



General Terms and Conditions regarding the Use of Applications and Data Content – provided by Mercedes-Benz AG – for After-Sales

1. General provisions and service content

- 1.1 Mercedes-Benz AG furnishes applications, data content, software, updates and other documentation for the After-Sales sector of the Mercedes-Benz and smart brands (hereinafter collectively referred to as the “**Applications and Data Content**”) in order to allow users to access those Applications and Data Content. Within the meaning of these General Terms and Conditions (hereinafter the “GTC”), “users” shall be all authorized service partners of the Mercedes-Benz and smart brands who have been duly authorized under this agreement to use the Applications and Data Content, as well as other companies and businesses operations that are authorized by Mercedes-Benz AG under this agreement to use the same (e.g., authorized national distribution companies of the Mercedes-Benz and smart brands or independent operators).
- 1.2 The subject matter of these GTC comprises all services delivered by Mercedes-Benz AG in connection with the provision of Applications and Data Content pursuant to section 1.3.
- 1.3 Currently, depending on the order placed by the user, the services provided include the Applications and Data Content XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY Menu Pricing (XMP), XENTRY Tips, XENTRY DSB, XENTRY Portal including the applications XENTRY Cockpit / XENTRY Offer, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Vehicle Detector, XENTRY Repair Packages, XENTRY Framework Diagnosis, XENTRY Com (DSD), XENTRY Book (DSD), Product Catalog, Wheel Alignment Machine and all further subfunctions of XENTRY Portal, XENTRY Update Service, and XENTRY Diagnosis Software, in all of the product versions thereof, , XENTRY Apps, including data and software updates (hereinafter the “**Updates**”) and the hardware-related “XENTRY Application and Tools” software.
- 1.4 The provision of XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY DSB, XENTRY Menu Pricing (XMP), XENTRY Apps, XENTRY Portal including the applications XENTRY Cockpit / XENTRY Offer, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Repair Packages, XENTRY Framework Diagnosis and all further subfunctions of XENTRY Portal and XENTRY Tips as well as the corresponding Updates is carried out via online access as a standard.
- 1.5 Access to the XENTRY Diagnosis Software is handled offline *via* local installations on the XENTRY Hardware or on the user’s own respective hardware. XENTRY Diagnosis Software Updates are provided online via the XENTRY Update Service.
- 1.6 Applications and Data Content have to be maintained and repaired at regular intervals and, if necessary, at short notice in order to enable the proper provision of the respective services (e.g. by installing Updates). As a result, the services may be temporarily unavailable in individual cases. Mercedes-Benz AG will inform the users about planned maintenance and repair work and its expected duration in good time, usually at least 48 hours in advance.
- 1.7 The user of the Applications and Data Content shall act to ensure that the technical prerequisites for operating the Applications and Data Content in question are met. The user may review the detailed technical prerequisites as well as specifications, interface descriptions and further information under “Connectivity Guide Retail” (in its current version as amended from time to time), which is posted on the “XENTRY Portal” (<https://xentry.mercedes-benz.com>) or on “Mercedes-Benz B2B Connect” (<https://b2bconnect.mercedes-benz.com>), under the Applications and Data Content in question. The user is responsible for acknowledging and complying with the applicable technical requirements and usage guidelines. In connection with the use of the Applications and Data Content with increased security requirements, the user undertakes to apply the prescribed measures to increase the security of user data and applications. These include measures such as a mandatory identification process as a basis for specific access rights and multi-factor authentication during the login process. Further appropriate safeguarding measures may be implemented at any time.
- 1.8 If the user enters his free timeslots and other offerings into XENTRY Book (DSD), Mercedes-Benz AG is entitled to record these and to evaluate them for statistics. This applies regardless of whether the user uses the functionality in XENTRY Portal provided for this purpose (XENTRY Book (DSD) or a third-party system connected to XENTRY Book (DSD) via a technical interface (e.g. a dealer management system, capacity planning tool).
- 1.9 The information provided via the XENTRY Menu Pricing (XMP) application is used exclusively for the calculation of costs and offers. The determination of the correct spare parts information must always be verified via the system provided for this purpose.

