



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

1. Contracting Parties, Service Content and General Terms and Conditions

- 1.1 The purchaser (hereinafter "Buyer") acquires from Mercedes-Benz AG the XENTRY Diagnosis Hardware in accordance with Section 1.3, consisting of hardware components and accessories as well as hardware-related software, without data content. The entirety of these elements is hereinafter referred to as "Hardware".
- 1.2 The subject of these GTC is all services provided by Mercedes-Benz AG in connection with the sale of Hardware in all its product variants.
- 1.3 Currently, the Hardware offered includes, depending on the order by the Buyer, among others: XENTRY Diagnosis Kit 5, XENTRY Diagnosis Kit 5 Scope, XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope as well as Retail Data Storage 2 and XENTRY Diagnosis COM Kit.
- 1.4 The accessories for the Hardware approved by Mercedes-Benz AG must be purchased separately by the Buyer, unless they are included in the initial scope of delivery.
- 1.5 Buyer acknowledges that the XENTRY Diagnosis Hardware in all its product variants, including the XENTRY COM Kit, can only be used in conjunction with the corresponding fee-based XENTRY software (in particular XENTRY Diagnosis Software). This XENTRY software is to be distinguished from hardware-related software, which is part of the Hardware in accordance with Section 1.1. The provision of applications and data content (incl. XENTRY Software) as well as software and data updates are the subject of a separate contract and are regulated in the "General Terms and Conditions for the Use of Applications and Data Content Provided by Mercedes-Benz AG for After-Sales". It is therefore solely the responsibility of the Buyer to obtain the necessary rights of use to the XENTRY software for a fee and by concluding a separate contract.
- 1.6 The Buyer's General Terms and Conditions shall not become part of the contract, even if they have not been explicitly contradicted.

2. Formation and alteration of contract

- 2.1 Buyer shall be bound by its order for 14 days. The contract is concluded when Mercedes-Benz AG has confirmed the acceptance of the order in textual form within this period or the delivery has taken place. However, Mercedes-Benz AG is obliged to inform the buyer without undue delay in textual form if it does not accept the order. Mercedes-Benz AG is not required to state a reason for not accepting the order.
- 2.2 All agreements must be documented in textual form. This also applies to collateral agreements, warranties, as well as subsequent contract amendments.

3. Scope of performance

- 3.1 The scope of supply and services is specified in the respective orders. These list in detail the Hardware and services.
- 3.2 Mercedes-Benz AG reserves the right to make constructive or technical modifications, as well as changes to the scope of supply and services, during the delivery period, provided that such changes or deviations are reasonable for the Buyer, considering the interests of Mercedes-Benz AG.

4. Delivery

- 4.1 Delivery dates and periods are binding if they have been designated as binding in textual form by Buyer and Mercedes-Benz AG in individual cases, otherwise all delivery dates and periods are non-binding.
- 4.2 If non-compliance with a delivery date or deadline is due to an unforeseen event beyond the control of Mercedes-Benz AG, the delivery date or deadline shall be extended by an appropriate period of time. In the event of a delay in delivery, the Buyer has the right to withdraw from the contract in question in accordance with the applicable legal provisions after the fruitless expiry of a reasonable grace period.
- 4.3 If a delivery by Mercedes-Benz AG is delayed, Buyer may demand liquidated damages for the delay. The liquidated damages will amount to 0.5 percent of the net purchase price (delivery value) for each full calendar week of delay, but subject in total to a maximum of 5 percent of the delivery value of the delayed Hardware. Mercedes-Benz AG reserves the right to demonstrate that Buyer's loss was lower than the foregoing liquidated damages or that no loss was incurred at all.
- 4.4 The rights of Buyer pursuant to clause 12 of these GTC and the applicable statutory rights of Mercedes-Benz AG, particularly in the event of an exclusion from its obligation to perform (for example where such performance and/or subsequent performance is impossible or unreasonable), remain unaffected.



