

DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG for IT Part I - IT Consultancy Services

1. Subject Matter/Scope

1.1 General

These Special Provisions of the GPC-IT (Part I) 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 the Contract.

1.2 Consultancy

The Contractor shall provide the agreed consultancy services for the preparation of matters such as expert opinions, analyses, studies, documentation, reports, charts, diagrams and images by the agreed deadlines and shall transfer title to such to the Customer.

2. Provision of Performance

2.1 Content

The tasks to be performed shall be specified in the order. The Contractor shall receive from the Customer all documents, information and data required for the performance insofar as such is agreed in the Contract.

2.2 Form and Scope

The Customer may provide the Contractor with specific technical information during the performance and such information must be followed by the Contractor.

The respective results shall be handed over to the Customer at the end of each stage of performance and at the end of the provision of the performance in a printed or printable form as well as on data carriers.

Any performance with results in a presentable form, such as expert opinions, analyses, programming services, documentations, reports, specifications or concepts, shall be presented and explained to the Customer in a presentation.

2.3 Place of Performance

The place of performance shall be the Contractor's registered office, unless the Customer's place of business is specified as the place of performance in the description of performance; otherwise, it shall be the Customer's registered office. The Contractor may provide services at its business premises subject to agreement.

2.4 Tasks

The respective tasks to be performed shall be specified by the Customer. At the beginning of its performance, the Contractor shall check whether the description of the performance is sufficiently precise and detailed; if such is not the case, the Contractor shall notify the Customer of such without undue delay.

2.5 Compliance with Deadlines/Progress Controls

All agreed dates and deadlines are binding unless agreed otherwise.

The meeting of any deadline shall be determined by the date of the actual handover in accordance with the Contract. If the Contractor becomes aware that any agreed date or deadline cannot be met, it shall notify the Customer of such in writing or in text form (*Textform*) without undue delay, stating the reasons for the delay. Any changes to agreed dates and deadlines shall be made by mutual agreement in text form.

The Contractor shall inform the Customer as to the progress of any work on a regular basis.

3. Change to Performance

This amendment procedure shall always be applied to any performance agreed for a lump sum fixed price. The Customer may also apply it to any performance agreed for remuneration according to time and expense.

3.1 Change Request by Customer

The Customer may at any time request changes to the agreed performance in terms of time and content.

3.2 Examination of the Change Request

In the event of a change request, the Contractor shall indicate in writing or in text form within 5 working days whether such change is possible and what effects it would have on the agreed performance, and in particular on deadlines, expenses, remuneration and cooperation. If such an assessment is not possible within 5 working days due to the complexity or scope, the Contractor shall indicate such without undue delay and the Parties shall agree on a reasonable deadline.

During the examination of any change request the performance shall be continued according to the terms and conditions of the existing contract. Such performance shall be interrupted in whole or in part only upon the written instructions of the Customer. In such case any deadlines shall be extended by the duration of the interruption and, insofar as the Contractor has specified such in advance, a reasonable start-up period.

Insofar as the examination of the change request requires a not inconsiderable effort on the part of the Contractor, the Contractor may charge for such separately, provided that the Contractor has informed the Customer of this and the extent of the examination effort in writing or in text form without undue delay after receipt of the corresponding change request and the Customer continues to request the examination in view of this information and confirms this to the Contractor in writing or in text form.

3.3 Agreement on Change Requests

The Customer shall notify the Contractor in writing or in text form within a further period of 5 working days after receipt of the examination results whether the proposed amendment is to come into force; the Contract shall then continue accordingly. If no such notification is provided by the Customer within the above period, the Contract shall continue in an unamended form.

3.4 Special Right of Termination

The Customer shall have the right to terminate the Contract if the Contractor fails to submit a reasonable change proposal for the Customer in good time following the change request.

4. Project Organisation

4.1 Representatives

Prior to the commencement of performance, the Parties shall each appoint a representative and a deputy. If one of these persons is hindered from fulfilling the role for a longer period of time, a substitute shall be appointed in good time.

The Contractor's representatives are authorised to receive and make all declarations in connection with the Contract.

4.2 Project Management/Meetings

During the performance of the Contract, the Parties shall meet regularly to the extent necessary at the Customer's premises or - by arrangement - at the Contractor's premises to discuss the status of the performance.

4.3 Personnel Qualifications

The Contractor and its deployed personnel shall be suitably qualified for the contractual performance and have sufficient experience with comparable work. The Customer may demand evidence of such and, in the absence thereof, demand a replacement of the project manager or any personnel being used.

4.4 Quality Assurance

The performance shall be provided in accordance with the respective recognised state of the art, taking into account technical standards and standards and quality specifications provided by the Customer.

The Contractor shall plan the contractual performance in such a way that the quality objectives are implemented in practice and a high quality performance is ensured. The Customer is entitled to inspect, either itself or through third parties, the quality management system in connection with the performance at the Contractor's premises during normal business hours. In doing so, the Customer or the third party may also inspect the Contractor's entire project documentation.

The Contractor shall keep the Customer informed about its quality management system on an ongoing basis during the cooperation. Together with the performance results the Contractor shall hand over to the Customer a complete written documentation of the quality management systems and quality assurance procedures applied to the performance, including quality inspections carried out and the inspection results.

5. Rights of Use

5.1 Ownership and Exclusive Rights of Use of Customer

Ownership of all results and interim results from the Contractor's performance, e.g. performance descriptions, specifications, studies, concepts, documentation including installation, user and operating manuals as well as documentation for maintenance and further development, reports, papers, consultancy documents, charts, diagrams, pictures as well as individual software, programmes, software adaptations and parameterisations including the commented source and object code as well as all intermediate results arising in this connection and any aids created for this purpose, and/or other performance results (collectively: "work results"), insofar as they are embodied objects, shall transfer to the Customer upon such being handed over to the Customer.

