

# DAIMLER TRUCK

## General Purchasing Terms and Conditions (Standard 5 August 2024)

### GENERAL PURCHASING TERMS AND CONDITIONS

These General Purchasing Terms and Conditions ('T&Cs') shall exclusively apply to any Purchase Order and any accompanying Special Conditions (including any Schedules and/or Annexures) agreed between the Daimler Truck Entity noted on the Purchase Order, and the Supplier entered into during the currency of these T&Cs.

In these T&Cs:

#### 1. DEFINITIONS:

**"Affiliate"** means any director, officer, employee, agent, Supplier, sub-supplier, consultant or adviser or Related Entity of a Party.

**"Agreement"** means these T&Cs and all accompanying POs and Special Conditions agreed between the Daimler Truck Entity and the Supplier to which these T&Cs apply.

**"Business Day"** means a day on which all banks are open for business in Melbourne that is not a Saturday, Sunday or a gazetted public holiday in the State of Victoria, Australia.

**"Business Partner Standards"** means the terms and conditions located at

<https://www.daimlertruck.com/dokumente/unternehmen/compliance/daimler-truck-business-partner-standards-april-2022.pdf> and the terms and conditions listed in the Article 36 (DTST 36/12) of the current version of Special Terms (and its Annex 1) or a hardcopy of which can be obtained by contacting Daimler Truck Entity via e-mail at [dtbaup\\_procurement@daimlertruck.com](mailto:dtbaup_procurement@daimlertruck.com). The standards represent requirements for all DT AG and Daimler Truck Entity's suppliers regarding human rights, labour standards, business ethics, environmental protection and safety.

**"Commencement Date"** means the date listed on the PO when the Supplier commences providing the Goods or Services.

**"Confidential Information"** means information that is provided from one party to the other or otherwise obtained by the other party, whether before or after acceptance of the Agreement, and includes:

- (a) the terms of a PO and these T&Cs;
- (b) all business, technical, operational or financial information relating to the business of either party or any of their Related Entities, including but not limited to all documents, records, reports and forecasts which relate to the party or any of their Related Entities or business;
- (c) all know-how or trade secrets of a party or their Related Entities;
- (d) a party or any of their Related Entities' Intellectual Property, including any Developed IPR;
- (e) details of a party's customers or suppliers or of any of its Related Entities;
- (f) any information created under or arising out of the provision of Services under this Agreement; and
- (g) all other information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to a party or any of their Related Entities.

It does not include information which:

- (a) is lawfully obtained by the other party from a third party and is not subject to a pre-existing obligation of confidentiality;
- (b) is in or becomes part of the public domain, other than through a breach of this Agreement;
- (c) was known to the other party at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
- (d) the other party can prove, by contemporaneous written documentation, was independently acquired or developed without

breaching any of the obligations set out in this Agreement.

**"Daimler Truck Entity"** means either of DTAuP or DTFSAu, whichever entity or entities are referred to as applicable on the Purchase Order.

**"Daimler Truck Entity Group"** means Daimler Truck Entity and its Related Entities.

**"Daimler Truck Group Company"** means any entity ultimately owned or held by DT AG or in which DT AG has a controlling interest.

**"Daimler Information Security Framework"** means information security documents available from the Daimler Truck Entity upon request.

**"Data Migration"** means selecting, preparing, extracting and transforming data and transferring it from one computer system or IT environment to another.

**"Date of Delivery"** means the date of delivery for the supply of the goods and/or services by the Supplier to the Daimler Truck Entity specified on the PO.

**"Developed IPR"** means all IPR discovered, developed or which has otherwise come into existence as a result of, for the purposes of, or in connection with supply of goods and/or services by the Supplier to Daimler Truck Entity pursuant to a PO and these T&Cs, including any improvements made to Daimler Truck Entity's IPR.

**"DTAuP"** means Daimler Truck Australia Pacific Pty Ltd ACN 618 413 282.

**"DT AG"** means Daimler Truck Holding AG, Daimler Truck Entity's ultimate parent company based in Germany.

**"DTFSAu"** means Daimler Truck Financial Services Australia Pty Ltd ACN 651 056 825.

**"Goods"** means the goods or product to be provided to Daimler Truck Entity by the Supplier pursuant to this Agreement that as detailed in the PO and/or Special Conditions (if any).

**"Government Entity"** means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organisation.

**"Government Official"** means any officeholder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office.

**"GST"** means goods and services tax imposed under the GST Act.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Insolvency Event"** means in respect of a Party, the happening of one or more of the following events:

If the party is an individual:

- (a) a petition or order is filed to sequester the party's estate;
- (b) the party enters into a Part IX or a Part X agreement under the *Bankruptcy Act 1966* (Cth); or
- (c) the party is made bankrupt; If

the party is a corporation/entity:

- (d) the party is placed under external administration with the express exception of the following:
  - (i) the party is placed under administration under Part 5.3A of the *Corporations Act 2001* (Cth);
  - (ii) when a managing controller has been appointed over all or substantially all of the party's property under Part 5.2 of the



*Corporations Act 2001* (Cth); or

- (iii) where the party makes an announcement, an application or undertake a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) for the purpose of avoiding insolvent liquidation; or
- (e) the party becomes deregistered.

“**IPR**” means all present and future proprietary, license or personal rights, title and interest arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not and whether in writing and recorded in any form, including but not limited to: Confidential Information; copyright; design, patent, trade mark, semiconductor or circuit layout rights; know how; inventions and ideas; methods, processes, procedures and systems; trade marks; brand names, business names and domain names, applications for any of the foregoing and any improvements, enhancements or modifications to any of the foregoing.

“**Modern Slavery**” has the meaning given under the *Modern Slavery Act 2018* (Cth).

“**Monetising**” means to use something for commercial or business purposes including but not limited to for any purpose which directly or indirectly generates revenue or income or otherwise transforms something into any form of asset.

“**Moral Rights**” has the meaning under the *Copyright Act 1968* (Cth).

“**National Parts Distribution Centre**” means the Corner of Boundary & Fitzgerald Roads, Laverton North, VIC 3026.

“**Nominated Representative**” means, in respect of each party, the person whose details are set out in the Special Conditions (if any).

“**Personal Information**” means any vehicle identification number (VIN) or information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion and as defined in the Privacy Act.

“**PO**” means the Purchaser Order which may be attached or on the front of these T&Cs (as the case may be), or any other purchase orders submitted by the Daimler Truck Entity in accordance with these T&Cs.

“**Privacy Act**” means the *Privacy Act 1988* (Cth).

“**Privacy Law**” means the Privacy Act and any other law that applies to the Supplier that relates to commercial communications with individuals (including but not limited to electronic communications), privacy or to the collection, use, disclosure or handling of information about individuals (including a law of a State or Territory relating to privacy) and any code of practice by which the Supplier is bound.

“**Safety Legislation**” means any:

- (a) legislation applicable to work health and safety, environmental protection and electricity safety;
- (b) regulations made under that legislation; and
- (c) directions or notices issued by any relevant authority under that legislation.

“**Safety Requirements**” means any written or oral direction, instruction, request or requirement of Daimler Truck Entity relevant to Daimler Truck Entity’s or the Supplier’s compliance with the Safety Legislation.

“**Services**” means the services to be provided to Daimler Truck Entity by the Supplier pursuant to this Agreement as detailed in the PO and/or Special Conditions (if any).

“**Special Conditions**” means the special conditions (if any) specified at Annexure A to these T&Cs.

“**Special Terms**” means the terms and conditions found here:

<https://docmaster.supplier.daimlertruck.com/DMPublic/en/html/ALD12000053.2021-12-01..multi.html>, and the annexure found here:

<https://docmaster.supplier.daimlertruck.com/DMPublic/en/html/ALD>

[12000186.2022-12-01..1\\_multi.html](https://docmaster.supplier.daimlertruck.com/DMPublic/en/html/ALD12000186.2022-12-01..1_multi.html)

“**Supplier**” means the party described as “Vendor” on the PO.

“**Related Entity**” has the meaning given to it in the *Corporations Act 2001* (Cth).

## 2. INTERPRETATION:

(a) References to “\$” or to “dollars” are to Australian dollars.

(b) References to legislation include any statutory amendments, modifications or re-enactments, and any subordinate legislation or regulations issued under that legislation or legislative provision.

(c) The PO prevails over the T&Cs to the extent of any inconsistency.

(d) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

(e) A provision of the PO or these T&Cs must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the PO or these T&Cs or the inclusion of the provision in the PO or these T&Cs.

(f) If a party consists of more than 1 person, the PO and these T&Cs binds each of them separately and any 2 or more of them jointly. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly. A party which is a trustee is bound both personally and in its capacity as trustee.

(g) The agreement between Daimler Truck Entity and the Supplier comprises the PO and these T&Cs, including any schedules or annexures to them.

## 3. NO EXCLUSIVITY OR PURCHASE COMMITMENT:

Nothing in the PO or these T&Cs creates an exclusive relationship between the parties in relation to the provision of the Goods and/or Services. Nothing in the PO or these T&Cs restricts Daimler Truck Entity’s right to contract with other persons for the supply or performance of goods and/or services similar to those provided in the PO. Further, the Supplier acknowledges that Daimler Truck Entity has not given, and will not give, any representation, promise, guarantee or assurance of any kind as to the volume of Goods and/or Services that Daimler Truck Entity may order from the Supplier pursuant to the PO or these T&Cs.

## 4. TERM:

### (a) Initial Period

This Agreement commences on the Commencement Date and continues for the Initial Period unless otherwise agreed in writing by the Parties, or unless terminated early in accordance with these T&Cs.

(i) If any option to extend beyond the Initial Period is contained in the PO or Special Conditions, Daimler Truck Entity may extend the term of this Agreement for the option period on the same terms and conditions (save for this sub-clause) as this Agreement.

(ii) If Daimler Truck Entity in its sole and unfettered discretion wishes to exercise the option to extend, Daimler Truck Entity will notify the Contractor in writing at least 30 days prior to expiration of the Initial Period.

### (b) Agreement to extend

The Parties may agree to extend the term of this Agreement. Any extension must be agreed by the parties in writing not less than 30 days before the expiry of the then Initial Term or expiry of any option period provided.

### (c) Holding over

(i) If Daimler Truck Entity elects not to exercise the option or the Parties elect not to extend the term of the Agreement and the term of this Agreement ends, any dealings between the Parties will continue in force and effect on a day to day basis in accordance with the terms and conditions of this Agreement.

(ii) Either Party may terminate this Agreement during the holding over period at any time by 30 days' written notice to the other Party or in accordance with the Termination provisions of this Agreement.

#### 5. PROVISION OF GOODS AND/OR SERVICES:

(a) The PO is subject to acceptance by the Supplier and may be varied by Daimler Truck Entity at any time prior to delivery, subject to written approval by the Supplier. By accepting the PO, the Supplier agrees to be bound by these T&Cs and provide the Goods and/or Services specified in the PO in accordance with these T&Cs. Supply of any Goods and/or Services under the PO will be deemed acceptance of the PO and these T&Cs.