2. Parties and General Terms and Conditions of Business

- 2.1 These GTC shall apply to the users of the Applications and Data Content within the meaning of section 1.1, 2nd sentence. The respective current version of the GTC is available on the Internet at <https://xentry-shop.mercedes-benz.com/>.
- 2.2 The user’s general terms and conditions of business shall not be deemed incorporated into the parties’ contract, even if Mercedes-Benz AG does not object to them.

**General Terms and Conditions** regarding the Use of Applications and Data Content – provided by Mercedes-Benz AG – for After-Sales**3. Rights of use, contractual penalties and third-party intellectual property**

- 3.1 The Applications and Data Content are intended for the sole use by each of the users within the meaning of section 1.1, 2nd sentence. Mercedes-Benz AG grants these users a simple, non-exclusive, limited in time to the contract term, spatially restricted and non-transferable right of use (*Nutzungsrecht*) to exploit the Applications and Data Content only for its own purposes, i.e. for servicing of vehicles. The user may only exercise this right of use if the user, the vehicle, and the hardware on which the Applications and Data Content are used are physically located in the same place, typically at the user's workshop location.
- The right of use of the Applications and Data Content is only valid for use in the country for which the right of use was originally acquired. Rights of use acquired in the European Union and EFTA countries may be used throughout the economic area of the European Union and EFTA countries for the purposes of cross-border roadside assistance. The user shall not use or provide usage of the Applications and Data Content via any remote access.
- Mercedes-Benz vehicles fitted with remote diagnosis by the manufacturer are not affected by the provision contained in preceding sentence, if the manufacturer's remote process is applied. Exceptions to section 3.1 require a separate contractual agreement.
- In addition, section 3.2 remains unaffected thereby.
- 3.2 If the user is an authorized national distribution company for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG, then the user will be authorized resp. obliged to grant the authorized service partners for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG as well as the independent operators within its territory a contractual right of use in order to exploit the Applications and Data Content for their own purposes. **The authorized national distribution companies, respectively, each undertake in this connection that they shall enter into relevant agreements of their own concerning the use of the Applications and Data Content. In these cases, Mercedes-Benz AG shall not become the user's contractual partner.**
- 3.3 Notwithstanding sections 3.1 and 3.2, all other rights to the Applications and Data Content, including subsequent upgrades and enhancements thereto, shall be retained by Mercedes-Benz AG/by the original software supplier.
- 3.4 The creation of any copies whatsoever of the Applications and Data Content is not permitted; similarly, not permitted is the processing and editing of the Applications and Data Content by the user or by third parties authorized by the user. This rule also relates to publications made under another name. The provided Applications allow it to display individual Data Content via the search masks. For the purpose of permanent availability, such individual Data Content may also be printed out. The user hereby undertakes that it shall use the Applications and Data Content exclusively for the purposes set out in section 3.1 of servicing customer vehicles and shall not disclose them to third parties (whether in whole or in excerpts) or make them available to such parties.
- Section 3.2 shall remain unaffected thereby.
- Any automated retrieval via scripts or systematic copying or the like is not allowed. To the extent permitted by law, the user shall also impose these obligations on its staff. Exceptions to section 3.4, e.g. Robotic Process Automation, require testing and individual approval by Mercedes-Benz AG.
- 3.4a If the user is obligated to use a Dealer Management System (DMS) by a separate agreement with Mercedes-Benz AG, the transfer of Data Content made available for this purpose pursuant to clause 1.3 and via the designated technical interfaces (APIs) is permitted to the following extent:
- The transfer by the user or access to the Data Content provided by Mercedes-Benz AG through a DMS provider (service provider) is only permitted, if the user stores these Data Content within the DMS exclusively for the purpose of setting up and maintaining this DMS.
- The use of another service provider by the user is permitted if it is strictly necessary for the provision of DMS services. This is the case, for example, if the DMS developed by the DMS provider does not include all functionalities specified by Mercedes-Benz AG. The service providers commissioned by the user are not allowed to engage or subcontract further third parties. The user and their commissioned service providers are not entitled to resell the Data Content received from Mercedes-Benz AG by using the Applications and Data Content or to charge a fee for their use. The user is entitled to use the Data Content exclusively within the scope of section 3.1 for servicing their customers' vehicles. Any further form of commercial use of the Data Content by the user's commissioned service providers is prohibited.
- The Applications and Data Content may only be used within the scope and exclusively within the internal data ecosystem of the user and solely for the provision of the commissioned service.
- The user is obligated to conclude an agreement on processing on behalf with its commissioned service providers, which restricts the processing of the Data Content to the aforementioned purpose according to section 3.4a. The user must ensure that this process is transparent and that all data protection requirements, particularly regarding access and processing of personal data, are met. Mercedes-Benz AG assumes no liability for the user's compliance with these obligations.



