

# DAIMLER TRUCK

## General Purchase Conditions of Daimler Truck AG for IT Part M - Cloud Service

### 1 General, Definitions

#### 1.1 General

These Special Provisions of the GPC-IT (Part M) as applicable at the time of contract formation for the Contract on IT Cloud 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 M), the definitions contained in Annex 1.1 "Definitions" shall apply.

#### 1.3 Ranking

If the Contractor's documentation, such as, for example, a performance or service description is referred to, the provisions of the order and these GPC-IT (Part M) shall prevail in the event of any contradictions. In the event of contradictions between these GPC-IT (Part M) and the GPC-IT (Part A), the provisions of the GPC-IT (Part M) shall prevail.

### 2. Subject Matter, Business Partner

#### 2.1 Subject Matter

The subject matter of this GPC-IT (Part M) 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 claim of their own as against the Contractor.

### 3. Services

#### 3.1 Performance and Type of Performance

3.1.1. The scope and nature of the ordered Cloud Services result from the order or the performance specification, if such is part of the Contract or order.

3.1.2. The Contract entitles not only the Customer, but also its affiliated companies within the meaning of § 15 of the German Stock Corporation Act (*AktG*) as well as the Business Partners to use the Services for the agreed remuneration.

3.1.3. The Contractor shall be liable to the Customer to provide appropriate instruction concerning the Services without additional remuneration.

3.1.4. Unless expressly stated otherwise in the order or the Customer's performance specification, the Contractor shall provide the Services in accordance with the provisions of these GPC-IT (Part M).

#### 3.2 Scope of Services

The Contractor shall provide the Services in such a way that the purpose of the provision to the Customer (and which is known to the Contractor) is fulfilled. This shall apply also to any performance not expressly mentioned in the performance specification but which a neutral expert third party would assume to be necessary for the provision of the Services.

#### 3.3 Performance Locations

The performance of the Contractor in relation to the Services shall be provided exclusively in the European Union or the European Economic Area. In particular, any storage and processing of data and processes of the Customer and the Business Partners outside the EU/EEA is not permitted. The same applies to access to such data and processes from outside the EU/EEA, even if such is undertaken for maintenance purposes. Any deviations from the above rule require the prior written consent of the Customer.

#### 3.4 Quality of Services

The Contractor shall provide the Services in accordance with the respective state of the art and in a quality that can be expected from a professional cloud provider.

#### 3.5 Security

During the term, the Contractor shall always provide the Services in accordance with the security standards ISO 27001 and/or SSAE 16/SOC 01 (or equivalent standard according to the assessment of the Federal Office for Information Security - *BSI*). Non-compliance with this minimum standard is not permissible and shall be notified to the Customer in writing without undue delay with a description of the effects.

Upon the request of the Customer, compliance with the security standards shall be proven to the Customer, e.g. by submitting suitable certificates from recognised institutes.

### 3.6. Additional Performance

At the request of the Customer, the Contractor shall provide additional or more extensive performance in connection with this order in accordance with a separate order, unless this is unreasonable for the Customer. Unless expressly agreed otherwise, these GPC IT (Part M) shall also apply hereto.

## 4. Changes to Services and Documentation

### 4.1. Changes to the Services

Changes to the Services by the Contractor during the term of the Contract shall only be permitted if

- (i) security in accordance with Clause 3.5 is not impaired,
- (ii) the changes are exclusively for the benefit of the Customer or at least do not lead to a significant restriction of the Services, and (iii) the Customer has been given at least 90 days' prior written notice describing the change, and (iv) the Customer has been given the opportunity to test the changes to a reasonable extent in advance. Demonstrable costs incurred by the Customer due to a necessary adjustment of its systems as a result of the change shall be borne by the Contractor.

### 4.2. Adjustments to Services

The discontinuation of the Services or parts thereof during the term of the Contract is only permissible if the Contractor

- (i) gives the Customer six (6) months' prior written notice, (ii) provides the Customer with replacement solutions in good time which are at least equivalent to the prior Service in terms of scope, quality and security, and (iii) reimburses the Customer for the necessary costs of the changeover. These GPC-IT (Part M) shall then apply accordingly to the Services to be replaced.

