

# DAIMLER

## General Terms and Conditions for Development Work non-exclusive

Version 10/2018

### 1 Governing Conditions, Development Contract

- 1.1 The legal relations between Daimler AG, Stuttgart, or between one of its affiliated companies (§15 of the German Stock Corporation Act (AktG)) (hereinafter referred to as 'Daimler') and the Supplier (hereinafter referred to as 'Partner'), hereinafter collectively referred to as the 'Contractual Partners' or individually referred to as a 'Contractual Partner', shall, unless agreed otherwise, be governed by these General Terms and Conditions and other written agreements between the Contractual Partners, if any.
- 1.2 General terms and conditions of the Partner shall not be applicable, even if they were not explicitly rejected in any individual case.
- 1.3 A contract regarding the rendering of development services (hereinafter 'Development Contract') is concluded by the Partner's written or electronic confirmation of the Daimler offer to conclude the contract (also called 'Purchase Order'). The Development Contract shall be deemed concluded when the Partner commences supplying the goods or services which are the subject of the offer to conclude the contract.
- 1.4 If Partner does not accept Daimlers' offer to conclude the contract within 14 days after receipt of the offer, Daimler may revoke the offer in writing.

### 2 Development work and documentation

- 2.1 The Contractual System, which is to be developed by Partner, and the related technical requirements shall be prescribed by the work specification agreed between the Contractual Partners. The Contractual Partners shall jointly update the work specification in accordance with current developments. The development work performed by the Partner shall be documented in the manner required by the specifications.
- 2.2 The development work shall be performed in accordance with the agreed project development plan. Every step in this project development plan which has been labelled as a milestone/quality gate requires the alignment with Daimler. Should the observance of the time schedule prescribed by this plan not be possible, the Contractual Partners shall immediately provide notification of this fact with a statement of the reasons for the failure to meet the deadline and shall identify the required measures. The notice periods agreed in the project development plan shall be contractual notice periods.
- 2.3 The Partner in the performance of its work shall comply with the state of the art of science and technology and the agreed technical data. The Partner shall also comply with the relevant statutory provisions (e.g. end-of-life vehicle regulation) as well as with all relevant national and international quality standards of the automobile industry. Further, the Contractual System may not be tainted with faults which reduce or eliminate its value or suitability for the prescribed use. This shall be determined at the time of the acceptance of the Contractual System.
- 2.4 The Contractual Partners after prior alignment shall provide each other without delay with all the information required for the performance of the development works. Any documents, objects or other aids supplied by one Contractual Partner to the other shall be provided on a loan basis. They shall be exclusively used for the performance of these works and shall be returned thereafter.
- 2.5 The Partner shall compile a report on the status of the development on a monthly basis or in accordance with the terms of a specific agreement and shall permit Daimler to inspect the relevant work results at any time on demand and shall provide all other requested information, and shall permit persons instructed by Daimler to enter the premises in which the development works are being performed during the Partner's regular working hours.
- 2.6 The Contractual Partners shall achieve an increase in efficiency and a reduction in costs while observing the highest quality requirements.

### 3 Technical Changes

- 3.1 The Partner shall propose technical changes to Daimler as soon as the Partner becomes aware that technical changes are necessary or conducive to the intended development result.
- 3.2 Daimler may request technical changes of the Contractual System at any time. The Partner is obliged to implement such changes without undue delay. The Partner may object to the change request where implementation of the change would be unreasonable.
- 3.3 If a change or adjustment of the Development Contract becomes necessary due to a technical change, in particular - but not limited to -

with regard to an increase or a reduction in costs, the Contractual Partners will seek an appropriate and mutually acceptable solution. As far as such changes result in an increase or a reduction in costs, an assignment by Daimler, if any, must be made compulsively by Daimlers' purchase department.

- 3.4 The Partner shall document all changes in a parts log.

### 4 Development results, inventions, intellectual property rights

- 4.1 The Partner shall transfer to Daimler all of the results (inter alia know-how, experimental and development reports, suggestions, ideas, drafts, designs, drawings, proposals, patterns, models, software including source code, data sets, CAD including history etc.), hereafter referred to as the "**Work Results**", achieved or used by it within the scope of the Development Contract, with a right to the joint unrestricted use which shall be settled by the agreed remuneration. All the Work Results shall be provided without the Partner's copyright or other mark.

