



General Terms and Conditions regarding the Use of Time Slices for Applications and Data Content for the After-Sales outside of the European Union (EU) and European Free Trade Association (EFTA)

1. Scope of Application

- 1.1 The following general terms and conditions (hereinafter the “GTC”) apply to orders in the form of Time Slices to allow Users (each as defined in sec. 1.2) to access Applications and Data Content.
- 1.2 Within the meaning of these GTC,
- “**Applications and Data Content**” shall mean applications, data content, software, updates, data storage media and other documentation for the After-Sales sector of the Mercedes-Benz and smart brands;
 - “**B2BConnect Platform**” (<https://b2bconnect.mercedes-benz.com>) is an After-Sales platform and integrates (at least partly) and includes the already existing online tools as systems such as WebParts, as far as applicable, and other Mercedes-Benz applications and data content;
 - “**Distributor**” shall mean Mercedes-Benz Australia/Pacific Pty Ltd (ABN 23 004 411 410) of 44 Lexia Place, Mulgrave, Victoria, 3170;
 - “**Time Slices**” shall mean fixed periods, throughout which the User is given access to the Applications and Data Content; and
 - “**User(s)**” shall mean all independent service providers and persons related to them that are authorized by the Distributor to use the Applications and Data Content in the form of Time Slices. Independent service providers can include: independent workshops, manufacturers of repair equipment, breakdown service employees, suppliers of inspection and testing services, employees of facilities for the education and training of car mechanics.

2. Contractual Service

- 2.1 The scope of services and quality are each based on the description of the Time Slices on the B2BConnect Platform when ordering. This contains a detailed list of the temporary access granted to the Applications and Data Content. Currently the services provided include the Time Slices for the following Applications and Data Content: Parts Information, WIS/XENTRY WIS, ASRA/XENTRY Operation Time (XOT) and XENTRY TIPS (desktop and app version). Access to Parts Information is free of charge.
- 2.2 To make use of the contractual provision of Time Slices for WIS/XENTRY WIS, ASRA/XENTRY Operation Time (XOT) and XENTRY TIPS (desktop and app version), a valid User login for the B2BConnect Platform is required, and a Time Slice must have been ordered for the User ID associated with the User login.
In order to use the contractual provision of Time Slices for the app XENTRY TIPS, a valid User login for this specific app is required and a Time Slice must have been ordered for the User ID associated with the User login.
In order to use Parts Information, a valid User login for the B2BConnect Platform is required and an annual registration fee must be paid for the User ID associated with the User login. Once the annual registration fee has been paid, Parts Information can be used for 12 months.
- 2.3 Depending on the service, the Time Slices available amount to 1 day, 1 week, 1 month or 1 year. The contractual term applies depending on which of the above periods is selected, and starts from the moment the order for the Time Slice is confirmed.
- 2.4 The provision of Parts Information, WIS/XENTRY WIS, ASRA/XENTRY Operation Time (XOT) and XENTRY TIPS (desktop and app version) as well as the corresponding updates is carried out via online access as a standard.
- 2.5 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 from time to time. The User will be informed about planned maintenance and repair work and its expected duration, usually at least 48 hours in advance.
- 2.6 The User of the Time Slices shall ensure that the technical prerequisites for operating the Time Slices in question are met. The User may review them on the B2BConnect Platform, under the Applications and Data Content in question.

3. Parties and General Terms and Conditions of Business

- 3.1 These GTCs shall apply to the Users of the Time Slices within the meaning of sec. 1.1. Upon request, the User can be sent the current version of these GTC.
- 3.2 The User’s general terms and conditions of business shall not be deemed incorporated into the parties’ contract, even if Distributor does not object to them.



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4. Rights of use, contractual penalties and third-party intellectual property

- 4.1 Distributor hereby grants Users a simple, non-exclusive and non-transferable right to use the Applications and Data Content during the contractual term in accordance with Part IVE of the *Competition and Consumer Act 2010* (Cth).
- 4.2 The access authorization for Time Slices may be used by any person and on any computer within one of User's locations/operations. Use in other locations/operations of the User will require additional access authorizations that must be acquired separately. As part of the assignment of usage rights, Users receive a personalized identity (User ID). This may only be used by the respective User personally. A transfer or use as a group or workshop user is not permitted. In case of a violation Distributor reserves the right to withdraw usage rights or delete digital identities.
- 4.3 Notwithstanding secs. 4.1 and 4.2, 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.
- 4.4 Unless otherwise authorized by Distributor, the following shall apply: 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 Users or third parties. This rule also relates to publications made under another name. The provided Applications allow it to display individual Data Content via the search masks. The User undertakes to 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.
- 4.5 § 69d para. 2 and 3 as well as § 87e of the German Copyright Act (*Urheberrechtsgesetz*) shall remain unaffected by sec. 4.4.
- 4.6 Upon request of Distributor, the User shall produce evidence of compliance with the rules governing the rights of use under this agreement.
- 4.7 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.
- 4.8 If the Time Slices or Applications and Data Content fall into third-party hands, e.g. because the User shares them or does not adequately protect them against third-party access, an appropriate contractual penalty must be paid, whereby the competent court may review whether this is appropriate in the event of disputes. This does not affect the right to enforce claims for damages, although such claims will then be offset against the penalty.
- 4.9 In each case, the User shall remain entitled to produce evidence that no losses or a lesser amount of loss was incurred, and similarly, Distributor will be entitled to prove that it has incurred a greater amount of losses.
- 4.10 Portions of the "Applications and Data Content" containing Software may contain Free and Open Source Software ("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 Product. 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. The User acknowledges that the Software containing FOSS is not free of third party rights. Distributor 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 General Terms and Conditions may be found to contradict any FOSS license governing a FOSS component incorporated into the Product, the latter shall prevail.