Furthermore, the Contractor hereby grants the Customer, for the due consideration provided the exclusive, permanent and irrevocable, sublicensable and transferable rights to use and exploit the work results on a worldwide basis permanently and without limitation as to any application, and such transfer of rights to the Customer shall be from the time of creation of the respective work results or at the latest upon their being handed over. These rights of use shall include all types of use and in particular, those rights related to the storage, loading, execution, processing of data, processing (including by third parties) including via fixed connections with services of the Contractor, rights to reproduce and distribute, rights of (public) performance and presentation, rights of further marketing as well as the rights to make modifications, redesigns, translations, additions and further developments. The source code of all performance results and intermediate results shall be handed over to the Customer in full with the respective development documentation.

The Customer is entitled to grant sub-licences and further rights of use to these rights of use for consideration as well as free of charge and to transfer rights of use to third parties and to use the originals as well as copies and modified versions without copyright designation.

5.2 Non-exclusive Rights of Use of Customer

The Contractor hereby grants the Customer, for the due consideration provided, non-exclusive, transferable, permanent and irrevocable worldwide rights of use to any works, other copyright or other unprotected knowledge (know-how) of the Contractor already developed or used by the Contractor prior to the commencement of the Contract as well as to any know-how, standard software and development tools ("Contractor's Intellectual Property") acquired by the Contractor, its vicarious agents and employees during the performance, to the extent necessary to use the work results produced by the Contractor for the Customer. This also includes the reproduction, processing and modification of the Contractor's Intellectual Property by the Customer or third parties, insofar as such is necessary for the use of the work results.

5.3 Standard Software

Notwithstanding 5.2, the rights of use to standard software may be transferred only to group companies or to third parties for use solely for the purposes of the Customer or its group companies.

5.4 Rights of Use for Customising Services

Insofar as the Contractor carries out customising of its own software or of third party software for the Customer, it shall grant the Customer the rights of use in accordance with 5.1. Any provision deviating from this shall be agreed in writing in the order, whereby the Customer shall be granted at least the rights of use in accordance with 5.2 for the customising services.

5.5 Duty of Disclosure

The Contractor shall notify the Customer in writing of all standard software, development tools and other works (such as documentation required for the further development and processing of the results of the Contractor's performance) to be used in connection with the development of the work results before the conclusion of the Contract; these shall be listed in the Contract. The Contractor shall in particular give details of which version was used and whether it is proprietary or market software. "Proprietary" shall mean software which was developed by the Contractor itself or to which it has exclusive rights of use, or which can be obtained exclusively from the producer itself and which is not, unlike market software, available in the trade or via intermediaries.

Unless otherwise agreed in the Contract, the Contractor shall in any case grant the Customer the rights of use to standard software, development tools and other works in accordance with 5.2 and 5.3.

5.6 Co-author

If employees or vicarious agents of the Contractor are co-authors, the Contractor warrants that it has acquired from such person in each case a granting of rights of use and exploitation corresponding to the aforementioned provisions in 5.1 and 5.2.

5.7 Rights to Inventions

The Contractor shall put the Customer in such a position that the Customer may permanently use any invention created during the performance free of charge. For this purpose, the Contractor hereby grants the Customer non-exclusive, transferable, permanent and irrevocable worldwide rights of use for any invention or the Contractor's share in any joint invention to the extent necessary for the use of the performance created by the Contractor for the Customer. This includes in particular any rights to reproduce. Any production of copies of an invention as well as the processing or modification of such shall be permissible insofar as it is necessary for the use of the performance. These rights of use may be exercised by group companies of Daimler Truck AG (§ 15 et seq. of the Stock Corporation Act (*AktG*)) or by third parties solely for the purposes of the Customer and the group companies. This also applies to the Customer's right to transfer the rights of use to group companies and third parties.

5.8 Survival

Any sub-licences granted or further rights of use granted shall remain unaffected by any termination of the Contract.

6. Data Protection, Information Security and Data Backup Measures

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 performance, the inclusion of this Annex is not necessary. The Customer shall document this.

7. Remuneration

Unless otherwise agreed, payment shall be made only after the complete provision of the performance. If the Parties agree on part payments, part payments shall be made only after complete performance of the respective part performance. Any agreed due dates remain unaffected hereby.

The Contractor shall invoice its services in each case after due performance have been rendered in accordance with the agreed invoicing periods.

The Contractor shall not be entitled to exhaust agreed remuneration limits. There shall be no entitlement to remuneration for services in excess of any remuneration limit.

The Contractor shall be bound by any agreed remuneration limits as well as by its estimate of expenditure made prior to the conclusion of the Contract; unless such are expressly designated as being non-binding in the respective order.

The Contractor shall notify the Customer without undue delay as soon as it becomes aware that the estimated expenditure according to daily rates is likely to be exceeded.

The Customer shall inform the Contractor in writing whether it agrees to such an exceeding of the estimated expenditure. If the Customer does not consent, the Contractor shall provide its performance at the originally calculated and agreed prices. The Contractor may request consent if it is not responsible for the excess. If the Contractor repeatedly makes modifications to the time and expenses estimate, the Customer shall have an extraordinary right of termination.

8. Inadequate Performance

Insofar as any affected performance can be repeated or are amenable to rectification, the Contractor shall, at the Customer's request, repeat or rectify within a reasonable period of time free of charge any performance that is not in accordance with the Contract or which is defective.

If performance provided is not in accordance with the Contract, the Contractor shall have no right to claim or, only a reduced claim to the agreed remuneration, insofar as the Customer is entitled to seek damages. The Customer may offset any claims for damages against any claims by the Contractor.