

DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG Part J - IT Operation and Application Management Services

1. General, Annexes, Definitions

1.1 General

These Special Provisions of the GPC-IT (Part J) as applicable at the time of contract formation for the Contract on IT Operation and Application Management Services shall always apply together with the General Provisions of the GPC-IT (Part A) as an integral part of the Contract.

1.2 Definitions

For the interpretation of these GPC-IT (Part J), the definitions contained in **Annex 1.1 "Definitions"** shall apply.

2. Subject Matter, Business Partner

2.1 Subject Matter

The subject matter of this GPC-IT (Part J) is the provision of the contractual Services by the Contractor to the Customer for the Customer and the Business Partners.

2.2 Business Partner

The Customer procures the Services not only to cover its own needs, but also to supply the Business Partners with the agreed Services.

The Business Partners have no direct contractual relationship and no rights to claims of their own as against the Contractor.

2.3 No takeover and transfer of assets or employees

2.3.1 Any taking over of assets (hardware, software and existing contractual obligations with third parties) by the Contractor is not within the scope of the Services. The same applies to the taking over of employees of the Customer, of Business Partners or of any service provider previously working for the Customer.

2.3.2 The Contractor is obliged to organise the provision of the Services in such a way that its employees or employees of the subcontractors are not transferred to the Customer or the Business Partners by way of transfer of business (§ 613a Civil Code (*BGB*)) at the end of the contract term. It shall therefore, and in particular, avoid the Services being provided by specific dedicated departments of the Contractor. It shall make its subcontractors to corresponding duties accordingly.

3. Services

3.1 Locations

3.1.1 If a specific location has been agreed from which or at which the Services are to be provided, the complete or partial relocation of the agreed location shall require the prior written consent of the Customer.

3.2 Type and Quality of Service Provision

3.2.1 The Contractor shall provide the Services in accordance with the respective state of the art and in compliance with generally recognised quality standards.

3.2.2 The Contractor shall be legally and commercially responsible for procuring and providing all necessary suitable material and human resources for the provision of the respective Services.

3.2.3 The Contractor shall ensure that the systems used by it to provide the Services integrate smoothly into the Customer's IT environment and that the Customer's internal or external systems are not impaired (in particular with regard to their functionality, performance, reliability, availability, response times or similar parameters).

3.2.4 If the use of certain systems and processes for the provision of the Services is agreed, a deviation by the Contractor is only permissible insofar as such is agreed in writing.

3.2.5 The Contractor shall set up and modify the systems and processes in such a way that

(i) the legal audit rights and obligations of the Customer and the Business Partners as well as the audit rights and control options of the supervisory authorities are not restricted, and

(ii) such do not (a) adversely affect the price, scope or quality of the provision of the Services (b) adversely affect the costs and investments associated with the procurement of the Services for the Customer or the Business Partners and/or (c) affect the systems or business processes of the Customer or the Business Partners.

Any deviation from the above shall require the prior express written consent of the Customer.

3.2.6 The Contractor shall maintain the systems used by it to provide the Services so that they are ready for operation and can be used in a correct manner at all times. The Contractor shall plan any work for the maintenance of the systems in such a way that the use of the systems by the Customer and the Business Partners is not impaired.

If work is unavoidable during regular or known operating hours, the Contractor shall organise such work in such a way that disruptions for the Customer and the Business Partners are kept to a minimum. As far as possible, maintenance work shall be coordinated with the Customer in advance. For necessary regular work during operating hours, the Contractor shall agree on the time windows required for such with the Customer by means of maintenance plans.

3.2.7 The Contractor shall at all times ensure the multi-client capability of the systems provided by it and used for the provision of the Services. This requires a logical separation and mutual shielding of the data files stored and processed for other customers of the Contractor. The Contractor must also be able at all times to provide the Services for its respective customers independently of each other and to follow instructions independently of each other.

3.2.8 The Contractor shall comply with the principles of proper accounting (*GoB*), the principles of proper IT-based accounting systems (*GoBS*) when providing the Services.

