



General Terms and Conditions for the Use of Applications, Data Content and Other Documentation

For exclusive use with contractors who enter into the purchase contract in the course of their commercial or self-employed business activity.

1. General

Fuso Europe Service Operations Division (GSP/TTF) – hereinafter referred to as Daimler AG provides application, data content and other documentation – hereinafter referred to as data content – to enable users to access this data content. Users can access the data content via local installations.

2. Parties to the Contract and General Terms and Conditions

- 2.1 These General Terms and Conditions apply to the users of data content.
- 2.2 The Client's General Terms and Conditions shall not form part of the contract, even if they have not been explicitly rejected.

3. Scope

These General Terms and Conditions apply to all services rendered by Daimler AG in conjunction with the provision of applications, including data content. The services rendered by Daimler AG currently comprise the applications within the After-Sales Portal (e.g. Service Portal, WebCAPS, ...) and all their data content.

4. Authorized Persons

The information provided is only intended to be used by authorized persons, who include all authorized Fuso and Mercedes-Benz service partners and other persons authorized by Daimler AG (such as independent market participants and internal clients).

5. Usage Rights, Penalties and Third-party Industrial Property Rights

- 5.1 Daimler AG shall grant the authorized persons a single, non-exclusive and non-transferable usage right for their own internal use. All other rights to the data content, including subsequent additions thereto, shall remain with Daimler AG or the original software supplier.
- 5.2 Unless specifically authorized by Daimler AG, no copies may be made, nor may the Client or third parties contracted by the Client edit or otherwise process the information. This provision also applies to the publication of such information under another name.
- 5.3 The Client undertakes only to use the data content within its business for the purpose of servicing its customers' vehicles and not to pass it on or otherwise make it available to third parties, neither wholly nor in part. It shall also require its employees to give an equivalent undertaking, so far as is lawfully possible.
- 5.4 Data storage media, documentation and electronic copies that are no longer needed must be properly destroyed. It must be ensured that installations cannot be accessed by unauthorized persons.
- 5.5 In the event that the data content falls into third-party hands, irrespective of whether the Client or its employees have passed this on or failed to ensure that third parties are prevented from accessing it, a penalty of €25,000 shall be payable for each infringement.
- 5.6 This shall not affect Daimler AG's right to enforce damages claims, although such claims shall then be offset against the penalty.

6. Registration

- 6.1 As part of the order processing system, the Client will provide the contractor with information which is necessary for the granting of access authorizations.
- 6.2 The order is deemed to have been accepted once the relevant access authorization has been granted.
- 6.3 Access to the data content shall be granted subject to the following conditions:
 - The Client must place a legally binding order for access to the data content.
 - The order must specify the areas and applications for which the data content is needed.

7. Support for Applications

- 7.1 The Client is entitled to receive support under existing contracts if the data is it using has been updated.
- 7.2 The general rule is that the support structures of the national representation are applied.

8. Term of the Contract and Termination

- 8.1 The contract shall generally run for a period of twelve months.
- 8.2 The contract may in particular be terminated without notice by Daimler AG for cause, if the Client
 - Copies or creates data content, or has data content created,
 - Passes on the data content to a third party,
 - Is no longer an authorized person,
 - Is in arrears with payments.

9. Remuneration and Payment

- 9.1 The costs shall be calculated in accordance with the valid price lists. The price lists and terms of payment shall be supplied by the relevant country organizations.
- 9.2 The stated prices are net prices exclusive of VAT. VAT shall be payable at the applicable rates.
- 9.3 If the Client fails to make the agreed payment on time, it shall be considered to be in default after the first reminder.
- 9.4 Daimler AG reserves the right to withhold or reduce services owed until the account has been settled by the Client, and to terminate the contract if necessary.
- 9.5 The Client may offset its claims against claims of the contractor only if the Client's counterclaim is uncontested or if entitlement has been confirmed by a non-appealable court decision.
- 9.6 Daimler AG reserves the right to amend prices even during the term of an existing contract. Daimler AG reserves the right to adjust prices in line with changed costs each year at its reasonable discretion (section 315 German Civil Code (BGB)). In the event of price increases the Client is entitled to terminate the contract in writing within 14 days of receipt of the price change notification. After this period the price change shall be deemed to have been accepted.

