



General Terms and Conditions for the Purchase of XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope, XENTRY Scope, Retail Data Storage+ and XENTRY Diagnosis COM Kit (**GTC** - valid from 02/2025)

**1. Scope**

All goods and services provided by Mercedes-Benz AG in connection with the sale of the diagnosis systems XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope, XENTRY Scope, the data system Retail Data Storage+ and the test adapter XENTRY Diagnosis COM Kit are subject to these terms and conditions.

**2. Further Provisions**

**2.1** All agreements must be documented in textual form. This also applies to collateral agreements, warranties, as well as subsequent contract amendments.

**2.2** Buyer'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, purchase orders, or declarations of acceptance and have not been explicitly rejected.

**3. Formation of Contract**

Buyer shall be bound by its order for a maximum of 14 days. A contract 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 Buyer in textual form without undue delay if it does not intend to accept 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**

**4.1** Buyer is obliged to refrain and desist from all practices that could result in criminal charges against employees of Buyer 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 Buyer and to break off all negotiations with immediate effect.

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

**4.2** Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this Agreement.

AND/OR

Buyer shall also not sell, supply, export, license or transfer, directly or indirectly, in any other way intellectual property rights or trade secrets as well as granting rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret to the Russian Federation or Belarus or for use in the Russian Federation or in Belarus. Buyer is required to prohibit possible sublicensees of such intellectual property rights or trade secret, from using such intellectual property rights, trade secrets or other information in connection with common high priority items as listed in Council Regulation (EU) 833/2014 that are intended for sale, supply, transfer or export, directly or indirectly, to the Russian Federation or for use in the Russian Federation.

**4.3** Buyer shall undertake its best efforts to ensure that the purpose of Clause (4.2) is not frustrated by any third parties further down the commercial chain, including by possible resellers and/or possible sublicensees of such intellectual property rights or trade secret.

**4.4** Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Clause (4.2).

**4.5** Any violation of Clauses (4.2), (4.3) and (4.4) shall constitute a material breach of an essential element of this Agreement, and MBAG shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of any costs, damage or liability incurred by MBAG resulting from the infringement, including the imposition of fines.

**4.6** Buyer shall immediately inform MBAG about any problems in applying Clauses (4.2), (4.3) or (4.4), including any relevant activities by third parties that could frustrate the purpose of Clause (4.2). Buyer shall make available to MBAG information concerning compliance with the obligations under Clauses (4.2), (4.3) and (4.4) within two weeks of the simple request of such information.

**5. Subject Matter of the Agreement**

**5.1** Buyer is purchasing from Mercedes-Benz AG the diagnosis systems XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope, XENTRY Scope, the data system Retail Data Storage+ and the test adapter XENTRY Diagnosis COM Kit (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



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Data Content provided by Mercedes-Benz AG for After-Sales'. **Mercedes-Benz AG hereby explicitly points out to the buyer 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 recommended period of use of the systems of 42 months in accordance with section 11. 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 purchased 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.**

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

## 6. Type and Scope of Performance

6.1 The scope of supply and services is specified in the contractual agreements. These list in detail the Systems and services and also provide product information. 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 Buyer while taking into account the interests of Mercedes-Benz AG.

6.2 **Buyer is aware that the Systems can be used only in connection with the corresponding XENTRY software (particularly XENTRY Diagnosis), for which charges apply. Buyer alone is responsible for obtaining a corresponding right to use the XENTRY software in return for a fee and by means of a separate agreement.**

## 7. Delivery

Delivery dates and periods are binding in individual cases where they have been designated in textual form as binding by Buyer and Mercedes-Benz AG; otherwise, all delivery dates and periods are non-binding.

7.1 If non-compliance with a delivery date or period can be attributed to an unforeseen event that is beyond Mercedes-Benz AG's control, the delivery date or period will be postponed or extended by an appropriate amount of time. In the event of a delayed delivery, Buyer has the right to withdraw from the agreement in question in accordance with the applicable statutory provisions after an appropriate grace period has elapsed to no avail.

7.2 If a delivery by Mercedes-Benz AG is delayed, Buyer may demand liquidated damages for the delay. The liquidated damages will amount to 0.5 percent of the net purchase price (delivery value) for each full calendar week of delay, but subject in total to a maximum of 5 percent of the delivery value of the delayed Systems. Mercedes-Benz AG reserves the right to demonstrate that Buyer's loss was lower than the foregoing liquidated damages or that no loss was incurred at all.

7.3 The rights of Buyer pursuant to clause 12 of these General Terms and Conditions and the applicable statutory rights of Mercedes-Benz AG, particularly in the event of an exclusion of its obligation to perform (for example where such performance and/or subsequent performance is impossible or unreasonable), remain unaffected.

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

7.5 Risk is specified as being transferred ex works (EXW), meaning that the transport costs and other charges will be borne by Buyer. This represents a departure from the provision of section 447 of the German Civil Code (BGB) and the use instead of the INCOTERMS of the International Chamber of Commerce (INCOTERMS 2010) as a basis.

## 8. Reservation of Title

Ownership of the Systems is transferred to Buyer only after full payment of the total purchase price and any other receivables in connection with this Agreement.

8.1 This reservation of title also extends to any substitute deliveries. Buyer cannot acquire ownership of the delivered Systems by integrating them into other equipment or devices. Where Buyer integrates the Equipment into third-party goods, Mercedes-Benz AG will become co-owner of the resulting new products by reference to the proportional value of the third-party goods used. The products thus created are also deemed to be subject to reservation of title by Mercedes-Benz AG.

