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General Terms and Conditions for the Rental of XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope (GTC - valid from 04/2022)

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**1. Scope**

All goods and services provided by Mercedes-Benz AG in connection with the rental of the diagnosis systems XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope are subject to these terms and conditions. All agreements must be documented in textual form. This also applies to collateral agreements, warranties, as well as subsequent contract amendments. Lessee's general terms and conditions of business shall not be deemed incorporated into this Agreement, even if these conditions have been attached to invitations to tender, orders, or declarations of acceptance and have not been explicitly rejected. This Agreement applies to components relinquished at no charge wherever appropriate.

**2. Subject of the Agreement**

2.1 The Lessee rents from Mercedes-Benz AG the diagnosis systems XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope (hereinafter referred to as '**Systems**') consisting of hardware components and firmware.

This Agreement does not cover the provision of Applications and Data Content (incl. XENTRY Software) and data updates. These are subject of a separate agreement and is regulated by the 'General Terms and Conditions regarding the Use of Applications and Data Content provided by Mercedes-Benz AG for After-Sales'.

**Mercedes-Benz AG hereby explicitly points out to the Lessee that the contract period of the aforementioned separate contract for the provision of applications and data content (incl. XENTRY Software) can be significantly shorter (e.g. until the end of a calendar year) than the minimum rental duration of the systems of 42 months in accordance with section 16.1. This applies in particular if the Applications and Data Content (incl. XENTRY Software) in its current 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.**

**ATTENTION: In this case, the rented systems can then not be used to access to the Applications and Data Content (incl. XENTRY Software) which are no longer used or distributed by Mercedes-Benz AG or no longer available to Mercedes-Benz AG.**

2.2 Lessee shall purchase the Mercedes-Benz AG-approved accessories for the Systems separately, unless these are included as part of the original delivery.

**3. Formation of Contract**

Lessee shall be bound by its order for a maximum of 14 days. A rental agreement is formed when Mercedes-Benz AG has confirmed acceptance of the order in textual form within this period or when Mercedes-Benz AG has performed delivery of the goods or services. However, Mercedes-Benz AG is obliged to inform Lessee in textual form without undue delay if it does not intend to accept the order.

Mercedes-Benz AG is not required to state a reason for not accepting the order.

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.

**4. Compliance with Applicable Law**

Lessee is obliged to refrain and desist from all practices that could result in criminal charges against employees of Lessee or other third parties for fraud or breach of trust, insolvency crimes, anti-competition crimes, granting of advantages, or passive corruption. In the event of violation of the above, Mercedes-Benz AG has the right to withdraw from or terminate all legal transactions existing with Lessee and to break off all negotiations with immediate effect.

Notwithstanding the above, Lessee is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Mercedes-Benz AG.



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**5. Type and Scope of Performances**

- 5.1 The scope of performance is determined by the provisions in the individual rental agreements. These agreements cover the exact listing of the rented Systems, data contents and services, and the inseparably linked agreements on qualification, program extensions and relinquishment of product information.
- 5.2 Mercedes-Benz AG reserves the right to make changes to the design, technology, and scope of supply and services during the delivery period, provided these changes remain reasonable for Lessee while taking into account the interests of Mercedes-Benz AG.
- 5.3 Upon request by Mercedes-Benz AG, Lessee is obliged to replace the Systems with newer Systems provided by Mercedes-Benz AG. This will be contingent upon the need for exchange resulting from ongoing further development in vehicle diagnosis technology, IT technology, telematics, etc. The Lessee who is entitled to sublease according to section 7.2 must ensure in the contractual agreements with Sub-lessees that the Systems are exchangeable at all times.
- 5.4 Lessee is aware that all Systems can only be used in connection with the corresponding chargeable XENTRY software (in particular XENTRY Diagnosis). Lessee bears the sole responsibility for granting a corresponding right of use for the XENTRY software for a fee and based on a separate agreement.

