

DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG for IT Part B - Purchase of Hardware

1. Subject Matter/Scope

1.1 General

These Special Provisions of the GPC-IT (Part B) as applicable at the time of contract formation shall apply, together with the General Provisions of the GPC-IT (Part A), as an integral part of any contract for the purchase of hardware.

1.2 Hardware

The Contractor shall deliver the hardware designated in the order, including the system and operating software designated therein (together the "System") with the associated documentation. The System shall be CE-certified and conform to the currently recognised state of the art at the time of delivery, having regard to the respective applicable VDE and UVV regulations.

1.3 System and Operating Software

Systems shall be delivered with installed system and operating software, which the Contractor shall provide additionally on commercially available data carriers.

System software shall include the operating system, the operating software (system-related software) and software development tools such as compilers and associated libraries. Database management tools and middleware are not within the scope of these Special Provisions of the GPC-IT for the Purchase of Hardware (GPC-IT Part B).

1.4 Documentation

The System shall be delivered with documentation in a printed or printable form in German (for German-speaking locations) and English. Such documentation, including that related to installation, use, operation as well as maintenance, shall constitute an element of the main performance obligations. The Customer is entitled to make copies of such documentation for internal purposes as required. The documentation must be sufficient to enable an average user to install and use the System without assistance from the Contractor. Operating manuals supplied must enable an IT specialist to operate and maintain the System.

The Contractor shall provide the Customer with sufficient quantities of up-to-date documentation so that authorised persons are capable of operating the System to the agreed extent without further support.

1.5 Installation

The System shall be set up, installed, integrated and/or configured by the Contractor and handed over and transferred to the Customer ready for operation.

The Customer shall establish the prerequisites necessary for operating the System (e.g. the premises, network and network connections) in order to permit proper installation by the delivery date provided that the Contractor has communicated such prerequisites in writing before contract formation.

1.6 Briefing /Other Performance

During test and trial operations the Contractor shall instruct the Customer on operation to the necessary extent.

The Contractor shall dispose of any packaging of delivered hardware at no charge. At the Customer's request, the Contractor shall also collect the hardware after use and dispose of it at its own expense in accordance with the statutory provisions of law.

1.7 Purchase Price

The performance set out under sections 1.2 to 1.6 is included in the purchase price for the System.

2. Rights of Use to Operating System, Operating and System Software

Upon the delivery of the System, the Contractor shall thereby grant the Customer non-exclusive, irrevocable, permanent rights of use to the system and operating software without any limitations in terms of territory or content, including for types of use unknown at the time of contract formation. These rights of use include the right to edit and maintain the software as well as to develop programs running together with the software, including by third parties, for the Customer. This shall also apply in each case to any corrections, patches, updates, upgrades, new versions or similar as well as updated documentation (collectively "Updates") provided by the Contractor which replace or supplement software previously provided.

The rights to which the Customer is entitled under this section 2 shall not lead to any increase in the total number of contractually agreed permissible users, or the permissible number of installations or permissible intensity of use.

The Customer may use the supplied system and operating software independently of the supplied System on other hardware or in virtual systems, insofar as third-party rights do not conflict with such.

3. **Guarantees (particularly Rights under Manufacturer Guarantees, Enforcement of Guarantee Claims)**

The Contractor shall pass on any guarantee of a manufacturer of the System to the Customer. The Contractor shall provide any explanations, including those concerning the scope of the guarantee as well as on claims thereunder, together with the System. The Customer may make claims under the guarantee directly with the manufacturer or via the Contractor.

The Contractor shall allow manufacturer's guarantee conditions to apply against itself in that any limitation periods for liability for defects and defects of title shall not commence prior to knowledge of the guarantee conditions and such limitation periods are inhibited during the investigation and remedy period on the part of the Contractor until the final conclusion of these efforts.

4. **Delivery Location/Delivery Dates**

The System shall be delivered at the agreed place of performance (place of use) on the agreed date. Prior to this, the price and performance risk shall not pass to the Customer.

5. **Acceptance of the System**

The System shall be delivered complete with the agreed scope of functions, the documentation and all other documents required for use in a ready-to-operate condition. In test and trial operations, the System shall be checked for completeness and its functions in accordance with the order as well as its documentation. The Contractor shall support the Customer in this regard. In the event of any significant defects during the test and trial operations, the Contractor shall provide another, defect-free System. If there are no significant defects, the Customer shall confirm acceptance of the System. With this confirmation, the price and performance risk as well as the ownership of the System shall pass to the Customer.

6. **Defects in Performance**

The Customer shall notify the Contractor without undue delay of any defects occurring during the warranty period. The period for this shall be at least two weeks either after receipt in the case of obvious defects or, after discovery of hidden defects.

The documentation is defective if a reasonable user with the knowledge normally to be expected for the use of the System is either unable to understand the operation of individual functions with the aid of the documentation with a reasonable amount of effort or, such a user is unable to solve problems that arise.

In the case of faults that are not caused by the System or are not caused solely by the System, the costs incurred for fault location, analysis and the costs incurred for the remedying of faults shall be divided or reimbursed appropriately according to the respective causation contribution. The agreed rates for services on a time and material basis shall apply.

6.1 **Subsequent Performance**

The Contractor shall remedy defects at the Contractor's discretion, taking into account the Customer's interests, either by delivering a new System or by replacing or repairing defective system components or, in the case of software, by installing an improved version. As a short-term measure, the Contractor may, in consultation with the Customer, provide an appropriate substitute or workaround solution to temporarily remedy or circumvent the effects of a defect. The obligation to completely remedy defects within a reasonable period of time remains unaffected hereby. The same applies to defects in the documentation. The Customer shall cooperate to a reasonable extent in the analysis and remedying of defects.

6.2 **Price Reduction, Withdrawal**

In the event of failure to remedy the defect or if a reasonable grace period granted to the Contractor expires unsuccessfully, the Customer may, at its discretion, reduce the remuneration or withdraw from the entire contract. If the Customer withdraws from the contract, it shall pay the Contractor an appropriate usage fee for the period until the time of withdrawal, taking into account the system defects, on the basis of a linear four-year depreciation.

6.3 **Reimbursement of Expenses, Damages**

Any further claims, including claims for damages and reimbursement of expenses, shall remain unaffected hereby.

7. **Hardware Maintenance**

Insofar as maintenance services are also agreed, the Contractor shall keep the System at the current recognised state of the art and free of faults and shall remedy any defects that occur. For these services, the special provisions on "**Hardware Maintenance**" (GPC-IT Part C) shall apply.

If maintenance services are also agreed, the remuneration for the purchase of the hardware and for the maintenance of the hardware shall be shown separately.

In the event of withdrawal from the hardware purchase contract for the System, the hardware maintenance shall also end automatically (objection enforcement (*Einwendungsdurchgriff*)). After expiry of the warranty for the System, only the termination of the hardware maintenance is possible. This shall apply accordingly to any independent parts of the System.