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The user commits to imposing the same obligations on its service providers, within the scope of legal possibilities, particularly according to sections 10 and 11, as entered into this contract.

- 3.5 § 69d para. 2 and 3 as well as § 87e of the German Copyright Act (*Urheberrechtsgesetz*) shall remain unaffected by section 3.4.
- 3.6 Upon request of Mercedes-Benz AG, the user shall produce evidence of compliance with the rules governing the rights of use under this agreement.
- 3.7 Any data storage media, documentation and electronic copies that are no longer required must be duly destroyed in accordance with the Waste Disposal Directive in force at that location. With respect to device and server installations, action must be taken to ensure that it is not possible for anyone to gain unauthorized access thereto.
- 3.8 The use of the Applications and Data Content must correspond to typical industry-standard usage behaviour and contractual provisions. Any misuse constitutes a breach of contract. Misuse includes, in particular, the following serious violations that indicate a justified suspicion of intent to cause damage or unauthorized commercial use:
- an excessive exceeding of the usual scope of use (e.g. access to WIS documents on a massive scale, in a volume that gives rise to the suspicion of unauthorized data extraction),
 - a significant deviation from typical usage behaviour that clearly indicates the use of Robotic Process Automation for the systematic retrieval of data, or
 - any other unauthorized use or provision of the Applications and Data Content that is capable of enabling unauthorized use and causing potential damage.
- In these cases, a contractual penalty of EUR 10,000.00 per violation will be due. In the event of violations of statutory provisions, in particular violations of export regulations and applicable sanctions, a contractual penalty of EUR 15,000.00 per violation will be due. This provision applies regardless of any transfer of data to third parties.
- 3.9 In the event that the Applications and Data Content fall into the hands of third parties, whether this is because the user or the user's employee has intentionally or negligently disclosed them without authorization or has intentionally or negligently failed to secure them from access to third parties, the user shall owe contractual penalties of EUR 25,000.00 for each breach. The assertion of damages taking into account the contractual penalty remains unaffected.
- 3.10 If and to the extent that individual Applications and Data Content in their offline version are no longer offered or made available, especially not in an updated version, the use of the respective versions of the Applications and Data Content shall no longer be permitted and must be discontinued. Any data storage media, documentations and electronic copies shall be deleted and destroyed. Section 3.7 shall apply accordingly.
- 3.11 Portions of Applications and Data Content containing software may contain Free and Open Source Software (hereinafter "FOSS") components. Mandatory information regarding the FOSS components used is incorporated into the Applications and Data Content or delivered with them by other means. The granting of rights under this Section 3 by Mercedes-Benz AG does not apply to FOSS. Users obtain licenses for FOSS directly from the right holder as predefined in the respective FOSS license. The user is therefore responsible for complying with the FOSS licenses in the context of its own exploitation of the FOSS components. If any term of this GTC contradicts a FOSS license, the FOSS license shall apply to the respective FOSS component.
- 3.12 Insofar as the user creates vehicle images in the course of repair or maintenance and collects necessary data for this purpose, the user transfers the usage rights required for further use. Within the meaning of these GTC, vehicle images are digital photographs created by the user for the application XENTRY Vehicle Detector (XVD). Collected data includes all data collected via the XENTRY applications, including vehicle images, vehicle parts, and component stress data. The user, as the creator of the vehicle images, grants Mercedes-Benz AG the right to use these vehicle images and collected data for the following purposes:
- Training of artificial intelligence (AI)
 - Analysis and statistics in order to optimize and continually improve the vehicles, the Applications and Data Content and the support
 - Quality management, product monitoring, and product safety
 - Control (checking) in case of suspected misuse

Mercedes-Benz AG uses the vehicle images exclusively internally, and this use does not serve the purpose of direct commercial exploitation or profit generation. The images are not used for sale, granting of usage or exploitation rights, or marketing and advertising purposes.



