General Terms and Conditions (GTC) for the use of XENTRY Pass Thru EU ("Open Shell Software") (AGB XPTEU (Open Shell SW) - valid from 03/2023)

1. Scope of Application

The following terms and conditions apply exclusively to all services provided by Snap-On Business Solutions GmbH ("Provider") in connection with orders for the **Open Shell software** in the Service Info Mercedes-Benz Trucks portal. The general terms and conditions of the buyer (hereinafter the "Customer") are not incorporated into the contract, even if they have been attached to invitations to tender, purchase orders or declarations of acceptance and have not been explicitly rejected.

2. Subject Matter of the Agreement

The Provider leases the Open Shell Software to the Customer for the term of this Agreement.

3. Conclusion of the Agreement

3.1 An effective order of time credits requires that the Customer has a valid VAT ID and belongs to the eligible group of persons according to the EU regulations (715/2007, 692/2008, 595/2009, 582/2011, 858/2018 and 64/2012) with a place of business within the European Union, an EFTA state or within the United Kingdom of Great Britain and Northern Ireland belongs. If the customer has his place of business outside the aforementioned economic area or the aforementioned countries, a separate proof of authorization is required, which will be mentioned on request at the following e-mail address support_dtag@snapon.com

3.2 The authorized group of persons includes independent market participants with an automotive connection, as well as persons associated with them. These can include: independent workshops, manufacturers of repair equipment, publishers of technical information, automobile club employees, breakdown service employees, suppliers of inspection and testing services, employees of facilities for the education and training of car mechanics.

3.3 A valid order is an offer by the Customer to conclude a contract with the Supplier. Without a positive credit check and/or when using an invalid credit card , the order will not be technically completed and will not be received by the Provider. The Customer is bound to the order for six weeks (commitment period).

3.4 The Agreement is concluded when the Provider expressly accepts a valid order in writing, or in text form, within the binding period, or when the Customer is provided with the authorization key (StartKey) with which to access the download of the Open Shell software.

4. Contractual Service

4.1 The initial order of the Open Shell software includes an authorization key (StartKey) which allows access to the download of the Open Shell software on Windows PCs with update service during the contract term. The contractual term is laid down in Section 9.

4.2 An Agreement number, a StartKey and time credits are required to use the Open Shell Software.

4.3 The prerequisite for using the Open Shell software is a special, hardware-dependent StartKey, which is requested with the order in the Service Info Mercedes-Benz Trucks Portal. The hardware ID required for the StartKey order can be read out via the basic setup in the "ConfigAssist" tool.

4.4 The scope of services and the condition result in each case from the item description in the Service Info Mercedes-Benz Trucks Portal when the order is placed. This contains a detailed list of the Open Shell software and services to be leased, and the inextricably linked agreements concerning qualifications and the provision of product information.

4.5 Delivery dates and periods are only binding if expressly agreed as binding by the Supplier and the Customer in the individual case: All other delivery dates or periods are non-binding.

4.6 The Supplier is entitled to supply the Services owed in parts and part-deliveries, unless this is unreasonable for the Customer.

4.7 The Open Shell software is provided only in executable form, including a user manual (user documentation or online help) and the installation instructions. The operating instructions and installation instructions will be provided to the Customer electronically.

4.8 To the extent the Open Shell Software contains interfaces with software not supplied by the Supplier, Section 69 d of the German Copyright Act (Urheberrechtsgesetz) applies. Before decompiling, the Customer must first request the necessary information from the Supplier.

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

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

4.11 The support is limited to responding to the Customer's queries in the usual course of business: If you have any problems or questions regarding Open Shell software (item properties, usage requirements, subscription, time credits, and other organizational and technical issues), please contact Support at support_dtag@snapon.com

5. Fee

5.1 The usage fee for the Open Shell software must be paid in advance by credit card at the time of initial order or contract renewal. (Lease)

5.2 Prices are net plus statutory VAT. The prices stated in the order summary apply when ordering.

6. Warranty

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

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

6.3 The strict liability of the Provider pursuant to Section 536a (1) of the German Civil Code (Bürgerliches Gesetzbuch - BGB) due to defects already existing at the time of contract conclusion is excluded.

6.4 The Customer must promptly report any defects in a comprehensible and detailed form, stating all information useful for the detection and analysis of defects, in writing or electronically to the address provided for this purpose (support_dtag@snapon.com). The Customer must in particular specify the work steps that led to the occurrence of the defect, its nature and the effects of the defect. Unless otherwise agreed, the Provider's relevant forms and procedures are used.

