

DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG for IT Part E - Purchase of Standard Software

1 Subject Matter/Scope

1.1 General

These Special Provisions of the GPC-IT (Part E) 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 software.

1.2 Software

The Contractor shall supply and transfer to the Customer the software programs designated in the order together with the associated documentation (collectively "Software") for permanent use.

1.3 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 use the Software without assistance from the Contractor. Operating manuals supplied must enable an IT specialist to install, operate and maintain the Software.

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

1.4 Briefing

During test and trial operations, the Contractor shall instruct and support the Customer to the necessary extent.

1.5 Installation

Insofar as such is agreed by way of an individual contract, the Software shall be installed, integrated and/or configured by the Contractor and handed over to the Customer ready for operation. In such case, the Customer shall create the system requirements for the Software necessary for proper installation on the delivery date provided that, the Contractor has communicated such prerequisites in writing before contract formation.

1.6 Purchase Price

Performance set out in sections 1.2 to section 1.4 as well as section 2 are included in the purchase price for the Software; this shall also apply in relation to section 1.5 if installation is agreed by way of an individual contract.

1.7 Additional Performance

If any adaptation, parameterisation, extension or supplementation of the Software or further implementation in the existing system environment is required for use by the Customer, such shall be agreed separately in the order. The Conditions for Individual Software Development, Maintenance and Adaptation (GPC-IT (Part H)) shall apply to such performance.

2 Delivery

The Contractor shall deliver to the Customer the Software capable of running in object code on commercially available data carriers.

If the Customer no longer has a version of the Software capable of running due to loss, accidental deletion or similar events, the Contractor shall provide a replacement free of charge.

If the Parties agree that the delivery is to also include the source code of the Software, such shall be delivered together with the complete development documentation and the development tools for this. The Software shall then be deposited in accordance with the Annex "Escrow Agreement". If the source code is not part of the scope of delivery, the Contractor shall ensure fulfilment of the contract by undertaking appropriate measures.

3 Rights of Use

3.1 Granting of Rights in Perpetuity

Upon delivery of the Software, the Contractor grants the Customer non-exclusive, irrevocable, permanent rights of use to the Software without any limitations in terms of territory or content. Unless otherwise agreed, the date of confirmation of receipt shall be deemed to be the date of commencement of use.

Duplication of the Software for use in accordance with the contract is permissible. Permitted use shall also include any storing, including necessary installation on EDP systems, loading, execution as well as processing of own databases. These rights of use include in particular the right to process and develop programs running together with the Software by third parties for the Customer, in particular to establish interoperability with neighbouring systems and programs.

3.2 Group Rights of Use

The Customer is entitled to provide the Software or individual programs to group companies of Daimler Truck AG (§ 15 *et seq* Stock Corporation Act (*AktG*)) for use and to have such companies use the Software or individual programs, insofar as the Customer itself is entitled to use them.

Any grant of non-exclusive rights of use shall always include the entitlement to exercise the rights of use by group companies or by third parties solely for the purposes of the Customer and the group companies.

This shall apply also to the Customer's right to transfer the rights of use to group companies and third parties.

The Customer may also have the rights of use to the Software together with the documentation exercised by a third party at another location and on other systems not belonging to the Customer or the group companies for the purposes of the Customer or the group companies such as, for example, in a third-party computer centre.

The rights to which the Customer is entitled under this section 3.2 shall not lead to any increase in the total number of the contractually agreed permissible users, or the permissible number of installations or permissible intensity of use.

3.3 Accession to Contract

Other group companies may join this contract and acquire additional rights of use to the Software on the terms of this contract. If this requires the granting of rights of use going beyond assignment or sub-licensing, the Contractor shall grant the required rights of use to the acceding group company on the basis of the conditions of this contract in accordance with an order to be agreed separately.

If necessary or desired by the Customer, this may also take the form of a group company concluding an agreement with a group company of the Contractor, the content of which shall be governed by this contract.