**6. Partial performances**

Mercedes-Benz AG is entitled to deliver the goods or services in installments provided that this is acceptable to Lessee.

**7. Usage Rights and Penalty**

- 7.1 Lessee undertakes to use the Systems, the accessories provided by Mercedes-Benz AG as part of the original delivery, the operating instructions, and the other documentation solely within its business and not to permit their use by any third parties, unless the Parties have agreed otherwise in this respect.
- 7.2 However, if Lessee is a foreign Daimler Group sales company for Mercedes-Benz and/or smart, it is entitled and obliged to make the Systems available for rental via a sub-rental agreement to any authorized repairers and independent operators (including fleet owner's workshops with/without facilities for processing warranties and goodwill, and fleet owners) (hereinafter referred jointly as the "**Sub-lessees**") within its contract territory. In this connection, Lessee hereby undertakes to form its own corresponding rental agreements for the Systems with the above-mentioned Sub-lessees within its contract territory.
- 7.3 Lessee must ensure that no documentation is accessible to third parties without the prior consent of Mercedes-Benz AG in textual form. No copies may be made. Furthermore, all information on the documentation is subject to a nondisclosure undertaking.
- 7.4 In the event that the Systems fall into third-party hands, irrespective of whether Lessee has passed them on or failed to ensure that third parties are prevented from accessing them, a penalty of EUR 25,000 will be payable to Mercedes-Benz AG. This does not affect the right of Mercedes-Benz AG to enforce damages claims, although such claims will then be offset against the penalty. Should such a case arise, Mercedes-Benz AG reserves the right to demand either the destruction or the return of the documentation.
- 7.5 A simple, gratuitous and indefinite right of use is conceded to Lessee for accessories relinquished at no cost including the accompanying documentation. Lessee shall duly dispose of the hardware components according to the legal regulations at its own cost after usage has expired.

**8. Small Repairs**

Lessee is liable for damage caused by external sources at a repair cost of up to EUR 250.- per contractual year, even if he did not cause the damage. The liability of Lessee for damages he causes remains unaffected.

**9. Due Diligence and Lessee's Liability**

Lessee is obliged to handle the Systems carefully. Culpable damage, e.g. damage due to negligence of due diligence or improper handling of the Systems is charged to Lessee in full, including transport and handling costs. The following due diligence rests on Lessee:

- Securing the Systems against theft as well as unintentional or willful damage.
- Sufficient protection of the Systems from dirt, not tampering with the marking, adhesive labels and/or protective seals.
- Avoiding the exposure of the Systems or the Systems' batteries to heat or direct sunlight.
- Not operating the Systems in the rain or on a wet surface - This will prevent short-circuits and system damage.
- Never pouring fluids over the system (water, solvents or cleaning agents, oil, etc.) or allowing foreign objects to remain in the device.



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General Terms and Conditions for the Rental of XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope (GTC - valid from 04/2022)

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- Securing the Systems from falling, not removing the rubber bumpers.
- Always placing the Systems on a level, non-slip surface.
- Avoiding all contact with flammable vapors.
- Adhering to the minimum distance of 46 cm (18 inches) from the Systems to the floor.
- Never covering the fans of the Systems. Never opening the Systems or making structural modifications, unless there are instructions to do so from the Diagnosis User Help Desk (UHD).
- Paying attention to the instructions on using and replacing batteries in the Systems.
- Operating the touchscreen of the XENTRY Tab only with the intended stylus or with a finger if need be.
- Avoiding unnecessary pressure, tensile and torsional influences on the system.
- Unplugging the Systems and cables after each use.
- Exclusively using appropriate power sources.
- Exclusively installing approved software, hardware and accessories on the Systems.
- Generally, Lessee may not order repairs itself or have repairs performed by a repairer not authorized by Mercedes-Benz AG.
- Only commercially available cleaning agents approved for IT devices may be used for cleaning.
- For the use of Systems, the due diligence obligations of Lessee stated in the "XENTRY Diagnosis system user guidelines" also apply.

