

General Terms and Conditions for Supply of Goods and Services

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§ 1 Subject Matter of the Agreement

- 1.1 The following Terms and Conditions for the Supply of Goods and Services (hereinafter referred to as “Terms and Conditions”) apply to the provision of all works and services, Application Service Providing contracts (ASP contracts) and sale and purchase agreements (hereinafter collectively referred to as “Services”) by Daimler TSS GmbH (hereinafter referred to as “TSS”) to businesses (hereinafter referred to as “Customer”). The offer and the Terms and Conditions together form the contract.
- 1.2 The Services of TSS shall be provided exclusively on the basis of the written order confirmation from TSS and these Terms and Conditions. TSS does not accept any conflicting terms and conditions of the Customer, even if a job is accepted from that Customer and performed. The placing of an order and acceptance of the Services provided by TSS constitutes confirmation on the part of the Customer that it agrees to these Terms and Conditions.
- 1.3 These Terms and Conditions shall also apply to future contracts between TSS and the Customer, even where no specific reference is made to them, unless otherwise agreed between the contracting parties.
- 1.4 The Terms and Conditions may be unilaterally varied by TSS, provided that the Customer is informed of the changes in writing or electronically with at least 90 days' notice. Unilateral changes to these Terms and Conditions entitle the Customer to cancel the Services affected by the changes, provided it does so at least 30 days prior to the date upon which the changes take effect.

§ 2 Formation of the Contract

- 2.1 All offers made by TSS are non-binding and subject to change without notice, unless expressly described as binding.
- 2.2 The Customer's order must be made in writing.

§ 3 Organization of the Provision of Services

- 3.1 TSS assumes full responsibility for the provision of the Services. Only TSS is entitled to issue instructions to staff members and subcontractors engaged in the projects.
- 3.2 Prior to the commencement of the work TSS shall provide the Customer with the name of a responsible contact person/project manager. TSS shall inform the Customer of any change of contact person/project manager in good time.
- 3.3 Where Services are carried out at the Customer's premises, TSS shall comply with the applicable safety regulations and information security directives, provided that the Customer has supplied copies of the safety regulations and information security directives without being requested to do so, in good time in advance.
- 3.4 TSS shall only be obliged to carry out a training event if at least six people have registered for the event seven days prior to the scheduled date.

§ 4 Provision of Services

- 4.1 TSS shall render the services described in detail in its offer either itself or via a third party.
- 4.2 The Services of TSS shall be available exclusively from Monday to Friday between 9 a.m. and 5 p.m. with the exception of public holidays in Baden-Württemberg (hereinafter referred to as "Working Days").
- 4.3 TSS shall provide its Services in accordance with the generally accepted technical standards prevailing at the time the contract is concluded. TSS reserves the right to make minor changes to the offer, which are required for technical reasons, even after the contract has been concluded.
- 4.4 The dates and periods specified by TSS are non-binding, unless otherwise expressly agreed.
- 4.5 Force majeure, industrial disputes, unrest, government action and other unforeseeable, unavoidable and serious events shall release the parties from their contractual obligations for the duration of the disruption and for a reasonable subsequent period to allow work to resume, to the extent of the effect of such events. The parties are obliged to take all reasonable steps to provide

the necessary information without delay and to adapt their obligations to the changed circumstances in accordance with the principles of good faith. This also applies if similar circumstances exist at suppliers to TSS.

- 4.6 TSS is permitted to render part-performance so far as this is acceptable to the Customer.
- 4.7 Only qualified employees will be employed in the performance of orders.
- 4.8 The employees assigned by TSS shall be available for the services specified in the offer. The Customer shall be notified of vacation days and flexitime days with a period of at least five working days' notice. The Customer shall also be informed if employees assigned to its projects are ill.

§ 5 Duty of the Customer to Cooperate

- 5.1 The Customer shall comply promptly with its duties to cooperate, so far as these are set forth individually in the contract with deadlines.
- 5.2 The Customer shall, by prior arrangement, provide TSS with the necessary infrastructure such as computers, internet access, software and workstations, free of charge.
- 5.3 The Customer shall designate a project manager with responsibility for carrying out the project. This person shall be the point of contact for the TSS project manager (§ 3.2).
- 5.4 In the case of ASP contracts, the Customer is obliged to provide the names of the proposed users of the ASP services. The Customer is also obliged to inform TSS of any change in the allocation of users resulting from organizational changes or staffing changes etc., to protect the user and access authorizations and identification and authentication protection allocated to the users against third-party access and not to pass these on to unauthorized users, to ensure that (e.g. during the capture of third party texts and data on TSS servers) all commercial copyright and other protection is observed, to obtain the necessary consents of the persons affected so far as personal data is collected, processed or used in connection with the use of the ASP services and no statutory license is required, and not to misuse ASP services or permit them to be misused.

