

DAIMLER

General Terms and Conditions (Standard 1 October 2017)

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 Entity noted on the Purchase Order, and the Supplier entered into during the currency of these General Purchasing Terms and Conditions.

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 General Purchasing Terms and Conditions and all accompanying POs and Special Conditions agreed between the Daimler 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.

"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:

- (i) is lawfully obtained by the other party from a third party and is not subject to a pre-existing obligation of confidentiality;
- (ii) is in or becomes part of the public domain, other than through a breach of this Agreement;
- (iii) was known to the other party at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
- (iv) 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" means Daimler AG, Daimler Entity's ultimate parent company based in Germany.

"Daimler Entity" means any of MBC, DTB, MBV and/or DPL, whichever entity or entities is/are referred to as applicable on the Purchase Order.

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

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

"Date of Delivery" means the date of delivery for the supply of the goods and/or services by the Supplier to Daimler 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 Entity pursuant to a PO and these T&Cs, including any improvements made to Daimler Entity's IPR.

"DPL" means Daimler Parts Logistics Australia Pty Ltd ACN 618 413 335.

"DTB" means Daimler Truck and Bus Australia Pacific Pty Ltd ACN 618 413 282.

"Goods" means the goods or product to be provided to Daimler 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 circumstances where a party is unable to pay its debts as and when they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for:

- (a) its bankruptcy, winding-up, dissolution, liquidation, or reorganisation other than to reconstruct or amalgamate while solvent on terms approved by the other party;
- (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer over it or any of its revenues and assets; or
- (c) seeking protection or being granted protection from its creditors, under any applicable legislation.

"IPR" means all present and future proprietary, licence 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.

"MBC" means Mercedes-Benz Cars Australia Pacific Pty Ltd ACN 004 411 410.

"MBV" means Mercedes-Benz Vans Australia Pacific Pty Ltd ACN 618 413 362

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

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

"Personal Information" means 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 Daimler 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 Entity relevant to Daimler Entity’s or the Supplier’s compliance with the Safety Legislation.

“**Services**” means the services to be provided to Daimler 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.

“**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.

(d) 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.

(e) 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.

(f) The agreement between Daimler 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 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 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 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 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 Entity in its sole and unfettered discretion wishes to exercise the option to extend, Daimler 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 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 Entity at any time prior to delivery on written notice to 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; and comply with Daimler Entity’s standards, operating principles, policies and procedures notified and provided to the Supplier, including Daimler 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 Group Companies the same prices for the same Goods and/or Services specified in the PO. If another Daimler Group Company elects to purchase Goods or Services at the same prices, that Daimler 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 11 (Acceptance and Rejection), the Supplier must only invoice Daimler Entity on or after the delivery of the Goods to Daimler Entity or completion of the Services. Provided that the Goods and/or Services have been accepted by Daimler Entity, Daimler 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 Entity.

(b) 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.

(c) If Daimler Entity, acting reasonably and *bona fide*, disputes the whole, or part of the invoiced amount Daimler 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 27 will apply.

(d) Daimler Entity may set off any amount it owes the Supplier under a PO and these T&Cs against any amount the Supplier owes Daimler 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 Entity, this Clause 9 shall apply.

In this Clause 9:

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

"Direct Ship" means an Order to send the specified Goods directly to a delivery address other than the Mercedes-Benz 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 either through MB Portal or by way of PO;

"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 Entity wishes to purchase Goods from the Supplier, Daimler Entity will submit to the Supplier an Order for the Goods.

(b) An Order may be made either: through the MB Portal; or by Daimler 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 it is received, or deemed to have been received by the Supplier, and the Supplier has not informed Daimler Entity within 24 hours of placement of the Order that it does not accept the Order.

(d) An Order is deemed to have been received by the Supplier on the earlier of: if ordered through the MB Portal, at the time the Order is uploaded; or if ordered by way of PO, at the same time as, had the Order been a Notice, it would have been deemed to have been received, or, if the Order is sent by email, when it is acknowledged as received (whether by "read receipt" or otherwise).

(e) Where access to MB Portal is made available to the Supplier, the Supplier agrees to use the MB Portal for Direct Ship Orders.

9. DELIVERY OF GOODS: The Supplier must deliver the Goods ordered by Daimler 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 Entity may nominate in writing prior to delivery, along with documentation quoting Daimler 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 Door E6, 24-32 Lexia Place, Mulgrave, Victoria (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 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 Entity in order to comply with any applicable law or policy.