3.3 Cooperation with Third-Party Providers

In order to ensure proper business operations on the part of the Customer and the Business Partners, the Contractor shall cooperate to a reasonable extent with third parties performing in connection with the Services for the Customer or the Business Partners concerned. This includes, to the extent necessary, participation in joint meetings and the provision of information. If possible, the Customer shall name these third parties to the Contractor upon the conclusion of the contract, otherwise in good time beforehand, stating their respective tasks.

4. Service Level and Key Figures

4.1 Compliance with Service Qualities, Service Levels and Key Figures

4.1.1 The Contractor shall comply with any agreed service levels and metrics in the provision of the Services.

4.1.2 Insofar as no service levels or key figures are agreed for the respective Services, the Contractor shall provide these Services at least in a quality that can be expected from a professional IT service provider in production-critical industries such as the automotive industry in connection with the relevant Services.

4.1.3 The service levels and key figures are a purely qualitative definition of the Services and do not restrict the Contractor's obligation to provide Services on a continuous basis. The Contractor shall be liable for any culpable breaches of duty within the scope of the provision of Services irrespective of the achievement of the service levels and key figures.

4.1.4 If specific legal consequences are agreed for the failure to meet service levels or key figures, this shall not affect any rights to make further claims, in particular claims for damages, unless expressly agreed otherwise in writing. In all other respects clause 14.1.5 shall apply. The Customer may terminate only subject to the provisions of clause 15.

5. Obligations to Cooperate and Provide Support

5.1 General Provisions

5.1.1 The Customer shall fulfil the cooperation and provision of support obligations incumbent upon it under this clause 5.1 or under any express written agreement. In particular, the Customer shall provide the Contractor with

(i) the documents and information necessary for the provision of the respective Services;

(ii) access to the systems and premises of the Customer and the Business Partners, insofar as this is necessary for the provision of the respective Services and, in doing so, ensure a clear demarcation of the tasks and premises of the Customer and the Contractor; the Contractor shall observe the provisions generally applicable to external users and of which it is made aware, in particular the relevant security regulations and house rules.

5.1.2 Notwithstanding any failure on the part of the Customer to comply with its obligations to cooperate and provide support, the Contractor shall make all reasonable efforts to provide the relevant Services.

5.1.3 The Customer shall provide the Contractor with support exclusively for the purpose of the provision of the Services.

5.1.4 The Customer is entitled to check the use of provided software by the Contractor by means of audits to a reasonable extent. In this context, the Contractor shall provide the Customer with an opportunity to inspect all relevant documents and grant the Customer access to its locations where the provided software is stored, hosted and/or used.

5.2 Special Provisions

Special provisions on obligations to cooperate and provide support are set out in **Annex 1.5** "Provision of Support by Customer".

6. Remuneration, Taxes

In addition to clause 6 of the GPC-IT (Part A) - General Section, the following shall apply:

6.1 Remuneration

6.1.1 For the provision of the Services, the Customer shall pay the Contractor the remuneration agreed in the Contract.

6.1.2 Unless otherwise agreed, payment shall be made only after complete performance. If the Parties have agreed on partial payments, these shall only be due after completion of the respective partial performance. Agreed payment periods shall remain unaffected by such.

6.1.3 If the remuneration is determined according to time periods, the Contractor shall invoice in each case after performance have been rendered in accordance with the agreed invoicing periods.

6.2 Retention

The Customer may withhold forfeited contractual penalties, damages caused by delay, additional expenses or any agreed securities from the Contractor's remuneration to a reasonable extent. The reservation of the assertion of a contractual penalty may be asserted by the Customer within three (3) months after knowledge of the reason and amount of the contractual penalty, in the case any performance requiring a final invoice, however, until payment of the final invoice.

7. Personnel and Subcontractors

7.1 General Requirements

7.1.1 The Contractor shall carry out the Services and the work assigned to it under its own direction and responsibility with its own employees. Temporary workers may be used only if the provisions of the Employment Act (Arbeitnehmerüberlassungsgesetz) are complied with. The Customer is not entitled to issue direct instructions to the Contractor's personnel.

