

**General Terms and Conditions** regarding the Use of Applications and Data Content – provided by Mercedes-Benz AG – for After-Sales (hereinafter the “GTCs”)**1. General provisions and service content**

- 1.1 Mercedes-Benz AG furnishes applications, data content, software, updates, data storage media 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 GTCs, “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 the server operators authorized by Mercedes-Benz AG (hereinafter referred to as the “SOs”) and, finally, other companies and businesses operations that are authorized by Mercedes-Benz AG under this agreement to use the same (e.g., the Mercedes-Benz Group’s own national sales companies, general agents (Generalvertreter) of the Mercedes-Benz and smart brands in foreign markets or independent service provider (ISP).
- 1.2 The subject matter of these GTCs comprises all services delivered by Mercedes-Benz AG in connection with the provision of Applications and Data Content pursuant to sec. 1.3.
- 1.3 Currently, depending on the order placed by the user, the services provided include the Applications and Data Content Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance)/XENTRY Operation Time (incl. Damage code), XENTRY Menu Pricing (XMP), XENTRY TIPS, DSB, XENTRY Portal including the applications XENTRY Cockpit, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Repair Packages, XENTRY Com (DSD), XENTRY Book (DSD) und XENTRY Pay (DSD), Product Catalog and all further subfunctions of XENTRY Portal, XENTRY Update Service, and XENTRY Diagnosis Software, in all of the product versions thereof, XENTRY NVH Diagnosis, XENTRY Apps, including data and software updates (hereinafter the “**Updates**”) and the hardware-related “XENTRY Application and Tools“ software.
- 1.4 The provision of Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance)/XENTRY Operation Time (incl. Damage code), DSB, XENTRY Menu Pricing (XMP), XENTRY Apps, XENTRY NVH Diagnosis XENTRY Portal including the applications XENTRY Cockpit, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Repair Packages 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. In the case of online provision by an authorized SO, Mercedes-Benz AG solely enables the SO to provide the relevant Applications and Data Content.
- 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 them 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.
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 utilizes XENTRY Portal to enter his free timeslots and other offerings into XENTRY Book (DSD) and Product Catalog, Mercedes-Benz AG is entitled to record these and to evaluate them for statistics for the purposes referred to in chapter 13.2.

2. Parties and General Terms and Conditions of Business

- 2.1 These GTCs shall apply to the users of the Applications and Data Content within the meaning of sec. 1.1, 2nd sentence. The respective current version of the GTC is available on the Internet at <https://xentry-shop.mercedes-benz.com/>. Upon request, the user will be sent the current version.
- 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.

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 sec. 1.1, 2nd sentence. Mercedes-Benz AG grants these users a simple, non-exclusive, limited in time to the contract term and non-transferable right of use (*Nutzungsrecht*) that allows the user to exploit the Applications and Data Content only for its own

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purposes, i.e. for servicing of vehicles that are physically located either at user’s workshop location or at user’s other location equipped with user’s hardware with corresponding Applications and Data Content. The right of use 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. The user shall not use or provide usage of the Applications and Data Content via any remote, out-of-workshop access to any other users or customers.

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 3.1 require a separate contractual agreement.

In addition, Sec. 3.2 remains unaffected thereby.

- 3.2 If the user is a foreign Mercedes-Benz Group national sales company or a foreign general agent 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 service provider (ISP) within its territory a contractual right of use in order to exploit the Applications and Data Content for their own purposes. **The foreign Mercedes-Benz Group national sales company or the foreign general agent, 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 users’s contractual partner.**
In addition, the foreign Mercedes-Benz Group national sales company or the foreign general agent for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG is obligated to report the names of employees authorized to place orders at the end of each calendar year and/or of new employees authorized to place orders immediately to Mercedes-Benz AG using the following contact address in order to ensure an up-to-date status: xentry.diagnosis.support@mercedes-benz.com
- 3.3 Notwithstanding secs. 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 in its business for purposes of supporting its clients’ vehicles and shall not disclose them to third parties (whether in whole or in excerpts) or make them available to such parties. 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 sec. 3.4, e.g. Robotic Process Automation, require testing and individual approval by Mercedes-Benz AG. Section 3.2 shall remain unaffected thereby.
- 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 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.
- 3.9 If and to the extent that individual Applications and Data Content such as the offline version of the Parts Information (e.g. in the form of a DVD) 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.
- 3.10 Portions of Applications and Data Content containing software may contain Free and Open Source Software (hereinafter “FOSS”) components. Information about the respective FOSS components - in particular those required to be shared by the respective applying FOSS licenses, are incorporated and/or delivered by other means with the Applications and Data Content. The user takes note that FOSS licenses may apply between the right holder/s of the FOSS component and the user and that certain usage of the FOSS component requires consent of the user to the applying FOSS licenses.

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The user acknowledges that the software containing FOSS is not free of third party rights. Mercedes-Benz AG does not confer neither expressly nor implicitly any license or patent rights concerning FOSS, unless obliged by FOSS license obligations.

If any term of this GTCs may be found to contradict any FOSS license governing a FOSS component incorporated into the Applications and Data Content, the latter shall prevail.

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 or the SO the information that is required in order to provide access to the Applications and Data Content.
- 4.2 Upon dispatch of the access license (“StartKey“ 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 and their staff according to section 1.1 sentence 2. A transfer or use 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. The user is obligated to use Applications and Data Content officially provided by Mercedes-Benz AG exclusively at the user’s own operation for the purpose of servicing customer vehicles and not disclosing them or making them accessible to third parties knowingly or unknowingly. 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). The user shall maintain confidentiality of personal login data and prevent misuse. If authorized users or their staff become aware of login data misuse, Mercedes-Benz AG must be informed immediately. Mercedes-Benz AG is entitled to immediate blocking of login data if a misuse has occurred. As described in section 13, data and accesses are monitored within the framework of product observation and security in order to counteract improper use.