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The collected data and vehicle images are also used for quality management and product monitoring to ensure the safety and reliability of vehicle parts and components.

In case of suspected misuse, the collected data and vehicle images are used for control purposes in order to ensure compliance with contractual obligations regarding the applications and systems.

4. Registration and login data

- 4.1 In connection with the order processing for Applications and Data Content, the user shall forward to Mercedes-Benz AG the information that is required in order to provide access to the Applications and Data Content. All information provided to Mercedes-Benz AG during registration must be truthful.
- 4.2 Upon dispatch of the access authorization ("StartKey", „Client Credential“ or username/password), the order will be deemed to have been accepted.
- 4.3 Access to the Applications and Data Content is subject to the following conditions:
- the user must place a binding order for access authorization, and
 - when placing the order, the user must indicate the scope to which the Applications and Data Content is required.
- 4.4 Login data for the use of Applications and Data Content (personalized identity (User ID) and passwords) provided by Mercedes-Benz AG shall only be used by authorized users according to section 1.1 sentence 2 and their respective authorized individual employees. The User is also responsible for maintaining the confidentiality of employee logins and will instruct its employees accordingly. A transfer or use of the provided login data as a group or workshop user is not permitted. Any disclosure of personal login data to third parties is prohibited, even if these belong to the authorized user group according to section 1.1 sentence 2. Third parties within the meaning of these GTC are all persons who are not involved in the conclusion of this contract, including group-affiliated companies or associated companies of the user. The user is obligated to use the provided login data exclusively for the Applications and Data Content officially provided by Mercedes-Benz AG for the purposes set out in sec. 3.1 of servicing customer vehicles, not disclosing them or making them accessible to third parties as well as to take all reasonable precautions to prevent accidental disclosure. The disclosure of login data is considered abuse. The use of login data in Applications and Data Content which have not been provided by Mercedes-Benz AG is prohibited (e.g. illegally purchased software). As part of product observation and security, data and accesses are monitored in order to counteract improper use, including violations of statutory provisions such as embargo and sanctions violations.
- 4.5 Access to our systems using TOR network or other VPN or Proxy services, which obfuscate the technical IP address and the origin location of the access is prohibited.
Notwithstanding, users who belong to a company with its own in-house data network are permitted to access via company-internal VPN connections and proxy servers, that are integral part of the in-house data network, as long as these do not obfuscate the user's location, which can be determined from the network protocol data, to such an extent that access from another country is simulated.
- If the user uses its own in-house data network, it is necessary to have the company's own network administrator (IT department) verify whether this company network meets the technical conditions mentioned.
In the event that it is determined during this verification that these conditions cannot be met for legitimate technical reasons, an explicit exception from the aforementioned conditions must be requested via the Application Support for the affected users to prevent potential account blocking due to automatically detected suspected account misuse.
Exceptions to sec. 4.5 require verification and individual approval by Mercedes-Benz AG.
- 4.6 In case of a user's violation or suspected violation of these GTC Mercedes-Benz AG is entitled to immediately temporarily block individual or all of the user's access or products until the facts have been fully clarified. Furthermore, Mercedes-Benz AG is entitled to immediately and permanently block the provided access data and the Applications and Data Content if a serious violation is confirmed after completion of the investigation. Serious violation in this context is classified as intentional conduct or abusive behavior. The user can avert these measures by submitting suitable evidence at his own expense to dispel the suspicion. The suspension shall not give rise to any claims of the user for damages or any other compensation.
- 4.7 The user is obligated to immediately inform Mercedes-Benz AG if the user suspects or becomes aware of any violation of section 3 and 4 of these GTC.
- 4.8 In the event of a blocking for which the user is responsible, the user's obligation to pay the contractually agreed remuneration remains unaffected. The user is still obliged to pay the remuneration, even if the applications and data content cannot be used due to the blocking for which the user is responsible.



