DAIMLER TRUCK

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

1. Subject Matter/Scope

1.1 General

These Special Provisions of the GPC-IT (Part D), 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 rental of hardware.

1.2 Hardware

The Contractor shall provide the Customer with the hardware designated in the order, including the system and operating software designated therein (together the "System") as well as the associated documentation for use during the term of the contract. The System shall be CE-certified and conform to the currently recognised state of the art during the term of the contract, having regard to the respective applicable VDE and UVV regulations.

1.3 System and Operating Software

Systems shall be provided with pre-installed system and operating software, which the Contractor shall make available in addition 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 covered by these Special Provisions of the GPC-IT for Hardware Rental (GPC-IT Part D).

1.4 Documentation

The System shall be provided with documentation in printed or printable form in German (for German-speaking locations) and English. Such documentation, including that related to installation, use and operation, shall constitute an element of the main performance obligations. The Customer is entitled to make copies of the 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 the group of persons authorised to use the system can use it to the agreed extent without further support.

1.5 Installation

The System shall be set up, installed, integrated and configured by the Contractor and handed over 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) on the date of provision, 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 replaced parts in cases of wear and tear 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.

1.7 Hardware Maintenance

During the rental period, the Contractor shall maintain the System in a condition suitable for use in accordance with the contract and shall perform any maintenance and repair work required for this purpose.

1.7.1 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 recognised state of the art or no longer function safely. The Contractor shall carry out any integration, configuration or installation work.

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 system and operating software is to be provided, 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 such being provided the Contractor shall grant the Customer rights of use to the Updates in accordance with section 3.

The provision of system and operating software which is further developed shall take place by sending or handing over the machine-readable code on a commercially available data carrier or by transmission via remote data transmission. The Customer shall receive the associated updated documentation in printed or printable form.

After the release of Updates, maintenance services will continue for the old version of the system and operating software.

1.7.2 Repair

The Customer shall report to the Contractor any malfunctions, system or system component failures and other problems ("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.

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.

Faults based on information security vulnerabilities of the system and operating software shall be remedied by the Contractor without undue delay, unless a different schedule has been agreed with the Customer.

1.7.3 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.

1.8 Rent

Any performance set out in section 1.2 up to and including section 1.7 is covered by the rental amount.

1.9 Additional Services

At the request of the Customer, the Contractor shall provide additional system components or subsystems in accordance with a separate order. Sections 1.2 to 1.7 inclusive shall apply accordingly.

The Contractor shall not be obliged to remedy faults caused by the use of force or improper handling (non-functional use) under the rental agreement. 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. Provision

The System shall be handed over ready for operation at the agreed place of performance (place of use) on the agreed date.

3. Rights of Use for System and Operating Software/ Use of the System

By providing the System, the Contractor grants the Customer for the term of the contract a non-exclusive right of use to the system and operating software, without any limitations in terms of territory or content. The Customer may make copies for archiving and backup purposes.

The Customer warrants that the System is not to be used by third parties. Group companies or companies that use the System for the Customer or operate such are not third parties. The rights of use include the right to develop programs running together with the software of third parties, for the Customer.

The rights of use shall also apply in each case to 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 3 shall not lead to an increase in the sum of the contractually agreed permissible number of users, permissible number of installations or permissible intensity of use.

4. Maintenance Window/Job Scheduling

The Contractor shall plan maintenance work 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.

5. Data Protection, Information Security and Data Backup Measures

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 backup 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 - depending on the criticality - in such a way that it is possible to restore the data stock on the System at any time without any problems. Depending on the critical nature of the System or the data, suitable measures must be taken to restore the System in the event of a system failure, for example by keeping parts of the System or system components available.

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 this annex is not necessary. The Customer shall document such.

6. Place of Performance and Change of Place of Installation

The place of performance shall be the Customer's business premises specified in the order (place of use), otherwise the seat of the Customer. Insofar as necessary, the Contractor may carry out remedying of a fault in one of its own workshops; in such case, it shall provide the Customer with replacements during this work at no additional charge.