Insofar as these results are protected by the Partner's copyright, the Partner hereby grants Daimler the non-exclusive, irrevocable and assignable right which is settled by the agreed remuneration, without restriction as to time, location or content, to use, modify or process any of these results for the purpose of any type of use. With regard to the drawings transferred by the Partner to Daimler within the framework of this collaboration, the Partner also irrevocably declares its consent to the disclosure by Daimler of these drawings to third parties in paper format or as electronic data, e.g. within the framework of a call for tenders.

- 4.2 The Partner shall provide information on its existing intellectual property rights and on any rights capable of protection at the time of the conclusion of the Development Contract (hereinafter referred to as "**Old Intellectual Property Rights**") where such rights are capable of use with regard to the Contractual System. Should the use of Old Intellectual Property Rights be required within the context of the exploitation of the Contractual System, including the manufacture of replacement parts, Daimler is hereby granted a non-exclusive, sub-licensable right of use which is settled by the agreed remuneration, without restriction as to time and location, for any kind of usage for any products, processes or services of Daimler which shall encompass the use of such rights for the purpose of production and further development by Daimler or by third parties on behalf of Daimler.
- 4.3 Should work results capable of protection be achieved during the work performed within the scope of the respective Development Contract (hereinafter referred to as "**New Intellectual Property Rights**") they shall be credited to the Contractual Partner whose employees achieved these work results. The Contractual Partners shall each be responsible for rewarding the inventiveness of their own employees.
- 4.4 The Partner shall examine whether its work results are capable of protection and shall inform Daimler of its conclusion in writing. Concerning the Partner's New Intellectual Property Rights, Daimler shall be granted a non-exclusive, sub-licensable right of use for any kind of usage for any products, processes or services of Daimler which is settled by the agreed remuneration without restriction as to time and location and which shall encompass the use of such rights for the purpose of production and further development by Daimler or by third parties on behalf of Daimler. This rule shall also apply to the intellectual property rights of such third parties that are used as subcontractors by the Partner within the framework of the work performed by it under the respective Development Contract. In such cases the Partner shall procure to Daimler a corresponding right of use of these intellectual property rights which is settled by the agreed remuneration.
- 4.5 Should work results, be achieved based on both Partner's and Daimler's contribution in the course of the services to be rendered under the respective Development Contract, the work results shall belong to both Contractual Partners (hereinafter "**Joint Work Results**"). Should the Joint Work Results be capable of protection, the resulting rights shall be jointly registered (hereinafter "**Joint Intellectual Property Rights**"). Should one the part of Daimler an affiliated company (§15 of the German Stock Corporation Act (AktG)) be Contractual Partner, the intellectual property right may be jointly registered by Daimler AG and the Partner. The resulting costs shall be shared by the Contractual Partners in proportion to their respective shares in the Joint Intellectual Property Rights; in cases of doubt each Contractual Partner shall bear half the costs.