3.4 Updates, New Versions

If the Contractor provides the Customer with corrections, patches, updates, upgrades, new versions or similar, as well as the respective updated documentation for these (collectively "Updates"), which replace or supplement previously provided Software, these shall also be subject to the provisions of this contract.

If the Contractor provides a new version of the Software, the provisions for the scope of the Customer's right of use in relation to the last software provided shall apply accordingly. Unless otherwise agreed, the Contractor may not derive any additional remuneration from such.

The Customer is not obliged to accept the installation of upgrades or new versions of the Software by the Contractor if the adoption of the current version is unreasonable for the Customer, in particular due to a conversion effort associated with the adoption or other conversion risks (e.g. instability of the system).

3.5 Rights to Work Results

All work results, in whatever form, arising during or in connection with the use of the Software shall be the property of the Customer. Work results includes all data or documents arising in the context of the use of the Software. The Customer shall be entitled to all current and future rights of use and exploitation. The Contractor is not entitled to use these work results beyond the extent necessary for the contractual performance.

3.6 Special Access Licences

If the use of the Software is dependent on the provision of special access tools or devices or special licences, the Contractor shall provide such in sufficient quantity. If such access tools or devices or licences are not provided in sufficient quantity for the Customer's purposes and the Contractor is able to recognise such at the time of the conclusion of the contract, the Contractor shall provide the necessary quantity of such access tools or devices or licences free of charge for the Customer.

3.7 Backup/Archiving

The Customer may make and use copies of the Software for backup and archiving purposes to the necessary extent.

The Customer may copy Software obtained by online download onto data carriers. Rights shall then also be exhausted as in the case of a purchase on a data carrier.

3.8 Processing Rights

The Customer is permitted to make changes, extensions and other modifications to the Software in accordance with § 69c no. 2 Copyright Act (*UrhG*) if it allows the Contractor two prior attempts to remedy a defect. The Customer shall not be entitled to any rights of use and exploitation of its own in the adaptations beyond the scope of the contract.

The Customer is entitled to decompile the Software within the limits of § 69e Copyright Act (*UrhG*). Upon written request, the Contractor shall provide the Customer with the data and information required to establish interoperability with other hardware and software.

3.9 Third-party Licence Terms

If licence provisions of third-party suppliers apply in connection with the Contractor's Software delivery, and such must be observed by the Customer when using the Software, these licence provisions must be provided to the Customer in full in a printed or printable form with the Contractor's offer. If this is not done, only the rights of use pursuant to these special provisions of GPC-IT (Part E) shall apply.

4 Delivery Location/Delivery Dates

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

5 Receipt of Performance

Before handing over the Software to the Customer, the Contractor shall first check the Software to be delivered itself to see whether it meets the contractual requirements and contains the functions stated in the product description or specification.

The Software 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 Software shall be checked for completeness and its functions in accordance with the order and documentation supplied. 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 deliver another Software free of defects or shall remedy the defects in the Software at the request of the Customer. If there are no significant defects, the Customer shall confirm acceptance of the Software. With this confirmation, the price and performance risk 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 Contractor warrants that the contractual performance complies with the applicable provisions of law upon receipt.

A defect in the documentation exists if a reasonable user with the knowledge normally to be expected for the application of the Software 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.

6.1 Subsequent Performance

The Contractor shall remedy defects by supplying an improved version. As a short-term measure, the Contractor may, in consultation with the Customer, provide a reasonable substitute or workaround solution to temporarily remedy or circumvent the effects of a defect. The obligation to fully remedy defects within a reasonable period of time shall remain unaffected hereby. The same applies to defects in the documentation. The Customer shall cooperate to a reasonable extent in the analysis and rectification 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 defectiveness of the Software, 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 Software Maintenance

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

In the event of withdrawal from the software purchase contract for the Software, the software maintenance also ends automatically (objection enforcement (*Einwendungsdurchgriff*)). After expiry of the warranty for the Software, only termination of the software maintenance is possible. This applies accordingly to individual programs of the Software.