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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter “Open Shell Software”)**

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**1. Scope of Application**

The following Terms and Conditions exclusively apply to all supplies and services by Mercedes-Benz AG (hereinafter “Provider”) related to orders of the **Open Shell Software** on the Mercedes-Benz B2B Connect platform (<https://b2bconnect.mercedes-benz.com> /hereinafter “**Mercedes-Benz B2B Connect**”). The General Terms and Conditions of the buyer (hereinafter the “Customer”) are not incorporated into the agreement, even if they have been attached to invitations to tender, purchase orders or declarations of acceptance and have not been explicitly rejected.

**2. Subject Matter of the Agreement**

The Supplier leases the Open Shell Software to the Customer for the term of this agreement.

**3. Conclusion of the Contract**

- 3.1 For an order to be valid, the Customer must have a valid VAT no. and be an authorized person in accordance with EU Regulations (715/2007, 692/2008, 595/2009, 582/2011 and 64/2012) whose place of business is within the EEA or the United Kingdom.
- 3.2 Authorized persons include independent market participants as well as persons related to them. This can include: independent workshops, manufacturers of repair equipment, publishers of technical information, automobile club employees, breakdown service employees, suppliers of inspection and testing services, employees of facilities for the education and training of car mechanics.
- 3.3 A valid order is an offer by the Customer to conclude a contract with the Supplier. Without a successful credit check and/or if an invalid credit card or an invalid PayPal account is used, the order is technically not completed and will not be sent to the Supplier. The Customer shall be bound to the order for six weeks (commitment period).
- 3.4 The agreement is concluded when the Supplier expressly accepts a valid order in written form or in text form within the commitment period or the authorization key (StartKey) with the access to the Download of the Open Shell Software is provided.

**4. Contractual Service**

- 4.1 The first order of the Open Shell Software comprises an authorization key (StartKey) commonly which allows the access to download the Open Shell-Software and installation on Windows PCs with an update service during the term of the agreement. The term of the agreement is laid down in section 9.
- 4.2 An agreement number, a StartKey and time credits are required to use the Open Shell Software. To use XENTRY Diagnosis Lite, the additional purchase of the hardware (XENTRY Diagnosis COM Kit) with the first order of the XENTRY Diagnosis Lite software from the supplier is required. The purchase of the hardware is subject of a separate agreement and is regulated in the "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".
- 4.3 To use the Open Shell Software, a special hardware-dependent StartKey ordered when placing the order in Mercedes-Benz B2B Connect is required. The hardware ID required for the StartKey order can be retrieved via the Basic-Setup in the tool “ConfigAssist”.
- 4.4 The scope of the supplies and services and quality are each based on the product description in Mercedes-Benz B2B Connect when ordering. This contains a detailed list of the leased Open Shell Software and services and the inextricably linked agreements concerning qualifications and the provision of product information.
- 4.5 Delivery dates and periods are only binding if expressly agreed as binding by the Supplier and the Customer in the individual case: All other delivery dates or periods are non-binding.
- 4.6 Partial deliveries and partial services by the Supplier are permitted, unless this is unreasonable for the Customer.
- 4.7 The Open Shell Software is only provided in an executable format including operating instructions (user documentation or online help) and installation instructions. The operating instructions and installation instructions will be provided electronically.
- 4.8 To the extent the Open Shell Software contains interfaces with software not supplied by the Supplier, § 69 d of the German Copyright Act (Urheberrechtsgesetz) applies. Before decompiling, the Customer must first request the necessary information from the Supplier.



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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter "Open Shell Software")**

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4.9 The Software will be installed and put into operation by the Customer. Customers are entitled to support with the Open Shell Software if they have an ongoing agreement and up-to-date data. Data is up-to-date if the latest update of the Open Shell Software with the most up-to-date Software-Release was no more than 6 months ago.

4.10 When installing the Open Shell Software on your own hardware, support is only provided for the Open Shell Software. The Supplier does not provide any support with the Customer's hardware and technical infrastructure, e.g. networking terminals via WLAN or the Internet connection.

The right to claim support for the hardware "XENTRY Diagnosis COM Kit" is not the subject of this agreement. The support for this is based on the "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".

4.11 The support is limited to responding to the Customer's queries in the usual course of business: In the event of problems or queries relating to the Open Shell Software (product features, operating conditions, connection, time credits, and other organizational and technical issues), please contact sales support at [xentry.customer.support@mercedes-benz.com](mailto:xentry.customer.support@mercedes-benz.com) or technical support at [xentry.diagnosis.support@mercedes-benz.com](mailto:xentry.diagnosis.support@mercedes-benz.com).

