DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG for IT Part F - Maintenance of Software

1   Subject Matter/Scope

1.1   General

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

1.2   Software

The Contractor shall take over the maintenance for software programs as well as the documentation (together the "Software"). The Software to be maintained is described in the order.

1.3   Software Maintenance

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

1.3.1   Elimination of Faults

The Customer shall report any faults to the Contractor. A fault shall be deemed to exist if the software does not fulfil the function specified in the documentation, delivers incorrect results, interrupts its run in an uncontrolled manner, does not behave in a functionally correct manner in any other way or cannot be operated as described in the documentation, so that the use of the program is impossible or restricted. Faults shall also be deemed to exist if information security vulnerabilities of the software become known or are pointed out by the Customer.

The Contractor shall localise, analyse and remedy faults reported by the Customer, detected by the Contractor in connection with its activities or disclosed by the software manufacturer. Upon receipt of a fault report, the Contractor shall inform the Customer by when the reported fault will be remedied.

The Contractor shall remedy faults within the agreed times, otherwise within a reasonable period of time.

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 software shall be remedied by the Contractor without undue delay, unless a different schedule has been agreed with the Customer.

1.3.2   Updates of Software/Delivery of New Versions

The Contractor shall ensure the ongoing further development of the standard software and shall make upgrades and new versions of the Software available to the Customer. It shall provide the Customer with an upgrade or a new version of the Software at regular intervals, but at least once a year.

The Customer shall be provided with corrections, patches, updates, upgrades, new versions or similar as well as the respective updated documentation (collectively "Updates") within the scope of any work to rectify faults.

The Contractor is obliged to adapt the Software to amended laws; this obligation is fulfilled if the usability of the Software is not restricted under the amended legal provisions or is only insignificantly restricted.

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

Updates which may have an influence on the productivity of the Software for the Customer shall be installed within a maintenance window to be agreed with the Customer.

The Customer may refuse any fault repair and/or Updates of the Software if such do not have essentially the same compatibility and functionality as the replaced part of the Software.

1.3.3   Changed System Requirements

The Contractor is entitled to make changes to the Software, provided that such serve to secure and further develop functionality. Previous system requirements shall always be taken into account in any further development of the Software. Upgrades or new versions of the Software shall not require significantly different system requirements to previous versions.

1.3.4   Compliance with Service Levels

The Contractor shall remedy faults in the software within the agreed times, but in any case within a reasonable period of time.

1.4   Maintenance Fee

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

2 Granting of Rights for Updated Versions and Source Code Escrow

Upon delivery of Updates, the Contractor shall grant the Customer the rights of use to the Updates in accordance with the contract on which the transfer of the Software is based. The maintenance fee includes the remuneration for updating the Software.

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. If the source code is not to be delivered to the Customer, the depositing of the software may be agreed 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 Support Period for Older Software Versions

After the release of an upgrade or a new version, maintenance services shall also be continued for the old version of the Software as set out below. The Customer is not obliged to accept an installation of upgrades or new versions of the Software by the Contractor.

Older versions of the Software shall be supported for a period of at least two years from the availability of the respective latest version of the Software. If an adoption of the current version is unreasonable for the Customer, in particular due to the conversion effort associated with the adoption or other conversion risks (e.g. instability of the system), the Customer may require the continuation of the maintenance on the version used by it up to a maximum of three further years beyond the period stated in the preceding sentence. The Contractor shall maintain an older version and the respective current version simultaneously for a transitional phase of at least three months. For this transitional phase, the Customer shall be entitled to use the versions simultaneously within the framework of parallel operation.

4 Maintenance Window/Job Scheduling

The Contractor shall plan maintenance services in such a way that the use of the Software by the Customer is not impaired. If maintenance services are unavoidable during the normal operating hours of the Software, 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 in order to minimise disruptions for the Customer. If it is foreseeable that maintenance services will have to be carried out more frequently during operating hours, schedules for such shall be agreed between the Parties.

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 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 regulations and all precautions and measures in accordance with the currently recognised state of the art in 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 a restoration of the database is possible at any time without any problems.

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 this.

6 Place of Performance and Change of Installation

The place of performance for software maintenance 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 the maintenance work at its business premises. For this purpose, the Customer shall grant the Contractor access to the Software at the Customer's premises by means of remote maintenance access. In doing so, the Contractor shall observe the Customer's system landscape and security provisions.

The Contractor shall be notified of any installation of the Software or individual programs at a place of performance other than that specified in the order. The Contractor shall continue software maintenance unless this is unreasonable for it. The provision of services shall always be reasonable if essential maintenance services are not provided on site at the Customer's premises.

7 Acceptance of Maintenance Services

At the Customer's request, the Contractor shall provide evidence of its performance rendered by submitting proof of work.

The Customer reserves the right to subject maintenance services to an acceptance test. In this case, the services rendered shall 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 faults found. A reservation of the right to claim for faults in the acceptance declaration is not necessary. In the event of such an acceptance test, the Contractor shall support the Customer to the best of its ability without separate remuneration.

In any case, the Contractor shall remedy faults by subsequent performance within the agreed times, otherwise within a reasonable period.

8 Defects and Faults in Performance

The Contractor shall remedy any faults occurring during the warranty period.

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. The Contractor may remedy insignificant defects within the scope of the next regular maintenance services or provision of Updates.

The documentation shall be deemed to be defective 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.

Insofar as the Contractor provides a workaround solution for faults, this shall not be deemed to be a defective performance, provided that the workaround solution is replaced by a complete remedy of the fault within a reasonable period of time. For this purpose, the Contractor may, in consultation with the Customer, make temporary changes to the configuration of the Software if and to the extent that the operability of the Software is thereby restored within the service levels or within a reasonable period of time. 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.

In the event of faults not caused by the Software or not caused solely by the Software, 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 on a time and material basis shall apply.

8.1 Reduction of Remuneration

If the Contractor does not remedy a reported fault within the agreed remedy time, or within a reasonable time, and if the suitability of the Software or individual programs is reduced as a result, the Customer shall be required to pay only a reasonably reduced maintenance fee. If use of the Software or individual programs 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, without limiting any other rights of the Customer, if the contractual use of the Software is impaired in whole or in part by the rights of third parties.

8.2 Subsequent Performance/Reimbursement of Expenses/Termination

In the event of any defect in performance, the Contractor shall be obliged to provide subsequent performance. If it is in default or if such subsequent performance fails, the Customer may remedy the defect itself or have it remedied by a third party and demand reimbursement of the necessary expenses. The Customer may terminate the contract extraordinarily if the use of the Software is significantly restricted due to defective performance or unsuccessful rectification of defects despite a reasonable grace period.

8.3 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.

8.4 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.

9 Term, Termination and Ending of Contract

9.1 Term

Software maintenance shall commence at the earliest upon confirmation of receipt or acceptance of the Software or upon the conclusion of the contract, unless another date is agreed in the contract for this purpose. The contract ends automatically with the expiry of the contractually agreed fixed term.

9.2 Termination

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

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

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

The Customer's rights of use for the Software shall remain unaffected by the ending of the software maintenance.

9.3 Ending of Contract

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 them 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 Customer's business operations of the affected area. This shall apply until full continuation is ensured either in the business operations or by a third party, but no longer than 6 months after the ending date. The above provisions shall also apply in the event of extraordinary termination.