### 4.3. Changes to Documentation

If, due to a change in the Services, a change in the Contractor's documentation is required or takes place, the Contractor shall make this available to the Customer in a printed form without being requested to do so.

## 5. Personnel and Subcontractors

### 5.1. General Requirements

The Contractor shall carry out the Services under its own direction and responsibility with its own employees. Temporary workers may only be used if the local regulations applicable to this, such as those of the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*) in Germany, are complied with.

### 5.2. Use of Subcontractors

5.2.1. Clause 12 of the GPC-IT (Part A) - General Section shall apply to any involvement of Subcontractors. Subcontractors not expressly approved by the Customer at the time of the formation of the Contract may only be used if the Customer has given its prior written consent. The Customer may refuse consent only for good reason, such as, in particular if (i) the Subcontractor is unreliable or (ii) the Subcontractor is directly or indirectly controlled by a competitor of the Customer in the field of motor vehicle construction or,

(iii) the Customer could terminate the Subcontractor for good cause if the Subcontractor were in a direct contractual relationship with the Customer. If the replacement of the rejected Subcontractor is impossible for the Contractor, the Contractor shall notify the Customer thereof, stating the reasons. The Customer shall then be entitled to terminate those Services in which the Subcontractor is used with a notice period of up to three (3) months. The Contractor will not use this Subcontractor for Services that were not terminated by the Customer because the Subcontractor was not employed for these Services.

5.2.2. The Contractor must ensure that the obligations of the Subcontractor vis-à-vis the Contractor with regard to the performance of the Services 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 submitting the relevant parts of the contract concluded with the Subcontractor.

5.2.3. The Contractor shall be liable for the performance and omissions of the Subcontractors in the same manner it would be for its own performance and omissions.

5.2.4. At the Customer's request, the Contractor shall name all Subcontractors used to provide the Services to the Customer, specifically identifying those Subcontractors with access to the Customer's data or processes.

5.2.5. The Customer may demand the replacement of any approved Subcontractor for the reasons stated in clause 5.2.1 if these reasons only occur or become known to the Customer after the approval of the respective Subcontractor. Clause 5.2.1 shall then apply accordingly to any replacement.

## 6. Participation by the Customer

Insofar as the Customer's participation goes beyond the requirements under these GPC-IT (Part M), this shall be described in the order. The procedure for issuing reminders as to failure to participate and for agreeing on additional participation by the Customer is set out in clauses 6.1 and 6.2.

### 6.1. Notification of Failure to Participate and Provision by Customer

The Contractor shall notify the Customer without undue delay in writing of any inadequate participation or failure to participate. Otherwise, the Customer shall not be in default in this regard and the Contractor may not claim for incorrect participation. If the Customer culpably fails to provide the notified participation after a notice to provide such and the expiry of a reasonable grace period, the Contractor may demand a postponement of the related dates and deadlines by the duration of the delay.

### 6.2. Request for Additional Performance Services

The Contractor shall notify the Customer in writing and in good time if additional participation or Provision by the Customer are necessary for the performance over and above the agreed participation. This participation and Provisions must be requested in good time so that the Customer is able to provide such within the framework of its ongoing business operations without any hindrance thereto. The Customer shall be entitled to claim from the Contractor for any expenses for participation not agreed upon.

## 7. Audit Rights

The Contractor hereby grants the Customer the audit rights described in Annex 1.2 "Audit Rights" with regard to the assigned scope of duties.

## 8. Confidentiality and Data Protection

8.1. 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. The **Annex "Agreement on Commissioned Processing"** shall also apply to data protection and information security. In the above, 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 provision of the performance, the inclusion of this Annex is not necessary. The Customer shall document this.

8.2. If, contrary to clause 3.3, the Contractor is permitted to process or have access to personal data of the Customer or of Business Partners outside the EU, the EEA or Switzerland, the Contractor shall additionally conclude the necessary contracts for this purpose with the Customer in accordance with the requirements of the Commission of the European Union before any such processing or access is permitted.

8.3. The Contractor is obliged to maintain banking confidentiality if the Customer or a Business Partner is a credit institution. In such case, Annex 1.3 "Special Requirements for Services for Banking Act (KWG) Institutions" shall also apply.