5. Registration and login data

- 5.1 Upon dispatch of the order confirmation to the User by the Distributor, the order of the Distributor will also be deemed to have been accepted by Mercedes-Benz AG.
- 5.2 Access to the Time Slices is subject to the following conditions, which the User shall ensure:
- the User must place a binding order to the Distributor to access authorization, and
 - when placing the order, the User must indicate the scope to which the Time Slices are required.
- 5.3 Login data for the use of Time Slices (personalized identity (User ID) and passwords) provided by Distributor may only be used by Users according to sec. 1.2 and their staff. 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 sec. 1.2. The use of login data in applications and data content which have not been provided by Distributor is prohibited (e.g. illegally purchased software). The User is obliged to maintain confidentiality of personal login data and to prevent



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misuse. If Users or their staff become aware of login data misuse, Mercedes-Benz AG and the Distributor must be informed immediately. Mercedes-Benz AG and/or Distributor are entitled to immediate blocking of login data if misuse has occurred. As described in sec. 14, data and accesses are monitored within the framework of product observation and security in order to counteract improper use.

6. Support

6.1 A right to claim support in the use of Time Slices shall continue during the contractual term.

6.2 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.

7. Alteration of contract

7.1 The Time Slices are provided in the form and for as long as they are used by Mercedes-Benz AG or are available to Distributor. Due to the constant further development of the respective systems and system landscapes, the Time Slices and Applications and Data Content provided may change in this respect during the period of use, whereby Distributor shall provide appropriate compensation to the User in the event of significant changes. Further claims shall be excluded.

7.2 Notwithstanding sec. 7.1, Distributor shall be entitled to change these GTC.

Should the User object to the changes, both Distributor and User shall have the right to terminate these GTC.

Sec. 9.6 shall remain unaffected.

8. Contractual term and termination

8.1 The contractual term and access authorization for the use of the Time Slices shall end once the selected period according to sec. 2.3 ends. There is no need to terminate the agreement. It is not possible to terminate the agreement prematurely without a valid reason.

8.2 If the annual registration fee according to sec. 2.1 for Parts Information is no longer paid by the Distributor, administration shall no longer be carried out and access to Parts Information shall be deactivated for the Distributor accordingly.

8.3 The contract may be terminated without notice by Distributor if there is good cause (*aus wichtigem Grund*). Good cause shall include, *inter alia*, situations in which the User:

- copies, produces or causes to be produced the Time Slices or Applications and Data Content without authorization resp. in breach of contract,
- discloses the Time Slices or Applications and Data Content or the provided login data (User ID and passwords) to third parties without authorization resp. in breach of contract,
- does not use the provided login data for the Mercedes-Benz AG provided Applications and Data Content (e.g. illegally purchased software),
- discontinues its business operations with or without a successor,
- no longer belongs to the authorized group of Users within the meaning of sec. 1.1 resp. sec. 1.2 or changes role within this authorized group,
- fails to pay the compensation when due and after receiving a written notice.

If the agreement is terminated without notice for good cause, claims on the part of the User for compensation for unused Time Slices shall be excluded.

9. Compensation and payment

9.1 The User shall pay the price for the provision of the Time Slices for the use by Users. Distributor shall calculate the price in line with the latest price list in force. The price includes the costs of the Time Slices and of the regular updates.

9.2 Unless otherwise agreed all payments shall be made at the payment date shown on the invoice (hereinafter the "**Due Date**"). Payment shall be deemed made when it has been credited to the account quoted by Distributor. User shall promptly obtain and continuously maintain any governmental or other approvals required to effect any payments to Distributor 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, Distributor 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 Distributor is able to



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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.