**5. Payment**

5.1 The fixed user fee for the Open Shell Software is payable in advance by PayPal or credit card when placing your first order or when renewing an agreement. (Lease)

5.2 The prices are net prices plus the statutory VAT. The prices stated in the order summary apply at the time of the order.

**6. Warranty**

6.1 The Supplier is obliged to keep the leased object in a condition suitable for use as contractually agreed for the duration of the lease.

6.2 Claims on the grounds of defects in the leased object are excluded when the impairment of the leased object's suitability for use as contractually agreed is only minor. Claims on the grounds of defects are also excluded to the extent that the deviation from the contractually agreed quality is due to improper use of the leased object or use of the leased object under operating conditions other than those agreed or in a system environment other than the one agreed. The same applies for deviations due to extraordinary external influences that are not provided for contractually.

6.3 The Supplier's strict liability in accordance with § 536a (1) BGB (Bürgerliches Gesetzbuch [German Civil Code]) for defects that already existed at the time of concluding the agreement is excluded.

6.4 The Customer must immediately give notification of defects in a comprehensible and detailed form, giving all information relevant for the detection and analysis of the defect, in written form or electronic form to the address provided for this purpose. The Customer shall especially state the working steps that led to the occurrence of the defect, its type of appearance and the effects of the defect. Unless otherwise agreed, the Supplier's relevant forms and procedures shall be used.

6.5 Defects are rectified during the Supplier's working hours. The Supplier must be allowed enough time. With the Customer's consent, the Supplier can replace the leased object or individual parts of it in order to rectify defects. The Customer will not refuse to give consent for this unreasonably.

6.6 Termination by the Customer in accordance with § 543 (2) no. 1 BGB on the grounds of failure to grant use as contractually agreed is only permitted if the Supplier has been given ample opportunity for defect rectification and has failed to do so. Failure to rectify defects is only assumed if it is impossible to do so, if the Supplier refuses to do so or is unreasonably slow to do so, there is reasonable doubt in the prospect of success or this is unreasonable for the Customer for other reasons.

6.7 The Customer's rights under a warranty are excluded if the Customer modifies the leased object or has it modified without the Supplier's prior consent, unless the Customer can prove that the modifications have not had any unacceptable effects on the analysis and rectification of the defect for the Supplier. The Customer's rights on the grounds of defects remain unaffected to the extent that the Customer is entitled to make modifications, particularly



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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter “Open Shell Software”)**

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within the scope of its right to rectify defects itself in accordance with § 536a (2) BGB, and these are carried out properly and clearly documented.

6.8 The Customer’s warranty claims on grounds of material defects shall lapse one year from the beginning of the statutory limitation period. Longer periods stipulated by law in the event of willful or grossly negligent breach of obligations on the part of the Supplier, in the event of malicious non-disclosure of a defect as well as in the case of death or personal injury and for claims arising from the German Product Liability Act (Produkthaftungsgesetz), shall remain unaffected. The limitation period laid down in § 548 BGB for compensation claims by the Supplier on the grounds of the modification or deterioration of the leased object or the leased system remains unaffected.

6.9 The Supplier can claim reimbursement of its expenses if

- a. it takes action on the grounds of a notification when a defect does not exist, unless the Customer could not recognize with reasonable effort that a defect did not exist, or
- b. a reported fault is non-reproducible or the Customer cannot prove it to be a defect in any other way, or
- c. additional expenses are incurred as a result of improper fulfillment of the Customer’s obligations.

6.10 The Supplier is only liable for infringements of third-party rights as a result of its services if its services are used according to contract and, in particular, in the contractually agreed or otherwise unchanged within the intended operating environment.

The Supplier is only liable for infringements of third-party rights within the European Union and the European Economic Area as well as in the place of contractual use of the services.

6.11 If a third party claims an infringement of its rights against the Customer due to services provided by the Supplier the Customer shall inform the Supplier immediately. The Supplier and, if applicable, its own suppliers are entitled, but not obliged, to ward off the claims at their own expense, to the extent permitted by law.

The Customer is not entitled to admit third-party claims before having given the Supplier adequate opportunity to review and ward off third-party claims in any other manner.

6.12 If a service provided by the Supplier infringes third-party rights, the Supplier shall, at its own discretion and at its own expense,

- a. grant the Customer the right to use the service or
- b. design the service free from violation of rights or
- c. withdraw the service and reimburse the remuneration paid by the Customer for it (minus reasonable compensation for use) if the Supplier cannot attain any other remedy with reasonable effort.