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

- 4.5 Mercedes-Benz AG is entitled to make delivery in installments provided that this is acceptable to Buyer.
- 4.6 Risk is specified as being transferred ex works (EXW), meaning that the transport costs and other charges will be borne by Buyer. This represents a departure from the provision of section 447 of the German Civil Code (BGB) and the use instead of the INCOTERMS of the International Chamber of Commerce (INCOTERMS 2020) as a basis.

5. Prices and Payments

- 5.1 The purchase price is calculated in accordance with the applicable price lists and must be paid by cashless means. Unless otherwise agreed, the purchase price must be paid on the due date stated on the invoice. Payment shall be deemed to have been made when it has been credited to the account indicated on the invoice. Buyer shall promptly obtain and maintain on an ongoing basis all regulatory or other approvals necessary to make payments to Mercedes-Benz AG and to remit all necessary taxes and duties.

All banking charges and fees shall be borne by the Buyer.

- 5.2 The prices as indicated and agreed are net prices quoted without VAT, stated in euros and may in each case be increased by the amount of the national VAT that is applicable or by any other indirect taxes, if neither a tax exemption nor a zero rate or reverse charge procedure is applicable. In respect thereof, the Buyer shall support Mercedes-Benz AG in obtaining shipment and transport documentation in order to ensure its ability to invoice on a VAT-exempt basis for cross-border delivery of goods (e.g. DVD), provided that the other prerequisites thereto are met.

If an exemption from statutory VAT or other indirect taxes depends on further requirements, Mercedes-Benz AG may charge a respective VAT amount or VAT-deposit amount as a security, which shall be refunded without interest upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

A recipient of services resident in the EU, shall indicate the valid VAT identification number (VAT ID no.) issued to it in its country of residence or, in cases of procurement of services by the permanent branch office, the VAT ID no. of the EU Member State for the recipient's permanent branch office.

- 5.3 If the Buyer does not pay the purchase price owed on time, it will be in default after the first reminder. In the event of default in payment, Mercedes-Benz AG shall be entitled to claim damages by charging interest at the rate applicable under law. This amount can be increased if Mercedes-Benz AG can prove greater damage, or it can be reduced if the Buyer can prove that the damage is less. A delay in payment of more than 60 days from the due date of the invoice constitutes a gross breach of contract.
- 5.4 Buyer may offset its claims against claims by Mercedes-Benz AG only if Buyer's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims from the same contract of sale. It can only assert a right of retention if it relates to claims arising from the same contractual relationship.

6. Taxes

- 6.1 The Parties shall take all measures in accordance with their respective domestic law and – if existent – the Treaty on the Avoidance of Double Taxation in the field of taxes on income and property in force between the Federal Republic of Germany and Buyer's country ('the Tax Treaty') to ensure a reduction of or exemption from, as the case may be, taxes which might become payable in connection with this Agreement.
- 6.2 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Buyer and imposed on Mercedes-Benz AG by the German tax authorities shall be borne by Mercedes-Benz AG. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by Buyer and imposed or to be paid in Buyer's country shall be borne by the Buyer. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the Tax Treaty.
- 6.3 To the extent that the Buyer is required to withhold taxes in accordance with the domestic law and the Tax Treaty, if any, from payments under this Agreement, the Buyer shall exercise its best efforts to attain that the payment to Mercedes-Benz AG will be taxed at any reduced rate under the Tax Treaty, if any, or under domestic law at the time of payment.
- 6.4 To the extent that the Buyer is required to withhold and remit taxes on payments made under this Agreement, the Buyer shall, without undue delay, provide Mercedes-Benz AG with the original withholding tax certificates issued by the national tax authority,



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

as well as any other documentation evidencing Mercedes-Benz AG as the taxpayer, the amount of tax withheld, the specific tax law and the legal regulation under which the withhold was made, the applicable tax rate or base, and the date of tax payment . Buyer is obliged to send a copy of the documents to the following e-mail address: withholdingtax@mercedes-benz.com.

If the documents of the tax authority are issued in a language other than German or English, the Buyer shall have the documents translated into German or English at its own expense at the request of Mercedes-Benz AG and shall have the correctness of such translation certified either officially or by a notary.