(b) Further, at all times during the term of this Agreement, the Supplier must: hold all authorisations, permits and licences required under any law to perform the Services or to provide the Goods; comply with the requirements of all laws of any kind applying to the performance of the Services or supply of the Goods; comply with any of the Special Terms, to the extent that they apply to the Goods or Services; and comply with Daimler Truck Entity's standards, operating principles, policies and procedures notified and provided to the Supplier, including Daimler Truck Entity's occupational, health and safety policies, equal employment opportunity policies and environmental policies in effect from time to time which are consistent with this Agreement.

#### 6. PRICE:

(a) The price specified in the PO will (unless expressed in writing to the contrary in the PO) will be fixed and will include the costs of any delivery fees, duty, freight, handling, insurance, packaging, stamp duty, any taxes and any other expense relating to the goods or services.

(b) The Supplier will offer other Daimler Truck Group Companies the same prices for the same Goods and/or Services specified in the PO. If another Daimler Truck Group Company elects to purchase Goods or Services at the same prices, that Daimler Truck Group Company will issue the Supplier with a separate PO. The PO will be subject to acceptance by the Supplier on the same terms as clause 5(a) of this PO.

#### 7. TERMS OF PAYMENT:

(a) Subject to clause 12 (Acceptance and Rejection) and sub-clause 7(b)-(f) below, the Supplier must only invoice Daimler Truck Entity on or after the delivery of the Goods to Daimler Truck Entity or completion of the Services. Provided that the Goods and/or Services have been accepted by Daimler Truck Entity, Daimler Truck Entity will pay for Goods and/or Services specified in the PO 30 days from the receipt of a valid tax invoice which complies in all respects with the GST Act being provided by the Supplier to Daimler Truck Entity.

(b) The Daimler Truck Entity may, in its absolute discretion, agree to make full or partial payment to the Supplier prior to delivery of the Goods or completion of the Services (**Advanced Payment**) if requested by the Supplier.

(c) For the purposes of 7(b) above:

(i) the Supplier shall do or cause to be done anything reasonably requested by the Daimler Truck Entity to enable the Daimler Truck Entity to determine if its agreeable to the Advanced Payment. Such things shall include, but not be limited to, providing to the Daimler Truck Entity with all and any consents necessary to undertake any searches or checks which the Daimler Truck Entity considers necessary and providing all and any documentation and information (which shall include, but not be limited to, verified financial documentation) to the Daimler Truck Entity in a timely and efficient manner;

(ii) the Daimler Truck Entity may impose any conditions it deems necessary in providing its consent to the Advanced Payment which may include, but not be limited to, the Supplier to enter into ancillary documents or providing security to the Daimler Truck Entity.

(d) If the Daimler Truck Entity is agreeable to the Advanced Payment, it shall confirm its acceptance in writing and detail any conditions which are applicable to the Advanced Payment.

(e) If the Daimler Truck Entity is agreeable to the Advanced Payment, it shall pay the Advanced Payment Amount as specified in the PO 30 days from the receipt of a valid tax invoice which complies in all respects with the GST Act being provided by the Supplier to Daimler Truck Entity.

(f) Any Advanced Payment shall remain the property of the Daimler Truck Entity and shall be held by the Supplier in a holding account until such time as the Goods and/or Services have been supplied and accepted by the Daimler Truck Entity in accordance with clause 12. For the avoidance of doubt, until such time as the Goods and/or Services have been supplied and accepted by the Daimler Truck Entity in accordance with clause 12:

(i) payment for the Goods and/or Services (including partial payment) shall not be due and payable by the Daimler Truck Entity to the Supplier;

(ii) the Advanced Payment shall not be applied as payment to the Supplier for the Goods and/or Services; and

(iii) the Advanced Payment shall at all times be immediately due and payable by the Supplier to the Daimler Truck Entity upon demand.

(g) The Supplier must include the following details in the valid tax invoice: Amount of the invoice, GST amount of the invoice, Service and or Goods description, length of service (hours) and/ or number of Goods as applicable, PO number, Supplier's name and ABN and account number.

(h) If Daimler Truck Entity, acting reasonably and *bona fide*, disputes the whole, or part of the invoiced amount or charged amount, the Daimler Truck Entity:

(i) may withhold payment of any amount that is in dispute;

(ii) must pay any undisputed amount stated in the tax invoice; and

(iii) must notify the Supplier of the dispute. If the parties cannot resolve the dispute within seven calendar days or another period agreed in writing between the parties, clause 29 (Dispute Resolution) will apply.

(i) Daimler Truck Entity may set off any amount it owes the Supplier under a PO and these T&Cs against any amount the Supplier owes Daimler Truck Entity, on any account.

**8. GOODS AND SERVICES TAX ("GST"):** In this clause the expressions consideration, GST, input tax credit, supply, tax invoice, recipient and taxable supply have the meanings given to them in the GST Act. Unless GST is expressly excluded, the consideration payable for any supply made under a PO or these T&Cs, includes GST (if any is payable). Each party agrees to do all things that are necessary to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to GST paid or payable in respect of any supply made under or in connection with these T&Cs or any PO. A party is not obliged to make payment if the other party does not provide a valid tax invoice. If a payment to a party under this PO is a payment by way of indemnity or reimbursement and is calculated by reference to the GST inclusive amount of a cost, expense or loss incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that cost, expense or loss before any adjustment is made on account of GST.

**9. SUPPLY OF GOODS (INCLUDING CUSTOM BRANDED GOODS):** If the PO or Special Conditions requires the Supplier to provide Custom Branded Goods to Daimler Truck Entity, this Clause 9 shall apply.

In this Clause 9:

"**Custom Brand**" means any brand owned or distributed by Daimler Truck Entity;

"**Direct Ship**" means an Order to send the specified Goods directly to a delivery address other than the National Parts Distribution Centre;

"**Emergency Order**" means an Order specified as an Emergency Order;

"**Individual Contract**" means the contract for the supply of the Goods which is formed when an Order is accepted by the Supplier;

"**Order**" means an order for the supply of Goods by way of a Purchase Order;

"**Stock Order**" means an Order specified as a Stock Order;

“**Warranty Period**” means the period of three years commencing on the date of supply of the Goods to an end user of the relevant Goods, except to the extent that an alternate period is set out in the Special Conditions; and

“**VOR Order**” means an Order specified as a “vehicle off road” order.

#### **Supply of Goods:**

(a) If Daimler Truck Entity wishes to purchase Goods from the Supplier, Daimler Truck Entity will submit to the Supplier an Order for the Goods.

(b) An Order may be made by Daimler Truck Entity sending a PO to the Supplier either in the same manner as if the Order was a Notice.

(c) Goods are deemed to have been ordered, and an Individual Contract formed, when the relevant Order is accepted by the Supplier. The Order will be deemed to be accepted by the Supplier if the related Goods outlined in the Order are provided by the Supplier to Daimler Truck Entity.

**10. DELIVERY OF GOODS:** The Supplier must deliver the Goods ordered by Daimler Truck Entity strictly in accordance with the Order and within the time specified in an Order for Delivery, or if no time is specified, within a reasonable time, to the delivery address as specified in the Order or any such address that Daimler Truck Entity may nominate in writing prior to delivery, along with documentation quoting Daimler Truck Entity’s Order numbers and any relevant part numbers (if any) quoted in the Order. Unless otherwise specified on the PO, deliveries of Goods are to be made to 24 McDonalds Lane, Mulgrave, VIC, 3170 (Receiving Goods), between 8.00am and 3.00pm Monday to Friday (excluding public holidays in Victoria) in accordance with any delivery instructions on the PO. In supplying the Goods and/or Services, the Supplier agrees not to interfere with Daimler Truck Entity’s activities at the delivery address and will ensure that it, its agents, employees and contractors are aware of and comply with all applicable laws, site safety policies (including any applicable Safety Legislation and Safety Requirements) and any reasonable direction given by Daimler Truck Entity in order to comply with any applicable law or policy.

**11. TIME:** Time is of the essence for the provision by the Supplier of Goods and/or Services to Daimler Truck Entity. The parties agree that Daimler Truck Entity is entitled in its absolute discretion to refuse to accept any Goods or Services that are delivered or tendered for delivery after the “Date of Delivery” specified on the Order. The Supplier must immediately notify Daimler Truck Entity in writing if it believes at any time that it is unlikely to be able to deliver any part of the Goods or Services by the date specified for delivery. The notice must contain detailed reasons for the anticipated delay and the Supplier’s best estimate of the expected delay. Notification will not relieve the Supplier from any of its obligations under this Agreement.

#### **12. ACCEPTANCE AND REJECTION:**

(a) Orders, acceptance of Orders, any alteration or amendment of Orders may be made by Daimler Truck Entity in writing prior to delivery, subject to written approval of the Supplier.

(b) Acts of nature, terrorism, natural disaster, nuclear incident, loss of utilities, industrial action including without limitation, strike, shutdown and interruption of business, release Daimler Truck Entity from its contractual obligations of accepting the goods or services for the duration of the disruption and to the extent of its effect. Both Daimler Truck Entity and the Supplier must agree on a suitable alternative Date of Delivery. If possible, Daimler Truck Entity will notify the Supplier within a reasonable time of a suitable alternative Date of Delivery.

(c) **Goods:** Goods delivered by the Supplier are not accepted by Daimler Truck Entity until the Goods have been inspected or verified by Daimler Truck Entity.

The signing of delivery dockets or similar documents by Daimler Truck Entity’s employees or agents does not constitute acceptance of Goods specified in such docket or document. Without limiting Daimler Truck Entity’s rights under these T&Cs, Daimler Truck Entity may reject all or any Goods or batches of Goods that are found to be defective after inspection

or that do not conform to the requirements of the PO or these T&Cs. Daimler Truck Entity will promptly notify the Supplier of any defect or non-conformity and will allow the Supplier to collect the Goods at the Supplier’s cost. Daimler Truck Entity may, at its election, cancel the PO, or may require the Supplier to either remedy, replace or resupply the Goods at the Supplier’s cost. Notwithstanding clause 7 (Terms of Payment), Daimler Truck Entity will not be required to pay for any Goods supplied to Daimler Truck Entity which are rejected under this clause 12 or if an Advanced Payment has been made, the Daimler Truck Entity shall be entitled to an immediate refund of all monies which were paid to the Supplier as an Advanced Payment which shall on demand, become immediately due and owing.