10. TIME: Time is of the essence for the provision by the Supplier of Goods and/or Services to Daimler Entity. The parties agree that Daimler 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 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.

11. ACCEPTANCE AND REJECTION:

(a) Orders, acceptance of Orders, any alteration or amendment of Orders may be made by Daimler Entity in writing prior to delivery,

(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 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 Entity and the Supplier must agree on a suitable alternative Date of Delivery. If possible, Daimler 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 Entity until the Goods have been inspected or verified by Daimler Entity.

The signing of delivery dockets or similar documents by Daimler Entity's employees or agents does not constitute acceptance of Goods specified in such docket or document. Without limiting Daimler Entity's rights under these T&Cs, Daimler 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 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 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, Daimler Entity will not be required to pay for any Goods supplied to Daimler Entity which are rejected under this clause 11.

(d) **Services:** Services delivered by the Supplier are not accepted by Daimler Entity until the delivery of the Services has been verified by Daimler Entity. Without limiting Daimler Entity's rights under these T&Cs, Daimler 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 Entity's election, remedy, replace or re-perform the Services until the Services are accepted, or Daimler Entity otherwise elects to cancel the PO. Notwithstanding clause 7, Daimler Entity is not required to pay to the Supplier any amount in respect of any Services provided which are rejected under this clause 11.

12 TITLE AND RISK:

(a) Title to and risk in the Goods passes to Daimler 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.

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

14. 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 no less than \$10 million if the services provided by the Supplier contain professional services.

(e) If requested by Daimler Entity, the Supplier must, within 24 hours of written request by Daimler Entity, provide Daimler Entity with copies of the relevant policy/s and evidence of payment of the current premium.

15. 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 Entity;
- (vi) are acceptable in appearance and finish, are durable and safe;
- (vii) are compliant with any Daimler 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 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) 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) 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 Entity; and
- (vi) comply with all reasonable directions of Entity and with any Daimler 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.

16. DATA PROTECTION: The Supplier 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 Compendium ('DISC') available at <http://media.mercedes-benz.com.au/DISC.pdf>.

17. 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 Entity supplies any good/s, vehicle/s, tool/s, dies, equipment, drawing/s, blue print/s, specification/s and/or other documents (**Daimler 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 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 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 Entity retains all ownership of, and title in all Daimler Entity Goods supplied by it to the Supplier and reserves the right to dispose of the Daimler Entity Goods.

(d) The Supplier agrees that Daimler 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 Entity reasonably requires to perfect and maintain perfection of Daimler Entity's security interest, including meeting the costs and expenses relating to enforcement or attempted enforcement of these T&Cs.

(e) The Supplier:

(i) waives its rights to receive a copy of any verification statement in respect of any security interest provided for in the PO and/or these T&Cs; and

(ii) acknowledges that it is not the owner of the Daimler Entity Goods provided to the Supplier by Daimler 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 Entity and the Supplier contract out the enforcement provisions in section 115(1) [Contracting out of enforcement provisions].

18. BREACH OF WARRANTY: If the Supplier becomes aware, or if Daimler 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 Entity's other rights, promptly (and at Daimler Entity's option) during any warranty period provided by the Supplier or available at law, as directed by Daimler 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 Entity the price paid for the Goods and/or Services; or

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

19. CONFIDENTIALITY:

(a) If the Supplier is provided with Confidential Information, the Supplier 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 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 Entity.

(b) The Supplier acknowledges that the Confidential Information is the valuable property of Daimler Entity and that any disclosure of it could give rise to considerable loss or damage to Daimler Entity.

(c) The obligations in this clause 19 do not apply to information which is:

(i) publically available through no fault of the Supplier;

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

(iii) disclosed by the Supplier with Daimler Entity's prior written approval.

(d) Neither Daimler 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.

(e) The Supplier must immediately notify Daimler Entity of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

(f) Immediately on demand, or on completion, termination or expiry of the PO and these T&Cs, the Supplier must deliver to Daimler Entity all material comprising Daimler Entity's Confidential Information and delete all copies electronically stored.

(g) This clause 19 survives expiry or termination of the PO and these T&Cs. Nothing in this clause 19 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.

20. PRIVACY

If the performance of the Supplier's obligations under these T&Cs involves the handling of Personal Information, the Supplier 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 Daimler Entity in connection with an obligation on Daimler Entity 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 Daimler Entity; 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.