- 4.6 The Contractual Partners shall mutually grant each other a non-exclusive, sub-licensable right of use of the Joint Work Results which is settled with the agreed remuneration without restriction as to time and location which shall encompass the use of such rights for the purpose of production and further development by the Contractual Partners or by third parties on behalf of the Contractual Partners.
- 4.7 The grant of a license for Joint Intellectual Property Rights to a third party, if any, shall – in the absence of a contrary agreement – be made jointly or with the consent of the other Contractual Partner.
- 4.8 If one Contractual Partner is not interested in registering a Joint Intellectual Property Right or does not wish to pursue the registration of a Joint Intellectual Property Right or wishes to surrender a Joint Intellectual Property Right it shall facilitate the registration, or the continuation of a registration or an intellectual property right, by the other Contractual Partner in the other Contractual Partner's own name and at the other Contractual Partner's own expense. The surrendering Contractual Partner shall retain a simple right of use which is settled by the agreed remuneration.
- 4.9 Notwithstanding the provisions of Section 4.4 the Partner shall produce through its development work a Contractual System free of third party rights (including, inter alia, patent rights, utility patent rights, copyrights, design rights, trademark rights or any other rights with regard to intellectual property). If the Partner does not succeed in doing so, it shall endeavor to ensure that the development results can be used by Daimler in the same way as would have been possible if they had been free of third party rights, i.e. in cases where there are third party rights, the Partner shall pay the corresponding royalties to third parties. If Daimler suffers a loss as a consequence of the existence of third party rights, the Partner shall pay compensation in respect of same – including reasonable legal fees and expenses. Sentences 2 and 3 of this Section 4.9 shall not apply if the Partner is not responsible for the violation of the obligation to achieve a Contractual System free of third party rights.
- If the Partner knows or becomes aware of third party rights in opposition to the Contractual System it shall in any case notify Daimler without delay.
- 4.10 All rights of use granted to Daimler under Section 4 shall also encompass a corresponding usage by affiliated companies (§15 of the German Stock Corporation Act (AktG)) of Daimler AG as well as by companies in which Daimler AG directly or indirectly holds at least 50 % of the shares, furthermore by the following minority participation of Daimler AG: Beijing Benz Automotive Co., Ltd., No. 8 Boxing Road, Beijing Economic Technological Development Area (BDA), Beijing, 100176, China (People's Republic). This does also encompass the corresponding usage by third parties on behalf of the aforementioned beneficiaries. "Corresponding usage" shall encompass any kind of usage for any products, processes or services of the aforementioned beneficiaries.
- 4.11 All rights of use granted to Daimler under Section 4 shall also encompass a corresponding usage by cooperation partners (Automotive Manufacturers) of Daimler Group (Daimler AG and/or affiliated companies (§ 15 of the German Stock Corporation Act (AktG) of Daimler AG) regarding products, processes or services that have been or will be developed in the framework of a cooperation project with Daimler which totally or partially includes the Contractual System. Section 4.10 2<sup>nd</sup> sentence applies accordingly.
- 4.12 The Partner shall ensure that the granting of usage rights according to this Section 4 also encompasses the corresponding rights of affiliated companies (§15 of the German Stock Corporation Act (AktG)) of the Partner as well as of subcontractors that the Partner uses according to Section 10.
- 4.13 To the extent that in the course of the services to be rendered under a Development Contract Joint Work Results are achieved both Contractual Partners shall, for the purpose of further research and development, have unrestricted access to those Joint Work Results including access to the directly resulting intellectual property rights and the directly resulting know-how. Partner does not receive any rights to use Daimler's intellectual property and/or know-how which was generated or will be generated outside the scope of the respective Development Contract. Further, Partner is not entitled to exploit the Joint Work Results unless otherwise agreed in these General Terms and Conditions or in the respective Development Contract.

## 5 Development remuneration

- 5.1 The development costs which shall be reimbursed for a successful development, and which shall include all the work performed by the Partner until the end of the development, are specified in the Development Contract. The Partner shall have no further claims, especially not regarding the compensation of other expenses.
- 5.2 In case the Development Contract provides for a remuneration of partial performance after achievement of agreed milestones, the payment for such partial performance (milestone) shall be made – if no other agreements are made – by bank transfer 30 calendar days following the

acceptance (technical acceptance) of the respective partial performance (milestone) and Daimler's receipt of a verifiable invoice.

- 5.3 In case a payment is made by Daimler before acceptance or partial acceptance, this shall not be deemed as acceptance or partial acceptance.

## 6 Transfer and Acceptance of the Contractual System

The development shall terminate upon the delivery of the complete Contractual System to Daimler and the written acceptance (functional recognition) of the Contractual System by Daimler. Reviews and inspections of interim results shall not imply acceptance.

## 7 Liability for Defects

The Partner shall warrant that its development works are free from defects. The statutory provisions applicable to contracts for work and services (Werkvertrag) – including the provisions which govern the statute of limitation – shall apply to defects.

## 8 Confidentiality

Without prejudice to the rules prescribed by Section 4, the Contractual Partners shall treat as business secrets all the business and technical details not in the public domain which become known to them through their business relationship. Subcontractors shall be subjected to the same obligation. Further, information may be disclosed to affiliated companies (§15 of the German Stock Corporation Act (AktG)) of the Contractual Partners, provided these affiliated companies are subject to equivalent confidentiality obligations. The rules prescribed by Section 4 shall remain unaffected by possible separate confidentiality agreements between the Contractual Partners.

## 9 Cancellation Rights

- 9.1 Daimler may cancel a Development Contract on 1 (one) month's written notice with effect at the end of the month if the Partner's competitiveness is considerably impaired with regard to quality, price, technology or the adherence to deadlines. In this case no claims of whatever nature may be made against Daimler including, inter alia, claims for the reimbursement of development costs, termination costs, claims for lost profit, the infringement of intellectual property rights or the payment of license fees.
- 9.2 During the performance of the development works, Daimler may also cancel the contract in accordance with the statutory right of termination of the customer (§648 of the German Civil Code (BGB – Bürgerliches Gesetzbuch)). In the case of such a cancellation the Partner shall be paid the necessary development costs which it has already incurred plus inevitable follow-up costs but payment shall not exceed the development costs for the development. There shall be no entitlement to the full remuneration as agreed in the respective Development Contract. The Partner shall be obliged to ensure that the amount to be reimbursed by Daimler under this clause is kept to a minimum. The Partner shall not be entitled to the reimbursement of payments if the Partner is responsible for the cancellation.
- 9.3 The right of the Contractual Partners to immediately terminate this contract for good cause shall remain unaffected.