(d) **Services:** Services delivered by the Supplier are not accepted by Daimler Truck Entity until the delivery of the Services has been verified by Daimler Truck Entity. Without limiting Daimler Truck Entity’s rights under these T&Cs, Daimler Truck Entity may reject the Service, if the Services are not provided in accordance with the PO and these T&Cs and the Supplier must, at Daimler Truck Entity’s election, remedy, replace or re-perform the Services until the Services are accepted, or Daimler Truck Entity otherwise elects to cancel the PO. Notwithstanding clause 7 (Terms of Payment), Daimler Truck Entity is not required to pay to the Supplier any amount in respect of any Services provided which are rejected under this clause 12 or if an Advanced Payment has been made, the Daimler Truck Entity shall be entitled to an immediate refund of all monies which were paid to the Supplier as an Advanced Payment which shall, on demand, become immediately due and owing.

#### **13. TITLE AND RISK:**

(a) Title to and risk in the Goods passes to Daimler Truck Entity on delivery of the Goods to the Delivery Address.

(b) Where non-compliant Goods are rejected, title to and risk in the non-compliant Goods will revert to the Supplier at the time of notification to the Supplier that the Goods are non-compliant Goods and are rejected.

#### **14. INSURANCE RISK:**

The insurance responsibility for damage, fire and theft passes to Daimler Truck Entity on acceptance by Daimler Truck Entity of the Goods.

#### **15. INSURANCE:**

The Supplier will obtain, maintain and claim against for the term of the supply of the Goods and/or Services and for any warranty period in these T&Cs or at law, insurance coverage to cover any loss or costs that may be incurred for which the Supplier is liable in connection with the provision of Goods and Services, including but not limited to the following insurances from a reputable insurer:

- (a) workers’ compensation insurance as required by law;
- (b) comprehensive motor vehicle cover;
- (c) public and product liability insurance for an amount no less than \$10 million; and
- (d) professional indemnity insurance for an amount not less than \$10 million if the services provided by the Supplier contain professional services.

#### **16. WARRANTY:**

- (a) The Supplier represents and warrants that any Goods supplied by it:
- (i) are free of any third party charge, encumbrance or security, and are not subject to any security interest as defined under the *Personal Property Security Act 2009* (Cth) or otherwise;
  - (ii) are new, unused and in good condition;
  - (iii) are compliant with all relevant Australian industry codes, laws and standards including Safety Legislation and Safety Requirements;
  - (iv) are free from defects in design, materials and workmanship;
  - (v) are of acceptable quality, fit for the purpose for which Goods of that kind are commonly supplied and any purpose made known by Daimler Truck Entity;
  - (vi) are acceptable in appearance and finish, are durable and safe;
  - (vii) are compliant with any Daimler Truck Entity specifications notified to the Supplier in the PO or otherwise in accordance with these T&Cs;
  - (viii) are consistent and comply with any demonstration or samples



performed or provided by the Supplier as the case may be; and  
(ix) unless stated elsewhere on the PO will be delivered or completed by the Date of Delivery.

(b) The Supplier represents and warrants that any Services supplied to Daimler Truck Entity will:

(i) unless stated elsewhere on the PO be supplied by the Date of Delivery and if there is no Date of Delivery specified within a reasonable period of time;

(ii) be supplied promptly, carefully and to the highest possible standard;

(iii) be supplied with due care, diligence and judgement, in an efficient, professional and cost effective manner and in accordance with accepted professional and business practices;

(iv) be compliant with all relevant Australian industry codes, laws and standards including Safety Legislation and Safety Requirements;

(v) be fit for the purpose for which Services of that kind are commonly supplied and for the purpose made known by Daimler Truck Entity; and

(vi) comply with all reasonable directions of Entity and with any Daimler Truck Entity specifications notified to the Supplier in the PO or otherwise in accordance with these T&Cs.

(c) The Supplier represents and warrants that it will:

(i) ensure that it and/or its employees, agents and/or contractors are suitably authorised, licensed, qualified and experienced to provide the goods and/or services;

(ii) not breach any obligation of confidence in the course of supplying the Goods and/or Services; and

(iii) at all times, act in good faith.

**17. DATA PROTECTION:** Each Party represents and warrants that it will comply with all directives, regulations and laws relating to the protection of data and/or Personal Information in force at the commencement of these T&Cs or that come into force during any supply under the PO including, without limitation, the requirements outlined in the Daimler Information Security Framework ('DISF').

**18. PERSONAL PROPERTY SECURITY ACT 2009 (CTH) ("PPSA"):**

(a) For the purposes of this clause, all terms defined in the PPSA or the applicable regulations have the same meaning herein.

(b) If Daimler Truck Entity supplies any good/s, vehicle/s, tool/s, part/s, dies, equipment, drawing/s, blue print/s, specification/s and/or other documents (**Daimler Truck Entity Goods**) to the Supplier to perform Services on for example, including but not limited to the fitting or installation of accessories, bodies, components, decals, equipment, modification works, and/or parts and the PPSA applies or is deemed to apply to the supply by Daimler Truck Entity, then these T&Cs will constitute a security agreement, and a security interest attaches to the Goods on delivery. The

Supplier agrees that this security agreement is not extinguished or in any way diminished even if the Daimler Truck Entity Goods or part of them are processed or commingled with and become part of a product or mass as part of an assembling, manufacturing or commingling process.

(c) Daimler Truck Entity retains all ownership of, and title in all Daimler Truck Entity Goods supplied by it to the Supplier and reserves the right to dispose of the Daimler Truck Entity Goods.

(d) The Supplier agrees that Daimler Truck Entity may register a financing statement including any financing change statement on the register. The Supplier further agrees to promptly sign any further documents or provide further information or do any other thing that Daimler Truck Entity reasonably requires to perfect and maintain perfection of Daimler Truck Entity's security interest, including meeting the costs and expenses relating to enforcement or attempted enforcement of these T&Cs.

(e) The Supplier:

(i) will not receive a copy of any verification statement in respect of any security interest provided for in the PO and/or these T&Cs, unless the Supplier otherwise requests in writing; and

(ii) acknowledges that it is not the owner of the Daimler Truck Entity Goods provided to the Supplier by Daimler Truck Entity for the purposes

of the Supplier performing the Services and as such if chapter 4 [Enforcement of security interests] of the PPSA applies to these T&Cs, Daimler Truck Entity and the Supplier contract out the enforcement provisions in section 115(1) [Contracting out of enforcement provisions].

**19. BREACH OF WARRANTY:** If the Supplier becomes aware, or if Daimler Truck Entity notifies the Supplier, that a Good or Service fails to comply with any of the quality or warranty requirements under the PO or these T&Cs then the Supplier must without prejudice to any of Daimler Truck Entity's other rights, promptly (and at Daimler Truck Entity's option) during any warranty period provided by the Supplier or available at law, as directed by Daimler Truck Entity:

(a) remedy the failure (including by replacing the Goods and/or Services, or resupplying the Goods or re-performing the Services);

(b) fully refund Daimler Truck Entity the price paid for the Goods and/or Services; or

(c) deduct in accordance with Daimler Truck Entity's directions the price paid for the Goods and/or from any amount owing to the Supplier.

**20. CONFIDENTIALITY:**

(a) If either Party is provided with Confidential Information, the Party must:

(i) keep the Confidential Information confidential;

(ii) not use, disclose, access or reproduce the Confidential Information for any reason except as necessary to employees, agents and contractors to the extent necessary to supply goods and/or services pursuant to a PO;

(iii) not disclose the Confidential Information to any third person (other than lawyers, accountants and other professional advisors on a confidential basis) without the prior written consent of Daimler Truck Entity; and

(iv) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure, including but not limited to any security measures specified by Daimler Truck Entity.

(b) The obligations in this clause 20 do not apply to information which is:

(i) publicly available through no fault of either Party;

(ii) disclosed under requirement of law, court, regulator, or tribunal order or rules of a stock exchange; or

(iii) disclosed by a Party with the other Party's prior written approval.

(c) Neither Daimler Truck Entity nor the Supplier will make public the business relationship of the other party for advertising purposes unless it has received the prior written consent of the other party.

(d) Each Party must immediately notify the other Party of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

(e) Immediately on demand, or on completion, termination or expiry of the PO and these T&Cs, each Party must provide to the other, all material comprising the other Party's Confidential Information and delete all copies electronically stored.

(f) This clause 20 survives expiry or termination of the PO and these T&Cs. Nothing in this clause 20 derogates from any obligation which either party may have either under the Privacy Act or these T&Cs in relation to the protection of Personal Information.

**21. PRIVACY:**

If the performance of a Party's obligations under these T&Cs involves the handling of Personal Information, the Party must:

(a) collect, use, disclose, store, transfer and handle Personal Information in accordance with the Privacy Act;

(b) comply with all reasonable requests or directions of the other Party in connection with an obligation on the Party under the Privacy Act;

(c) not transfer that Personal Information outside Australia or allow persons outside Australia to have access to that Personal Information, except to the extent expressly agreed in writing by the other Party; and



(d) take all reasonable steps to ensure that such Personal Information is protected against misuse, loss, unauthorised access, modification or disclosure.

This clause survives expiry or termination of the PO and these T&Cs. Nothing in this clause derogates from any obligation which either party may have either under the Privacy Act or these T&Cs in relation to the protection of Personal Information.

## 22. OCCUPATIONAL HEALTH AND SAFETY:

The Supplier agrees that any Goods and/or Services will comply with, and be provided in accordance with, industry best practice, any safe work method statements required by Daimler Truck Entity, the latest Safety Legislation and Safety Requirements, Australian Standards, other industry standards, technical rules and the agreed technical data in respect of the Goods and/or Services to be provided. The specifications encompassed in the PO do not relieve the Supplier from the responsibility of ensuring that all materials, components and assemblies meet all requirements of the PO and any law or regulation, including Safety Legislation and Safety Requirements. The Supplier's quality assurance specification forms part of the PO.

The Supplier must comply with all requirements of any Safety Legislation and Safety Requirements in force in the place in which any Services or work is to be performed or Goods supplied to. The Supplier must ensure that neither it nor any of its workers does anything or omits to do anything which may result in Daimler Truck Entity being in breach of its obligations under the Safety Legislation and Safety Requirements. The Supplier must notify Daimler Truck Entity of any and every workplace accident or incident which occurs related to the performance of the PO. Prior to accessing any Daimler Truck Entity site or IT system, the Supplier warrants that it will and it will ensure that its agents, employees and subcontractors obtain an access pass or authorisation from the Reception Desk at Daimler Truck Entity. If any of the Supplier's agents, employees or subcontractors is not granted or is refused an access pass or authorisation, the Supplier warrants that the individual will not be used by the Supplier in relation to the PO.

**23. SUPPLIER'S CONDUCT:** The Supplier must comply with and ensure that its conduct is consistent with Daimler Truck Entity and DT AG's reasonable operating principles, policies and procedures which are located at

<https://www.daimlertruck.com/company/compliance/compliance-of-our-business-partners.html> and contained in the Business Partner Standards.

### (a) Business Partner Standards:

(i) The Supplier represents and warrants that it has read and understood the Business Partner Standards.

(ii) The Supplier warrants that it will comply with and ensure that its conduct is consistent with Daimler Truck Entity and DT AG's reasonable operating principles, policies and procedures found in the Business Partner Standards.