10. Safety and Security Regulations

- 10.1 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. The Client shall be liable for any damage caused as a result of a failure to comply with such instructions.
- 10.2 It is also imperative that subsequent changes and additions to the data content supplied are complied with.

11. Liability and Delay

- 11.1 Although the data content supplied will be produced with the utmost care and professional expertise, the possibility that it may contain errors or that information may be missing cannot be excluded. The data content will be provided in the form in which it is used by Fuso of Daimler AG, and for as long as it is used by Fuso. It may therefore vary during the period of use. There shall be no further entitlement.
- 11.2 The applications may also contain links to websites. Fuso of Daimler AG would like to point out that it has no influence on the layout and content of the linked websites. Consequently, the information provided there cannot be guaranteed to be up-to-date, correct, complete or of good quality. In view of this, Fuso of Daimler AG hereby distances itself from all content of these websites. This declaration applies to all links to external websites contained in the applications and the content of the websites.
- 11.3 If Daimler AG is to be held responsible under the statutory provisions for loss caused by ordinary negligence, the liability of Fuso of Daimler AG shall be limited as follows:
- 11.4 Liability exists only in the event of a breach of essential contractual conditions. Liability is limited to the typical loss foreseeable at the time the contract was concluded. To the extent the loss is covered by insurance taken out by the Client for the type of loss suffered (excluding fixed-sum insurance), Fuso of Daimler AG shall only be liable for any associated disadvantage suffered by the Client, for example increased insurance premiums or the interest charges / income foregone until such time as the claim is settled by the insurer.
- 11.5 If the Client is a public authority, a publicly-owned corporation or a business person acting in the course of business in concluding the contract, these limitations on liability shall also apply for damages claims where the damage was caused through gross negligence, but not where the damage was caused by the gross negligence of a statutory representative or senior manager of Fuso of Daimler AG, nor where it was caused through gross negligence which is covered by insurance taken out by the Client for the type of damage concerned.

12. Data Protection

Information relating to the Client shall be treated confidentially in accordance with the legal data protection requirements. Upon request, the Client shall be entitled to receive details of the data held at the service provider and at the contractor and may, where applicable, amend, delete or block such information.

13. Provision of Data

- 13.1 The user data recorded in log files during the sessions shall be supplied to Daimler AG in connection with its use.
- 13.2 This data shall be used for analyses and statistical evaluations aimed at the optimization and continuous improvement of the vehicles and applications.
- 13.3 Workshop data concerning users and the applications and data content approved for use shall be communicated to and stored by Fuso of Daimler AG via the user reporting procedure in such a way that it is not possible to determine actual use. The data thereby acquired shall be used to produce invoices and to provide evidence of correct billing, and for statistical purposes.

14. Compliance with Applicable Law

The Client is obliged to desist from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, granting of advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by the Client or other third parties.. In the event of violation of the above, Daimler AG has the right immediately to withdraw from or terminate all legal transactions existing with the Client and to cancel all negotiations. The above notwithstanding, the Client is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Daimler AG.

15. Jurisdiction and Applicable Law

The place of performance and jurisdiction shall be Stuttgart. This agreement is governed exclusively by the law of the Federal Republic of Germany, excluding application of any conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, is excluded.

16. Severability Clause

Any contract concluded on the basis of these terms and conditions shall remain binding even if individual provisions are or become legally invalid or if there are omissions in other parts of the contract. Should any provision become wholly or partly invalid or prove to contain omissions, the parties to the contract shall endeavor to find an alternative, legally valid means of achieving the commercial result intended by the invalid or incomplete provision.