DAIMLER TRUCK

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

1 Subject Matter/Scope

1.1 General

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

1.2 Software

The Contractor shall provide the Customer with the software programs designated in the order and the associated documentation (collectively "Software") for use during the term of the contract. The Software shall correspond to the currently recognised state of the art during the term of the contract.

1.3 Documentation

The Software shall be provided with documentation in German (for German-speaking locations) or English in printed or printable form. Such documentation, including that related to installation, use and operation, shall constitute an element of the main performance obligations. The documentation must be sufficient for an average user to be able to use the Software without support from the Contractor. Supplied operating manuals must enable an IT specialist to install and operate the Software.

The Contractor shall provide the Customer with sufficient quantities of up-to-date documentation so that the group of persons authorised to use the Software can use it to the agreed extent without further support.

1.4 Briefing

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

1.5 Software Maintenance

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

1.1.1 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.

1.5.1 Updates of the 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.

1.5.2 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.

1.5.3 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.

1.6 Installation

If agreed in individual contracts, the Software shall be installed, integrated and configured by the Contractor and handed over to the Customer ready for operation. In such case, the Customer shall provide the system prerequisites (hardware and other software) necessary for the proper installation of the Software on the date of provision, provided that the Contractor has communicated such prerequisites in writing before contract formation. The Contractor shall inform the Customer at least two weeks before the installation is carried out of the time of installation and of any possible need for a prior backup of software and user data.

1.7 Rent

Any performance set out in section 1.2 up to and including section 1.5 is covered by the rental amount; this also applies to section 1.6 if the installation is agreed in an individual contract.

1.8 Additional Services

At the request of the Customer, the Contractor shall provide additional software modules or programs in accordance with a separate order. Sections 1.2 to 1.5 shall apply accordingly.

The Contractor shall, upon request and for separate remuneration, provide training for the Customer's employees for the use of the Software.

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 the rental agreement. The Contractor shall remedy such faults at the Customer's request unless the provision of such performance would be unreasonable for the Contractor. The Contractor may invoice such services separately in such case.

2 Provision, Acceptance

The Software shall be provided ready for operation at the agreed place of performance (place of use) on the agreed date.

The Software shall be made available for use in full and with the agreed scope of functions, the documentation and all other documents required for use. In test and trial operations, the Software shall be checked for completeness and its functions in accordance with the order as well as its documentation. In the event of any significant defects during the test and trial operations, the Contractor shall provide other, defect-free Software or remedy the defects found without undue delay and make the Software available for renewed test and trial operations. If no significant defects occur, the Customer shall confirm acceptance of the Software. As of the time of this confirmation of acceptance, the Customer shall pay the rental fee.

If the parties agree that the delivery also includes the source code for 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 for a Limited Period

By providing the Software, the Contractor grants the Customer a non-exclusive right to use the Software for the term of the contract without any limitation in terms of territory or content.

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 Maintenance, 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. The rental fee includes the remuneration for updating the Software.

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.

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.

At the end of the contract, the Contractor shall return all work results in its possession, in whatever form, to the Customer at the Customer's request or delete or destroy copies thereof. This shall also apply to programmes, data or documents which the Customer provides for the use of the Software or stores with it.

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.

If the Customer has received the Software by way of online download, it shall be entitled to copy the Software onto a data carrier. The scope of the rights shall then correspond to the rights as in the case of an acquisition on a data carrier.

3.8 Processing Rights

The Customer and third parties commissioned by it are 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 G) shall apply.

3.10 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. The Customer is not obliged to install upgrades or new versions of the software.

Older versions of the Software shall be supported for a period of at least two years from the availability of the latest version of the Software. If the 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 demand the continuation of the maintenance of the version used by it, but only for a maximum of three further years beyond the period specified 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.

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

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. 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.

7.1 Reduction of Renumeration

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 rental fee for this period. 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 the rental fee for this period. This shall apply accordingly, without limiting any other rights of the Customer, if the contractual use of the Software or individual programs is impaired by the rights of third parties.

7.2 Removal of Defects/Reimbursement of Expenses/Termination

In the event of any defect in performance, the Contractor shall be obliged to remedy the defect. If it is in default with this or if this rectification of defects fails, the Customer may rectify the defect itself and demand reimbursement of the necessary expenses. The Customer may terminate the contract extraordinarily if the defective performance or the unsuccessful rectification of defects significantly restricts the use of the Software despite a reasonable grace period.

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 fault report from the Customer, 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, Termination and Ending of Contract

8.1 Term

The rental contract shall commence on the date agreed in the contract. Insofar as the confirmation of the receipt or acceptance of the Software takes place later, the rental contract shall commence upon receipt or acceptance. The contract ends automatically at the end of the contractually agreed fixed term.

8.2 Termination

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

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

8.3 Ending of Contract

If it is not possible for the Customer to ensure the continued provision of performance at the end of the contract, 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 the further provision of performance is ensured by the Customer, 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 also apply in the event of extraordinary termination.

8.4 Return of Software

The Customer shall surrender the Software including data carriers and documentation provided to the Contractor upon request. Any copies of the Software and documentation provided by the Contractor shall be completely deleted or destroyed, with the exception of archive copies, even if no request is made to surrender the Software at the end of the contract.