21. 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 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 Entity being in breach of its obligations under the Safety Legislation and Safety Requirements. The Supplier must notify Daimler Entity of any and every workplace accident or incident which occurs during or related to the performance of the PO. Prior to accessing any Daimler 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 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.

22. SUPPLIER'S CONDUCT: The Supplier must comply with and ensure that its conduct is consistent with Daimler Entity and Daimler AG's reasonable operating principles, policies and procedures (which are located at http://www.daup.com.au/terms_and_conditions.html or a hardcopy of which can be obtained by contacting Daimler Entity via e-mail at daup_procurement@daimler.com). The Supplier must ensure that all its employees, agents, contractors and representatives involved in the performance of its obligations or at any premises or sites of Daimler Entity observe such standards, policies and procedures.

23. INTELLECTUAL PROPERTY:

(a) The Supplier agrees that Daimler Entity will own any Developed IPR in any Goods, Services or materials specially developed, designed, manufactured, produced or supplied by the Supplier to Daimler 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 Entity, and the Supplier will ensure that title to such Developed IPR vests in Daimler Entity upon creation. To the extent that title in any Developed IPR is not capable of assignment to Daimler Entity, the Supplier grants to Daimler Entity an exclusive, worldwide, royalty free fully assignable perpetual licence in respect of the Developed IPR, which may only be terminated by Daimler Entity, for Daimler Entity to use the Developed IPR and to grant others the right to use the Developed IPR.

(b) Immediately on request by Daimler 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 23.

(c) Nothing in the PO and these T&Cs assigns IPR in any material over which Daimler 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 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 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.

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

25. LIABILITY AND INDEMNITY

(a) The Supplier must defend, indemnify and hold the Daimler Entity Group and its representatives, successors and assigns (**Indemnified Parties**) harmless from and against any claims, liability, costs, expenses, losses, damages and settlement expenses, including legal costs, that Daimler 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 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 25 is held by Daimler Entity on behalf of, and on trust for, each of the Indemnified Parties and can be enforced by Daimler Entity for the benefit of each of the Indemnified Parties in the name of Daimler Entity or in the name of any of the Indemnified Parties.

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

26. TERMINATION:

(a) Termination without cause

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

(b) Termination by Daimler Entity

Daimler 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 10 Business Days after receiving a written Notice from Daimler 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 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 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 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 Entity reasonably considers may have the potential to adversely affect the delivery of the Services, Daimler Entity's business or reputation.

(c) Termination by the Supplier

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

- (i) Daimler Entity is in breach of this Agreement and, if the breach is capable of remedy Daimler Entity has not remedied the breach within 30 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 Entity is the subject of an Insolvency Event.

(d) Return of property

On termination or expiration of this Agreement for any reason, the Parties will each immediately deliver to the other all property in their possession or control which belongs to the other Party and will deliver to or destroy (as applicable and to the extent permitted by law) any Confidential Information of the other Party.

(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 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 Entity is reasonably able to engage another supplier to provide the Services.

- (iii) Notwithstanding any other clause, in the event of any termination of this Agreement, Daimler Entity will only be liable to pay the Supplier for the Services performed before the date of termination; and will not be liable to pay for any work including any Services performed after termination.

27. 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 27.
- (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 27 unless otherwise agreed in writing by Daimler 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 Institute of Arbitrators and Mediators Australia, 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.

28. 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 a Attendee or potential attendee, howsoever obtained, including name, contact details and payment details, and, if Daimler Entity provides the Supplier with any information about any dealer, delegate, supplier, or customer of Daimler Entity or any other sponsor, includes such information;
- “Brief” means an outline of Daimler 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 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 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 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 Entity. The Website must: permit prospective Attendees to register and pay for Registration online; be hosted externally to Daimler Entity’s servers; be used solely for services performed for Daimler Entity; meet any IT or data security requirements notified by Daimler 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 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 Entity against any claim brought against Daimler 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 Entity, the Supplier must immediately: take the Website off line; and remove any Mercedes-Benz or Daimler 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 Entity Orders Registration Services, Daimler 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 Entity; and remit those Revenues to Daimler 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 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 Entity (if any). The Supplier must not adjust the Registration Fee. The Supplier must not refund any amount to any Attendee without Daimler 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 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 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 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 Entity for the sale of Registrations is deemed a taxable supply under the GST Act made by Daimler Entity to the Attendee. The Supplier shall provide Daimler Entity with all information Daimler Entity needs to account for GST in respect of all taxable supplies made by Daimler 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 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 four digits of the credit card details.

