

## GENERAL TERMS AND CONDITIONS OF MERCEDES SERVICECARD GMBH & CO. KG

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### 1. Scope and amendment of these General Terms and Conditions

- a. These General Terms and Conditions ("GTC") apply to the entire contractual relationship between Mercedes ServiceCard GmbH & Co. KG, Mainparkstr.2, 63801 Kleinostheim, Germany ("MSC") and the MSC customer ("Customer") in the currently valid version. After termination of the contractual relationship, these General Terms and Conditions shall continue to apply until the business relationship has been fully completed. Conflicting or deviating terms and conditions of the Customer are not binding, even if MSC performs the contract without expressly objecting to them. This version replaces all previous versions of the General Terms and Conditions.
- b. The business relationship between MSC and the Customer is based on a contract between the Customer and MSC ("Customer Contract"), which is established upon acceptance of the Customer's card application by MSC, but no later than upon use of the acceptance media sent to the Customer by MSC (in particular Service Cards, more particularly clause 3 below). These GTC form an integral part of the Customer Contract in all cases.
- c. MSC is entitled to amend the GTC with effect for the future, insofar as this is necessary for valid reasons, i.e. due to amended laws or supreme court rulings, technical changes, new organisational requirements for high traffic congestion, loopholes in the GTC, changes in market conditions or other comparable reasons and does not unreasonably disadvantage the customer. MSC shall inform the Customer of this in writing. If the Customer (a) does not object to the respective amendment within six (6) weeks of receipt of notification of the amendment in text form or (b) uses the contractual service of MSC after the notified date of the intended entry into force, this shall be deemed to be consent to the amendment. In the respective amendment notifications, MSC shall specifically inform the Customer of this assumed consent and the right to object, as well as of the consequences of continued use.

### 2. Availability and accessibility

MSC Customer Service can generally be reached from Monday to Friday from 8:00 a.m. to 5:00 p.m. (except on holidays).

### 3. MSC Service Partners

- a. MSC makes it possible for its customers to use services associated with service partners contractually affiliated with MSC ("MSC Service Partners") that are associated with the operation of a commercial vehicle of the Daimler Truck Group brands. Such services include the procurement of services (e.g. repair, parts, maintenance, emergency breakdown service) and other vehicle-related services.
- b. MSC continuously strives to expand the network of MSC service partners and acceptance points. The MSC network of acceptance points is, by its nature, subject to change and MSC cannot guarantee that certain MSC service partners or acceptance points will remain part of the MSC network of acceptance points.

### 4. Acceptance media

- a. MSC shall provide the Customer with acceptance media that the Customer can use to verify the cashless receipt of services from the MSC Service Partners. Acceptance media are, in particular, service cards and applications for use on mobile end devices.
- b. MSC makes it possible for its customers to purchase or use cashless services associated with the operation of a commercial vehicle from contractually affiliated service partners and their service centres, which are offered via MSC. The Customer must ensure that the acceptance media provided by MSC are only used in accordance with the contract by persons authorised by the customer to use the media and obtain vehicle-related services from MSC Service Partners ("authorised users").
- c. The Customer is not entitled to make acceptance media available to third parties or to procure services for third parties by means of acceptance media. Third parties also include subcontractors or Group companies. The acceptance media are intended exclusively for commercial purposes. Private use is not permitted.
- d. All acceptance media remain the property of MSC. The acceptance medium must be stored carefully and protected against access by unauthorised third parties. In particular, an acceptance medium must not be kept in an unattended vehicle.
- e. MSC Service Partners are entitled to verify the authorisation of the owner of the acceptance medium. For this purpose, the MSC Service Partner may obtain official IDs, the registration certificate for the vehicle or a comparable document, the vehicle rental contract or similar from the owner of the acceptance medium and reject deliveries and services if it is suspected that the acceptance medium used is being used without authorisation, expires or is blocked.

### 5. Provision of services

- a. MSC shall provide the Customer with the services of the MSC Service Partner. This results in a direct contract between the MSC Service Partner and the Customer. MSC executes this contract in an agency agreement with the Customer, i.e. MSC will settle the consideration owed to the MSC Service Partner in the name of and for the account of the Customer, and thereby acquire rights to advance payment and reimbursement of expenses from the MSC Service Partner to the Customer (reimbursement of expenses).

