

# DAIMLER TRUCK

## NP.30.10.132 - Commodity-specific Conditions of Contract of Daimler Truck AG for Product Partners

### 1. Scope

- 1.1 Daimler Truck AG (hereinafter also "DTAG") intends to develop, either directly or through appointed or instructed third parties (hereinafter also "Third Parties"), new or existing production facilities (hereinafter also "Facilities"), including their conceptual design, planning, installation and operation (hereinafter also "Project"). The Product Partner is willing and able to supply components, assemblies and/or systems (hereinafter also "Product") for the Facilities, and willing and able to provide the associated services, including conceptual design, planning, manufacture, instruction, training, maintenance and operation.
- 1.2 To the extent that DTAG gives notice of the location of Facilities, these are the current locations of those Facilities. They are non-binding and subject to change.

### 2. Subject matter of this agreement

- 2.1 The Product Partner shall supply to DTAG and/or its appointed or instructed Third Parties, on demand, Products for Projects, and shall supply to DTAG and/or its appointed or instructed Third Parties the commissioned services regarding conceptual design, planning, installation and operation of the Projects.
- 2.2 With regard to additional Products during the contract period, the Product Partner offers to supply such Products to DTAG on the same conditions set out in the purchasing agreement and applicable terms, provided that the additional Products are of the same product standard. This applies in particular where the scope of the Project is unknown at the time of entering into the agreement with the Product Partner. DTAG shall consider the award to a Product Partner on a case-by-case basis. An extension of the existing agreement to include such Projects shall require an amendment to the purchasing agreement by DTAG's procurement department.
- 2.3 DTAG shall not be obligated to procure Products from the Product Partner. DTAG shall be entitled to decide at all times not to use the Product Partner's Products, in particular where DTAG considers that their use in the production facility would not be suitable or cost-effective. In the event that the use of the Products is not suitable or cost-effective, DTAG shall call on the Product Partner to ensure within a reasonable time limit that the required suitability and/or cost-efficiency are achieved ("Last Call"). Notwithstanding the right of a Last Call, DTAG is entitled to use competing products or to agree to the use of competing products by Third Parties.

### 3. Project requirements

The Product Partner shall ensure that for the respective Project the following requirements in particular are met. In the event of a tender process, the Product partner shall also take these into account when preparing its tender:

- 3.1 The specific aim of the product partnership is to provide DTAG and/or Third Parties, for all constituent elements of a Project with mature, standardised, and tested conceptual design, planning, trial, and implementation services and Products.
- 3.2 The Product Partner shall have full responsibility for the technology requested and/or commissioned by DTAG, in particular its conceptual design, planning, testing, instruction, operation, functionality, and the provision of operational support and training, as well as for the delivery of the Products as agreed. This includes in particular safeguarding of the entire ramp-up until full capacity is achieved and the production lifetime of the respective Project according to the scope of delivery.
- 3.3 The invitation to tender specifies the scope of the Products for the purchasing agreement. To the extent that the invitation to tender includes assumptions of quantity structures, these are intended as guidance only and are non-binding. To the extent that the invitation to tender is based on given requirement profiles, this is to form the basis for tenders by potential Product Partners. Definitions used in the invitation to tender shall be binding on the Product Partner. The Product Partner may offer extensions or additional services that exceed the scope of those specified in the invitation to tender. In such circumstances, the services shall be itemised in detail and the value for each entry given in Euros.
- 3.4 The invitation to tender describes the full scope to be tendered and delivered under the Project. All elements of an invitation to tender shall be deemed to be constituent elements of one single inherently conclusive invitation to tender for a product system, to be awarded to a single Product Partner who shall deliver the tendered Product system. It shall not be permissible therefore to consider only individual parts of the invitation to tender or submit a tender for individual parts only.

In the event that individual elements of the invitation to tender are contradictory, the requirement that represents the higher specification shall prevail. The Product Partner shall highlight, before award of the contract, any identified inconsistencies in an exclusion list.

The Product Partner shall furthermore draw DTAG's attention to any potential for optimisation, with regard in particular to costs, timeframe and technology.