7.2 Involvement of Subcontractors

7.2.1 Clause 12 of the GPC-IT Part A - General Section shall apply to the involvement of subcontractors. Subcontractors not approved at the time of conclusion of the contract shall require the consent of the Customer by way of the amendment procedure pursuant to clause 8.2.

7.2.2 The Contractor must ensure that the obligations of the subcontractor towards the Contractor with regard to the provision of performance are in line with the obligations of the main contract between the Contractor and the Customer. The contract with the subcontractor must also allow for the direct enforcement against the subcontractor of the rights to information and audit regulated in this Contract for the benefit of the Customer and the Business Partners. Upon request, the Contractor shall prove compliance with these requirements to the Customer by making available the contract concluded with the subcontractor for inspection.

7.2.3 The Contractor shall be liable for the acts and omissions of the subcontractors to the same extent it is for its own acts and omissions.

8. Operating Manual, Change Procedure

8.1 Operating Manual

8.1.1 When providing the respective Services, the Contractor shall observe the specifications of the Customer's operating manual provided to it and regularly update and maintain it as part of the Services. The operating manual must be readily comprehensible to the intended user.

8.1.2 The content and scope of the Services shall not be altered by the operating manual; in this respect, only the provisions of this Contract shall apply.

8.2 Amendment Procedure

8.2.1 The amendment procedure shall apply to any change, adjustment or extension of the Contract and in particular the Services.

8.2.2 The Customer may request a change, adjustment or extension of the Contract and the Services at any time. As soon as possible in response to a corresponding request, the Contractor shall explain to the Customer in detail in writing the consequences of the change, adjustment or extension requested by the Customer, in particular for deadlines, effort and remuneration, and submit a complete offer for the requested change, adjustment or extension on competitive terms. If the implementation of the change request is not possible or unreasonable for the Contractor, the Contractor shall justify this in writing.

8.2.3 The Contractor shall be obliged to conclude an amendment agreement at the Customer's request if the Customer agrees to a reasonable adjustment of the remuneration including the necessary additional effort for the implementation of the change request, unless the implementation of the change request is impossible or unreasonable for the Contractor.

8.2.4 Each party shall bear its own costs incurred in connection with the implementation of the amendment procedure. Excluded from this are operating changes which are to be provided within the scope of the defined Services and which are not to be remunerated separately.

9. Legal Requirements and Policies

9.1 Compliance with and Changes to Legal Requirements and Policies

9.1.1 The Contractor shall perform its obligations under this Contract in accordance with the applicable legal requirements and policies of the Customer.

9.1.2 The Customer shall make the legal requirements and policies (including site- or department-specific policies) available to the Contractor in an appropriate form prior to the conclusion of the contract and after each change that is to be taken into account by the Contractor.

9.1.3 If, as a result of an amendment or supplement to the legal requirements or policies which comes into force after the conclusion of the contract, it becomes necessary to adapt the Contract, the amendment procedure shall apply in this respect.

10. Reporting, Audit Rights

10.1 Audit Rights

The Contractor hereby grants the Customer and the Business Partners the audit rights described in Annex **1.2 "Audit Rights"** with regard to the assigned scope of tasks.

11. Confidentiality and Data Protection

Notwithstanding the applicable provisions on confidentiality (clause 7 of the GPC-IT Part A), the Contractor shall ensure data protection within the meaning of the provisions of data protection law, including the technical and organisational measures for the protection of personal data, taking into account confidentiality, availability and integrity. For data protection and information security, the **Annex "Agreement on Commissioned Processing"** shall also apply. In this Annex, the required information shall 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. In such case, the Customer shall document this fact.

If the Customer or a Business Partner is a credit institution, the Contractor is obliged to maintain banking secrecy. In this case, **Annex 1.4 "Special Requirements for Services for Banking Act (KWG) Institutions"** shall also apply.

12. Security and Emergency Measures

12.1 Security

The Contractor shall at all times take reasonable and effective security measures to ensure the proper provision of the Services.

The Contractor's security measures shall comply with the Customer's relevant policies.