(iii) The Supplier warrants that all its employees, agents, contractors and representatives involved in the performance of its obligations or at any premises or sites of Daimler Truck Entities will observe the standards, policies and procedures found in the Business Partner Standards.

(iv) The Supplier will notify Daimler Truck Entity immediately if it becomes aware of any breach of the Business Partner Standards caused by the Supplier's employees, agents, contractors and/or representatives.

## 24. INTELLECTUAL PROPERTY:

(a) The Supplier agrees that Daimler Truck Entity will own any Developed IPR in any Goods, Services or materials specially developed, designed, manufactured, produced or supplied by the Supplier to Daimler Truck Entity pursuant to a PO and these T&Cs. The Supplier shall ensure that any IPR existing in any such material of any nature whatsoever, including any plans, sketches, blueprints and processes, shall reside with Daimler Truck Entity, and the Supplier will ensure that title to such Developed IPR vests in Daimler Truck Entity upon creation. To the extent that title in any

Developed IPR is not capable of assignment to Daimler Truck Entity, the Supplier grants to Daimler Truck Entity an exclusive, worldwide, royalty free fully assignable perpetual licence in respect of the Developed IPR, which may only be terminated by Daimler Truck Entity, for Daimler Truck Entity to use the Developed IPR and to grant others the right to use the Developed IPR.

(b) Immediately on request by Daimler Truck Entity, the Supplier must at its own cost, bring into existence, sign, execute or otherwise deal with any document, deed or other instrument which may be necessary to give effect to this clause 24.

(c) Nothing in the PO and these T&Cs assigns IPR in any material over which Daimler Truck Entity owns or otherwise claims any IPR.

(d) The Supplier agrees and irrevocably consents, and must ensure its sub-suppliers agree and consent, to waive the rights to make or bring any claim, demand, action, suit or proceeding arising out of or in connection with any purported or actual infringement by Daimler Truck Entity or any other person or party of any moral rights of the Supplier or a sub-supplier of the Supplier (as applicable) whether such infringement occurs before or after the parties entering into the Agreement.

(e) The Supplier warrants that the Goods and/or Services supplied pursuant to the PO do not infringe any copyright, moral rights, licences, patents, registered designs, trade marks or any other IPR. The Supplier indemnifies and holds harmless Daimler Truck Entity, its customers and the users of the goods supplied, against any action, claim (including any third party claim), demand, proceeding or suit for actual or alleged infringement of any copyright, moral rights, licences, patents, registered designs, trade marks or any other IPR brought or made against any of them by reason of any use or disposal of the Goods and/or Services supplied against the PO.

**25. BLUE PRINTS, TOOLS, ARTWORK, etc.:** Daimler Truck Entity Goods must not be copied or used for any purpose other than to fulfil the PO. All Daimler Truck Entity Goods must be returned to Daimler Truck Entity on completion or termination of the PO, and unless otherwise authorised in writing by Daimler Truck Entity the Supplier must immediately discontinue to display or use the Daimler Truck Entity IPR or Developed IPR.

## 26. LIABILITY AND INDEMNITY (SUPPLIER):

(a) The Supplier must defend, indemnify and hold the Daimler Truck Entity Group and its representatives, successors and assigns (**DT Indemnified Parties**) harmless from and against any claims, liability, costs, expenses, losses, damages and settlement expenses, including legal costs, that Daimler Truck Entity incurs, whether directly or indirectly, resulting from, in connection with or arising out of any one or more of:

(i) any defect or deficiency in the goods or services that are the subject of the PO;

(ii) any breach of the Supplier's obligations under the PO or these T&Cs or any act or omission of the Supplier or its employees, agents, officers, representatives or contractors (**Supplier Group**);

(iii) any breach of any applicable law or regulation (including but not limited to, Safety Legislation and Safety Requirements) by the Supplier Group; or

(iv) any fraud including any wilful act or fraudulent misrepresentation of the Supplier Group.

(b) The Supplier agrees that each indemnity given in this clause 26 is held by Daimler Truck Entity on behalf of, and on trust for, each of the DT Indemnified Parties and can be enforced by Daimler Truck Entity for the benefit of each of the DT Indemnified Parties in the name of Daimler Truck Entity or in the name of any of the DT Indemnified Parties.

This clause survives expiry or termination of the PO and these T&Cs.

## 27. LIABILITY AND INDEMNITY (DAIMLER TRUCKS):

(c) The Daimler Truck Entity Group must defend, indemnify and hold the Supplier and its representatives, successors and assigns (**Supplier Indemnified Parties**) harmless from and against any claims, liability, costs, expenses, losses, damages and settlement expenses, including



legal costs, that Supplier incurs, whether directly or indirectly, resulting from, in connection with or arising out of any one or more of:

- a) any breach of the Daimler Truck Entity Group's obligations under the PO or these T&Cs or any act or omission of Daimler Truck Entity Group or its employees, agents, officers, representatives or contractors (**DT Group**);
- b) any fraud including any wilful act or fraudulent misrepresentation of the DT Group.
- c) The Daimler Truck Entity agrees that each indemnity given in this clause 27 is held by the Supplier on behalf of, and on trust for, each of the Supplier Indemnified Parties and can be enforced by the Supplier for the benefit of each of the Supplier Indemnified Parties in the name of the Supplier or in the name of any of the Supplier Indemnified Parties.

This clause survives expiry or termination of the PO and these T&Cs.

## **28. TERMINATION:**

### **(a) Termination without cause**

Either Party may at any time for any reason terminate this Agreement without cause by providing the other Party with 30 days' written notice. The Parties agree that if either Party terminates this Agreement under this clause it will not be a breach of any implied duty of good faith.

### **(b) Termination by Daimler Truck Entity**

Daimler Truck Entity may terminate this Agreement immediately on written notice to the Supplier if:

- (i) the Supplier is in breach of this Agreement and, if the breach is capable of remedy the Supplier has not remedied the breach within 20 Business Days after receiving a written Notice from Daimler Truck Entity requiring it to do so and setting out the steps required to remedy the breach;
- (ii) the Supplier is in breach of an essential term of this Agreement or the Supplier commits a breach of this Agreement which cannot be remedied within a reasonable time;
- (iii) the Supplier has breached any warranty given to Daimler Truck Entity under this Agreement;
- (iv) the Supplier commits multiple or recurring breaches of this Agreement, whether or not remedied;
- (v) the Supplier suffers an Insolvency Event;
- (vi) the Supplier ceases, or indicates that it is about to cease, carrying on its business;
- (vii) there is any change in the effective management, ownership or control of the Supplier including any change in the underlying beneficial ownership of the Supplier without Daimler Truck Entity's prior written consent;
- (viii) the Supplier fails to provide the information required by or to comply with service levels as may be set in the Agreement; or
- (ix) Daimler Truck Entity considers that the Supplier, any subcontractor or a representative of the Supplier has or may have committed a crime or been charged with an offence which Daimler Truck Entity reasonably considers may have the potential to adversely affect the delivery of the Services, Daimler Truck Entity's business or reputation.

### **(c) Termination by the Supplier**

The Supplier may terminate this Agreement immediately on written notice to Daimler Truck Entity if:

- (i) Daimler Truck Entity is in breach of this Agreement and, if the breach is capable of remedy Daimler Truck Entity has not remedied the breach within 20 Business Days after receiving a written notice from the Supplier requiring it to do so and setting out the steps required to remedy the breach; or
- (ii) Daimler Truck Entity is in breach of an essential term of this

Agreement or Daimler Truck Entity commits a breach of this Agreement which cannot be remedied within a reasonable time; or

- (iii) Daimler Truck Entity commits multiple or recurring breaches of this Agreement, whether or not remedied; or
- (iv) Daimler Truck Entity ceases, or indicates that it is about to cease, carrying on its business; or
- (v) the Supplier considers that Daimler Truck Entity, any subcontractor or a representative of Daimler Truck Entity has or may have committed a crime or been charged with an offence which the Supplier reasonably considers may have the potential to adversely affect the Supplier's business or reputation; or
- (vi) Daimler Truck Entity is the subject of an Insolvency Event.

### **(d) Return of property**

To the extent permitted by law, on termination or expiration of this Agreement for any reason, the Supplier must immediately, at the cost of the Supplier:

- (i) cease using any Intellectual Property belonging to or otherwise provided by the Daimler Truck Entity including but not limited to removing, retracting or deleting any Daimler Truck Entity Intellectual Property being used under any licence granted to the Supplier under this Agreement;
- (ii) comply with its obligations under cl 30(m) [Return and destruction of data] of this Agreement and where relevant, a separate Data Processing on behalf of Agreement;
- (iii) return and permanently delete (if applicable) from its possession and control any other Daimler Truck Entity property including but not limited to any physical property and intangible property belonging to or otherwise provided by the Daimler Truck Entity to the Supplier;
- (iv) where applicable, in the format specified by the Daimler Truck Entity immediately make available and deliver to the Daimler Truck Entity all deliverables from the Services and/or Developed Intellectual Property arising from this Agreement including any and all information or Data required to enable the Daimler Truck Entity to make full use of such deliverables from the Services and/or Developed Intellectual Property including but not limited to any source codes, passwords, guides and instructions;
- (v) if applicable, provide migration or transportation Services (including Data Migration) to the Daimler Truck Entity; and
- (vi) provide a declaration to the Daimler Truck Entity confirming compliance by the Supplier with the above.

### **(e) Consequences of termination**

- (i) Termination of this Agreement will not prejudice any rights or obligations of the Parties which exist prior to termination or expiry.
- (ii) Notwithstanding any termination under this clause, by either Party, or any other clause, upon receipt of a notice from Daimler Truck Entity, the Supplier agrees and undertakes to continue to perform the Services on the terms and conditions of this Agreement until such a time as Daimler Truck Entity is reasonably able to engage another supplier to provide the Services.

## **29. DISPUTE RESOLUTION:**

- (a) If any dispute arises out of or in connection with the PO or the Agreement, neither party is to commence proceedings relating to the dispute unless that party has first complied with the provisions of this clause 29.
- (b) A party claiming that a dispute has arisen is to give written notice to the other party specifying the nature of the dispute.
- (c) On receipt of a notice claiming that a dispute has arisen, the parties must endeavour in good faith to resolve the dispute.
- (d) If the parties do not resolve the dispute within seven days of receipt of the notice claiming a dispute has arisen (or such other period as agreed in writing by them), then the parties will mediate the dispute in accordance with the procedures described in this clause 29 unless



otherwise agreed in writing by Daimler Truck Entity.

(e) Before any legal proceeding, other than the seeking of an injunction or other urgent interlocutory relief, may be issued in respect of any dispute or difference arising out of or in connection with the PO or the Agreement, the dispute shall first be submitted to mediation, administered by the Resolution Institute, conducted at Melbourne and held in accordance with its mediation rules. Each party will bear its own costs, and equally share the costs of the mediator and venue, in relation to the mediation. If the parties do not resolve the dispute in the first two days of mediation, then either party may issue proceedings.