7. Reservation of Title

- 7.1 Ownership of the Hardware is transferred to Buyer only after full payment of the total purchase price and any other receivables in connection with this Agreement.
- 7.2 This reservation of title also extends to any substitute deliveries. Buyer cannot acquire ownership of the delivered Hardware by integrating it into other equipment or devices. Where Buyer integrates the Equipment into third-party goods, Mercedes-Benz AG will become co-owner of the resulting new products by reference to the proportional value of the third-party goods used. The products thus created are also deemed to be subject to reservation of title by Mercedes-Benz AG.
- 7.3 As long as reservation of title exists, a sale, a pledge, transfer of title by ways of security, leasing, or otherwise dealt with in a manner that impairs Mercedes-Benz AG's security interests is only permissible with the prior consent of Mercedes-Benz AG in textual form.
- 7.4 If the reserved-title goods are seized by third parties, Buyer must indicate Mercedes-Benz AG's ownership of said goods and inform Mercedes-Benz AG immediately.
- 7.5 If Buyer does not properly fulfill its payment obligations, Mercedes-Benz AG is authorized to repossess the reserved-title goods at any time, without this constituting a withdrawal from the Agreement.

8. Rights of use, restrictions on use and contractual penalty

- 8.1 The Hardware is intended exclusively for use by the Authorized Users. Authorized users within the meaning of these T&Cs are employees or legal representatives of the Buyer.
- 8.2 Buyer undertakes to use the Hardware, accessories, operating manuals and other documentation supplied by Mercedes-Benz AG in the initial scope of delivery exclusively for the purpose of diagnosing and repairing Mercedes-Benz vehicles and only in its company. Furthermore, the Buyer undertakes to ensure that the authorized user within the meaning of Section 8.1, the vehicle to be diagnosed or repaired and the hardware on which the applications and data content are used are physically located at the same location. Use by third parties or for any other purpose is not permitted, unless otherwise agreed by the contracting parties. Section 8.3 remains unaffected.
- 8.3 The Hardware may only be used in the country in which it was originally purchased. Hardware purchased in the European Union and EFTA countries may be used for cross-border breakdown service purposes throughout the economic area of the European Union and EFTA countries. Section 8.4 remains unaffected.
- 8.4 If the Buyer is an authorized country sales company or a foreign general distributor for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG, the Buyer is entitled or obliged to make the Hardware available for rent or purchase to the authorized service partners for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG as well as to the independent operators in its contract territory. **In this context, the authorized country sales company or the foreign general distributor hereby undertakes to conclude corresponding rental or purchase agreements for the Hardware with the aforementioned authorized service partners and independent operators in its contract territory. In this case, Mercedes-Benz AG will not become a contractual partner of the aforementioned authorized service partners and independent operators.**
- 8.5 In the event that the Hardware falls into third-party hands, whether this is because Buyer or authorized user has intentionally or negligently disclosed them without authorization or has intentionally or negligently failed to secure them from being accessed by third parties, the Buyer shall owe a contractual penalty of EUR 25,000.00 for each breach. The assertion of damages taking into account the contractual penalty remains unaffected.

9. Warranty

- 9.1 Mercedes-Benz AG warrants that the Hardware is free from defects at the time of risk transfer.