§ 6 Changes to Services

- 6.1 The Customer may propose amendments and additions to the Service up to the point at which the Customer signs off the Service. The Customer must describe the proposed changes in detail. Within a reasonable period of at least 10 working days from the receipt of the change proposal, TSS shall examine whether the Customer's proposal is feasible for TSS. TSS shall inform the Customer of the outcome of this examination, together with the costs and changes to the completion date arising from the change, in the form of a written quotation. TSS shall invoice the Customer for the time spent on the change request procedure on the basis of the TSS price list in force at the time.
- 6.2 The Customer shall examine the quotation within a period of ten working days from receipt and shall notify TSS of its decision. If the Customer accepts the offer, the changes shall become part of the contract. If the Customer does not accept the offer, the parties to the contract shall implement the contract on the previously agreed terms.

§ 7 Remuneration and Due Dates

- 7.1 All payments are subject to VAT at the applicable rate.
- 7.2 Unless otherwise agreed, for example because the TSS offer specifies a fixed price, Services will be charged on an hourly basis in accordance with the prevailing TSS price list.
- 7.3 If TSS provides Services over a period of several months, TSS shall issue an invoice at the beginning of each calendar month for the Services carried out in the previous month.
- 7.4 If remuneration on an hourly basis has been agreed, the monthly invoice shall be for the work actually carried out in that month. Cost estimates are not binding. If it becomes clear to TSS that the actual cost is likely to be more than 10 percent above the estimated cost, it shall inform the Customer in writing immediately. In such a case the Customer shall be entitled to terminate the contract. In such a case payment for services already rendered shall be made in accordance with § 12.5.
- 7.5 Travel and other expenses of TSS shall be reimbursed by the Customer upon presentation of receipts. Time spent traveling shall be deemed to be hours worked. For the purpose of calculat-

ing travel expenses, the journeys of employees assigned by TSS shall be deemed to have started at the head office of TSS, unless otherwise agreed.

- 7.6 Invoices shall be payable without deduction within 14 days of the invoice date and receipt of the invoice. In the event of delayed payment TSS is entitled to charge interest at a rate of 8 percent p.a. above the base rate. Further claims shall not be affected.
- 7.7 Travel and accommodation expenses as well as other expenses in connection with the participation in a training event shall be borne by the Customer itself.

§ 8 Reservation of Title

- 8.1 Items acquired by the Customer from TSS under the terms of the contract shall remain the property of TSS until the agreed price has been paid in full.
- 8.2 This also applies to all supporting materials. So far as rights of usage have been granted, the above provision shall apply *mutatis mutandis* to data media to be supplied.

§ 9 Usage Rights

- 9.1 Subject to contrary or additional provisions, the Customer shall have an irrevocable and non-exclusive right to use the work results supplied to it by TSS for the purpose envisaged by the contract and for use within the scope of its own business. Such rights may only be assigned or sublicensed to third parties with the prior written consent of TSS. Work results are all items which are subject to intellectual property rights and have been created by TSS for the Customer on the basis of these Terms and Conditions.
- 9.2 Even if the Customer has acquired an exclusive usage right to the work results of TSS by virtue of other agreements, TSS remains entitled to use its own knowledge or its employees' own knowledge and the modules, tools or methods used to produce the work results, which are intended or suitable for re-use in other business relationships, for the purposes of its business.
- 9.3 With regard to ASP contracts the Customer shall receive the non-exclusive right, limited to the term of this agreement, to access the ASP service by means of telecommunication and, via a browser, to use the functionalities associated with the ASP service in accordance with this

agreement. The Customer shall not acquire any further rights, in particular to the ASP service itself, the software application or the operating software. The Customer is not entitled to use the ASP service for any purpose other than that permitted in this agreement or to permit it to be used by a third party or to make it available to a third party. In particular the Customer is not entitled to copy, sell or transfer for a limited period the right to use the ASP service or parts thereof, particularly not to lease it or rent it out.

§ 10 Guarantee und Liability

- 10.1 The Customer must examine contract goods upon delivery without delay, as soon as this is feasible within the usual course of business, and notify TSS of any defects in writing immediately, in any event within seven days of delivery. Defects which are not apparent within the usual course of business must be reported by the Customer in writing as soon as they are discovered, within a period of no more than seven days from discovery. Otherwise the contract goods shall be deemed to have been approved, unless the defect has been fraudulently concealed.
- 10.2 So far as items produced under a contract for work and services are defective, this must be recorded in writing in the sign-off record.
- 10.3 If defective goods or services are supplied and such defects have been duly reported, so far as this is required, the Customer shall firstly give TSS the opportunity at the choice of TSS to remedy the defect or supply new goods or services, so far as TSS's obligation was not limited to mere performance. The Customer is entitled to withdraw from the contract or to reduce the payment owed if, after a reasonable period, the subsequent performance also fails, is unacceptable to the Customer, is refused by TSS or is not provided within a reasonable period granted by the Customer. Withdrawal from the contract is not permitted in cases of negligible defects.
- 10.4 TSS accepts no liability for the loss of data and information of the Customer, which could have been prevented by regular data backups. In the absence of an express agreement to the contrary, the Customer shall be solely responsible for backing up the data.
- 10.5 The liability of TSS shall not apply to the extent that the Customer modifies the Services without the prior written consent of TSS and the defect is due to such modifications.