(f) Pending resolution of any dispute, the parties will continue to perform their obligations under the PO and the Agreement without prejudice to their respective rights and remedies.

**30. EVENTS:** If the PO requires the Supplier to undertake Services related to an Event, this clause shall apply:

In this Clause:

**“Attendee”** means an individual who has registered to attend an Event;

**“Attendee Data”** means any and all Attendee Information howsoever obtained or stored and any other data or information which contains any Attendee Information;

**“Attendee Information”** means any information provided by or relating to an Attendee or potential attendee, howsoever obtained, including name, contact details and payment details, and, if Daimler Truck Entity provides the Supplier with any information about any dealer, delegate, supplier, or customer of Daimler Truck Entity or any other sponsor, includes such information;

**“Brief”** means an outline of Daimler Truck Entity’s requirements for the Services to be performed by the Supplier;

**“Event”** means if required as part of the Services an event held by Daimler Truck Entity in respect of which the Supplier is engaged to perform Services as described in the Brief;

**“Marketing Material”** means any marketing, promotional or ancillary materials produced by the Supplier, or by any of its Affiliates at the direction of the Supplier, for the purposes of or as part of performing the Services and includes without limitation any advertisement, editorial or article, campaign materials, mail piece, illustrative, or photographic materials, media, direct marketing, design, Internet material, digital, mobile and social media materials, events, point-of-sale and out-of-home materials, below-the-line materials, and creative concepts;

**“Registration”** or **“Registrations”** means the registration of an Attendee to attend an Event, and “Register” or “Registered” has a corresponding meaning;

**“Registration Fee”** means the GST-exclusive fee per Attendee for Registration for an Event, being the amount notified to the Supplier in the Brief (if any);

**“Registration Services”** those Services that the Supplier is required to manage to effect Registrations on behalf of Daimler Truck Entity for one or more Events (if any);

**“Revenues”** means the total sum income (including GST) received or recorded by the Supplier in respect of Registration Fees for an Event;

**“Website”** means an Internet registration and payment website created by the Supplier (if required by Daimler Truck Entity) through which Attendees may register to attend an Event and pay the Registration Fee;

**“Website Development Services”** means the development and deployment of a Website to facilitate Registration; and

**“Website Hosting Services”** means the hosting of the Registration website.

**(a) Website Development and Hosting Services:** This sub-clause applies if the Services to be provided by the Supplier include Website Development Services and/or Website Hosting Services in respect of an Event.

(i) The Supplier must develop and host the Website. The Website must include such fields as may be nominated by Daimler Truck Entity. The Website must: permit prospective Attendees to register and pay for Registration online; be hosted externally to Daimler Truck Entity’s servers; be used solely for services performed for Daimler Truck Entity; meet any IT or data security requirements notified by Daimler Truck Entity; require a prospective Attendee to sight, scroll through and actively accept any terms and conditions of sale prior to payment of the Registration Fee.

(ii) The Supplier represents and warrants that: any payment method option via the Website is secure and meets all applicable laws and Daimler Truck Entity’s notified requirements for electronic payments; any payment method options comply in all respects with the Payment Card Industry Data Security Standard (PCI DSS) requirements; the Supplier will use a fully hosted payment gateway that is a secure product for processing credit card payments which is external to the Supplier’s system; the Supplier will indemnify Daimler Truck Entity against any claim brought against Daimler Truck Entity by any person which arises out of payment via the Website.

(iii) At the earlier of the completion of the Services or upon written request by Daimler Truck Entity, the Supplier must immediately: take the Website off line; and remove any Daimler Truck Entity or DT AG IPR from the Website.

**(b) Registration Services:** This sub clause applies if the Services to be performed by the Supplier include Registration Services.

(i) If Daimler Truck Entity Orders Registration Services, Daimler Truck Entity appoints the Supplier to: act as its agent to manage all Registrations; invoice Attendees for the Registration Fee (and GST on the Registration Fee); collect Revenues on behalf of Daimler Truck Entity; and remit those Revenues to Daimler Truck Entity for the Event in respect of which the Supplier performs the Services.

(ii) The Supplier must maintain correct Attendee Information for each Registration in a secure database. The database must: meet all Privacy Law requirements and be stored in Australia.

(iii) If Daimler Truck Entity notifies the Supplier that Registration is subject to: particular terms and conditions, the Supplier must ensure that such terms and conditions are validly incorporated into the contract of sale; along with any stipulated pre-conditions to attendance, or other eligibility requirements. The Supplier must ensure that the Registration process is capable of ascertaining whether Attendees meet such eligibility requirements.

**(c) Registration Fees:**

(i) The Supplier must charge each Attendee the Registration Fee (plus GST) for each Registration as specified by Daimler Truck Entity (if any). The Supplier must not adjust the Registration Fee. The Supplier must not refund any amount to any Attendee without Daimler Truck Entity’s written direction except when required by law. The parties acknowledge and agree that the Registration Fee excludes GST, and that GST will be calculated on the Registration Fee and added to the Registration Fee by the Supplier, and the Attendee must pay the GST Amount at the same time and in the same manner as making payment of the Registration Fee. The Supplier must issue a valid tax invoice for the Registration Fee for each Registration effected, and require the Attendee to pay the Registration Fee at time of Registration. If Daimler Truck Entity has instructed that payment of Registration Fees may be made via a Website or within 7 days of Registration against an invoice, the Supplier must notify Daimler Truck Entity if such payment is not made within 7 days; manage all invoices to ensure payment is made promptly; and issue payment receipts to Attendees.

(ii) The tax invoice issued to the Attendee for the Registration Fee must specify the GST on any taxable supply made by Daimler Truck Entity to



that Attendee. The GST amount must be calculated and included as a separate line item on the invoice issued by the Supplier. If an adjustment event occurs, the Supplier must issue to the Attendee an adjustment note.

(iii) The parties acknowledge and agree that any tax invoice issued by the Supplier on behalf of Daimler Truck Entity for the sale of Registrations is deemed a taxable supply under the GST Act made by Daimler Truck Entity to the Attendee. The Supplier shall provide Daimler Truck Entity with all information Daimler Truck Entity needs to account for GST in respect of all taxable supplies made by Daimler Truck Entity to Attendees pursuant to the Agreement, or adjustments thereto, no later than 5 Business Days after the end of the month in which the taxable supply or adjustment event was made.

**(d) Credit Cards and Direct Deposit:**

(i) The Supplier must permit and facilitate the payment of the Registration Fee by Attendees by credit card and by direct deposit. Daimler Truck Entity will not pay any amount in respect of credit card merchant fees to the Supplier.

(ii) The Supplier must not under any circumstance store credit card or bank account details in any database. The Supplier must delete credit card and bank account details immediately after payment is processed. A reference number may be stored, but must contain no more than the last four digits of the credit card details.

(iii) The Supplier must provide Daimler Truck Entity with details of the proposed payment gateway system prior to use. The Supplier must only use a secure payment gateway system which is approved by Daimler Truck Entity.

**(e) Revenues:**

(i) Revenues from all Registrations must be paid by the Supplier to Daimler Truck Entity at least 7 days prior to the Event. Payment must be made in Australian dollars by way of electronic transfer to an Australian bank nominated by Daimler Truck Entity.

(ii) Notwithstanding sub-clause (i), Daimler Truck Entity may require Revenues collected by the Supplier to be remitted to Daimler Truck Entity at any time prior to the Event upon written notice. If a demand is made, the Supplier will immediately remit to Daimler Truck Entity any Revenues the Supplier has collected up to the date of the demand.

(iii) The Supplier must hold all Revenues on trust for Daimler Truck Entity separately from and not mixed with other client funds or revenues. Such funds must be clearly designated and identifiable as Daimler Truck Entity funds. The Supplier warrants that it has sufficient and appropriate processes and internal controls in place to enable the accurate recording of Revenues held on trust for Daimler Truck Entity.

(iv) The Revenues must be paid to Daimler Truck Entity in full. The Supplier must not set off against the Revenues any amount owed to the Supplier, whether under the Agreement or otherwise and the Supplier may not use the Revenues to pay any cost of the Event.

(v) The Supplier must report to Daimler Truck Entity at regular intervals and as reasonably required by Daimler Truck Entity sufficient to permit Daimler Truck Entity to obtain at any time an accurate summary of all Registrations effected, the names of Attendees, the total Revenue collected and the status of each transaction.

(vi) If the Supplier is required to perform Registration Services for one or more Events, the Supplier must separately record the Revenues for each Event.

**(f) Third Party Suppliers required for Events:** If the Services to be provided by the Supplier require the Supplier to undertake Event management services, the Supplier must:

(i) manage and co-ordinate on behalf of Daimler Truck Entity any third party suppliers as notified by Daimler Truck Entity that are required to be

engaged for the Event in respect of which the project management or event management services are required;

(ii) obtain at least 3 quotations for third party suppliers for the Goods or Services to be supplied or performed by that third party supplier and submit that quotation to Daimler Truck Entity for review and approval. Daimler Truck Entity must approve both the quotation and the proposed third party supplier in writing prior to the engagement of such party. No third party supplier may be engaged, and Daimler Truck Entity will not be liable to pay any amount in respect of a third party supplier unless and until the engagement of the third party supplier is approved in writing by Daimler Truck Entity, which will not be unreasonably withheld; and

(iii) provided Daimler Truck Entity has approved the engagement of a Third Party, Daimler Truck Entity will pay the approved amount of the Third Party Suppliers' invoices. Unless Daimler Truck Entity has otherwise agreed in writing with the Supplier, the Supplier will not charge, and Daimler Truck Entity will not be required to pay, any Supplier's margin on any Third Party Supplier's invoice.

**(g) Marketing Material:** If the Supplier is required to provide Marketing Material as part of the Services, then:

(i) all Marketing Material must be approved by Daimler Truck Entity in writing: prior to production, and following production but prior to publication or distribution or release to market;

(ii) any approval obtained will only apply to the use of the proposed Marketing Material in the manner in which, and the purpose for which, the approval is sought. Approval may be withheld or subject to any terms and conditions at the sole and unfettered discretion of Daimler Truck Entity; and

(iii) the Supplier warrants and represents that any Marketing Material provided to Daimler Truck Entity or produced or published by or on behalf of the Supplier under this Agreement complies with all Applicable Laws and any industry codes or standards applicable to the jurisdiction/s in which the Marketing Material will be published or otherwise notified to be used by Daimler Truck Entity.

**31. Building and Construction Work:** If the PO requires the Supplier to undertake Services which involve performing any building and construction work, this clause 31 shall apply.