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 right credentials 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.

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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 Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance) /XENTRY Operation Time (incl. Damage code), DSB, XENTRY TIPS, XENTRY Menu Pricing (XMP), XENTRY Apps and to central servers, the contract has no fixed expiration date but does have a minimum term of 12 months after which the contract may be terminated at any time 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.

In case of rented XENTRY Diagnosis Hardware the contract term of XENTRY Diagnosis Software will be automatically extended by up to 6 months, if the rented XENTRY Hardware is not returned or not returned in a timely manner.

7.3 A contract term of 42 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). The software products, „XENTRY Diagnostics for IMO” and “XENTRY Diagnostics Open Shell” are excluded – for these software products, a contract term of 12 months shall apply which can be repeatedly extended or renewed by the user by a further 12 months each time during the entire hardware support term.

If hardware components of Mercedes-Benz AG (Multiplexer) are not in use, the contract term of 12 months shall apply.

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 secs. 7.1-7.4 before the expiry of the respective contract terms or minimum 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

- uses, copies, produces or causes to be produced the Applications and Data Content without authorization, in particular
- discloses the Applications and Data Content or provided login data to third parties without authorization,
- 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 secs. 1.6 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,

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- no longer belongs to the authorized group of users within the meaning of sec. 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 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 service provider (ISP) 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.

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

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.

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 (sec. 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

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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.
- 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 secs. 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

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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.

12. Data protection

- 12.1 Corporate and personal data of the user shall be treated as confidential in accordance with the applicable data protection laws, except that the SOs have the right to forward the user's billing data to Mercedes-Benz AG. Upon request, the user will receive information about the data stored with the SOs and with Mercedes-Benz AG, and may correct, delete or block this information, if necessary.
- 12.2 Further information on how personal data of the user, its employees and/or concerned customers is processed hereunder, will be made available separately and/or within the XENTRY PORTAL. Users have to ensure that concerned data subjects (e.g. customers) are informed in accordance with the applicable legal requirements and the information on the collection and processing of personal data as provided by Mercedes-Benz AG from time to time.
- 12.3 Such information is to be provided to data subjects in paper form and prior to commencing with the collection and processing of personal data which has to be ensured by users respectively.
- 12.4 Upon request, users will provide Mercedes-Benz AG corresponding evidence.
- 12.5 In order to comply with applicable data protection requirements, the parties also agree to be bound by the provisions of the XENTRY Data Protection Agreement insofar as such an agreement is provided by Mercedes-Benz AG.
- 12.6 Mercedes-Benz AG reserves the right to contact the users for the purpose of information, conducting satisfaction surveys as well as market and opinion research on products and services in the after-sales sector (in particular of the XENTRY product family) of Mercedes-Benz AG as well as its own national sales companies, general agents or comparable partners by e-mail, telephone, fax or comparable electronic means of communication. Contact can be established in Mercedes-Benz AG's name or in the name of such national sales companies or general agents as well as comparable partners. Such communication can be objected to at any time by notifying Mercedes-Benz AG (if necessary also by using appropriate opt-out functions in the respective means of communication). Information on the handling of personal data can be found in the separately provided Privacy Notice for the use of XENTRY Services.
- 12.7 In connection with XENTRY Services, including XENTRY Com (DSD) and Product Catalog, Mercedes-Benz AG may prepare statistical reports on the usage, intensity of use of global templates and communication channels. This statistical evaluation is carried out without reference to a particular user-ID and does not contain any information about the free-text content of the messages. Mercedes-Benz AG will use such statistical reports in order to optimize and continually improve the XENTRY Services and to help evaluate improvement proposals and product observations of the markets.

13. Data transmission

- 13.1 In connection with the use of XENTRY Diagnosis Software (e.g. on XENTRY Hardware or on user's own hardware), the technical data, which is recorded in log files during the diagnosis meetings and other data of XENTRY Services, will be transmitted to, and stored at, Mercedes-Benz AG. The user shall make necessary arrangements with the customers as well as inform the customers sufficiently according to the agreed upon processes to facilitate the data transmissions to Mercedes-Benz AG as described in these GTC and within the relevant Privacy Notice as provided separately. The user shall inform Mercedes-Benz AG if under local law outside of Germany a separate consent of the customer is necessary for the data transmissions and will coordinate with Mercedes-Benz AG in meeting any necessary measures to facilitate the respective transmission to and use of the data by Mercedes-Benz AG.
- 13.2 Data collected by XENTRY Diagnosis and XENTRY Services is used for analysis and statistics in order to optimize and continually improve the vehicles, the Applications and the Data Content and the support as well as for quality management,

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product monitoring and security (for example, vehicle parts and components stress data) and are used for control (checking) purposes when abuse is suspected.

- 13.3 The repair garage-related data about the registered user and the application and data volumes that were approved for use are transmitted to, and stored at, Mercedes-Benz AG *via* the user reporting. This is carried out without creating any inferences regarding actual usage. The data thereby compiled serve to generate and verify a proper billing settlement and are used for statistical purposes.

If other invoicing terms have been agreed than on a monthly basis a user of a foreign Mercedes-Benz Group national sales company or a foreign general agent for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG can be enabled for a user reporting function by Mercedes-Benz AG for purposes of traceability of accounts. User reportings will be made available quarterly after activation for a limited period of time.

In the event of further processing, the foreign Mercedes-Benz Group national sales company or the foreign general agent for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG shall comply with applicable data protection regulations.

14. Compliance with applicable laws

- 14.1 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 other 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.

- 14.2 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.

- 14.3 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.

- 14.4 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.

15. 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.