- b. For the purchase of the services of the MSC Service Partner, the provisions agreed by the MSC Service Partner with the user of the acceptance medium authorised by the Customer shall apply (the MSC Service Partner's General Terms and Conditions generally apply), unless otherwise agreed in clause 8 below. The Customer is not entitled to agree changes with the MSC Service Partner at the expense of MSC.
- c. Any complaints must be submitted immediately by the Customer to the MSC Service Partner. MSC must be informed of this. Complaints that the MSC Service Partner does not resolve must be reported to the MSC immediately in text form.
- d. The Customer is obliged to pay all claims for reimbursement of expenses arising from the agency agreements agreed according to clause 5a., in each case at the nominal amount of the claim, plus the fees and other costs agreed in accordance with clause 9 of these GTC.
- e. There is no obligation on the part of MSC or the MSC Service Partner to render performance before an individual contract for a service is concluded. Furthermore, in the case of an individual contract concluded for a service, there is no obligation to render performance in the event of force majeure, non-delivery by upstream suppliers or changes in the network of MSC Service Partners if these make delivery impossible or difficult.

## 6. The Customer's provision limit

- a. MSC defines certain provision limits for the Customer (in total and/or for individual acceptance media). The provision limit is the maximum amount up to which the Customer may use services. MSC cannot in all cases ensure that the procurement of services is technically excluded if the provision limit is exceeded.
- b. MSC shall be entitled to unilaterally reduce the provision limit
  - aa. in the event of a deterioration in the Customer's creditworthiness,
  - bb. if the Customer fails to fulfil its obligations pursuant to clause 7
  - cc. if the Customer is in default of payment or
  - dd. cannot provide evidence of continuing creditworthiness,

at its reasonable discretion in accordance with Section 315 of the German Civil Code (BGB). The statutory rights of MSC, in particular in accordance with Section 321 BGB, remain unaffected.

## 7. Customer's information and notification obligations

- a. MSC is entitled to obtain information about the Customer from credit agencies and credit institutions.
- b. The Customer is obliged to inform MSC immediately in writing of all circumstances that affect its creditworthiness or other aspects of the performance of the contract. This also applies to changes to such circumstances that occur after conclusion of the Customer Contract. Accordingly, the Customer must inform MSC in particular about
  - aa. change of the company owner (of the owner of their company), the departure or joining of shareholders, the departure or joining of official representatives, the change of their bank details, the legal form of their company, the change of the address or telecommunications connections and/or the change or discontinuation of business operations (indicating the future availability of the owners and managing directors) and
  - bb. number plate or motor vehicle change.

The Customer must return acceptance media affected by a change to MSC, in particular if the registration number of the vehicle changes or the vehicle is decommissioned or sold or the Customer's company changes.

- c. The Customer is also obliged to inform MSC immediately in writing of all VAT numbers issued to it on the basis of VAT registrations in EU and EFTA countries ("VAT ID no." and/or "Tax numbers for VAT purposes" with or without "Appointment of a fiscal representative"), as well as any changes to these VAT registrations, and to provide evidence of such changes outside of its country of residence by means of official proof. Customers located outside the EU are obliged to provide proof of their entrepreneurial status with a certificate from their tax administration (so-called entrepreneur's certificate) or similar with specification of the tax number for VAT purposes.
- d. The Customer is liable for all damages and expenses incurred by MSC due to information provided late in accordance with clause 7c.

## 8. Poor performance of MSC Service Partners

- a. If the service provided by an MSC Service Partner is poor or there is a further breach of contract, the Customer's claims shall be directed directly against the MSC Service Partner.
- b. Irrespective of the contracts concluded in accordance with clause 5, the Customer must notify the MSC Service Partner of any defects in the service provided by the MSC Service Partner in text form as follows:
  - aa. in the event of recognisable defects within 24 hours of receipt of the service,
  - bb. in the case of undetected defects, within 24 hours of discovery of the defect.

The Customer must send MSC a copy of the report. Further obligations of the Customer arising from the contracts concluded in accordance with clause 5 (and therefore with the MSC Service Partner's General Terms and Conditions of Business generally) remain unaffected.

## 9. Fees and other costs

- a. Other costs, such as reminder and collection fees incurred by MSC for reasons for which the Customer is responsible must be reimbursed by the Customer to MSC. If the Customer does not reimburse the costs, MSC may permanently refuse to use the acceptance media and terminate the contractual relationship.
- b. The Customer shall bear all costs associated with payment transactions, such as transaction costs and currency costs.

## 10. Proper invoicing, accounting and payment

- a. The Customer's payment obligation for services provided by the MSC and/or the MSC Service Partner arises when the services are used.
- b. MSC generally invoices the services purchased from the Customer on a semi-monthly basis (up to the 15th of a month and at the end of the month).
- c. Payment by the Customer to MSC shall be made in euros. Invoices from MSC Service Partners that are not in euros will be converted to euros. In this case, the exchange rate of the European Central Bank on the day the MSC Service Partner's invoice is posted at MSC shall be used. The use of other exchange rates by the Customer is not permitted.
- d. The invoice can be made available electronically or, in exceptional cases, in paper-based form (by post).
- e. The Customer must pay the MSC's invoice within 20 days. MSC may agree on a different payment term in individual cases.