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5. Support for Applications and Data Content

- 5.1 A right to claim support in the use of Applications and Data Content shall continue as long as the agreement is in force, and only where the data status is up to date. Data status for XENTRY Diagnosis Software shall be deemed up to date if one of the last two Updates provided by Mercedes-Benz AG has been installed locally on the XENTRY Hardware.
An updated data status for all Applications and Data Content is deemed to exist if online access to central servers is available.
- 5.2 Where Applications and Data Content are installed on the user's own hardware, the user shall have a right to claim support solely relating to Mercedes-Benz AG's Applications and Data Content, provided that the minimum requirements (which may be viewed acc. to sec. 1.7) to the user's own hardware have been satisfied and where, in the case of online access, a standard virus scanner is active. Users of the Applications and Data Content by means of their own hardware must ensure that the virus scanner is regularly updated and that the Windows operating system is regularly supplied with updates. To the extent required in technical terms, support shall be provided for the Applications and Data Content only after a recovery (data recovery, reset of system [= user's own hardware] to its status at the time of delivery), pursuant to which software and data specific to the user could be deleted. The user shall have no further rights to claim support.
- 5.3 Regular service hours for Support are from 8am to 6pm Central European Time (CET; "Service Hours"). Support requests submitted via the provided ticketing systems will be handled and executed during the Service Hours. Outside these Service Hours support, requests will usually not be answered or handled.

6. Formation and alteration of contract

- 6.1 The user shall be bound by its order for 14 days. The user hereby waives the declaration of acceptance of its order. The contract shall be formed upon activation and transmission of the access authorization for the Applications and Data Content.
- 6.2 The Applications and Data Content are provided in the form and for as long as they are used by Mercedes-Benz AG or are available to Mercedes-Benz AG. Due to the constant further development of the respective systems and system landscapes, the Applications and Data Content provided may change in this respect during the period of use, whereby Mercedes-Benz AG shall provide appropriate compensating measures to the users in the event of significant changes. Further claims shall be excluded.
- 6.3 Notwithstanding section 6.2, Mercedes-Benz AG shall be entitled to change these GTC.

If there is a provision in a separate contract for the dynamic inclusion of the current version of these GTC, this shall take precedence.

In all other cases, Mercedes-Benz AG will inform users of the intended changes in textual form (e.g. e-mail) six (6) weeks in advance. If the user does not object to the changes in textual form within four (4) weeks after receipt of the respective change notice, the changes shall be deemed accepted and mutually changed with expiration of the above-mentioned period of six (6) weeks and unopposed continuation of use of the services. Should the user object to the changes, both Mercedes-Benz AG and the user shall have the right to terminate these GTC or the corresponding order with a notice period of four (4) weeks. Mercedes-Benz AG undertakes to inform the user of the effect of silence or non-objection when informing of the changes.

Section 8.6 shall remain unaffected.

7. Contract term and termination

- 7.1 With respect to Applications and Data Content with online access for the XENTRY PORTAL components XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY DSB, XENTRY Tips, XENTRY Menu Pricing (XMP), XENTRY Apps, Wheel Alignment Machine and to central servers, the contract has no fixed expiration date. The contract may be terminated with four weeks' notice in textual form to the end of the month.
- 7.2 Notwithstanding the foregoing, for the XENTRY Diagnosis Software the contract shall have a term of 42 months on rented and purchased XENTRY Hardware.
If the use of the XENTRY Diagnosis Software on rented XENTRY Hardware is required beyond the contract term of 42 months, the user may order a new StartKey within the last month of this contract term for a further period of 42 months (follow-up order). For this follow-up order of the XENTRY Diagnosis Software, a new contract term of 42 months shall apply. This contract shall terminate prematurely upon return of the rented XENTRY Hardware by the user to Mercedes-Benz AG.
In this case, the costs for the use of the XENTRY Diagnosis Software shall be calculated up to the time of the actual return of the rented XENTRY Hardware in accordance with the relevant applicable price lists for the XENTRY Diagnosis Software.