## 10 Subcontractors

- 10.1 The Partner may only engage subcontractors to fulfill the contractual obligations in whole or partially with the prior written consent of Daimler.
- 10.2 Daimler's consent to a subcontractor engagement can be given subject to conditions and is revocable. Daimler shall be entitled at any time to revoke its consent in regard to each subcontractor with immediate effect in particular, if in a procedure of determination of the subcontractor's Principal status pursuant to social-insurance law (in accordance to section 7a of the German Code of Social Law IV) it turns out according to an official hearing or a decision of the German statutory pension insurance scheme (Deutsche Rentenversicherung) that a dependent employment has to be assumed.
- 10.3 The Partner shall require the subcontractors engaged to give the same undertakings as it has itself given to Daimler, particularly with regard to confidentiality and data protection.
- 10.4 The Partner assures and shall provide evidence at the request of Daimler, that none of its subcontractors will subcontract with a Sole Proprietorship or with a Civil Law Association (as a sub-subcontractor), insofar as the service is in whole or partially performed by the Principal (Proprietor of a Sole Proprietorship or Partner of a Civil Law Association).
- 10.5 The Partner assures that the prohibition in Section 10.4 will be followed in the complete chain of all further subcontractors.
- 10.6 Furthermore, the Partner assures that in the complete chain of all subcontracting every of its subcontractors and sub-subcontractors fulfill

the legal requirements in regard to the minimum wage for their respective employees.

- 10.7 On request of Daimler the Partner shall at any time disclose to Daimler which subcontractor and sub-subcontractor in the complete chain is or has been engaged in fulfilling in whole or partially the Partner's contractual obligations towards Daimler.
- 10.8 The Partner shall be liable to Daimler for the fault of subcontractors and vicarious agents engaged by the Partner as it would be for its own fault.
- 10.9 If the Partner violates one of the above obligations or assurances in Section 10.1 to 10.7, the Partner is liable to Daimler for all resulting damages. Furthermore, the Contractual Partners agree that every Partner's breach of the content of this Section 10 is good cause which entitles Daimler to terminate the contract with the Partner with immediate effect.

#### **11 Rights of retention**

The Partner's right of retention shall be excluded unless its claims are not disputed or have been legally determined without the right of appeal.

#### **12 Additional rules**

In the absence of any contrary provision in this contract, the Mercedes-Benz Special Terms 2016, including any annexes, which can be downloaded from the Daimler Supplier Portal at <http://daimler.covisint.com> shall apply supplementary.

#### **13 Miscellaneous provisions**

- 13.1 Within the framework of its commercial dealings with Daimler, the Partner 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, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by the Partner or other third parties. In the event of violation of the above, Daimler has the right to immediately withdraw from or terminate all legal transactions existing with the Partner and the right to cancel all negotiations. The above notwithstanding, the Partner is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Daimler.
- 13.2 The Partner undertakes to pay the minimum wage plus agreed supplements including the contributions for social insurance, promotion of job creation and payments to protect the social insurance for employees and those in marginal part-time employment, within the scope of the statutory provisions and collective pay agreements, particularly the provisions of the Posted Workers Act and of the relevant collective pay agreements.
- 13.3 Alterations and additions to a Development Contract or to these General Terms and Conditions must be in writing in order to be effective. Additional verbal agreements shall not be effective.
- 13.4 Rules prescribed by individual provisions of the Development Contract or of these General Terms and Conditions which apply beyond the termination of the Development Contract shall remain in force after the termination of the Development Contract. The end of the development services or the end of the Development Contract (in particular - but not limited to - by an acceptance in accordance with Section 6 or by a cancellation in accordance with Section 9) do not affect the continued validity of the provisions in Section 4 and Section 8.
- 13.5 Should any provision of these conditions or of any additional stipulations agreed upon be or become invalid, this shall not affect the validity of the remainder of these conditions. The Contractual Partners are obliged to replace the invalid provision with one which comes as close as possible to the invalid provision in terms of its economic effect.
- 13.6 The law of the Federal Republic of Germany shall apply exclusively, excluding the conflict of laws provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980.
- 13.7 The exclusive place of jurisdiction for all disputes arising from or in connection with this contractual relationship is Stuttgart (Mitte), Germany. Each Contractual Partner may however also be sued at its general place of jurisdiction.