### 4. Scope of supply and services

The scope of delivery and supply of services follows from the underlying purchasing agreement and its annexes, as supplemented by the following provisions.

#### 4.1 Initial operation/start-up support

The Product Partner shall deploy sufficient qualified personnel to safeguard the commissioning and commencement of production of the supplied Products. If

required to do so by DTAG, the Product Partner shall deploy personnel in multiple shifts.

#### 4.2 Schedule

Where new Products or Product functions (sub-functions) are to be developed, the Product Partner shall submit with its tender a binding schedule. Where Products are offered without a development schedule, DTAG shall assume that the Products and necessary functions are readily available series products.

Where individual components are not yet available in sufficient quantities at the time of submitting the tender, the Product Partner shall include in the respective annexes to its tender binding delivery deadlines for such individual components.

#### 4.3 Failure to meet deadlines

Should the Product Partner fail to comply with stipulated or promised launch dates, or should any such failure become foreseeable, the Product Partner shall in good time offer alternative solutions. The Product Partner shall bear any additional costs incurred as a result hereof, including costs initially incurred by DTAG and/or by Third Parties (e.g. the suppliers of equipment).

#### 4.4 Delay damages

Where the Product Partner culpably fails to meet the agreed date of delivery/launch date for completion of the Product Partner's scope of work, or the Product Partner is otherwise delayed in the completion of its scope of work, DTAG is entitled to impose a contractual penalty. Such contractual penalty shall be 0.1 % of the gross contract amount per working day of delay, not exceeding an aggregate of 5 % of the gross contract amount. Where the Product Partner forfeits multiple penalties, they shall be credited against each other.

The maximum limit of all contractual penalties shall be 5 % of the gross contract amount. Where the final completion date is met, DTAG will waive any contractual penalties imposed for failure to meet interim deadlines, provided that neither DTAG nor Third Parties have suffered any additional costs as a result of such failure to meet interim deadlines. DTAG shall be entitled to require payment of any contractual penalty due on final payment, irrespective of whether any reservation was made upon acceptance of the Product Partner's performance.

Should the agreed deadlines be revised or a new contract schedule agreed, the contractual penalty provisions shall apply correspondingly to the revised deadlines or the new schedule. DTAG's statutory or contractual rights, in particular those in relation to claims for damages or the right of termination, shall remain unaffected by these provisions on contract penalties.

#### 4.5 Retrofits and conversions

The Product Partner shall bear the cost of any retrofit or conversion required as a result of delays in the provision of the Products or associated services to be delivered by the Product Partner, or due to delays in Product availability. Where the agreed Products are available, the Product Partner shall bear the cost of converting any interim solution to the intended solution.

## 5. Prices

### 5.1 Pricing basis and net price list for the Project

The agreed net price list for the Project provides the basis for the price of the Products and associated deliveries and services provided by the Product Partner. The Product Partner shall update the net price list for the Project after approval by DTAG's procurement department. The Product Partner may, with the agreement of DTAG, add additional Products to the net price list for the Project. The terms and conditions agreed in the purchasing agreement shall apply to such Products.

### 5.2 Additions and amendments

To the extent that the Product Partner's tender fails to include Products necessary to achieve the agreed functionality and these were known (or should have been known) to the Product Partner at the time of preparation of the tender, the cost of such Products shall be deemed to be included in the prices set out in the net price list for the Project. This does not apply to additional incidental materials, components or technical changes requested by DTAG or specified jointly during the project phase after the tender has been prepared.

### 5.3 Calculation of the discount rate

The level of any discount shall be calculated based on a Product's allocation to a component group. Each Product is divided into component groups; component groups are divided into assemblies. Component groups comprise not only the specified assemblies, but also all elements practically and/or functionally forming part of the assemblies in question (e.g. a required component carrier would automatically be part of the component group to which the component is allocated, irrespective of the fact, that the component carrier is not explicitly listed in the price sheet).