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7.3 A contract term of 12 months shall apply to the procurement of XENTRY Diagnosis Software on the user's own hardware (such as own laptop) if the hardware is combined with hardware components of Mercedes-Benz AG (Multiplexer), which can be repeatedly extended or renewed by the user by a further 12 months each time during the entire hardware support term. For this XENTRY Diagnosis Software (excluding XENTRY Diagnosis Open Shell and XENTRY PassThru North America), the user is entitled to alternatively select a contract term of one month. The user may switch between the 12-month and the 1-month contract terms and may adjust these repeatedly upon each extension or renewal.

7.4 Notwithstanding the foregoing, for the XENTRY Update Service the contract shall have a term of 42 months on purchased retail data storages from generation "Retail Data Storage 2" or newer. The contract term shall not be automatically extended. In order to continue using the XENTRY Update Service on the Retail Data Storage, the user may extend or renew the contract by 12 months at a time for a fee. The extension of the contract for the XENTRY Update Service on purchased Retail Data Storage only includes the software operation and data supply of the device including the necessary software support. The warranty for the hardware of the Retail Data Storage as well as the corresponding hardware support are explicitly not part of this contract and cannot be extended.

Mercedes-Benz AG reserves the right to refuse contract extensions for outdated Retail Data Storages that no longer meet the technical requirements of the XENTRY Update Service. In this case, the purchase of a current Retail Data Storage is required. The use of the XENTRY Update Service without Retail Data Storage on own hardware or XENTRY hardware shall remain unaffected thereby.

7.5 If Applications and Data Content in the form or scope (e.g. certain data packages of individual divisions) are no longer used or distributed by Mercedes-Benz AG or no longer available to Mercedes-Benz AG the contract may be terminated by Mercedes-Benz AG in textual form contrary to sections. 7.1-7.4 before the expiry of the respective contract terms with a notice period of six (6) weeks.

7.6 The contract may be terminated without notice in textual form by Mercedes-Benz AG if there is good cause (*aus wichtigem Grund*). Good cause shall include, *inter alia*, situations in which the user

- violates the provisions in particular in accordance with sections. 3 and 4 such as using, reproducing, producing or having produced the Applications and Data Content without authorization,
- discloses the Applications and Data Content or provided login data to third parties without authorization or uses the Applications and Data Content for remote access,
- uses provided login data in Applications and Data Content not officially provided by Mercedes-Benz AG (e.g. illegally purchased software)
- uses its own hardware or XENTRY Hardware which does not satisfy the technical requirements for operating the Applications and Data Content in question pursuant to sections. 1.7 and 5 hereof, and/or this XENTRY Hardware is no longer supported by Mercedes-Benz AG,
- discontinues its business operations with or without a successor,
- no longer belongs to the authorized group of users within the meaning of section. 1.1, 2nd sentence or changes role within this authorized group,
- fails to pay the compensation when due and after receiving a dunning notice.

7.7 The user is advised that, after the end of this Agreement and irrespective of the grounds thereof, the user shall have no claim for a so-called "Software Freeze".

8. Compensation and payment

8.1 The costs of the Applications and Data Content and of regular Updates (online via the XENTRY Update Service, via OneAPI or mailed on data storage media, e.g. on DVDs, Blu-Ray discs) shall be borne by the user. The costs shall be calculated in line with the price lists and are to be paid electronically. The costs shall be invoiced generally on a monthly basis unless other invoicing terms have been agreed. The applicable price lists for independent operators are uploaded to the Mercedes-Benz B2B Connect and XENTRY Shop for the user.

Unless otherwise agreed all payments shall be made at the payment date shown on the invoice ("Due Date"). Payment shall be deemed made when it has been credited to the account quoted by Mercedes-Benz AG. User shall promptly obtain and continuously maintain any governmental or other approvals required to effect any payments to Mercedes-Benz AG and settle all necessary taxes and surcharge payments.

In the event of termination of the online applications XENTRY Parts Information or XENTRY Tips by the user before the end of the already paid annual period, no (partial) refund of the paid annual fee will be made. The user is not entitled to a partial refund of the annual fee for the remaining months of the current annual period.