The Customer's interests will reasonably be taken account of.

Claims by the Customer on the grounds of legal defects will expire in accordance with section 6.8. Section 7 applies additionally for claims for damages and the reimbursement of expenses by the Customer. Section 6.3 applies accordingly for other expenses incurred by the Supplier.

## **7. Liability**

7.1 If, due to the statutory provisions, the Provider has to pay for damage caused by slight negligence, the Provider shall have limited liability: Liability only exists in the event of a breach of essential contractual obligations, such as those that the contract intends to impose on the provider according to its content and purpose or the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer regularly relies and may rely. This liability is limited to the typical damage foreseeable at the time of conclusion of the contract. Excluded is the personal liability of the legal representatives, vicarious agents and employees of the provider for the damages caused by them by slight negligence.

7.2 The aforementioned limitation of liability and the aforementioned exclusion of liability do not apply to damages based on a grossly negligent or intentional breach of obligations of the provider, his legal representative or his vicarious agent as well as in the event of injury to life, body and health. In these cases, the provider is liable in accordance with the statutory provisions.



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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter "Open Shell Software")**

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- 7.3 Irrespective of any fault on the part of the Provider, any liability of the Provider in the event of fraudulent concealment of a defect, from the assumption of a guarantee or a procurement risk and in accordant to the Product Liability Act shall remain unaffected.
- 7.4 In the event of system failures of the Open Shell Software, the provider 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 the provider. Clauses 7.1, 7.2 and 7.3 shall apply mutatis mutandis.
- 7.5 If it is necessary to restore data or components (such as hardware or software), the Supplier is only liable for the expenses necessary for restoration when the Customer has properly backed up data and taken precautions against the risk of loss of data. In the event of slight negligence on the Supplier's part, this liability only occurs if, prior to the incident, the Customer has backed up data and taken precautions against the risk of loss in a way appropriate for the specific type of data and components. This does not apply if it has been agreed that the Supplier will provide this service.
- 7.6 Sections 7.1 to 7.3 and 7.5 apply accordingly for claims for the reimbursement of expenses and other liability claims by the Customer against the Supplier.
- 7.7 The Supplier accepts no liability for injuries, damages or losses resulting from incorrect use or incorrect application of the information in the products or the products themselves.

**8. Data protection**

- 8.1 Sections 8 and 9 of these GTC contain information on the processing of personal data of the Customer or its employees (individually or collectively also the "Users"), which are collected and processed within the scope of these GTC.
- 8.2 Corporate and personal data of the user shall be treated as confidential in accordance with the applicable data protection laws, except that the customer has the right to forward the user's billing data to the supplier. Upon request, the user will receive information about the data stored with the customer and with the supplier, and may correct, delete or block this information, if necessary.  
Further information on how personal data of the user is processed hereunder, will be made available separately.
- 8.3 The supplier reserves the right to contact the 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 the supplier as well as its own national sales companies, general agents or comparable partners by e-mail, telephone, fax or comparable electronic means of communication. Contact can be established in its own 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 the supplier (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.
- 8.4 In connection with XENTRY Services the supplier may prepare statistical reports on the usage, 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. The supplier will use such statistical reports in order to optimize and continually improve the XENTRY Services and to help evaluate improvement proposals and product observations of the markets.

**9. Data transmission**

- 9.1 In connection with the use of XENTRY Diagnosis Software (e.g. on XENTRY Hardware or on user's own hardware), the technical data, which is recorded in log files during the diagnosis meetings and other data of XENTRY Services, will be transmitted to the supplier and stored. The user shall make necessary arrangements with the end customers as well as inform the end customers sufficiently according to the agreed upon processes to facilitate the data transmissions to the supplier as described in these GTC. The customer shall inform the supplier if under local law outside of Germany a separate consent of the end customer is necessary for the data transmissions and will coordinate with the supplier in meeting any necessary measures to facilitate the respective transmission to and use of the data by the supplier.
- 9.2 Data collected by XENTRY Diagnosis and 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



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## General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter "Open Shell Software")

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

- 9.3 The repair garage-related data about the registered user and the application and data volumes that were approved for use are transmitted to the supplier and stored via the user reporting. This is carried out without creating any inferences regarding actual usage. The data thereby complied serve to generate and verify a proper billing settlement and are used for statistical purposes.