- f. The Customer must check the MSC's invoice immediately upon receipt, and notify MSC of all data disputed in the invoice and the full reason for his objection. If notification is not made within 8 weeks of receipt of the invoice by the Customer, the invoice shall be deemed to have been approved, unless it was impossible to verify the invoice through no fault of the Customer's. MSC shall refer to this legal consequence separately in its invoices.
- g. If the Customer does not pay a claim from MSC within the agreed payment term, e.g. due to non-payment of direct debits, the Customer will be in default with no further notice being given. The right to claim damages caused by default remains reserved. The Customer shall not be in default as long as the service is not provided due to a circumstance for which the Customer is not responsible.
- h. If a third party provides the service to the Customer, MSC may object to this and reject the service by the third party, even if the Customer does not object to the service by the third party.
- i. MSC offers the Customer the option of making payments by bank transfer or by SEPA direct debit. MSC shall provide the Customer with advance notice no later than one (1) bank working day prior to the respective direct debit. The Customer must name the MSC settlement account for all repayment claims. The Customer authorises MSC to make repayments to the current settlement account. MSC is entitled to offset its own claims against the Customer with these repayment claims.

## 11. Duty to notify and liability in the event of unauthorised use of an acceptance medium

- a. If the Customer discovers the loss or theft, misuse or any other unauthorised use of one of the acceptance media used by the Customer, or if there are indications leading to such suspicion, the Customer must immediately notify MSC or its legal representatives or vicarious agents, stating the Customer and the acceptance medium number, the vehicle registration number, country, place, time and type of incident ("Blocking Notification"). The Blocking Notification can be made by telephone, email or in writing using the contact details provided to the Customer for the purpose of the Blocking Notification (see in particular <https://www.mercedesservicecard.de/de/support>). The Blocking Notification shall be deemed to have been received as soon as the Customer has provided all the information required for the authorisation verification.
- b. The Customer must also immediately report any theft or misuse of an acceptance medium to the competent police authority. The Customer must provide MSC with a copy of the report.
- c. The Customer shall be liable until implementation of the Blocking Notification in accordance with clause 12a in MSC's authorisation system (which must be implemented immediately, but no later than two (2) hours after receipt) for all claims of MSC arising from transactions carried out by misuse of the acceptance medium. Despite the implementation of the Blocking Notification in MSC's authorisation system, the Customer is also liable for claims if the Customer is responsible for the misuse of the acceptance medium. This shall apply in particular if the Customer violates their obligations to handle the acceptance medium in accordance with clause 4 or otherwise facilitates misuse through an intentional or negligent violation of its contractual obligations. If MSC has not done everything reasonably possible within the limits of the existing technical systems to prevent misuse, corresponding contributory negligence must be considered.

- d. The Customer shall also be liable for transactions carried out with a counterfeit acceptance medium, insofar as the counterfeiting was made possible by a breach of the Customer's obligations in accordance with clause 4.

## 12. Blocking of acceptance media

MSC shall block the Customer's acceptance media upon receipt of a Blocking Notification from the Customer. MSC may block acceptance media for objective reasons, taking into account the legitimate interests of the Customer. The Customer will be notified of a block immediately. An objective reason shall be deemed to exist in particular:

- a. if there are signs of (imminent) misuse,
- b. if the provision limit pursuant to clause 6 is exceeded, or
- c. if the Customer breaches their obligations under the Customer Contract (including these GTC).

## 13. Limitation of liability

- a. MSC shall be fully liable for damages resulting from injury to life, limb or health caused by an intentional or negligent breach of duty by MSC. MSC shall also be fully liable for any other damages resulting from an intentional or grossly negligent breach of duty by MSC.
- b. MSC shall only be liable for damages resulting from a simple negligent breach of such obligations, which are essential for the appropriate and flawless performance of the contract and on the fulfilment of which the Customer accordingly relies and may rely (cardinal obligations), to an extent limited to the typically foreseeable damage.
- c. Other claims for damages are excluded subject to clause 13d below.
- d. Limitations of liability and exclusions of liability in accordance with clause 13 shall not affect MSC's liability in accordance with the mandatory statutory provisions of the German Product Liability Act, due to the fraudulent concealment of a defect and the assumption of a guarantee for the quality of an item.
- e. Clause 13 applies to all claims against MSC by the Customer, regardless of the legal basis, in particular for contractual and tortious liability.
- f. Insofar as MSC's liability is limited or excluded in accordance with clause 13, the limitations or exclusions also apply to the personal liability of MSC's employees, legal representatives and vicarious agents in the event of direct claims by the Customer.
- g. MSC is not liable for damage for which it is not responsible, e.g. in the event of system failures or the lack of availability of the emergency service control centres.

