DAIMLER TRUCK

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

1.   Subject Matter/Scope

1.1   General

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

1.2   Hardware

The Contractor shall provide maintenance for hardware including the associated operating system, operating and system software (together the "System") and documentation. The System to be maintained is described in the order.

If the Contractor takes over the maintenance of a System already existing with the Customer, it shall record any defects in an equipment acceptance report. The Contractor shall remedy any defects within the scope of the maintenance performance, unless such is significantly beyond customary maintenance and the Contractor has indicated such in the equipment acceptance report.

1.3   Hardware Maintenance

During the term of the contract, the Contractor shall maintain the System in a condition suitable for use in accordance with the contract and shall provide the necessary maintenance and repair services for this purpose.

1.3.1   Preventive Measures (Maintenance)

Maintenance is to maintain the functionality of the System and shall include the replacement of parts subject to wear and tear and system components that are defective, no longer correspond to the currently recognized state of the art or no longer function safely. Any replacement parts for those subject to wear and tear as well as any system components shall become the property of the Customer upon delivery. The replaced worn parts and system components shall become the property of the Contractor. The Contractor shall carry out any integration, configuration or installation work.

The Contractor shall dispose of replaced worn parts and system components so that any data of the Customer on such are irretrievably destroyed or deleted. The complete deletion and/or destruction of the data shall be confirmed to the Customer in writing upon request.

The Contractor shall carry out regular system inspections in accordance with the respective system documentation or current manufacturer information. Faults in the System detected by the Contractor or notified by the manufacturer shall be remedied by the Contractor. The Contractor shall inform the Customer if the fault may have had an impact on the Customer's work results or processes.

If the object of the maintenance is also an operating system, operating and system software, the Contractor shall also provide the Customer with corrections, patches, updates, upgrades, new versions or similar as well as the respective updated documentation (collectively "Updates") and install these in consultation with the Customer. Upon delivery of the Updates, the Contractor shall grant the Customer rights of use to the Updates in accordance with the contract on which the provision of the System is based.

Updates shall be delivered by sending or handing over the machine-readable code on a commercially available data carrier or by sending it by remote data transmission. The Customer shall receive the associated updated documentation in printed or printable form.

After the release of Updates, maintenance services will also be continued for old versions of the system and operating software.

1.3.2   Repair

The Customer shall report to the Contractor any malfunctions, system or system component failures and other problems (in short: "faults"). The Contractor shall localise, analyse and remedy such faults. After receipt of a fault report, the Contractor shall inform the Customer by which date the reported fault is to be remedied.

Faults based on information security weaknesses in the system and operating software shall be remedied by the Contractor without undue delay.

If the elimination of a fault after its analysis turns out to be very extensive, the Contractor shall, in consultation with the Customer, provide at least a temporary substitute or workaround solution so that significant impairments to the Customer's business operations are avoided; agreed service levels shall be observed. The obligation to finally eliminate the fault within a reasonable period of time remains unaffected hereby.

1.3.3   Replacement of Obsolete Hardware

In consultation with the Customer, the Contractor shall replace parts of the System and system components that no longer correspond to the currently recognised state of the art with new parts or components. The assessment for this can be presented by the Customer on the basis of the market development.

In case of doubt, the normal useful life according to the asset depreciation table *(AfA Tabelle)* as from the commencement of the contract shall apply.

1.4 Maintenance Fee

Any performance provided under section 1.3 is covered by the maintenance fee.

1.5 Additional Services

At the request of the Customer, the Contractor shall deliver, install, integrate and configure additional system components or subsystems in accordance with a separate order. The provisions for the purchase of hardware (GPC-IT Part B) shall apply to such. Furthermore, these provisions for Hardware Maintenance (GPC-IT Part C) shall also apply to such additional system components or subsystems from the time of such being taken over.

The Contractor shall not be obliged to remedy faults caused by the use of force or improper handling (non-functional use) within the scope of maintenance. The Contractor shall, however, remedy such faults unless the provision of such performance would be unreasonable for the Contractor. The Contractor may invoice such services separately insofar as the Customer has placed an order for them.

2. Maintenance Window/Job Scheduling

The Contractor shall plan maintenance work and coordinate it with the Customer in such a way that the use of the System by the Customer is not impaired. If maintenance work is unavoidable during the normal operating hours of the System, the Contractor shall inform the Customer of the reason and cause therefor and agree on a maintenance window with the Customer no later than two weeks before the work is to be carried out.

3. Data Protection/Data Security/Information Security

The Contractor shall observe the Principles of Proper Data Processing *(Grundsätze ordnungsgemäßer Datenverarbeitung - GoDV)* when providing its services. This includes, for example, protection against malware (e.g. Trojans, viruses, spyware, etc.), information security and data back-up measures, compliance with data protection provisions and all precautions and measures in accordance with the currently recognised state of ITC technology.

If the scope of services also includes data backup by the Contractor, the Contractor shall implement suitable measures for data backup and recovery. The data shall be backed up at regular intervals in such a way that it is possible to restore the database on the System without any problems. The Contractor shall provide for suitable measures to restore the System in the event of a system failure.

For data protection and information security, the **Annex "Agreement on Commissioned Processing"** shall also apply. The required information is to be filled in by the Contractor and the Customer. If no personal data are processed by the Contractor within the scope of the service provision, the inclusion of the above annex is not necessary. The Customer shall document such.