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



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In the event of delay in any payment, Mercedes-Benz AG shall be entitled to claim damages by charging interests at a rate on the amount due for the period of delay as specified by applicable laws. That amount may be increased if Mercedes-Benz AG is able to prove greater damage, or reduced if user can prove that the damage is lower. Delay in payment of more than 60 days from the Due Date of the invoice will constitute a gross breach of contract.

The user must pay the agreed remuneration for the access authorisations ordered, irrespective of whether the Applications and Data Content will actually be used with the ordered number of access authorisations or not.

- 8.2 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 user 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 interests upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

A recipient of services, who resides 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.

- 8.3 If the user fails in a timely manner to pay the compensation owed, then it shall be deemed in default following the first dunning notice.
- 8.4 Mercedes-Benz AG reserves the right to withhold/reduce the services, which it owes, until the user has paid its invoice and, where applicable, to terminate the contractual relationship with that user.
- 8.5 Users may exercise a right of set-off against claims of Mercedes-Benz AG only if the user's counterclaim is undisputed or has been adjudicated with *res judicata* effect. The foregoing shall not apply to counterclaims of the user based on the same contract. The user may only exercise a right of retention if it is based on claims from the same contract.
- 8.6 Mercedes-Benz AG reserves the right to make price changes, even within existing agreements. Mercedes-Benz AG reserves the right, in its reasonable discretion, to adjust the indicated prices on an annual basis (section. 315 of the German Civil Code (abbreviated as "BGB")) in order to take account of changes in costs. If the prices are increased, then the user will have the right to terminate the agreement in textual form within 14 days from the date it receives the change notice. After that period, the price change will be deemed to have been accepted by the user.

9. Tax clause

- 9.1 The Parties shall take all measures in accordance with their respective domestic law and the Treaty on the Avoidance of Double taxation between the Federal Republic of Germany and the user'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.
- 9.2 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the user 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 user and imposed or to be paid in user's country shall be borne by the user. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the Tax Treaty.
- 9.3 In case the user is required to withhold taxes in accordance with the domestic law and the Tax Treaty, if any, from payments under this Agreement, the user 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 or under domestic law at the time of payment.
- 9.4 In case the user is required to withhold taxes from payments under this Agreement, the user shall provide Mercedes-Benz AG without undue delay with the original tax certificate, copy of tax assessment and any other documents that evidence calculation and payment of the tax. These documents shall specify Mercedes-Benz AG as tax payer, the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate or the amount on which such rate is based, and the date of payment of the tax.

A copy of the documents should be sent to the following e-mail address: withholdingtax@mercedes-benz.com.