(iii) The Supplier must provide Daimler 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 Entity.

(e). **Revenues**

(i) Revenues from all Registrations must be paid by the Supplier to Daimler 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 Entity.

(ii) Notwithstanding sub-clause (a), Daimler Entity may require Revenues collected by the Supplier to be remitted to Daimler Entity at any time prior to the Event upon written notice. If a demand is made, the Supplier will immediately remit to Daimler 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 Entity separately from and not mixed with other client funds or revenues. Such funds must be clearly designated and identifiable as Daimler 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 Entity.

(iv) The Revenues must be paid to Daimler 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 Entity at regular intervals and as reasonably required by Daimler Entity sufficient to permit Daimler 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 Entity any third party suppliers as notified by Daimler 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 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 Entity for review and approval. Daimler 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 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 Entity, which will not be unreasonably withheld; and

(iii) provided Daimler Entity has approved the engagement of a Third Party, Daimler Entity will pay the approved amount of the Third Party Suppliers' invoices. Unless Daimler Entity has otherwise agreed in writing with the Supplier, the Supplier will not charge, and Daimler 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 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 Entity; and

(iii) the Supplier warrants and represents that any Marketing Material provided to Daimler Entity or produced or published by or on behalf of the Supplier under this Deed 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 Entity.

29. Building and Construction Work: If the PO requires the Supplier to undertake Services which involve performing any building and construction work, this clause 29 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 Entity and will be of such a nature and quality that they will reasonably achieve the result required by Daimler 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 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 Entity within 2 Business Days.

30 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 Entity, this clause shall apply.

(a) **Responsible and competent liaison**

On the Commencement Date of this Agreement, the Supplier must notify Daimler 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 Entity in these areas to ensure compliance with this Agreement.

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

The Supplier 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 the Supplier to contact an individual, the Supplier must only do so in accordance with the individual's consent and preferred communication method. If the individual has not consented to contact, the Supplier 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 Entity (or Daimler 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:

(a) been made aware and have agreed to comply with the privacy, data and information security, and confidentiality obligations in this Agreement; and

(b) had and will continue to have regular Privacy Law training provided by the Supplier.

(iii) any access is capable of being monitored and tracked by the Supplier;

- (iv) access is restricted on the basis of a minimum of 2 factor authentication;
- (v) it will solely be used by the Supplier in accordance with Daimler Entity's written or e-mailed instructions as to the collection, process or use of the Data; and
- (vi) 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 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 Entity's and any third party's infrastructure emanating from Daimler Entity's information technology environment;
- (ii) ensure that any data of whatever nature introduced into an Daimler 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 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;
 - (a) ensure that Daimler Entity's information technology systems are only accessed by persons who have Daimler Entity's prior written consent ("**Authorised Persons**") which may be withheld or subject to whatever conditions that Daimler Entity may impose. The Supplier must immediately notify Daimler Entity in writing of the departure of an Authorised Person who has access to Daimler Entity's information technology systems so that Daimler Entity can withdraw existing access authorisations; and
 - (b) 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 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 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 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 Entity's written consent which may be withheld or subject to whatever requirements that Daimler Entity may impose;

- (j) 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 Entity's prior written consent, which may be withheld or subject to whatever conditions that Daimler Entity may impose. If Daimler Entity does consent in writing to the Supplier transferring or storing Personal Information overseas the Supplier must inform Daimler 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 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;

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

- (b) if the Supplier processes, stores or transfers Data that belongs to different customers ensure that Daimler 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 has an information security strategy and plan that complies with or exceeds Daimler Information Security Compendium available at <http://media.mercedes-benz.com.au/DISC.pdf> and will provide this plan to Daimler Entity within 5 days of the Commencement Date. Daimler 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 Entity may elect on written notice to terminate this Agreement. Daimler Entity will only be liable to the Supplier for payment of Services performed up to and including the date of termination;
- (iii) 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];
- (iv) if during the performance of the Services the Supplier identifies any gaps between the Supplier's operations and the Daimler Information Security Compendium, the Supplier will as soon as reasonably possible notify Daimler Entity of these gaps in writing and remedy them to Daimler Entity's reasonable satisfaction; and
- (v) 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 Entity in writing of the change and the effect on Daimler Entity of these changes. If such changes are expected to reduce the effectiveness of security of any data (including the Data) then Daimler 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 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 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 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 Entity can immediately terminate this Agreement on written notice and Daimler 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 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 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 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 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 Entity with all information and cooperation that Daimler 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 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 Entity and take all reasonable steps requested by Daimler Entity.