The Contractor shall be notified of any relocation of the System or parts thereof to a place of performance other than that specified in the order. The Contractor shall continue the services unless such would be unreasonable for it. If the relocation significantly affects the expense for performance, the Contractor may demand an appropriate adjustment of the remuneration. Insofar as the hardware rental becomes unreasonable for the Contractor due to any 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 a conversion and this would lead to significant disadvantages for the Customer.

7. Services According to Expense

The Contractor shall receive remuneration in excess of the rental amount only if such has been agreed in writing in advance.

8. Acceptance of the System

The System shall be made available 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. In the event of significant defects during the test and trial operation, the Contractor shall provide another, defect-free System insofar as another System is available for renewed test and trial operations. If no significant defects occur, the Customer shall confirm acceptance of the System. As of the time of this confirmation of acceptance, the Customer shall pay the rental fee.

9. Defects and Faults in Performance

A defect in the property rented and thus a defective performance shall be deemed to also exist if faults are not remedied, not remedied to the required extent or not remedied within any agreed period 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 in the rental object shall be deemed to also exist 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 is unable to solve problems that arise.

Insofar as the Contractor provides a workaround for faults, such shall not be deemed to be defective performance. 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, 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.

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 the situation shall be allocated or reimbursed appropriately in accordance with the respective share in the causation.

9.1 Reduction in 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 only pay a reasonably reduced rental fee for this period. If use of the System or individual parts is not reasonably possible as a result of a fault, the Customer shall not be required to pay rent 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.

9.2 Removal of Defects/ Setting of Deadlines/ Reimbursement of Expenses/ Termination

In the event of defective performance, the Contractor shall be obliged to remedy the defect.

If such fails, the Customer has the right to an extraordinary termination of the contract or to remedy the defect itself or to 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.

9.3 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 fault report from the Customer, the Contractor shall be in default.

9.4 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 duty from the Contractor's remuneration. Any further rights of the Customer to claim shall remain unaffected.

10.   Term and Termination of the Contract

10.1   Term

The rental contract shall commence on the date agreed in the contract. If the acceptance of the System (clause 8) takes place at a later date, it shall commence with the. The contract ends automatically with the expiry of the contractually agreed fixed term.

10.2   Termination

Statutory rights of termination remain unaffected hereby.

Either party may terminate the contract with immediate effect for good cause. Good cause includes serious breaches of this contract or other obligations.

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

10.3   Ending of Contract

The Contractor shall hand over to the Customer all of the Customer's backed-up data files in their entirety, insofar as they are in the Contractor's possession. Any copies of data 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 this data or other documents to be surrendered.

If it is not possible for the Customer to ensure continued performance until the time the contract is to end, the Contractor shall continue the contract beyond the date it ends in order to maintain business operations in the affected area. This shall apply until continued performance by the Customer is ensured, but for a maximum period of 6 months after the date of the Contract ending. The parties shall mutually endeavour to find a solution that ensures an appropriate transition. The above provisions shall apply also in the event of an extraordinary termination.

10.4   Returns

Upon the ending of the contract, the Contractor shall collect the System from the Customer at the Contractor's own expense.

The Customer shall provide the System to the Contractor in an undamaged condition with the system and operating software provided, including also those data carriers and documentation provided. Any copies of the system and operating software and documentation provided by the Contractor shall be completely deleted or destroyed, with the exception of archive copies.

Upon return of the System, a record shall be drawn up in which the completeness of the System and any damage shall be recorded. The Customer shall reimburse any costs for the proper correction of any damage for which it is responsible.

The Contractor shall delete and/or destroy existing data of the Contractor on the System in such a way that any reconstruction of the data is excluded. The complete deletion and/or destruction shall be confirmed to the Customer in writing upon request.