### 10. Rights

- 10.1 Unless otherwise agreed, the Supplier grants the Customer a simple, non-exclusive and non-transferable right to use the Open Shell Software during the lease for its own operating purposes and for the intended use as contractually agreed.
- 10.2 To use the Open Shell Software extra time credits must be purchased. These time credits can be purchased in the form of hourly, daily, monthly or annual units.
- 10.3 Unless authorized by the Supplier, it is prohibited to produce copies of the Open Shell Software. This does not include producing a back-up copy. The Customer may only produce a back-up copy if this is necessary to ensure future use. The editing and revising of the information by the Customer or third parties commissioned by it is prohibited. This regulation also applies to the publication in another name.
- 10.4 The Customer is obliged to use the Open Shell Software solely internally for the purpose of looking after its customers' vehicles, that are physically located either at user's workshop location or at user's other location equipped with user's hardware and to not share it or make it available to third parties, even in excerpts. To the extent permitted by law, the Customer shall also impose these obligations on its staff. For avoidance of doubt, customer shall not use or provide usage of the Open Shell Software via any remote, out-of-workshop access to any other users or customers. Mercedes-Benz vehicles fitted with remote diagnosis by the manufacturer are not affected by the provision contained in preceding sentence, if the manufacturer's remote process is applied.
- 10.5 The Open Shell software may only be used within the European Union and EFTA countries. Any exceptions to this require a separate contractual agreement.
- 10.6 In connection with the use of the Open Shell Software with increased security requirements, the user undertakes to apply the prescribed measures to increase the security of the Open Shell Software. These include measures such as a mandatory identification process as a basis for specific access rights and multi-factor authentication during the login process. Further appropriate safeguarding measures may be implemented at any time.
- 10.7 Login data for the use of the Open Shell Software (personalized identity (User ID) and passwords) provided by provider shall only be used by authorized users and their staff according to section 3.2. 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 section 3.2. The customer is obligated to use Open Shell Software officially provided by the provider exclusively at the customer's own operation for the purpose of servicing customer vehicles and not disclosing them or making them accessible to third parties knowingly or unknowingly.

The disclosure of login data is considered abuse. The use of login data in Open Shell Software which have not been provided by the provider is prohibited (e.g. illegally purchased software).

The user shall maintain confidentiality of personal login data and prevent misuse. If authorized users or their staff become aware of login data misuse, the provider must be informed immediately. The provider is entitled to immediate blocking of login data if a misuse has occurred.

- 10.8 Data storage devices, documentation and electronic copies that are no longer needed must be properly destroyed. Measures must be put in place to ensure that installations cannot be accessed by unauthorized persons.
- 10.9 Components of the Open Shell Software may include free and open source software (hereinafter collectively referred to as "FOSS") components. Information regarding the specific FOSS components - in particular, information that must be disclosed as part of the component usage - is integrated into the Open Shell Software or otherwise transmitted with



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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter "Open Shell Software")**

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the Open Shell Software . The user of the Open Shell Software is aware that FOSS licenses can have an effect between the rights holders of the FOSS components and the user of the component, and that certain actions in connection with a FOSS component require the user's consent to the applicable FOSS licenses.

The customer is aware that software with FOSS components is not free of third party rights.

The supplier does not knowingly or implicitly grant any rights or licenses to patents with respect to FOSS unless the supplier is required to do so under the terms of a FOSS license.

To the extent that a clause of these GTC conflicts with a FOSS license of a FOSS component incorporated into the Open Shell Software, the FOSS license will prevail with respect to the FOSS component.

- 10.10 In the event that Open Shell Software falls into the hands of third parties, whether this is because the Customer has disclosed them without authorization or has failed to secure them properly from access to third parties, the Customer shall owe an appropriate contractual penalty to be set as the Supplier sees fit, whereby in the event of disputes the competent court may review whether this penalty is appropriate. The minimum amount is EUR 25,000.00 per product ordered. This does not affect the right to enforce damages claims, although such claims will then be offset against the penalty.
- 10.11 The Supplier is entitled to take appropriate technical measures to establish protection against non-conforming contractual use. The use of the supplies and services as contractually agreed may not be significantly affected by this.
- 10.12 The Supplier can revoke the Customer's right of use and/or terminate the agreement if the Customer significantly transgresses its rights of use or breaches regulations on protection against unauthorized use. The Supplier must in principle grant the Customer a reasonable grace period in which to remedy the situation.
- 10.13 Revocation of the right of use alone does not entail termination of the agreement at the same time. Following revocation, the Customer must give the Supplier express written confirmation that it has ceased use.
- 10.14 The Supplier's entitlement to remuneration for use exceeding the agreed use remains unaffected.
- 10.15 The Customer is entitled to have its right of use restored after it has proved that it has ceased non-conforming use and will refrain from non-conforming use in the future.