#### 10. Warranty

- 10.1 Mercedes-Benz AG warrants that the Systems are free from defects at the time of risk transfer. The warranty for the Systems starts at the time of delivery (ex works). Lessee shall send defective Systems or hardware components to Mercedes-Benz AG upon request.
- 10.2 In the event that a replacement is provided, the defective System or hardware components must be promptly returned to Mercedes-Benz AG upon receipt of the replacement System. If Lessee delays returning said item(s) or does not return it/them at all, Lessee must reimburse any losses incurred as a result, in accordance with the applicable statutory provisions. In particular, any customs charges or handling expenses due to a delayed return will be borne by Lessee.
- 10.3 Lessee is obliged to report damage and defects to the System immediately, otherwise the warranty for the System does not apply. The warranty shall not apply if a defect is caused by Lessee or a third party having modified, improperly used, or repaired the Systems without the consent of Mercedes-Benz AG or because the Systems have not been used and looked after in accordance with the 'Guidelines for XENTRY Diagnosis System Users'.
- 10.4 If a damage not caused by Lessee is not rectified, especially if the fault cannot be repaired or additional remedy attempts are unacceptable for Lessee, Lessee has the right to terminate the Agreement due to loss of use as per § 543 BGB.

#### 11. Liability

- 11.1 If Mercedes-Benz AG must compensate for damages based on the statutory provisions and if such damages were caused by simple negligence 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 Lessee can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was formed.  
The personal liability of the statutory representatives, vicarious agents and plant members of Mercedes-Benz AG for any damages that were caused by their simple negligence is excluded (disclaimed).  
The aforementioned limitation of liability and the aforementioned liability disclaimer do not apply to damages that are attributable to the grossly negligent or intentional violation of duties on the part of Mercedes-Benz AG, its statutory representative or its vicarious agent and do not apply to death, bodily injury and impairment of health.
- 11.2 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.
- 11.3 Lessee must immediately report in textual form or have Mercedes-Benz AG record any damages and losses for which Mercedes-Benz AG must provide compensation.
- 11.4 Damages claimed for reasons of slight negligence fall under the statute of limitations within one year from the date when the act of negligence occurred.



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General Terms and Conditions for the Rental of XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope (GTC - valid from 04/2022)

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**12. Support and Service**

Support and other services will be provided only if Lessee adheres to the prescribed service processes. This means that the diagnosis user help desk must be contacted when support and services are required. The instructions of the diagnosis user help desk are binding.

**13. Prices/Terms of Payment**

13.1 The prices listed in the applicable price list apply. The rental price is payable cashless upon receipt of the invoice. Prices are net and exclusive of value added tax, which will be charged at the rate applicable on the date the purchase price is due and are expressed in euros.

13.2 The monthly rent is due and payable in advance on the first day of the month.

13.3 If the System is replaced or in some way updated to the latest technical status by a new development and introduced as such by Mercedes-Benz AG, Mercedes-Benz AG is authorized to adjust the rent with notification at least 2 months in advance. The rent is adjusted by the same amount by which the list rental prices have been raised in comparison with the previous list rental prices. If Mercedes-Benz AG demands an increase in rent, Lessee can cancel the rental agreement within a month after announcement of the increase as per the effective date of the increase in rent.

13.4 The Lessee may offset its claims against claims by Mercedes-Benz AG only if the Lessee's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims of the Lessee from the same contract of lease contract. He can only assert a right of retention if it relates to claims arising from the same contractual relationship.

**14. Taxes**

The Parties will take all measures in accordance with domestic law and the Treaty on the Avoidance of Double Taxation between Lessee's state and the Federal Republic of Germany ('the Treaty') to ensure a reduction of or exemption from taxes that might become payable in connection with these terms of rental.

All taxes or levies of any kind whatsoever in connection with payments made by Lessee and imposed on Mercedes-Benz AG by the German tax authorities will be borne by Mercedes-Benz AG. All taxes or levies of any kind whatsoever in connection with payments made by Lessee and imposed or to be paid in its home state will be borne by Lessee. The foregoing sentence does not apply to tax on income that is imposed or deducted at source in accordance with the Treaty.

