. Supplement GPC-IT Part M clause 12 Commencement, termination and ending of contract

3.1 Extraordinary termination

Clause 12.2.2 of GPC-IT Part M is replaced by the following provision:

If the basis of a termination is a breach of a contractual obligation, termination is permissible only after non-compliance with a rectification demand, unless the basis of trust for the further performance of the contractual relationship has already been broken by the initial breach of the contractual obligation to such an extent that such trust cannot be restored even by setting a deadline for remedial action or by a rectification demand. In particular, a rectification demand is not required in the event of an order by the Federal Financial Supervisory Authority (BaFin) to terminate the *Services* for *Business Partners* which are institutions within the meaning of the German Banking Act (KWG).

4. Special examination and audit rights

The following provisions shall apply in addition to *Annex 1.2 "Audit Rights"* insofar as a *Business Partner* or the *Customer* using the *Services* is active in the financial services sector (e.g. Mercedes-Benz Bank AG) or the *Services* of the *Customer* are used in the financial services sector or the *Customer* is active as an outsourcing company within the meaning of § 25a (2) of the Banking Act (KWG) and other regulations for *Business Partners* in the financial services sector and wishes to use the *Contractor* as a *Subcontractor*.

The Contractor shall therefore additionally grant the Customer and the relevant Business Partners the special audit rights described in this clause 5 to the extent necessary to comply with the legal requirements existing in relation to the relevant Business Partners or the Customer itself. The applicability of these provisions shall be made known to the Contractor in good time before the conclusion of the Contract. Should the application of these provisions become necessary at a later date, the Customer and the Contractor shall agree on such. If an agreement cannot be reached, the affected Business Partner or the Customer, if it is itself affected, shall be entitled to terminate the Contract with a notice period of three (3) months.

4.1 The *Parties* hereby clarify that any instructions of the *Customer* to the *Contractor* shall only be issued at management level or to a representative of the *Contractor* on the basis of the rights to issue instructions regulated in Annex 1.3 "Special Requirements for Services for Banking Act (*KWG*) Institutions".

4.2 Inclusion in the internal control system

The *Contractor* shall enable the *Customer* and the relevant *Business Partners* to fully integrate the scope of tasks assigned by this Contract into the internal control system of the Customer and the relevant *Business Partners* and, if necessary, to have recourse to the *Contractor's* internal audit for this purpose, and shall provide the *Customer* and the relevant *Business Partners* with all information required in this context. This presupposes a high degree of transparency of the technical controls and the performance of the auditing tasks on the part of the *Contractor*.

4.3 Full rights to inspect, access and audit

Banking Act (*KWG*) institutions are subject to special requirements and regulatory obligations. The *Contractor* shall grant the *Customer* and the *Business Partners* concerned, their respective internal auditors, any auditors working for them on the basis of statutory provisions, the supervisory authorities as well as the bodies commissioned by the supervisory authorities with rights to inspect, access and audit at any time, in full and without hindrance with regard to the scope of duties assigned to the *Contractor* by the *Contract*. In this context, the *Contractor* shall provide these persons with all information and documentation they require for their respective activities.

The *Parties* agree that the internal audit and the auditors of the *Customer* and of the relevant *Business Partners* must be able to verify the *Contractor's* compliance with the legal requirements and the individual requirements of the supervisory authorities with regard to the scope of tasks assigned by this *Contract*. They shall therefore be granted access to all documents, data carriers and systems of the *Contractor* (including the right to make copies of relevant documents) insofar as these relate to the scope of tasks assigned by this *Contract*. Persons who perform internal auditing functions at the *Contractor* or carry out external audits prescribed by law or ordered by the supervisory authorities shall be released by the *Contractor* from their respective duty of confidentiality in this context vis-à-vis the *Customer*, the relevant *Business Partners* and the auditors of the *Customer* and the relevant *Business Partners*. These audit rights shall continue to apply for a period of at least three (3) years after termination of the respective *Contract*, commencing at the end of the financial year in which the respective *Contract* is terminated. All relevant documents must remain available for the same period of time, irrespective of any extended retention obligations under commercial law or other statutory obligations, unless they are returned upon termination of the contract.

4.4 Rights to issue instructions

Special requirements are placed on Banking Act (*KWG*) institutions and such are also subject to supervisory obligations at law. The *Customer* and the *Business Partners* concerned are therefore entitled to issue instructions to the *Contractor* in order to ensure proper performance of the tasks assigned to it under the *Contract*. This shall also apply if the instruction concerns a matter that is the subject of an escalation procedure; escalation procedures or amendment procedures shall then be continued in parallel. Instructions from the *Customer* to the *Contractor* shall in each case be issued only at management level or to a representative of the *Contractor*.

As a matter of principle, the *Contractor* shall comply with the instructions given to it without undue delay. However, if the *Contractor* fears in any individual case that compliance with an instruction of the *Customer* could impair the proper provision of the Services, the *Contractor* shall inform the *Customer* of this without undue delay in text form (*Textform*). At the same time, the *Contractor* shall describe the feared negative effects on the Services in sufficient detail. If the *Customer* then confirms the instruction, the *Contractor* shall comply with it, but shall not be responsible for any negative consequences resulting therefrom and previously presented to the *Customer*. Notwithstanding this, the *Contractor* shall make every effort to prevent the occurrence of such negative consequences or to reduce the impact of such.

Insofar as a *Business Partner* issues an instruction to the *Contractor* which is likely to impair the provision of the Services, the *Contractor* shall inform the *Customer* thereof without undue delay. The *Customer*, the *Business Partner* concerned and the *Contractor* shall then endeavour to bring about a mutually satisfactory solution to the matter.

Insofar as the *Contractor* incurs additional costs in complying with any instruction which leads to measures which the *Contractor* would not have been obliged to undertake had the instruction not been issued, such additional costs shall be reimbursed to the *Contractor* by the *Customer* to a reasonable extent.

The *Contractor* shall ensure that the rights to issue instructions of the *Customer* and the relevant *Business Partners* are directly enforceable and such can take place independently of any other competing rights to issue instructions.