12.2 Emergency Measures

The Contractor shall take reasonable and effective measures for emergencies to ensure timely availability of substitute solutions for the purpose of business continuity and return to normal operations within a reasonable period of time.

The Contractor's emergency measures shall be coordinated with the relevant policies and the Customer's internal emergency plans, which the Customer shall make available upon request.

13. Intellectual Property and Infringements

13.1 Intellectual Property

13.1.1 Unless expressly stated otherwise in this Contract, in particular in the following provisions, all intellectual property rights, e.g. copyright, industrial property rights or know-how, which existed prior to the conclusion of the respective contract shall remain with the party to which such belong at that time.

13.1.2 Insofar as the Contractor uses protected works, such as in particular software and databases, for the provision of the Services, the Contractor shall ensure that the Customer and the Business Partners are entitled to use these works insofar as this is necessary for the provision or receipt and use of the Services. This also applies with regard to third parties insofar as this is necessary for the appropriate use of the Services by the Customer or Business Partners or these third parties make a contribution to the appropriate use of the Services by the Customer or the Business Partners that requires such a right of use.

13.1.3 The Customer may at any time request the Contractor to deposit in a manner customary in the market the source code of the Contractor's proprietary software, in which the Contractor or the companies affiliated with the Contractor (pursuant to § 15 Stock Corporation Act (AktG) and directly or indirectly controlled by the Contractor) hold the copyright (ancillary copyright). The Customer shall bear the costs of any measures for such a depositing.

13.1.4 The rights of use to intellectual property for all work results developed for the purposes of the Contract and in particular for the Services shall be vested solely in the Customer for an indefinite period with a corresponding right to sublicense. The Customer shall grant the Contractor a free, non-exclusive right of use to such work results insofar as this is necessary for the provision of the Services. If the transfer of the rights of use is not possible to the aforementioned extent for legal reasons, the Contractor shall inform the Customer of this in writing in advance.

13.1.5 Notwithstanding clause 13.1.4, the Contractor shall be entitled to the rights of use to further developments of the Contractor's own software and Contractor's third-party software, however, the Customer (and, if necessary, the Business Partners) shall in any case be entitled to the rights of use to the Contractor's further developments for the continuation of the Services for an indefinite period extending beyond the end of the contract term. In particular, the Customer is also permitted to allow third parties to use the Contractor's performance results after the end of the contract term for the continuation of the Services (also in modified form).

13.1.6 Insofar as such is necessary to realise the rights described above and nothing to the contrary results from the Contract, the software and other works may each be used in all ways relevant at present or in the future. This includes the right of reproduction, adaptation, distribution and communication to the public (including the right of making available to the public).

13.1.7 If application management services are the subject of the Services, clause 13.1.4 f. shall apply accordingly. In any case, the Customer shall be entitled to the Contractor's performance results in connection with the management of the applications for an unlimited period of time, and even after the end of the contract term. In particular, the Customer is permitted to have the application management services with the Contractor's performance results performed by third parties after the end of the contract term.

- 13.1.8 The right of the Parties to re-use ideas, concepts or procedures relating to the Services and such becoming part of the general know-how of their respective personnel in the course of the cooperation shall remain unaffected hereby, provided that such does not infringe any proprietary rights of the other Party or a third party.
- 13.2 Infringement of Third-Party Rights
- 13.2.1 The Contractor warrants that the Services and their appropriate use by the Customer and Business Partner do not infringe any third-party rights. This also applies to the systems that the Contractor provides and uses to provide the respective Services.
- 13.2.2 If claims are asserted against one of the Parties in connection with the Services due to the actual or alleged infringement of third-party rights, the Parties shall inform each other thereof without undue delay. The Parties shall coordinate the defence of any such claim in close consultation, with the Contractor taking the lead.
- 13.2.3 If the Customer or Business Partners incur costs and/or damage (including the costs of reasonable legal action or legal defence) in connection with the defence or other handling of claims based on an infringement of third-party rights for which the Contractor is responsible, the Contractor shall indemnify the Customer and the Business Partners concerned against such costs and damages.
- 13.2.4 The Contractor's obligation to provide the Services shall remain unaffected hereby.
- 13.2.5 If the Services are, or in the reasonable opinion of the Contractor may become, the subject of a claim by a third party, the Contractor shall inform the Customer thereof without undue delay. The Contractor shall also: (i) secure the right to continue using the affected part of the Services; (ii) replace or modify the affected part of the Services in order to eliminate the (possible) infringement, whereby this must not lead to a significant deterioration of the Services; or (iii) if neither (i) nor (ii) is possible, remove of the affected part of the Services and adjust the Contractor's remuneration so that the resulting impairment of the Customer and the Business Partners is adequately compensated. The costs for such measures shall be borne by the Contractor, unless it is not responsible for the infringement of the rights of third parties.
- 13.2.6 The provisions in this clause 13.2 shall apply accordingly in favour of the Contractor with regard to such systems which the Customer provides and which are used by the Contractor to provide the respective Services. In this case, the Customer shall be responsible for the defence against any such claims.