(j) Data correction

If the Supplier becomes aware or if the Supplier is notified by Daimler 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 Entity or the individual for this correction.

(k) Information owner request for data access

If Daimler 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 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 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) Return and destruction of data

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

- (i) without cost and in the format specified by Daimler Entity immediately make available to Daimler 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 Entity of the actual law in writing) and without cost to Daimler 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 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.

31 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 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 an Daimler Entity site (including any delivery address specified by Daimler Entity in accordance the T&Cs or the PO) (**Site**), the Supplier must ensure that it and its employees, agents and subsuppliers:

- (i) comply with the directions and instructions of Daimler Entity or such other entity as may from time to time be identified by Daimler Entity at the Site for the purpose of any Safety Legislation and/or Safety Requirements;
- (ii) attend any co-ordination meetings called by Daimler 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 Entity in accordance with the T&Cs or the PO, pay the costs of remedying any such damage and indemnify the Daimler 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 Entity, ensure that the vehicle or equipment is returned to Daimler 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 Entity, upon request, with all information and documentation reasonably required by Daimler 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 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 mere bailee on behalf of Daimler Entity as bailor. Daimler 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 Entity or its employees, agents or suppliers (other than the Supplier). The Supplier indemnifies the Daimler Entity Group from and against all loss, damages and liability suffered or incurred by Daimler 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.

32. 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:** Within the framework of its commercial dealings with Daimler Entity, the Supplier 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 the Supplier or other third parties. In the event of violation of the above, Daimler Entity has the right to immediately withdraw from or terminate all legal transactions existing with the Supplier and the right to cancel all negotiations. The above notwithstanding, the Supplier is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Daimler Entity.
- (c) Child and forced labour:** Subject to this clause, the Supplier will not directly or indirectly employ or make use of any children. The Supplier will not use any forced labour, which means any work or service performed involuntarily under threat of penalty. The Supplier 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 Entity, Daimler AG or Daimler related companies' finished products, serving as temporary employees to Daimler Entity, or present at Daimler 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).

(d) Audit rights: Daimler 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 Entity, the Supplier will cooperate and provide Daimler 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 Entity any overcharges and Daimler Entity may require that the Supplier reimburse Daimler Entity's reasonable audit costs within 30 days after the date of Daimler Entity's invoice after completion of the audit. Daimler Entity will take all reasonable steps to maintain the confidentiality of the audited records. If the Supplier refuses Daimler Entity's reasonable request to audit its records, Daimler Entity may withhold payment until the Supplier complies with such request. The representatives nominated by Daimler Entity may include employees or officers of Daimler Entity or its Affiliates or auditors (whether internal or external) of Daimler Entity or its Affiliates.

(d) Dual signature: Daimler Entity hereby places the Supplier on notice that Daimler Entity policy mandates that all Daimler 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 Entity's written correspondence and e-mail communications. To the full extent permitted by law, the Supplier must not rely upon and Daimler Entity will not be bound by any written communication to the Supplier which does not comply with the Signing Authority.

(e) 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.

(f) 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.

(g) Subcontracting: The Supplier must not use subcontractors for the supply of Goods or Services without Daimler Entity's prior written consent, which may be withheld in Daimler 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 Entity or be entitled to receive any payment under the Agreement from Daimler Entity. If at any time Daimler Entity reasonably considers that the performance or conduct of a subcontractor is unsatisfactory, Daimler 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.

(h) 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.

(i) 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.

(j) 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 Entity, which consent must not be unreasonably withheld. Daimler Entity may assign its rights and obligations under this Agreement on written notice to the Supplier.

(k) 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.

(l) 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.

(m) 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.

(n) 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 Entity unless it first obtains Daimler Entity's written consent.

(o) 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 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.

(p) 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.

(q) Exclusion of Sale of Goods Act The applicability of the *Sale of Goods (Vienna Convention) Act 1987* (Vic) is excluded.

(r) 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. 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 The Supplier 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. The Supplier must do so during the term of the Agreement and for 7 years after the Agreement ends. On request by Daimler Entity, the Supplier must make all documents and records relating to the supply of the Goods and/or Services available to Daimler Entity for inspection.

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ANNEXURE A
Special Conditions