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

- 9.2 The warranty for the Hardware starts at the time of delivery Ex Works (EXW). The warranty period for the Hardware is 42 months; this does not include connection cables and batteries, which have a warranty period of 12 months.
- 9.3 Mercedes-Benz AG undertakes to repair or replace any defective Hardware, at its own discretion. Buyer shall send defective Hardware or Hardware components to Mercedes-Benz AG upon request.
- 9.4 In the event of a replacement, the defective Hardware or Hardware component must be returned to Mercedes-Benz AG immediately upon receipt of the replacement Hardware. Only the return documents and information provided by Mercedes-Benz AG may be used for returns. The risk of accidental loss and accidental deterioration of the Hardware shall only pass upon handover by the freight forwarder, carrier or other person designated to carry out the shipment to the service provider designated by Mercedes-Benz AG to take over the Hardware. If the buyer fails to return the Hardware or makes a delayed return, the Buyer must compensate for the resulting damage in accordance with the applicable legal regulations. In particular, any customs and handling costs in the event of late return delivery will be borne by the Buyer.
- 9.5 Buyer has the right to demand a reduction of the purchase price or to withdraw from the contract in the event of failure of subsequent performance in accordance with the applicable statutory provisions. Buyer shall grant Mercedes-Benz AG the time and opportunity necessary for any subsequent performance at its equitable discretion. Mercedes-Benz AG shall be released from the obligation to remedy the defect if the Buyer refuses to do so. In the event of a refusal of subsequent performance by the buyer, the buyer shall bear sole responsibility for the use of the still defective hardware and the results achieved with it.
- 9.6 The warranty shall not apply if a defect is caused by Buyer or a third party having modified, improperly used, or repaired the Hardware without the consent of Mercedes-Benz AG or because the Hardware has not been used and looked after in accordance with the 'Guidelines for the use of XENTRY Diagnosis Hardware'.
- 9.7 The provision of the warranty is conditional upon Buyer fulfilling its statutory obligations to inspect goods and report defects (sections [377](#) and [381](#) of the German Commercial Code (HGB)) in accordance with Section 12.1. If the Buyer fails to carry out a proper inspection and/or to provide notification of any defects, Mercedes-Benz AG will not be liable for the unreported defect in accordance with Section 12.1. The defect that has not been reported is therefore not subject to the warranty.
- 9.8 If no basis for a warranty claim exists, then the costs of diagnosing and, if applicable, repairing the fault will be borne by Buyer, provided a corresponding order has been placed.
- 10. Support, Service and Recommended Period of Use of the Hardware**
- 10.1 Support and other services relating to the Hardware will be provided only if Buyer adheres to the prescribed service processes. This means that the diagnosis user help desk of Mercedes-Benz Customer Assistance Centers must be contacted when support and services are required. The instructions of the diagnosis user help desk are binding.
- 10.2 The Hardware should be used for a maximum of 42 months. This restriction is necessary to ensure the fault-free diagnostic capability of the Hardware. The use of the Hardware beyond the maximum recommended period of use can lead to product liability claims, especially in the case of safety-related work. Free support by Mercedes-Benz AG will cease 42 months after the date of delivery EX-Works (EXW).
- 10.3 Mercedes-Benz AG hereby advises Buyer that the Hardware may have to be replaced with more modern equipment before the end of the 42-month period because of technical changes as a result of ongoing refinements in vehicle diagnosis technology, IT technology, telematics etc. Buyer shall refer to this accordingly in the rental or sales agreements formed with the above-mentioned authorized repairers and independent operators within its contract territory.

Claims of Buyer or the above-mentioned authorized repairers and independent operators within Buyer's contract territory against Mercedes-Benz AG in this regard are excluded.

11. Return of the Hardware

- 11.1 There shall be no obligation to accept the return of Hardware mistakenly ordered by the Buyer. Notwithstanding the foregoing, Mercedes-Benz AG may, as a gesture of goodwill, accept the return of Hardware mistakenly ordered by the Buyer, provided that such Hardware is in its original, unopened packaging and has not been used. Buyer shall have no right to claim such goodwill. Any request for a return based on goodwill must be submitted via a support ticket through the XENTRY Support System under "XENTRY Diagnosis Administrative Topics". The Hardware may only be returned after Mercedes-Benz AG has given its approval in textual form. In the event of a return based on goodwill, the Buyer shall bear all shipping and return shipping costs. In addition, the Buyer shall be charged a handling fee of €250.00 per Hardware.



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

- 11.2 After the recommended period of use, the Hardware can be returned to Mercedes-Benz AG. For the return shipment, only the return documents and information provided by Mercedes-Benz AG upon request may be used.

12. Liability

- 12.1 Buyer shall comply with its statutory obligations to inspect the goods and give notice of defects (§§ 377, 381 HGB). Should a defect become apparent during inspection or at a later date, Mercedes-Benz AG must be notified thereof in textual form without undue delay; timely dispatch of the notice shall suffice for compliance with the deadline. If the Buyer fails to properly inspect the Hardware and/or give notice of defects, Mercedes-Benz AG shall not be liable for any defect not so reported. Irrespective of the foregoing, in the event of externally apparent transport damage, the Buyer shall be obliged to notify the delivering carrier of such damage in textual form upon receipt of the Hardware and to provide Mercedes-Benz AG with a copy of the complaint within two working days.