8.4. The Contractor shall notify the Customer without undue delay if any third party obtains data of the Customer or the Business Partners without authorisation or if authorities demand or have access to the data of the Customer or the Business Partners, unless the Contractor is prohibited from doing so by law or by a binding order.

8.5. If the requirements under data protection law change during the term of the Contract, the Contractor undertakes to cooperate in and agree to a corresponding change in the data protection provisions.

## 9. Intellectual Property and Infringements of Intellectual Property Rights

### 9.1. Intellectual Property

9.1.1. 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 formation of the Contract shall remain with the Party which held such at that time.

9.1.2. Insofar as the Contractor uses protected Works for the provision of the Services, such as in particular software and databases, 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 which require such a right of use.

9.1.3. The rights of use to intellectual property of all work results which are developed by the Customer for the purposes of the Contract and in particular with the aid of the Services shall be vested in the Customer exclusively and for an unlimited period of time, without restriction and with a right to sublicense. The Customer grants the Contractor a free, non-exclusive right of use to such work results to the extent necessary for the provision of the Services. The Contractor shall not be entitled to any further rights. The same applies to data and processes of the Customer which are entrusted to the Services.

### 9.2. Infringement of Third Party Rights

- 9.2.1. The Contractor guarantees that the Services and their appropriate use by the Customer and Business Partners do not infringe the rights of third parties. This also applies to the systems that the Contractor provides and uses to provide the respective Services.
- 9.2.2. If claims are asserted against one of the Parties in connection with the Services due to an actual or alleged infringement of third party rights, the Parties shall inform each other thereof without undue delay.
- 9.2.3. If the Customer or Business Partners incur costs and/or damages (including the costs of reasonable legal actions or legal defences) 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 damage.
- 9.2.4. The limitations of liability under clause 11.2 or in a separate agreement shall not apply to the indemnity under clause 9.2.3 unless the Parties expressly indicate that clauses 9.2.4 and 11.2.3 (relating to the infringement of third party rights) shall not apply.
- 9.2.5. The Contractor's obligation to provide the Services shall remain unaffected thereby.
- 9.2.6. If the Contractor is unable to continue to provide the Services in an unchanged state due to an infringement of third party rights, it shall change the Services in such a way that the Customer and the Business Partners are able to continue to use the Services without infringing third party rights. Clause 4 applies accordingly to such changes, but with the restriction that the Contractor must notify the Customer as soon as possible.

## **10. Remuneration**

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

### **10.1. Remuneration**

- 10.1.1. For the provision of the Services, the Customer shall pay the Contractor the remuneration agreed in the Contract.
- 10.1.2. If the remuneration is determined according to time periods, the Contractor shall invoice its performance in each case after performance has been rendered in accordance with the agreed invoicing periods.

### **10.2. Retention**

The Customer may withhold any forfeited contractual penalties, damage caused by delay, additional expenses or any agreed securities from the Contractor's remuneration to a reasonable extent. The reservation of the enforcement of a contractual penalty may be asserted by the Customer within three (3) months of obtaining knowledge of the reason and amount of the contractual penalty.

## **11. Warranty and Liability**

### **11.1. Warranty**

- 11.1.1. The Contractor shall provide the Services in accordance with the respective state of the art and with the diligence of a prudent businessman, free of any deficiency and in compliance with clause 3.4. The Services shall be provided at least in a quality that can be expected from a professional cloud service provider in connection with the relevant performance.
- 11.1.2. A deficiency shall be deemed to exist if the Services do not meet the contractually specified requirements and/or are not suitable for the purpose assumed under the Contract or, if such purpose is not known to the Contractor, are not suitable for the customary uses.
- 11.1.3. The Contractor shall, within its area of responsibility and at its own expense, determine the cause of any deficiency and, if necessary, take all further measures required to prevent the deficiency from occurring in the future.
- 11.1.4. The assertion of other claims to which the Customer is entitled in the event of the occurrence of a deficiency shall remain unaffected. However, any termination of this Contract is only possible under the conditions of clause 12.2. Any reduction of the remuneration shall be excluded if the cause of the deficiency simultaneously leads to the failure to meet agreed Service Levels or key figures and thus to a penalty or service credit becoming due.
- 11.1.5. If Service Levels or key figures and associated penalties or service credits have been agreed, this shall not preclude the Customer from asserting its rights to claim for damages in excess thereof within the scope of the liability provisions under clause 11.2.
- 11.1.6. Insofar as any Services are subject to tenancy law, the limitation provisions applicable to claims for defects under tenancy law shall apply.