4. Place of Performance/Change of Place of Installation

The place of performance for the hardware maintenance of the System shall be the Customer's business premises specified in the order, otherwise the seat of the Customer. Insofar as necessary, the Contractor may carry out the maintenance work at one of its own workshops; in such case, it shall provide the Customer with replacements during the maintenance work at no additional charge.

The Contractor shall be notified of any relocation of the System to a place of performance other than that specified in the order. The Contractor shall continue maintenance unless such would be unreasonable for it. If the relocation significantly affects the expense required for performance, the Contractor may demand an appropriate adjustment of the remuneration. Insofar as the hardware maintenance becomes unreasonable for the Contractor due to the relocation, the Contractor may terminate the corresponding contract with effect from the time of the relocation. The same shall apply to the Customer if the Contractor objects to the relocation and this would lead to significant disadvantages for the Customer.

5. Hardware and Maintenance Disclosure

Insofar as any purchase of hardware is also agreed, the remuneration for the purchase of the hardware and for the maintenance of the hardware shall be shown separately.

6. Acceptance of Maintenance Services

The Customer shall confirm the Contractor's performance by signing off on the work records submitted by the Contractor. Any performance rendered shall then be tested by the Customer without undue delay and acceptance declared if there are no significant defects. The Customer shall without undue delay give notice of any defects found. A reservation of the right to claim for defects in the acceptance declaration is not necessary. The Contractor shall remedy defects by subsequent performance within the agreed period of time or, within a reasonable period of time.

7. Defects and Faults in Performance

Defective performance shall be deemed to exist if faults are not remedied, not remedied to the required extent or not remedied within the agreed time for such or, within a reasonable period of time. The Contractor may remedy insignificant defects within the framework of the next regular services.

A defect shall be deemed to also exist if a reasonable user with the knowledge normally 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 is unable to solve problems that arise.

Insofar as the Contractor provides a workaround for faults, such shall not be deemed to be defective maintenance service. For this purpose, the Contractor may, in consultation with the Customer, make temporary changes to the configuration of the System if and to the extent that the operability of the System is thereby restored within the service levels. However, a fault shall be deemed to have been remedied only if the workaround is replaced by a complete fault remedy within a reasonable period of time.

The Customer hereby assigns to the Contractor any warranty claims to which it is entitled from the contractual relationships with equipment manufacturers and suppliers on which the System is based, and the Contractor hereby accepts the assignment. The underlying contracts shall be disclosed to the Contractor insofar as such is necessary. The Contractor shall take such third-party supply contracts into account in its performance of services. Notwithstanding the above, the Customer shall retain the right to make claims in relation to any assigned rights.

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

7.1 Reduction of Remuneration

If the Contractor does not remedy a reported fault within the agreed remedy period, or within a reasonable time, and if the suitability of the System or parts is reduced as a result, the Customer shall be required to pay only a reasonable reduced maintenance fee for such period. If use of the System or individual parts is not reasonably possible as a result of the fault, the Customer shall not be required to pay any maintenance fee for this period. This shall apply accordingly if the contractual use of the System is impaired in whole or in part by the rights of third parties.

7.2 Subsequent Performance/ Substitute Performance/ Reimbursement of Expenses/ Termination

In the event of defective performance, the Contractor shall be obliged to provide subsequent performance.

If such fails, the Customer may remedy the defect itself or have it remedied by a third party and demand reimbursement of any necessary expenses (substitute performance) if the defective performance or the unsuccessful remedy of the defect significantly restricts the use of the System despite a reasonable grace period having been set.

7.3 Default Delay

If the Contractor does not perform within the agreed period of time or, in the absence of an agreement, within a reasonable period of time in response to a report from the Customer of a fault, the Contractor shall be in default.

7.4 Retention and Set-off

Insofar as the Contractor does not fulfil its obligations, the Customer may withhold payment for contractual performance until the Contractor has fulfilled its obligations in full. The Customer may deduct its claims against the Contractor for breach of contract from the Contractor's remuneration.

Any further rights of the Customer to claim shall remain unaffected hereby.

8. Term and Termination of Contract

8.1 Term

Hardware maintenance shall commence from the date agreed in the contract. If the System is taken over at a later date, maintenance shall commence from such date. The contract ends automatically with the expiry of the contractually agreed fixed term.

8.2 Termination

Either party may terminate the contract with immediate effect for good cause. Good cause includes serious breaches of this contract or other obligations. In the event of withdrawal from the hardware purchase contract for the System, this hardware maintenance contract 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.

Notice of termination must be given in writing (*Schriftform*) to be effective.

The Customer's rights of use for system and operating software shall remain unaffected by the ending of hardware maintenance.

8.3 Ending of Contract

The Contractor shall hand over to the Customer the System and the Customer's backed-up data files in their entirety, insofar as they are in the Contractor's possession, as well as all documents and documentation required for the installation, further operation and use of the System. Any copies of the documentation and other documents of the Customer remaining with the Contractor shall be returned to the Customer in whatever form and copies thereof shall be deleted or destroyed. There shall be no rights of retention or rights to refuse performance in relation to the System, data or other items to be handed over.

If it is not possible for the Customer to transfer the maintenance services to a third party at the end of the contract or to integrate such into its own business operations without impairment, the Customer may require the Contractor to continue the contract beyond the date it ends in order to maintain the business operations of the affected area.

This shall apply until full continuation is ensured either in the Customer's business operations or by a third party, but no longer than 6 months after the ending date. The parties shall mutually endeavour to find a solution that ensures an appropriate transition. The above provisions shall apply also in the event of any extraordinary termination.