## 14. Termination and end of contract

- a. The Customer Contract shall be in force for an indefinite period until it is terminated by one of the parties in accordance with this clause 14.
- b. The Customer may ordinarily terminate the Customer Contract in its entirety or in relation to individual acceptance media by giving thirty (30) calendar days' notice at the end of a month. The provision of reasons is not required.
- c. MSC may ordinarily terminate the Customer Contract in full or in relation to individual acceptance media by giving thirty (30) calendar days' notice at the end of a month. The provision of reasons is not required.
- d. The right of each party to terminate the Customer Contract in its entirety or in relation to individual acceptance media for good cause remains unaffected. Good cause for termination by MSC shall be deemed to exist in particular

- aa. in the event of repeated misuse of an acceptance medium,
  - bb. in the event of non-payment of claims of MSC despite claims being due and reminders being sent,
  - cc. in the event of revocation of the agreed direct debit order or SEPA direct debit mandate, or
  - dd. in the event of a deterioration in the Customer's creditworthiness or if the Customer fails to fulfil their obligations in accordance with clause 7.
- e. If there is a credit balance for the Customer in the context of credit management, this credit balance shall expire immediately upon termination of the Customer Contract.
  - f. Any termination shall require a notice of termination in text form and shall take effect upon receipt.
  - g. At the effective date of termination, the Customer shall cease using the affected acceptance media and return them immediately to MSC or destroy them at MSC's request.

## 15. Data privacy

- a. MSC processes personal data exclusively within the framework of the data protection regulations (in particular the GDPR and the BDSG) for its own purposes (in particular to provide the services owed under the Customer Contract). Subject to admissibility under data protection law, this also includes the transfer of personal data to third parties (e.g. MSC Service Partners).
- b. MSC is entitled to process the Customer's master data and transaction data, as well as that of its contact persons and employees (e.g. drivers), insofar as this is necessary for the normal support and/or proper performance of the services. With the Customer's consent, given by concluding this Customer Contract, MSC shall transfer the data generated by the business transactions and transferred by the customer to MSC (possibly including personal data), in particular within the Daimler Truck Group (e.g. to other Daimler Truck national companies or general representatives). The transfer of data such as company and address data as well as information on the business transactions carried out takes place in order to fulfil contractual obligations and to improve service offerings to the Customer. All processing, including the transfer of personal data, is carried out in accordance with the legal requirements for data protection. In the event of the transfer of personal data to MSC, the Customer warrants that it is entitled to do so. If relevant, the Customer is obliged to conclude a separate agreement with MSC on order processing (e.g. for personalised acceptance media). The current data protection provisions for MSC's card application are published at [https://www.mercedesservicecard.de/media/ka\\_ds\\_en.pdf](https://www.mercedesservicecard.de/media/ka_ds_en.pdf).
- c. The Customer undertakes to refer authorised users and other persons working for them whose data is processed by MSC to MSC's privacy policy.

## 16. Applicable law and legal venue

- a. German law shall apply to these GTC and the Customer Contract, as well as to all resulting or associated claims, including tortious claims, to the exclusion of the conflict of laws provisions applicable under this law and the UN Convention on Contracts for the International Sale of Goods (CISG).
- b. The place of performance and exclusive – including international – legal venue for all disputes arising from or in connection with the Customer Contract, including for tortious claims, is Aschaffenburg, Germany. Priority statutory provisions, in particular on exclusive competences, remain unaffected.

## 17. Miscellaneous

- a. Should any provisions of these GTC be or become invalid, the validity of the remaining provisions shall remain unaffected.
- b. The Customer may offset any claims against the claims of MSC only if their counterclaim is undisputed or legally established or if these are counterclaims from the same legal relationship; this also applies to the assertion of rights of retention by the Customer.
- c. No verbal side agreements have been entered into.
- d. If the text form is required in these GTCs, written or electronic declarations, e.g. by email, are sufficient to comply with them.
- e. Business relationships with foreign customers are also subject to these GTC as written in German. The translation of this information into the national language of the Customer or into the English language, as made available to foreign customers, is a special, but legally non-binding service by MSC, and is intended to provide better understanding. In the event of a dispute over interpretation, the German text always takes precedence.

The purpose of this information is to notify you about the processing of your personal data by Mercedes ServiceCard GmbH & Co. KG and your associated rights.