### **11.2. Liability, Limitation of Liability**

- 11.2.1. The Parties shall be liable to each other in accordance with the general statutory provisions of law, unless otherwise provided for in the following.
- 11.2.2. In addition to compensation for its own damage, the Customer may claim, as if such was the Customer's own damage, for compensation for damage resulting to the Business Partners caused by the Contractor and for which the Contractor is responsible by way of its performance. The assertion of any claim against the Contractor for the same damage by the Business Partners is excluded in such case.

11.2.3. Unless expressly agreed otherwise in writing, in the event of simple negligence the Parties shall be liable for all damage in a contractual year only up to an amount equal to four times the net remuneration which the Customer pays or would have to pay for the Services in the contractual year in which the damage occurs. This limitation of liability shall not apply to cases of product liability, injury to life, limb or health, to any breach of confidentiality or data protection obligations or, in the event of any infringement of third party rights.

## **12. Commencement, Termination and Ending of Contract**

### **12.1. Commencement**

The Contract begins with the formation of the Contract unless another date is agreed in writing and the Contract expires on the agreed date without any need for termination by a Party.

### **12.2. Extraordinary Termination**

12.2.1. Either Party may terminate the Contract without notice for good cause. Good cause includes material breaches of the provisions of this Contract or other obligations. Termination must be made in writing (*Schriftform*) in order to be effective.

12.2.2. If the good cause relates to a breach of a contractual obligation, termination is permissible only after non-compliance with a rectification demand, unless the basis of trust for the further performance of the contractual relationship has already been broken by the initial breach of the contractual obligation to such an extent that such trust cannot be restored even by setting a deadline for remedial action or by a rectification demand.

12.2.3. A good cause for termination may also consist of repeated breaches of Service Levels or key figures.

### **12.3. Ending of Contract**

12.3.1. The Customer may demand from the Contractor that, notwithstanding the ending of the Contract - for whatever legal reason - the Contractor continues the Services under the terms of the Contract (including these GPC-IT (Part M)) for up to six (6) months in order to enable the Customer to transfer the processes and data processing enabled by the Services to itself or to another service provider ("ending period"). The request must be made in writing no later than one month before the end of the Contract, in the case of extraordinary termination within two weeks of termination. In the event of termination of the Contract by the Contractor for good cause due to default in payment by the Customer, the Contractor may demand that the remuneration for the ending period be paid in advance. In addition, the Contractor may refuse to provide the Services during the ending period if it has justifiably terminated the Contract with the Customer for good cause and the continuation of the Services would be unreasonable for the Contractor.

12.3.2. The Contractor shall keep the data and processes and content which the Customer has entrusted to the Services available for retrieval by the Customer for 60 days after the ending of the Contract or the expiry of the ending period; retrieval shall be technically possible for the Customer at any time. The data and processes must be kept available in a common format.

12.3.3. At the request of the Customer, the Contractor shall support the Customer, in return for reasonable remuneration, in the transfer of the processes and data processing enabled by the Services (as well as the content to which the Customer is entitled) either to the Customer itself or another service provider to a reasonable extent.

## **13. Prohibition of Set-off, Right of Retention, Right to Refuse Performance**

Any right of set-off by the Contractor against claims of the Customer is hereby excluded unless the Customer does not dispute the underlying counterclaims or such have been legally established. Any assertion of rights of retention and rights to refuse performance by the Contractor also require that the Contractor's counterclaims are based on the same contractual relationship. In the event of a breach of contract by the Customer, the Contractor may withhold or refuse the Services only if the matter relates to a serious breach of contract which the Customer fails to rectify with a deadline of at least 20 working days despite two written notices to do so. Insofar as any breach of contract by the Customer results in the Contractor not being able to provide the Services or not being able to do so in a correct and proper manner, any right to claim by the Customer is excluded.

## **14. Change of Control**

The Customer is entitled to an extraordinary termination of the Contract if the Contractor or its material assets are sold to a third party or a third party acquires the majority of shares or voting rights in the Contractor.