- 9.3 The prices as indicated and agreed are net prices quoted without GST, stated in Australian Dollar (AUD) and may in each case be increased by the amount of GST that is applicable or by any other indirect taxes. Where GST, VAT or any other indirect taxes (such as service tax, business tax, consumption tax, Digital service tax etc.) may be due in the other country, such taxes will be borne by the recipient of the service in addition to the agreed net price.
- 9.4 If the User fails in a timely manner to pay the compensation owed, then it shall be deemed in default following the first written notice.
- 9.5 Distributor 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 User.
- 9.6 Distributor reserves the right to make price changes. Distributor reserves the right, in its reasonable discretion, to adjust the indicated price on an annual basis in order to take account of changes in costs. An updated price list will be made available to User by Distributor.
- 10. Tax clause**
- 10.1 The parties shall take all measures to secure and ensure that there is strict compliance and adherence, as the case may be, to tax and customs duties which are payable in connection with this agreement.
- 10.2 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by User and imposed or to be paid in State of User shall be borne by User.
- 11. Security warning**
- 11.1 It is the User's responsibility to ensure that the User stringently complies 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.
- 11.2 Any subsequent supplements or developments to the delivered Applications and Data Content must be observed unconditionally.
- 11.3 If the technical documentation specifies that special tools are required, it is imperative that these tools are used for the correct performance of the repair work. Users shall be liable for any damage caused as a result of a failure to comply with such instructions.

Mercedes-Benz AG reserves the right to revise the Applications and Data Content at any time without notice.

Applications and Data Content is intended only for use by service personnel who are properly trained and qualified to work on Mercedes-Benz and smart vehicles and have sound knowledge related to the information, access to the tools, equipment and literature necessary for the correct, safe performance of maintenance and repairs, as well as experience of using them in accordance with Part IVE of the *Competition and Consumer Act 2010* (Cth). If they do not have this expertise and knowledge related to the Applications and Data Content, they must refrain from performing this work.

Warning: The Applications and Data Content is not intended for use as instructions or tools for repairs or maintenance on Mercedes-Benz and smart vehicles by individuals who have inadequate training on or inadequate experience of performing repairs and maintenance on Mercedes-Benz and smart vehicles. If the correct tools and equipment are not used, all the proper, necessary precautions that a trained, certified vehicle mechanic would take are not taken and all the safety regulations in this and other service publications are not followed, this can lead to material damage, personal injury or even death.

12. Liability

- 12.1 The Applications and Data Content also contain links to other Internet sites. Distributor 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, Distributor 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.



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- 12.2 It is the User's responsibility to check and ensure that the use of the Time Slices does not cause any damage to any workshop infrastructure. If Distributor provides the Applications and Data Content in accordance with its contract with the User, Distributor shall not be responsible for corresponding damages.
- 12.3 If Distributor must compensate for damages based on the statutory provisions and if such damages were caused by simple negligence (*leichte Fahrlässigkeit*), then Distributor'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 Distributor 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 Distributor for damages caused by simple negligence is excluded.
- 12.4 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 Distributor, its legal representative or its vicarious agent or in the event of death, personal injury or damage to health. In such cases, Distributor shall be liable in accordance with the statutory provisions.
- 12.5 In the event of system failures of the Applications and Data Content, Distributor 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 Distributor. Clauses 12.3 and 12.4 shall apply *mutatis mutandis*.
- 12.6 Distributor 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.
- 12.7 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 Distributor, 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 Distributor and/or Mercedes-Benz AG.
- 13. Data protection**
- 13.1 Corporate and personal data of the User shall be treated as confidential in accordance with the applicable data protection laws, except that the server operators 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 server operators and with Mercedes-Benz AG, and may correct, delete or block this information, if necessary.
- 13.2 Further information on how personal data of the User, its employees and/or concerned customers is processed hereunder, will be made available separately.
- 13.3 Mercedes-Benz AG and/or Distributor reserve the right to contact 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 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.
- 13.4 In connection with XENTRY Services Mercedes-Benz AG may prepare statistical reports on the usage and 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, to help evaluate improvement proposals and product observations of the markets.
- 14. Data transmission**
- 14.1 In connection with the use of Applications and Data Content on Users own hardware, data will be transmitted to, and stored at, Mercedes-Benz AG.
- 14.2 Data collected by 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, product monitoring and



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

- 14.3 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.

15. Compliance with applicable laws

- 15.1 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 Distributor or other third parties. Where there have been such acts or omissions, Distributor will be entitled to rescind or terminate all legally consequential transactions with the User and to break off any and all dealings.

- 15.2 Notwithstanding the foregoing, the User will be obligated to comply with all statutes and regulations impacting them and the business relationship with Distributor.

- 15.3 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.

- 15.4 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 Distributor.

16. Governing law and jurisdiction

- 16.1 The laws of the State of Victoria, Australia govern this Agreement. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.