(a) if the Supplier carries out, or subcontracts the carrying out of, or manages, any building or construction work of any nature whatsoever (including but not limited to the construction of decking, stages, plinths, erection of marquees or temporary structures), then the Supplier represents and warrants that: the Supplier and any of its subcontractors will exercise a high level of skill, care and diligence in the construction of the structures and performance of the work that is required to be carried out; the work will be carried out in a proper and workman like manner and in accordance with the plans and specifications for the work; all materials supplied will be new, in good condition and suitable for the purpose for which they are used; the work and materials used will be reasonably fit for the purpose made known by Daimler Truck Entity and will be of such a nature and quality that they will reasonably achieve the result required by Daimler Truck Entity; all designs, materials and methods of building or construction proposed or specified in the Supplier's proposal or used by the Supplier or any of its subcontractors, and any structures: will comply with all applicable laws (including but not limited to all applicable health and safety legislation and standards and all applicable building legislation, Australian Standards and building codes in the State or Territory in which work is to be performed, and the Building Code of Australia);

(b) if any approval or certification of any structure is required by any applicable laws, the Supplier will ensure that such approval or certification is obtained;

(c) any building or construction work will be carried out by a registered building practitioner who is registered or licensed to perform that work in the State or Territory in which the work is to be performed;

(d) Daimler Truck Entity may at any time request evidence of such registration or licence to be provided and such evidence must be provided by the Supplier to Daimler Truck Entity within 2 Business Days.

### **32. SHARED DATA:**

If the PO requires the Supplier to undertake Services which involve performing information technology services which include obtaining and processing data from Daimler Truck Entity, this clause shall apply.

In the event that Personal Information is collected, held, used or disclosed as part of this Agreement or the Goods/Services (directly or indirectly), the parties shall agree to execute a Data Processing on Behalf of Agreement (**DPOBOA**). To the extent that the DPOBOA conflicts with this Agreement, the terms of this Agreement shall prevail.

#### **(a) Responsible and competent liaison:**

On the Commencement Date of this Agreement, the Supplier must notify Daimler Truck Entity in writing of the name and contact details of a representative of the Supplier who has experience and qualifications in the areas of privacy, data protection and information security to liaise with Daimler Truck Entity in these areas to ensure compliance with this Agreement.

#### **(b) Collection and use of data:**

Each Party represents and warrants that:

- (i) it will treat all Personal Information as Confidential Information;
- (ii) it will only use, disclose, transfer or store the Personal Information for a purpose connected with this Agreement or as required by law at all times strictly in accordance with the Privacy Laws, Australian Privacy Principles and any privacy collection consents of the information owner;
- (iii) if the Services require a Party to contact an individual, the Party must only do so in accordance with the individual's consent and preferred communication method. If the individual has not consented to contact, the Party must not contact them.

#### **(c) Access Control:**

The Supplier represents and warrants that in relation to any data (which includes Personal Information or Confidential Information (together "Data")) disclosed to the Supplier by Daimler Truck Entity (or Daimler Truck Entity's agent, employee, subcontractor or otherwise):

- (i) it will only be accessed (physically or virtually) by people required to access such Data for the purpose of performing the Services under strict conditions of confidentiality and in strict compliance with the privacy, data protection and information security requirements stipulated in this Agreement, the Privacy Law and Australian Privacy Principles;
- (ii) all individuals accessing the Data under this Agreement have:
  - (iii) been made aware and have agreed to comply with the privacy, data and information security, and confidentiality obligations in this Agreement; and
  - (iv) had and will continue to have regular Privacy Law training provided by the Supplier.
  - (v) any access is capable of being monitored and tracked by the Supplier;
  - (vi) access is restricted on the basis of a minimum of 2 factor authentication;
  - (vii) it will solely be used by the Supplier in accordance with Daimler Truck Entity's written or e-mailed instructions as to the collection, process or use of the Data; and
  - (viii) it will not be used for the Supplier's, an individual's or third party's purpose other than the performance of the Services.

#### **(d) Protection of Daimler Truck Entity's information technology systems and data:**

The Supplier represents and warrants that it will:

(i) take all necessary steps to prevent damage to Daimler Truck Entity's and any third party's infrastructure emanating from Daimler Truck Entity's information technology environment;

(ii) ensure that any data of whatever nature introduced into a Daimler Truck Entity system or environment has been scanned for malware (with current malware scanning software) and that no malware is detected prior to the introduction into the Daimler Truck Entity system;

(iii) ensure that any building where Data is stored or located and also where the Services are being performed have a backup and recovery strategy, uninterrupted power supply and mirroring of services to ensure permanent availability of the Data;

(iv) ensure that Daimler Truck Entity's information technology systems are only accessed by persons who have Daimler Truck Entity's prior written consent ("Authorised Persons") which may be withheld or subject to whatever conditions that Daimler Truck Entity may impose. The Supplier must immediately notify Daimler Truck Entity in writing of the departure of an Authorised Person who has access to Daimler Truck Entity's information technology systems so that Daimler Truck Entity can withdraw existing access authorisations; and

(v) ensure that Authorised Persons are aware of and strictly comply with the Privacy Law and the privacy, data protection and information security requirements as set out in this Agreement and are kept informed of any data security and privacy matters which may impact on the Services being provided to Daimler Truck Entity.

#### **(e) Technology and encryption:**

The Supplier represents and warrants that it will:

(i) use the latest technology (including but not limited to the latest versions of anti-virus software, virus databases and ensure that the most recent patches are installed for all operating systems and databases) at all times to safeguard all information or data (including Data) which the Supplier collects, processes, transfers or stores for Daimler Truck Entity or has access to in such a way that is effective against unauthorised access, alteration, destruction or loss, unauthorised processing or misuse or the like;

(ii) when transmitting or saving data (including Data) on mobile data storage media that it will protect Data by:

- (a) using the latest available encryption technology (including but not limited to encryption standards which must be equal to or exceed Advanced Encryption Standard with a minimum key length of 256 bits; triple Data Encryption Standard with a minimum key length of 112 bits and Digital Signature Algorithm with a minimum key length of 1024 bits); and
- (b) ensuring such transmission or storage is within a secure environment which has been designed in accordance with the latest technical standards.

(iii) Will on request by Daimler Truck Entity provide written evidence of compliance with this clause within 7 days.

#### **(f) Transmission and storage of Personal Information inside and out of Australia:**

The Supplier represents and warrants that it will:

(i) not subcontract any of the Services without Daimler Truck Entity's written consent which may be withheld or subject to whatever requirements that Daimler Truck Entity may impose;

(ii) ensure that all subcontractors only store or transfer Personal Information contemplated by this Agreement or the Services on an Australian server or Australian cloud (not owned or ultimately owned by a United States company) except if the Supplier obtains Daimler Truck Entity's prior written consent, which may be withheld or subject to whatever conditions that Daimler Truck Entity may impose. If Daimler Truck Entity does consent in writing to the Supplier transferring or storing Personal Information overseas the Supplier must inform Daimler Truck Entity of the countries to which the Personal Information is transferred



and stored, what steps the Supplier has taken to ensure that it and any approved subcontractor complies in all respects with the Australian Privacy Principles and Privacy Laws and provide evidence to Daimler Truck Entity that the Supplier has entered into an enforceable contract with the subcontractor with privacy, data protection and information security requirements which replicate those in this Agreement;

(iii) only store or transmit Personal Information in an anonymised or encrypted format unless the Supplier has Daimler Truck Entity's prior written consent to do otherwise; and

(iv) if the Supplier processes, stores or transfers Data that belongs to different customers ensure that Daimler Truck Entity's Data is stored separately to ensure that it is not mixed with data of any description belonging to a third party.

**(g) Information security:**

The Supplier represents and warrants that:

(i) it will take all reasonable steps to protect and safeguard Personal Information (regardless of the format of the Personal Information) which forms part of the Services from misuse, interference, loss, unlawful access, use or transfer, and from unauthorised access, modification and disclosure;

(ii) it will comply with the requirements set out in either A or B below:

(a) it has an information security strategy and plan that complies with or exceeds Daimler Information Security Framework and will provide this plan to Daimler Truck Entity within 5 days of the Commencement Date. Daimler Truck Entity is entitled to request any reasonable amendments to this plan which must be implemented by the Supplier at its cost. If the Supplier refuses to implement these amendments then Daimler Truck Entity may elect on written notice to terminate this Agreement. Daimler Truck Entity will only be liable to the Supplier for payment of Services performed up to and including the date of termination; or

(b) it complies with the most current version (assessed as at the Commencement Date and any Further Term (if relevant)) of ISO 27000 [Information technology – security techniques – information security management systems – overview and vocabulary];

(iii) if during the performance of the Services the Supplier identifies any gaps between the Supplier's operations and either the Daimler Information Security Compendium or ISO 27000 standard, the Supplier will as soon as reasonably possible notify Daimler Truck Entity of these gaps in writing and remedy them to Daimler Truck Entity's reasonable satisfaction; and

(iv) if the Supplier changes or become aware of any material change to its data processing and data security then the Supplier will immediately notify Daimler Truck Entity in writing of the change and the effect on Daimler Truck Entity of these changes. If such changes are expected to reduce the effectiveness of security of any data (including the Data) then Daimler Truck Entity must approve these changes in writing and may impose any such conditions on the Supplier (that the Supplier must immediately implement at the Supplier's cost) that Daimler Truck Entity considers necessary in order to reasonably protect the security of the data (including the Data).

**(h) Penetration testing and audit:**

(i) Within 30 days of the Commencement Date and thereafter on an annual basis during the Term and any Further Term(s) of this Agreement, the Supplier will have at the Supplier's entire expense, their information technology system penetration tested by an independent third party suitability qualified and experienced in carrying out such a task. On completion of the penetration test, the Supplier must provide Daimler Truck Entity with a copy of the penetration test report.

(ii) Six months from the Commencement Date, and every six months thereafter the Supplier must allow Daimler Truck Entity to conduct an on-

site review at the Supplier's premises (or any other relevant site where the Services are carried out) to audit the Supplier's compliance with the privacy, data protection and information security requirements in this Agreement. In the event that the audit reveals the Supplier's failure to comply, Daimler Truck Entity can immediately terminate this Agreement on written notice and Daimler Truck Entity will only be liable for the cost of Services performed up to the date of termination.

**(i) Breach, seizure, complaint or enquiry about data:**

The Supplier represents and warrants that it:

(i) has a data breach response plan which complies with the Office of the Information Commissioner's current guidelines, including a mechanism to notify Daimler Truck Entity where there is or there are reasonable grounds to suspect a data breach and outlines any remedial action that will be taken in accordance with the law. The requirements of this provision will also apply to any of the Supplier's subcontractors approved by Daimler Truck Entity to perform the Services under this Agreement;

(ii) will promptly notify in writing (and in any event, no later than 3 days of being aware) Daimler Truck Entity of any breach, suspected breach, violation, breach of security or other manipulation during data processing which affects the Data or if the Supplier has reasonable grounds for suspicion in this respect the Supplier must promptly inform (in any event no later than 3 days) and in consultation with Daimler Truck Entity immediately initiate all necessary steps to rectify the problem and to limit any loss, damage or disclosure of that information at the sole cost of the Supplier;

(iii) will promptly notify in writing (and in any event, no later than 3 days of becoming aware) of a complaint or enquiry by a data owner as to the use, disclosure, transfer or handling of their Personal information;

(iv) will provide Daimler Truck Entity with all information and cooperation that Daimler Truck Entity requires to properly address any complaint or enquiry by a data owner or regulator as to the use, disclosure, transfer or handling of the Data; and

(v) will immediately inform Daimler Truck Entity if the Supplier becomes aware of a risk of unauthorised access to the Data as a result of seizure or other enforcement of legal control by the relevant authorities during insolvency or composition proceedings, or as a result of other events or actions taken by third parties. The Supplier must inform those third parties that the Data belongs to Daimler Truck Entity and take all reasonable steps requested by Daimler Truck Entity.