14. Warranty and Liability

14.1 Warranty

- 14.1.1 The Contractor shall provide the Services free of defects in accordance with the respective state of the art and with the diligence of a prudent businessman. The Services must be provided at least in a quality that can be expected in connection with the relevant Services from a professional IT service provider in production-critical industries such as the automotive industry.
- 14.1.2 A defect shall be deemed to exist if the Services do not comply with the contractually specified requirements or, if no specific requirements have been specified, if they are not suitable for the purpose presupposed under the Contract or are not suitable for ordinary use.
- 14.1.3 The Parties shall inform each other without undue delay in text form (*Textform*) if they discover an actual or suspected defect with regard to the Services.
- 14.1.4 The Contractor shall determine the cause of the defect within its area of responsibility at its own expense and, if necessary, take all further measures required to prevent the occurrence of the defect in the future. The Contractor shall regularly report to the Customer on the respective status and success of such efforts.
- 14.1.5 The right to make other claims to which the Customer is entitled in the event of the occurrence of defects shall remain unaffected hereby. However, termination of this Contract is only possible under the conditions of clause 15. Any reduction of the remuneration shall be excluded if the cause of the defect simultaneously leads to a failure to meet service levels or key figures and thus to a penalty becoming due.

14.2 Liability

- 14.2.1 The Parties shall be liable to each other in accordance with the general statutory provisions.
- 14.2.2 The Customer may, in addition to compensation for its own damages, claim compensation for damage incurred by the Business Partners and caused by the Contractor and for which the Contractor is responsible by way of its performance as if such were the Customer's own damage.

15. Term and Termination

15.1 Term

The Contract shall become effective at the earliest upon the conclusion of the Contract, insofar as no other date is agreed in the Contract for this purpose, and ends on the date agreed in the Contract without any need for a separate notice of termination.

15.2 Termination for Good Cause

- 15.2.1 Either Party is entitled to terminate the Contract prematurely and without any notice period for good cause.

15.2.2 If the good cause relates to a breach of a contractual obligation, termination is only permissible after an unsuccessful warning notice, unless the basis of trust for the further performance of the contractual relationship has already been so affected by the initial breach of contract that the basis of trust cannot be restored even by setting a deadline for remedial action or by giving a warning notice.

15.2.3 A good cause for termination may include repeated breaches of service levels or key figures.

15.3 Written Form

Any termination must be in writing and signed (*Schriftform*) in order to be effective.

16. Contract Processing

The Contractor shall at all times ensure that the Services can be taken over by a successor provider in the event of a full or partial termination of the respective Contract. The provisions of **Annex 1.3 "Exit Management"** shall apply if the Contract is terminated in whole or in part - for whatever reason.

17. Prohibition of Set-off, Right of Retention, Right to Refuse Performance

Any right of the Contractor to set off an amount against claims due to the Customer is hereby excluded unless the Customer does not dispute the underlying counterclaim or such have been legally established. Any assertion of a right of retention or a right to refuse performance by the Contractor shall also require that the Contractor's counterclaims are based on the same contractual relationship.