So far as Lessee is required to withhold taxes in accordance with the Treaty from the payments under these terms of rental, Lessee will do everything within its power to ensure that the payment to Mercedes-Benz AG is taxed at the reduced rate under the Treaty at the time of payment.

So far as the Treaty requires Lessee to withhold and pay over taxes from payments under these terms of rental, Lessee shall, without culpable delay, provide Mercedes-Benz AG with original tax receipts issued by the tax authority and any other documents that specify Mercedes-Benz AG as taxpayer and show the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate or the basis on which the tax payment is assessed, and the date on which the tax was paid.

If the documents of the tax authority are issued in a language other than German or English, Lessee agrees to have the documents translated into German or English at its own expense at the request of Mercedes-Benz AG and to have the correctness of such translation certified either officially or by a notary.

**15. Assignment**

Lessee may assign or delegate its rights and obligations under this Agreement only with the prior consent of Mercedes-Benz AG in textual form.

**16. Term and Termination**

16.1 The duration of the rental agreement is indefinite, insofar as the rental agreement has not been canceled at the expiration of the minimum rental duration. The minimum rental duration is 42 months, after which the rental agreement is automatically extended by 12 months and can then be canceled with a period of notice of six months before the end of the respective contractual year.

**Attention: If Applications and Data Content (incl. XENTRY Software), which are subject of a separate agreement, in its current 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 (see sec. 2.1), Mercedes-Benz AG may terminate this agreement at any time - even before the expiry of the minimum rental duration - with a notice period of six (6) weeks.**



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General Terms and Conditions for the Rental of XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope (**GTC** - valid from 04/2022)

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- 16.2 The rental agreement can be canceled without notice for good cause. Mercedes-Benz AG in particular can cancel the Agreement without notice if Lessee
- is no longer part of the authorized distribution network of Mercedes-Benz AG, or
  - is in default of paying the rent or a considerable part of the rent for two successive due dates, or is in default of the payment of a part of the rent which amounts to the rent for two months, for a period which exceeds two due dates.
- 16.3 If Mercedes-Benz AG cancels the rental agreement without notice for a good cause, Mercedes-Benz AG has the following rights:
- Claim for the immediate return of all relinquished Systems;
  - Entitlement to the payment of depreciation compensation as per section 17.2.
  - Entitlement to compensation amounting to the agreed rent for the duration of the withholding of the Systems, including the total equipment if Lessee does not return the Systems to Mercedes-Benz AG after the end of this contract. In addition, any customs and handling costs in the event of the late return are to be borne by Lessee.
- 16.4 The Lessee who is entitled to sublease according to section 7.2 must provide information on termination by Mercedes-Benz AG to the Sub-lessee in textual form and in due time.

**17. Return of the Systems after the Agreement Ends**

- 17.1 At the end of the rental agreement, the Systems shall be returned in accordance with the scope stated in the agreement. Lessee shall return the delivered Systems according to the prescribed return process, at the expense of Mercedes-Benz AG. Any cables provided within the scope of the rental agreement are excluded from this regulation. Lessee shall bear the risk associated with the return of the Systems to Mercedes-Benz AG.
- If Systems or hardware components are not returned for reasons Lessee is responsible for, Lessee shall pay for the costs of replacement and any resulting damage according to the applicable legal regulations.
- 17.2 If, at the end of the rental agreement, the Systems are not in a good condition taking into account their age and contractual use, and thereby are of lower value, Lessee has to commission Mercedes-Benz AG with establishing the proper condition and/or settle the reduced value plus VAT, if Lessee caused this as per section 9 due to a disregarding of its due diligence obligations or improper handling.

**18. Place of Performance, Place of Jurisdiction and Governing Law**

The place of performance is Stuttgart, and jurisdiction and venue shall lie 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.