**(j) Data correction:**

If the Supplier becomes aware or if the Supplier is notified by Daimler Truck Entity or the information owner that Personal Information is inaccurate, incomplete, irrelevant, misleading or no longer up to date, the Supplier must take reasonable steps to correct the Personal Information as soon as practicable and not charge Daimler Truck Entity or the individual for this correction.

**(k) Information owner request for data access:**

If Daimler Truck Entity on behalf of an information owner or if the information owner itself requests information or access in relation to their Personal Information, that information or access must be provided in the manner requested by Daimler Truck Entity or the individual within 15 days unless an exception in Australian Privacy Principle 12 applies. If such an exception applies, the Supplier must within that 15 day period notify Daimler Truck Entity or the information owner (as the case may be) in writing as to the basis and reasons as to why the request or access is refused.

**(l) Data Migration:**

If applicable, the Services will be developed in a way that allows the Daimler Truck Entity to undertake Data Migration itself for the term of this Agreement and for a reasonable period of time following expiration or termination of the Agreement.

### (m) Return and destruction of data:

On the earlier of termination or expiration of this Agreement or on demand, the Supplier must:

(i) without cost and in the format specified by Daimler Truck Entity immediately make available to Daimler Truck Entity a copy of all information (including Data) stored or processed by the Supplier as part of this Agreement; and

(ii) unless a law requires otherwise (in which case the Supplier must notify Daimler Truck Entity of the actual law in writing) and without cost to Daimler Truck Entity immediately destroy or permanently and irretrievably de-identify all the Personal Information obtained by the Supplier as part of the Services and provide to Daimler Truck Entity within 7 days a statutory declaration from a company secretary or company director of the Supplier confirming that such destruction or permanent de-identification has occurred.

### 33. LOGISTICS:

If the PO requires the Supplier to undertake Services which include providing logistics Services this clause shall apply.

In this clause:

**'Materials'** means the Goods and products specified by Daimler Truck Entity to be carried or transported by the Supplier in the course of supplying Goods and/or Services.

(a) In supplying the Goods and/or Services at a Daimler Truck Entity site (including any delivery address specified by Daimler Truck Entity in accordance with the T&Cs or the PO) (**Site**), the Supplier must ensure that it and its employees, agents and sub-suppliers:

(i) comply with the directions and instructions of Daimler Truck Entity or such other entity as may from time to time be identified by Daimler Truck Entity at the Site for the purpose of any Safety Legislation and/or Safety Requirements;

(ii) attend any co-ordination meetings called by Daimler Truck Entity or its representatives and notified to the Supplier, to plan, review and co-ordinate the supply of the Goods and/or Services at the Site;

(iii) co-ordinate supply of the Goods and/or Services, and not interfere, disrupt or damage the Site and any work being undertaken, or to be undertaken, at the Site; and

(iv) prevent nuisance and unreasonable noise and disturbances.

(b) The Supplier must ensure that the vehicles and equipment used by the Supplier in supplying the Goods and/or Services are:

(i) fit for the purpose for which such vehicles and equipment are commonly used;

(ii) in good working order and repair, including being regularly serviced;

(iii) clean and suitable for the cartage of any Materials so as to avoid any damage or contamination to the Materials, if applicable; and

(iv) compliant with relevant licensing, registration and insurance requirements.

(c) The Supplier must:

(i) use reasonable endeavours to prevent damage to any roads on the route to the delivery address specified by Daimler Truck Entity in accordance with the T&Cs or the PO, pay the costs of remedying any such damage and indemnify the Daimler Truck Entity Group against any claim for damage caused by the Supplier;

(ii) take all such measures as may be reasonably necessary to ensure that it does not interfere with local traffic; and

(iii) if using a vehicle or equipment owned by Daimler Truck Entity, ensure that the vehicle or equipment is returned to Daimler Truck Entity in the same condition in which it was supplied to the Supplier, save for fair wear and tear.

(d) Without limiting any other provision of these T&Cs and the PO, the Supplier must ensure that, in supplying the Goods and/or Services, it and its employees, agents and subcontractors:

(i) comply with all mass, dimension, load and restraint requirements for vehicles or the carriage or handling of Materials;

(ii) comply with all applicable chain of responsibility, fatigue management, driving hours, speed or traffic laws or regulations;

(iii) manage and retain all transport and journey documentation, including collection and delivery documentation, as required by law; and

(iv) provide Daimler Truck Entity, upon request, with all information and documentation reasonably required by Daimler Truck Entity (or a government authority or agency) to monitor or audit compliance with these requirements (including permitting inspections of transport and journey documentation and vehicles).

(e) The Supplier undertakes to use all reasonable commercial endeavours to provide Daimler Truck Entity with accurate and reliable information regarding weights, nature and dimensions of loads to be carried.

(f) The Supplier acknowledges that it has no ownership of, property, lien, right, title or interest in the Materials and that the Supplier holds the Materials as a mere bailee on behalf of Daimler Truck Entity as bailor. Daimler Truck Entity remains the sole beneficial and legal owner of the Materials, at all times including without limitation, while the Materials are in the Supplier's possession or under its control.

(g) Risk in the Materials will remain with the Supplier at all times while the Materials are in the possession or under the control of the Supplier.

(h) The Supplier must not mortgage, pledge, charge, encumber, create a lien or security interest in or over or do any other act or thing substantially similar to the foregoing, in relation to the Materials.

(i) The Supplier is responsible for any loss of, or damage to, the Materials while the Materials are in the possession or under the control of the Supplier, except to the extent that such damage or loss results from an inherent defect in the Materials or any conduct directly attributable to Daimler Truck Entity or its employees, agents or suppliers (other than the Supplier). The Supplier indemnifies the Daimler Truck Entity Group from and against all loss, damages and liability suffered or incurred by Daimler Truck Entity as a result of or in connection with the loss of or damage to the Materials while they are in the possession or under the control of the Supplier.

### 34. BODIES AND VEHICLE FITTINGS:

If the PO requires the Supplier to supply Bodies or Vehicle Fittings, this clause shall apply.

In this clause:

**'Body'** means the body that will be Manufactured, supplied and fitted to the Vehicle(s) by the Supplier in accordance with the Specifications or as otherwise set out in the PO.

**'Collection Date'** means the date the Daimler Truck Entity wishes to collect the Complete Vehicle, Body or Vehicle Fitting from the Supplier, as specified in the PO.

**'Complete Vehicle'** means the Vehicle and the relevant Body.

**'Vehicle Fitting'** means the vehicle part designed for fitting to a vehicle that will be Manufactured, supplied and affixed (if so specified) by the Supplier in accordance with the Specifications and as otherwise set out in the PO.

**'Manufacture'** means the design (if necessary) manufacture, test and commission.

**'Specifications'** means the Daimler Truck Entity's requirements for the Manufacture, supply and fitment of a Body or Vehicle Fitting to a vehicle(s) as may be notified by the Daimler Truck Entity to the Supplier.

**'Vehicle Delivery Date'** means the date the vehicle(s), if any, will be delivered to the Supplier by the Daimler Truck Entity as specified in the PO.

(a) The Daimler Truck Entity non-exclusively engages the Supplier, and the Supplier accepts such engagement, to Manufacture, supply and fit Bodies and/or Vehicle Fittings to Vehicles as outlined in the PO. The PO will specify: identification details of any Vehicles to be delivered to the Supplier; the Body or Vehicle Fitting Specifications; approximate Vehicle Delivery Date; and Collection Date to the extent applicable.

(b) The Supplier agrees to accept delivery of the Vehicles; Manufacture

the Bodies or Vehicle Fittings in accordance with the Specifications; supply and fit the Bodies and/or Vehicle Fittings (if required) to the Vehicles prior to any specified Collection Date; and ensure that the Bodies and Vehicle Fittings have been Manufactured and fitted (where applicable) to the Vehicles such that the Complete Vehicles are available for collection by the Daimler Truck Entity or its nominee no later than the relevant Collection Date.

(c) The Supplier represents and warrants to the Daimler Truck Entity that the Body or Vehicle Fitting will comply with the Specifications, all Applicable Laws and design rules; and be constructed with due diligence and skill; with new, good quality materials; and conditioned in a proper and workmanlike manner; be of an acceptable quality; be free from Defects; and not adversely affect the performance or safety of the vehicle(s) or the Completed Vehicle(s).

(d) If the Supplier identifies any error or defect in the design of the Specifications, or any failure of the Specifications to comply with any Applicable Law or design rules, the Supplier must immediately notify the Daimler Truck Entity, providing details of such error, defect or failure and details of any proposed methods the Supplier may have of rectifying that error, defect or failure.

(e) The Supplier represents and warrants that the Bodies and/or Vehicle Fittings will strictly conform to the Specifications and will comply with all applicable Australian standards, the Applicable Laws and design rules of all states and territories of Australia in relation to the Manufacture and fitment of the Bodies or Vehicle Fittings.

(f) The Supplier warrants in respect of each Body or Vehicle Fitting that it will repair or replace any Defects.

(g) If the Supplier offers a Customer Warranty, the Supplier acknowledges and agrees that each Body forming part of a Complete Vehicle and/or Vehicle Fitting will be on-sold by the Daimler Truck Entity to a customer and in addition to the conditions and warranties contained in this Agreement, the Supplier agrees to provide the Customer Warranty to the Daimler Truck Entity's customer. Further, the Daimler Truck Entity may elect to assign the Customer Warranty received from the Supplier to its customer, in which case the Supplier consents to any assignment of the Customer Warranty to the Daimler Truck Entity's customer and such consent is irrevocable, perpetual, and applicable to any Customer Warranty obtained under this Agreement. The Customer Warranty in respect of each Body or Vehicle Fitting will commence on acceptance of the each Complete Vehicle, Body or Vehicle Fitting by the Daimler Truck Entity.

(h) The Supplier acknowledges and agrees that the Daimler Truck Entity is authorised to sell any Bodies and/or Vehicle Fittings purchased from the Contractor (including to end users or to resellers for the purpose of resale) in such manner, at such prices and on such terms as the Daimler Truck Entity determines.