**11. Contractual Term**

- 11.1 The term of the agreement is 12 months from conclusion.
- 11.2 The term of the agreement can be extended by 12 months following expiry of the agreement by paying an extra fixed user fee in Mercedes-Benz B2B Connect if the technical requirements are met, the agreement has not been terminated in accordance with section 11.3 and the Open Shell Software is still on offer generally. However, a contract extension regarding the use of XENTRY Diagnosis Lite is not possible if the XENTRY Diagnosis COM Kit is no longer supported by the supplier.
- 11.3 The Supplier can terminate the agreement without notice for good cause. In particular, the Supplier can terminate the agreement without notice if the Customer
- a. reproduces, produces or has produced the Open Shell-Software in breach of agreement,
  - b. discloses the Open Shell software to third parties without authorization, uses provided login data in the Open Shell Software not officially provided by the provider (e.g. illegally purchased software)
  - c. shares the Open Shell Software with third parties,
  - d. no longer qualifies as an authorized person in accordance with section 3.2.

**12. Taxes**

- 12.1 Payments made by the Customer could be subject to withholding tax which should be paid by the Customer to the local tax authorities. Therefore, we recommend the Customer for tax advice.
- 12.2 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 resident state of the Customer ("**the Tax Treaty**") to



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**General Terms and Conditions (GTC) for the Use of XENTRY Pass Thru EU and XENTRY Diagnosis Lite (hereinafter “Open Shell Software”)**

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ensure a reduction of or exemption from, as the case may be, taxes which might become payable in connection with this agreement.

- 12.3 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Customer and imposed on the Supplier by the German tax authorities shall be borne by the Supplier. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Customer and imposed or to be paid in a resident state of the Customer shall be borne by the Customer. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the Tax Treaty.
- 12.4 In case the Customer is required to withhold taxes in accordance with the domestic law and the Tax Treaty, if any, from payments under this agreement, the Customer shall exercise its best efforts to attain that the payment to the Supplier will be taxed at any reduced rate under the Tax Treaty or under domestic law at the time of payment.
- 12.5 In case the Customer is required to withhold taxes from payments under this agreement, the Customer shall provide the Supplier without undue delay with the original tax certificate, copy of the tax assessment and any other documents that evidence calculation and payment of the tax. These documents shall specify the Supplier as tax payer, the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate or the amount on which such rate is based, and the date of payment of the tax.
- 12.6 If the documents of the tax authority are issued in a language other than German or English, the Customer shall have the documents translated into German or English at its own expense at the request of the Supplier and shall have the correctness of such translation certified either officially or by a notary public.

**13. Compliance with Applicable Law**

The Customer 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 Customer or other third parties. Where there have been such acts or omissions, the Supplier will be entitled to rescind or terminate all legally consequential transactions with the Customer and to break off any and all dealings and negotiations. Notwithstanding the foregoing, the Customer will be obligated to comply with all statutes and regulations impacting him and the business relationship with the Supplier.

**14. Miscellaneous**

- 14.1 The Customer is responsible for observing the import and export regulations applicable to the supplies or services. In the case of border-crossing supplies or services, the Customer shall pay the duties, fees and other levies due. The Customer shall handle legal or administrative proceedings related to border-crossing supplies or services, unless otherwise expressly agreed.
- 14.2 The Customer cannot transfer rights and obligations arising from or in connection with the agreement or the conclusion thereof to third parties without the Supplier's consent.
- 14.3 The Customer may offset its claims against claims by the Supplier only if the Customer's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims of the Customer from the same lease contract. He can only assert a right of retention if it relates to claims arising from the same contractual relationship.
- 14.4 The Customer will conclude any agreements that arise in terms of data protection law for the handling of personal data, with the Supplier.
- 14.5 The Provider is entitled to transfer this contract or any of its rights or obligations or may delegate its performance to any group company with its place of business in Germany, in particular, if this company is to operate this business unit in the framework of the implementation of a divisional structure of the Mercedes-Benz Group AG in the future.
- 14.6 The exclusive place of jurisdiction shall be Stuttgart (Mitte).
- 14.7 The laws of the Federal Republic of Germany shall apply. The application of private international law and the UN Sales Convention is excluded.