- 10.6 Further claims of the Customer are excluded, in particular claims to damages in lieu of performance and to compensation for other direct or indirect loss – including collateral or consequential loss - irrespective of the legal basis for such. This shall not apply if
- a) TSS is liable under mandatory statutory provisions such as the Product Liability Act,
 - b) TSS has fraudulently concealed a defect or has given a guarantee.
 - c) the loss is due to the willful intent or gross negligence of TSS, its statutory representatives or persons employed to assist it in the performance of the contract, or a negligent breach of essential contractual duties by these persons (i.e. duties without which the due and proper performance of the contract would not be possible, and upon whose compliance the Customer relies and ought to be able to rely) or
 - d) a culpable breach of duty by TSS, its statutory representatives or persons employed to assist it in the performance of the contract has led to physical injury or damage to health.
- 10.7 In the event of simple negligence TSS's obligation to pay compensation is limited to the amount of foreseeable loss which is typical of the type of contract concerned.
- 10.8 The above provisions shall apply *mutatis mutandis* to claims made directly by the Customer against the statutory representatives of TSS or persons employed to assist it in the performance of the contract.
- 10.9 If, through no fault of TSS, use of an ASP service in accordance with the terms of the contract is hindered by third-party rights, TSS is entitled to refuse the Services affected. TSS shall inform the Customer of this without delay and provide it with access to its data by appropriate means. In such a case the Customer shall not be obliged to pay.
- 10.10 The limitation period for warranty claims relating to sale and purchase agreements and to contracts for work and services is 12 months. The commencement of the limitation period is governed by the statutory provisions.

§ 11 Rights of Retention, Prohibition of Set-off and Assignment

- 11.1 The Customer shall have a right of set-off only if its counterclaims have been confirmed by a non-appealable court decision or are uncontested or acknowledged by TSS.

11.2 The Customer shall be entitled to exercise a right of retention only if its counterclaims have been confirmed by a non-appealable court decision or are uncontested or acknowledged by TSS.

11.3 Warranty claims and claims for compensation cannot be assigned.

§12 Termination

12.1 Long-term obligations may be terminated prematurely by both contracting parties with eight weeks notice¹ to the end of a calendar month.

12.2 In the case of training events, the Customer may withdraw from the contract up to seven days prior to the scheduled event without incurring any costs. In the event of cancellation at shorter notice or non-attendance, the full charge will be invoiced. In such a case TSS must deduct any savings made as a result of the non-provision of the service.

12.3 Each contracting party may terminate the contract without notice for good cause. Good cause is deemed to exist in particular if the Customer stops payments or if insolvency proceedings are initiated in respect of the Customer's assets. In such a case TSS shall be entitled to terminate the contract.

12.4 Termination shall not be valid unless expressed in writing. Notice of termination must be delivered by registered mail.

12.5 If the Customer terminates a contract prematurely, wholly or in part, it shall be liable to pay for the Services duly performed prior to termination.

§ 13 Place of Performance

Unless otherwise agreed, the place of performance shall be the registered office of TSS.

§ 14 Non-Disclosure

- 14.1 The parties agree to treat all confidential information and documentation disclosed to them or which becomes known to them as strictly confidential. The parties to the agreement must take steps to ensure that such information cannot be accessed or misused by third parties. These obligations apply in particular to trade secrets, software and data. This non-disclosure obligation applies for the duration of the contract and for a period of five years after it has ended.
- 14.2 Information and documentation may only be used for the purpose of performing the contract. It may be passed on to employees and subcontractors on a need-to-know basis only. This does not apply to confidential information and documentation which is or becomes public knowledge without any breach of contract by a party to this contract, or which the receiving party has obtained from a third party which is authorized to publicly disclose it. The party seeking to rely on these exceptions shall bear the burden of proof.
- 14.3 The Customer shall not disclose to any third party all or parts of the offer from TSS, not even in an edited version, without the prior written consent of TSS.
- 14.4 The obligation to maintain confidentiality shall not apply if one of the parties is obliged to disclose information by law or by virtue of a judicial or government decision.

§ 15 Final Provisions

- 15.1 The agreements between the contracting parties shall be governed exclusively by the law of the Federal Republic of Germany, excluding application of the CISG.
- 15.2 The German wording of these Terms and Conditions and other contract documentation shall be authoritative for the interpretation of the contract.
- 15.3 The exclusive place of jurisdiction for all legal disputes arising from or in connection with this contract shall be Ulm unless mandatory provisions of law stipulate another venue. TSS is also entitled to institute legal action at the location of the Customer's main or branch office.
- 15.4 No arbitration or conciliation agreement has been concluded.

15.5 Should individual provisions of these Terms and Conditions be or become invalid or unenforceable wholly or in part, or prove to contain omissions, this shall not affect the validity of the remaining provisions. The contracting parties undertake to replace the invalid, unenforceable or missing provisions with provisions which accord most closely with the spirit and economic purpose of the invalid provision and the intention of the contracting parties.

15.6 In the event of conflict, the following order applies (a) the order confirmation from TSS, (b) the offer from TSS, (c) the work specification from TSS and (d) these Terms and Conditions.