- 12.2 If Mercedes-Benz AG must compensate for damages based on the statutory provisions and if such damages were caused by simple negligence (*leichte Fahrlässigkeit*), then Mercedes-Benz AG's liability shall be limited as follows:
Liability will arise only when there has been a breach of material contractual duties, such as those that the contract seeks to impose on Mercedes-Benz AG based on its content and purpose or the fulfillment of which cannot even arise unless or until the contract is duly performed and upon which the Buyer can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was formed.

The personal liability of the statutory representatives, vicarious agents and employees of Mercedes-Benz AG for any damages that were caused by their simple negligence is excluded (disclaimed).

- 12.3 The aforementioned limitation of liability and the aforementioned liability disclaimer do not apply to damages that are attributable to the grossly negligent or intentional violation of duties on the part of Mercedes-Benz AG, its statutory representative or its vicarious agent and do not apply to death, bodily injury and impairment of health. In these cases, Mercedes-Benz AG shall be liable in accordance with the statutory provisions.
- 12.4 Irrespective of any fault on the part of Mercedes-Benz AG, Mercedes-Benz AG shall remain liable for any fraudulent concealment of a defect, for the issuance of a guarantee or for a procurement risk and shall remain liable as prescribed under the Product Liability Act.
- 12.5 Claims for damages due to simple negligence become statute-barred within one year of the claim arising.

13. Assignment

Buyer may assign or delegate its rights and obligations under this Agreement only with the prior consent of Mercedes-Benz AG in textual form.

14. Compliance with Applicable Law

- 14.1 Buyer is obliged to refrain and desist from all practices that could result in criminal charges against employees of Buyer or other third parties for fraud or breach of trust, insolvency crimes, anti-competition crimes, granting of advantages, or passive corruption. In the event of violation of the above, Mercedes-Benz AG has the right to withdraw from or terminate all legal transactions existing with Buyer and to break off all negotiations with immediate effect.
Notwithstanding the above, Buyer is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Mercedes-Benz AG.
- 14.2 Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this Agreement.
AND/OR
Buyer shall also not sell, supply, export, license or transfer, directly or indirectly, in any other way intellectual property rights or trade secrets as well as granting rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret to the Russian Federation or Belarus or for use in the Russian Federation or in Belarus. Buyer is required to prohibit possible sublicensees of such intellectual property rights or trade secret, from using such intellectual property rights, trade secrets or other information in connection with common high priority items as listed in Council Regulation (EU) 833/2014 that are intended for sale, supply, transfer or export, directly or indirectly, to the Russian Federation or for use in the Russian Federation.



General Terms and Conditions for the Purchase of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

- 14.3 Buyer shall undertake its best efforts to ensure that the purpose of Clause 14.2 is not frustrated by any third parties further down the commercial chain, including by possible resellers and/or possible sublicensees of such intellectual property rights or trade secret.
- 14.4 Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Clause 14.2.
- 14.5 Any violation of Clauses 14.2, 14.3 and 14.4 shall constitute a material breach of an essential element of this Agreement, and MBAG shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of any costs, damage or liability incurred by MBAG resulting from the infringement, including the imposition of fines.
- 14.6 Buyer shall immediately inform MBAG about any problems in applying Clauses 14.2, 14.3 or 14.4, including any relevant activities by third parties that could frustrate the purpose of Clause 14.2. Buyer shall make available to MBAG information concerning compliance with the obligations under Clauses 14.2, 14.3 and 14.4 within two weeks of the simple request of such information.
- 15. Place of Performance, Place of Jurisdiction and Governing Law**
The place of performance is Stuttgart, and jurisdiction and venue shall lie exclusively with the competent courts of Stuttgart. The laws of the Federal Republic of Germany shall apply to the exclusion of any conflict of law rules. The contracting parties agree to exclude the application of the uniform United Nations (UN) law of sales that is based on the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.