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- 9.5 If the documents of the tax authority are issued in a language other than German or English, the user 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 public.
- 10. Security warning**
- 10.1 The user must stringently comply with all warning notices and safety-related information disclosures as well as user disclosures that are communicated in the respective Applications and Data Content. The user will be liable for any damages caused by a violation of the foregoing mandate.
- 10.2 Any subsequent supplements or developments to the delivered Applications and Data Content must be observed unconditionally.
- 10.3 The user must always keep the Applications and Data Content on an up-to-date data status. Pursuant to sections. 5.1, sentences 2 and 3, an up-to-date data status exists.
- 11. Liability**
- 11.1 The Applications and Data Content also contain links to other Internet sites. Mercedes-Benz AG would like to note that it has no influence on the structure or content of the pages to which the links are connected. Consequently, no guarantee can be given with regard to the currentness, correctness, completeness or quality of the information made available on those sites. Based on the foregoing, Mercedes-Benz AG hereby distances itself from all content on these linked pages. This declaration applies to all links that are contained in Applications and Data Content and that lead to external sites and the content thereof.
- 11.2 It is the user's responsibility to check and ensure that the use of the applications and data content does not cause any damage to any workshop infrastructure. If Mercedes-Benz AG provides the Applications and Data Content to the user operation in accordance with the contract, Mercedes-Benz AG shall not be responsible for corresponding damages.
- 11.3 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:
- The 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 user can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was concluded.
- The personal liability of the legal representatives, vicarious agents and employees of Mercedes-Benz AG for damages caused by simple negligence is excluded.
- 11.4 The aforementioned limitation of liability and the aforementioned exclusion of liability shall not apply to damages resulting from a grossly negligent or intentional breach of duties by Mercedes-Benz AG, its legal representative or its vicarious agent or in the event of death, personal injury or damage to health. In such cases, Mercedes-Benz AG shall be liable in accordance with the statutory provisions.
- 11.5 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.
- 11.6 In the event of system failures of the Applications and Data Content, Mercedes-Benz AG shall not be liable for any damage (including damage due to loss of business profits, interruption of operations, loss of business or other loss of assets) unless caused by intent or gross negligence on the part of Mercedes-Benz AG. Clauses 11.3, 11.4 and 11.5 shall apply mutatis mutandis.
- 11.7 Mercedes-Benz AG shall also only be liable for the loss of data to the extent that the respective user has ensured by standard procedures that the data can be restored with reasonable effort. This includes in particular proper and regular data backups by the user. This does not apply where data backup is an agreed obligation of Mercedes-Benz AG.
- 11.8 Insofar as tenancy law applies within the scope of the services owed, § 536 a I 1. Alt. BGB shall be excluded.
- 11.9 Provision and use of the Applications and Data Content as well as its support services may also be subject to certain restrictions, interruptions and/or inaccuracies beyond the control of Mercedes-Benz AG, which might be caused in particular by force majeure events, including strikes, epidemics, lockouts, natural catastrophes, orders by the authorities, or result from technical or other measures or occurrences (e.g., lack of internet access, repairs, maintenance, software updates and enhancements) that need to be carried out on systems of Mercedes-Benz AG.



General Terms and Conditions regarding the Use of Applications and Data Content – provided by Mercedes-Benz AG – for After-Sales

- 11.10 In the event of the occurrences mentioned in clause 11.9, the service obligations of Mercedes-Benz AG are temporarily suspended. In such cases, no claims for damages or other secondary claims shall arise against Mercedes-Benz AG, to the extent that such damages are not caused by circumstances for which Mercedes-Benz AG is responsible
- 12. Compliance with applicable laws**
- 12.1 The user is obligated not to engage in any acts or omissions that could lead to criminal liability based on fraud or breach of trust, insolvency crimes, anti-competitive criminal acts, the granting of advantages or to the corruptibility of persons employed by the user or third parties. Where there have been such acts or omissions, Mercedes-Benz AG will be entitled to rescind or terminate all legally consequential transactions with the user and to break off any and all dealings and negotiations.
- 12.2 Notwithstanding the foregoing, the user will be obligated to comply with all statutes and regulations impacting him and the business relationship with Mercedes-Benz AG.
- 12.3 It is the user's sole responsibility to assess whether using the Applications and Data Content as provided hereunder will be in line with applicable laws and to carry out any measures needed in order to be able to use the Applications and Data Content in compliance with law.
- 12.4 The Applications and Data Content and all related documentation, information or materials may be subject to export control regulations. The user will strictly comply with all legal requirements established under these regulations and will not export, re-export, divert, transfer or disclose, directly or indirectly the Applications and Data Content, or any related technical documentation, information or materials without the prior approval of Mercedes-Benz AG.
- 12.5 The User 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
The User 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. The User 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.
- 12.6 The User shall undertake its best efforts to ensure that the purpose of Clause 12.5 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.
- 12.7 The User 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 12.5.
- 12.8 Any violation of Clauses 12.5, 12.6 and 12.7 shall constitute a material breach of an essential element of this Agreement, and Mercedes-Benz AG 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 Mercedes-Benz AG resulting from the infringement, including the imposition of fines.
- 12.9 The User shall immediately inform Mercedes-Benz AG about any problems in applying Clauses 12.5, 12.6 or 12.7, including any relevant activities by third parties that could frustrate the purpose of Clause 12.5. The User shall make available to Mercedes-Benz AG information concerning compliance with the obligations under Clauses 12.5, 12.6 and 12.7 within two weeks of the simple request of such information.
- 13. Governing law and judicial forum**
- 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.