### 5.4 Pricing for deliveries to DTAG

The prices for the Product Partner's Products shall be given in the prevailing version of the purchasing agreement. The discount rates agreed in the purchasing agreement shall apply to the Product Partner's listed products and associated services: list price minus the discount rate offered for the respective component group. Delivery to DTAG also includes delivery to an Affiliated Company of DTAG. Affiliated Company means any affiliated company of Daimler Truck AG in accordance with § 15 AktG (German Stock Corporation Act) and as well as any company in which Daimler Truck AG is directly or indirectly involved with more than 50%.

### 5.5 Pricing for deliveries to Third Parties

When supplying listed Products and services to Third Parties, the Product Partner shall apply the discount rates offered herein (list price minus the discount rate offered for the respective component group), provided that such discounted rates are lower than the prices otherwise applicable between the Product Partner and the Third Party. The price set out in the purchasing agreement is therefore a maximum price for Products to be delivered to Third Parties. The Product Partner agrees that DTAG and its Affiliated Companies dis-

close the agreed maximum prices (project net prices) to such Third Parties that intend to offer DTAG and/or its Affiliated Companies such Third Parties' own products that contain product technology to be procured from the Product Partner.

All other Products are subject to the respective price agreements between the Product Partner and the Third Party. In both cases, the Third Party shall refer to the Project for the procurement of the Products from the Product Partner.

The Product Partner shall, annually at the end of February, notify the responsible purchaser at DTAG of the Products (and number of units) delivered to the Third Party in the previous calendar year.

In the event that individual components supplied or to be supplied by the Product Partner as part of an agreed component group fail to meet the requirements that were agreed or assumed with regard to their overall performance, specifically their functionality, technical execution, quality, pricing or reliability of supply, or should such components fail to meet the state-of-the-art of technology, DTAG shall be entitled to use alternative products from other providers, either in whole or in part. The terms and conditions for the respective component group remain unaffected.

#### 5.6 Price breakdown

DTAG reserves the right to demand at any time a price breakdown for the Products offered. The breakdown shall serve to validate the offered or agreed prices and may be requested at a level of detail down to the individual structural elements of the components. The supplier undertakes to actively support this process.

#### 5.7 Binding nature of the prices

In the absence of any explicit agreement to the contrary in the purchasing agreement, prices (based on the prices applicable for Germany at the time the purchasing agreement is entered into) shall be valid without price adjustment during the entire Project period as specified in the specifications or the timetable.

The Product Partner shall itemise already in its tender any surcharges for delivery (free delivery to the place of use inclusive of unloading) to the destination country of the relevant Project or to individual (e.g. series-specific) destination countries of a Project.

The Project terms and conditions specified in the purchasing agreement, including in particular the prices for replacement parts set out in the net price list for the Project, shall apply to the initial provision of replacement parts for the Products, up to at a minimum the end of the term of the purchasing agreement.

### 6. Warranty

The Product Partner's warranty for the supplied Products shall commence with the SOP ("Start of Production") of the Third Party's technology and/or facilities (as applicable), but in any case no earlier than the date of delivery to DTAG or - to the extent that an acceptance is required - no earlier than the date of such acceptance by DTAG. The project-specific warranty period agreed as based on the tender documents will apply, but at least the applicable statutory period.

### 7. Training sessions

The Product Partner undertakes to run project-related training sessions for DTAG and Third Parties (e. g. machine/plant suppliers). The Product Partner shall prepare for these purposes a project-related training program for different groups, in particular system experts, maintenance personnel, operators and machine/plant suppliers. The training sessions shall provide the knowledge and skills required to operate the Products implemented in the Project. The Product Partner shall coordinate the training program with the responsible officeholders at DTAG.

### 8. Use of documents

DTAG shall be entitled to use for internal purposes the documents created by the Product Partner in connection with the product partnership. This shall particularly include their duplication and distribution. DTAG shall also be entitled to make such documents available to third parties involved in the Project, in particular machine/plant manufacturers or service providers.

The transmittal of the Product Partner's documents to third parties not involved in the Project shall require the prior consent of the Product Partner.