8.2 Where the Systems are subject to reservation of title, these may be sold, pledged, provided as security, leased, or disposed of or changed in any other way that impairs Mercedes-Benz AG's rights to security only with Mercedes-Benz AG's prior consent in textual form.

8.3 If the reserved-title goods are seized by third parties, Buyer must indicate Mercedes-Benz AG's ownership of said goods and inform Mercedes-Benz AG immediately.

8.4 If Buyer does not properly fulfill its payment obligations, Mercedes-Benz AG is authorized to repossess the reserved-title goods at any time, without this constituting a withdrawal from the Agreement.

## 9. Usage Rights and Penalty

9.1 Buyer 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.



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- 9.2** If Buyer is a foreign Mercedes-Benz Group national sales company or a foreign general distributor for Mercedes-Benz and/or smart, it is entitled and obliged to make the Systems available for rental or purchase to any authorized repairers and independent operators within its contract territory (including fleet owner's workshops with/without facilities for processing warranties and goodwill, and fleet owners). In this connection, Buyer hereby undertakes to form its own corresponding rental or sales agreements for the Systems with the above-mentioned authorized repairers and independent operators within its contract territory.
- 9.3** Buyer 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.
- 9.4** In the event that the Systems fall into third-party hands, irrespective of whether Buyer has passed them on or failed to ensure that third parties are prevented from accessing them, a penalty of €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.

**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). The warranty period for the Systems is 42 months; this does not include connection cables and batteries, which have a warranty period of twelve months. Mercedes-Benz AG undertakes to repair or replace any defective Systems, at its own discretion. Buyer 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 Buyer delays returning said item(s) or does not return it/them at all, Buyer 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 Buyer.
- 10.3** In the event that subsequent performance is unsuccessful, Buyer has pursuant to the applicable statutory provisions the right to demand a reduction in the purchase price, or to withdraw from the agreement. Buyer will grant Mercedes-Benz AG the time and opportunity required to render any subsequent performance as it sees fit. Mercedes-Benz AG will be released from its obligation to render subsequent performance if Buyer refuses to do this. If Buyer refuses the subsequent performance, it will bear sole responsibility for the subsequent use of the System in its defective state and for the results obtained in this way.
- 10.4** The warranty shall not apply if a defect is caused by Buyer 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'.
- 10.5** The provision of the warranty is conditional upon Buyer fulfilling its statutory obligations to inspect goods and report defects (sections [377](#) and [381](#) of the German Commercial Code (HGB)). Should a defect be discovered during the inspection or at a later date, notice of this must be provided to Mercedes-Benz AG in textual form without undue delay. The prompt dispatch of this notification is sufficient for the purposes of meeting this deadline. If Buyer fails to carry out a proper inspection and/or to provide notification of any defects, Mercedes-Benz AG will not be liable for the unreported defect. Regardless of this and in the event of any externally visible damage in transit, Buyer is obliged to provide the delivering carrier with written notification of the damage in transit upon receipt of the items and to present Mercedes-Benz AG with a copy of the complaint within two working days.
- 10.6** If no basis for a warranty claim exists, then the costs of diagnosing and, if applicable, repairing the fault will be borne by Buyer, provided a corresponding order has been placed.

**11. Support, Service and Recommended Period of Use for the Systems**

Support and other services relating to the Systems will be provided only if Buyer 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.

The Systems should be used for a maximum of 42 months. This restriction is necessary to ensure the fault-free diagnostic capability of the Systems. Use of equipment that is no longer approved, particularly in connection with work with safety implications, may result in product liability claims. After the expiration of a maximum of 42 months support free of charge will be terminated by Mercedes-Benz AG.

Mercedes-Benz AG hereby advises Buyer that the Systems may have to be replaced with more modern equipment before the end of the 42-month period because of technical changes as a result of ongoing refinements in vehicle diagnosis technology, IT technology, telematics etc. Buyer shall refer to this accordingly in the rental or sales agreements formed with the above-mentioned authorized repairers and independent operators within its contract territory. Claims of Buyer or the above-mentioned authorized repairers and independent operators within Buyer's contract territory against Mercedes-Benz AG in this regard are excluded.

**12. Liability**

- 12.1** 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



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contract is duly performed and upon which the Buyer 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.

**12.2** 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.

**13. Assignment**

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

**14. Prices/Payment Terms**

**14.1** The purchase price is payable upon receipt of the invoice and has to be paid cashless. The prices listed in the applicable price list apply.

**14.2** 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 Buyer 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.

If an exemption from statutory VAT or other indirect taxes depends on further requirements, Mercedes-Benz AG may charge a respective VAT amount or VAT-deposit amount as a security, which shall be refunded without interests upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

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.

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

**15. Return of the Systems**

At the end of their use, the Systems can be returned to Mercedes-Benz AG. The costs incurred in returning the Systems will be borne by Buyer.

**16. Taxes**

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 Buyer'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.

All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Buyer and imposed on Mercedes-Benz AG by the German tax authorities shall be borne by Mercedes-Benz AG. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by Buyer and imposed or to be paid in Buyer's country shall be borne by the Buyer. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the Tax Treaty.

In case the Buyer is required to withhold taxes in accordance with the domestic law and the Tax Treaty, if any, from payments under this Agreements, the Buyer 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.

In case the Buyer is required to withhold taxes from payments under this Agreement, the Buyer shall provide Mercedes-Benz AG without undue delay with 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 taxpayer, 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 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](mailto:withholdingtax@mercedes-benz.com).



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

**17. 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. 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.