### 35. Compliance with Laws and Respect for Human Rights

(a) The parties agree to comply with all applicable laws, rules, regulations and product requirements affecting the parties' performance under the terms of this Agreement, carrying the force of law including, without limitation, those of their respective state of incorporation or principal place of business, and of the state of operations (collectively referred to as "Applicable Laws").

(b) Notwithstanding the above and any further provisions of this Agreement, the parties confirm that they have adequate procedures in place in order to comply with the Applicable Laws relating to antitrust, anti-corruption, anti-money laundering, sanctions and export control obligations, data protection, the prohibition of child and forced labor, labor rights, occupational health and safety, as well as environmental protection during the term of the parties' contractual relationship.

(c) The parties agree to respect all internationally recognized human rights as expressed in the UN International Bill of Human Rights and the ILO's (International Labour Organization) fundamental conventions during the term of the parties' contractual relationship.

(d) The parties shall ensure through the establishment, implementation,

monitoring and active enforcement of pertinent policies, procedures and measures including, without limitation, the keeping of accurate books and records, that there is continuous and full compliance with all of the provisions in this article.

### 36. GENERAL CLAUSES:

**(a) Governing law:** These T&Cs and the PO are governed by the laws of the State of Victoria, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of Victoria.

**(b) Compliance with laws:** each Party within the framework of its commercial dealings with the other, 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 their organisation or other third parties. In the event of violation of the above by a Party, the other Party has the right to immediately withdraw from or terminate all legal transactions existing with the other Party and the right to cancel all negotiations. The above notwithstanding, each Party is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with the other Party.

**(c) Modern Slavery, child and forced labour:** Subject to this clause, each Party will not directly or indirectly employ or make use of any children. Each Party will not use any forced labour, which means any work or service performed involuntarily under threat of penalty. The Parties will comply with the minimum employment age limit defined by national law or by International Labor Organization ("ILO") Convention 138, whichever is higher. The ILO Convention 138 minimum employment age is the local mandatory schooling age, but not less than 15 years of age (14 in certain developing countries), subject to exceptions allowed by the ILO and national law. If the Supplier's employees are working in facilities that are manufacturing or packaging Daimler Truck Entity, DT AG or Daimler Truck related companies' finished products, serving as temporary employees to Daimler Truck Entity, or present at Daimler Truck Entity facilities, then these employees will be at least 15 years of age (and no exceptions allowed by the ILO or national law will apply).

Each Party represents and warrants that:

- (i) it will not engage in Modern Slavery in performing the Services;
- (ii) it does not procure goods or services from organisations that engage in, or are reasonably believed to engage in, Modern Slavery;
- (iii) it will implement appropriate measures to continuously identify, assess and address risks of Modern Slavery in its supply chains,
- (iv) it will promptly notify the other Party if it becomes aware of suspected or actual Modern Slavery in its supply chains, in which case the Contractor will take all reasonable steps to properly assess and address the actual or suspected Modern Slavery to the other Party's reasonable satisfaction, and
- (v) it will place substantially similar contractual obligations to (i), (ii) and (iii) above on its suppliers and subcontractors.

**(d) Audit rights:** Daimler Truck Entity or its representatives may audit the Supplier's records related to this Agreement with reasonable prior written notice during the Supplier's regular business hours during the term of this Agreement. Upon receipt of such notice from Daimler Truck Entity, the Supplier will cooperate and provide Daimler Truck Entity access to its records for review and copying. If the audit discloses any overcharging in breach of this Agreement, the Supplier will pay Daimler Truck Entity any overcharges and Daimler Truck Entity may require that the Supplier reimburse Daimler Truck Entity's reasonable audit costs within 30 days after the date of Daimler Truck Entity's invoice after completion of the audit. Daimler Truck Entity will take all reasonable steps to maintain the confidentiality of the audited records. If the Supplier refuses Daimler Truck Entity's reasonable request to audit its records, Daimler Truck Entity may withhold payment until the Supplier complies with such request. The representatives nominated by Daimler Truck Entity may include employees or officers of Daimler Truck Entity or its Affiliates or auditors (whether internal or external) of Daimler Truck Entity or its Affiliates.

**(e) Dual signature:** Daimler Truck Entity hereby places the Supplier on notice that Daimler Truck Entity policy mandates that all Daimler Truck Entity written communications must be signed or countersigned by two signatories, one of which must be either a company director, company secretary, senior executive, dealer principal or lawyer (“**Signing Authority**”). The Signing Authority applies to Daimler Truck Entity’s written correspondence and e-mail communications. To the full extent permitted by law, the Supplier must not rely upon and Daimler Truck Entity will not be bound by any written communication to the Supplier which does not comply with the Signing Authority.

**(f) Variations:** Any alteration or amendment to the PO or these T&Cs must be agreed by both parties in writing in order to be effective. The parties agree that any terms and conditions endorsed on any order confirmation, delivery note, docket, invoice or other document produced by the Supplier are expressly negated and do not form part of the PO or these T&Cs, and do not apply to the delivery of Goods or Services.

**(g) Waiver:** A waiver is not effective unless it is in writing. A party’s failure or delay to exercise a power or right that it has under the PO or these T&Cs, does not operate as a waiver of that power or right. A party does not by granting an indulgence, allowing any time, or exercising any right or remedy arising out of any default/s by the other waive its rights or remedies under these T&Cs.

**(h) Subcontracting:** The Supplier must not use subcontractors for the supply of Goods or Services without Daimler Truck Entity’s prior written consent, which may be withheld in Daimler Truck Entity’s discretion. If the Supplier uses a subcontractor, the Supplier agrees to be liable for the subcontractor’s acts, negligence and omissions (including its performance or lack thereof) as if they were the acts, negligence or omissions of the Supplier. No subcontractor will have any rights under the Agreement against Daimler Truck Entity or be entitled to receive any payment under the Agreement from Daimler Truck Entity. If at any time Daimler Truck Entity reasonably considers that the performance or conduct of a subcontractor is unsatisfactory, Daimler Truck Entity will have the right to require the Supplier to replace any such subcontractor and the Supplier in such circumstances will promptly do so as is reasonably practicable in the circumstances.

**(i) Relationship:** The Supplier is an independent Supplier. Nothing in these T&Cs or the PO creates a partnership, agency or employment relationship between the parties. The Supplier may not advertise this business relationship except with the prior written consent of Daimler Truck Entity.

**(j) Severance:** If any clause in these T&Cs is invalid, illegal or unenforceable, that clause must be read down to the extent necessary to ensure that it is not illegal, invalid, or unenforceable. If it is not possible to read down a clause, that clause will be severed to the extent necessary without affecting the validity or enforceability of the remaining part of that clause or the other clauses in these T&Cs, and the rest of these T&Cs remain in full force and effect.

**(k) Assignment:** The Supplier may not assign or transfer any of its rights or obligations under the PO or these T&Cs except with the prior written consent of Daimler Truck Entity, which consent must not be unreasonably withheld. Daimler Truck Entity may assign its rights and obligations under this Agreement on written notice to the Supplier.

**(l) Ongoing obligations:** Termination or expiry of these T&Cs does not relieve any party from that party’s obligations that are expressed to or by their nature are intended to survive expiry or termination.

**(m) Effecting PO and T&Cs:** Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the PO and these T&Cs.

**(n) No representations:** Each party has accepted the PO, these T&Cs and the Agreement without relying on any representation (whether or not negligently) by any other party or any person purporting to represent that other party.

**(o) No public announcement:** The Supplier must not make any public announcement or provide any information to the public or media in relation to the Agreement, the termination of the Agreement, or its relationship to Daimler Truck Entity unless it first obtains Daimler Truck Entity’s written consent.

**(p) Order of precedence:** If there is any discrepancy or inconsistency between the documents forming part of the Agreement then the following order of precedence shall where possible be used to resolve such conflict:

1. A PO and accompanying Special Conditions (including any Schedules and/or Annexures) attached to the PO issued by Daimler Truck Entity relating to the Goods or Services during the Term,
2. These T&Cs,
3. Any other documents or information incorporated by reference into the Agreement.

**(q) Agreement to be interpreted in accordance with clear commercial purposes:** The Agreement is to be interpreted in accordance with its clear commercial purposes. It is not to be read literally if that would produce a result clearly contrary to those purposes.

**(r) Exclusion of Sale of Goods Act:** The applicable of the *Sale of Goods (Vienna Convention) Act 1987* (Vic) is excluded.

**(s) Notice:** A notice or other communication connected with the PO or these T&Cs (**Notice**) has no legal effect unless it is in writing. In addition to any other method of good provided by law, the Notice may be sent by prepaid post to, or delivered at, the address of the addressee set out in this Contract or subsequently notified. The Supplier acknowledges and agrees that the Daimler Truck Entity may rely upon any written notice and/or updated information submitted through the Supplier Database portal, issued by a representative of the Supplier providing notification of a change to the Supplier’s representative, address, bank account details or other particulars, unless the Daimler Truck Entity was expressly notified or ought to have reasonably been aware that such notification was not authorised to be provided, having regard to the form or circumstances in which the updated information was provided. If the Notice is sent or delivered in a manner provided by this clause, it must be treated as given to and received by the party to which it is addressed:

(i) if sent by post within Australia, on the 4th Business Day (at the address to which it is posted) after posting; or

(ii) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

**(t) Records Retention:** Each Party must keep full records and documentation in relation to the supply of the Goods and/or Services in hard copy or reasonably accessible and readable electronic form. Each Party must do so during the term of the Agreement and for 7 years after the Agreement ends. On request by one Party, the other Party must make all documents and records relating to the supply of the Goods and/or Services available to the requesting Party for inspection.

### 37. ELECTRONIC SIGNATURES:

This Agreement may be validly executed in counterparts by each Party applying or affixing an Electronic Signature and the parties agree that both counterparts shall together be deemed to constitute one and the same instrument.

Both parties expressly consent to the Agreement being executed via Electronic Signatures.

By applying or affixing an Electronic Signature to this Agreement, the applying or affixing Party:

(a) Represents and warrants to the other Party that:

(i) the Electronic Signature being applied or affixed to the Agreement is the Electronic Signature of the authorised signatory of the Party named in the Agreement;

(ii) the authorised signatory has the express authority and capacity to execute the Agreement using the Electronic Signature and that the Electronic Signature is capable of binding that Party;



- (b) Acknowledges and agrees that the affixing or applying of the Party's Electronic Signature to the Agreement:
- (i) is a representation to the other Party of its intention to be bound by the Agreement;
- (ii) shall have the same legal validity and enforceability as an original signature manually applied or a paper-based record and shall be effective to bind such a Party to this Agreement to the fullest extent permitted by applicable law.

A Party must, upon request, supply to the other Party evidence to support the authentication and validity of its Electronic Signature.

**“Electronic Signature”** means a visible representation of an authorised signatory of a Party's name or mark, affixed to this Agreement using a certificate-based digital ID issued by an accredited Certificate Authority (CA) or Trust Service Provider (TSP).

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**ANNEXURE A**  
**Special Conditions**