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

6.6 Termination by the Customer in accordance with Section 543 (2) (1) (1) on the grounds of failure to grant use as contractually agreed is only permitted if the Provider has been given ample opportunity for ratify the defect and has failed to do so. Failure to rectify defects is only assumed if it is impossible to do so, if the Provider refuses to or is unreasonably slow to do so, there is reasonable doubt in the prospect of success or this is unreasonable for the Customer for other reasons.

6.7 The Customer's rights under a warranty are excluded if the Customer modifies the leased object or has it modified without the Provider's prior consent, unless the Customer can prove that the modifications have not had any unacceptable effects on the analysis and rectification of the defect for the Provider. The Customer's rights on the grounds of defects remain unaffected to the extent that the Customer is entitled to make modifications, particularly within the scope of its right to rectify defects itself in accordance with Section 536a (2) BGB, and these are carried out properly and clearly documented.

6.8 The limitation period for material defects is one year from the commencement of the statutory limitation period. To the extent longer periods are prescribed by law in the event of an intentional or grossly negligent breach of duty by the Provider, in the event of non-disclosure of a defect and in the event of loss of life, physical injury or damage to health, as well as for claims arising from the German Product Liability Act (Produkthaftungsgesetz), these will remain unaffected. The limitation period laid down in Section 548 BGB for compensation claims by the Provider on the grounds of the modification or deterioration of the leased object or the leased system remains unaffected.

6.9 The Provider can claim reimbursement of its expenses if
   a. it takes action on the basis of a notification without the existence of a defect, unless the Customer could not recognize with reasonable effort that a defect did not exist, or
   b. a reported fault is non-reproducible or the Customer cannot prove it to be a defect in any other way, or
   c. additional expenses are incurred as a result of improper fulfillment of the Customer's obligations.

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

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

6.11 If a third party makes a claim against the Customer on the grounds that a service provided by the Provider infringes its rights, the Customer will inform the Provider immediately. The Provider and, if applicable, its own suppliers are entitled, but not obligated, to fend off the claims made at their own expense, if permissible.

The Customer is not entitled to admit third-party claims before giving the Provider adequate opportunity to review and fend off third-party claims in any other manner.

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

    a. grant the Customer the right to use the service or

    b. design the service not to violate rights or

    c. withdraw the service and reimburse the remuneration paid by the Customer for it (minus reasonable compensation for use) if the Provider cannot attain any other remedy with reasonable effort.

The Customer's interests will be given appropriate consideration.

Claims by the Customer on the grounds of legal defects will expire in accordance with subparagraph 6.8. Subparagraph 7 also applies for claims for damages and the reimbursement of expenses by the Customer. Subparagraph 6.3 applies accordingly for other expenses incurred by the Provider.

7. Liability

7.1 The Provider always has a liability towards the Customer

    a. for damage caused by it, its legal representatives or its agents through intent or gross negligence,

    b. in accordance with the German Product Liability Act, and

    c. for damages resulting from loss of life, physical injury or damage to health which the Provider, its legal representatives or its agents are responsible for.

7.2 The Provider is not liable in the event of ordinary negligence, unless it has breached a fundamental contractual obligation that must be fulfilled in order for the agreement to be implemented properly, or whose breach poses a risk to the achievement of the purpose of the agreement which the Customer can normally expect to be complied with.

In the case of material and financial damage, this liability is limited to the foreseeable damage that is typical of the type of agreement concerned. This also applies for the loss of profits and savings. Liability for indirect consequential damage is excluded.

7.3 The Provider can only be held liable for damages on the grounds of a warranty if such liability is expressly accepted in the warranty. In the case of ordinary negligence, this liability is subject to the restrictions of subparagraph 7.2.

7.4 If it is necessary to restore data or components (such as hardware or software), the Provider is only liable for the expenses necessary for restoration when the Customer has properly backed up data and taken precautions against the risk of loss. In the event of ordinary negligence on the Provider's part, this liability will only be incurred if, prior to the incident, the Customer has backed up data and taken precautions against the risk of loss in a way appropriate for the type of data and components. This does not apply if it has been agreed that the Provider will provide this service.

7.5 For claims for reimbursement of expenses and other liability claims of the Customer against the Provider, Sections 7.1 to 7.4 apply accordingly.

7.6 The Supplier accepts no liability whatsoever for infringements, damage or losses resulting from the incorrect use or incorrect application of the information in the Products or the Products themselves.

8. Rights

8.1 Unless otherwise agreed, the Provider grants the Customer a non-exclusive, non-transferable right to use the Open Shell software during the lease for its own operating purposes and for the intended use as contractually agreed.

8.2 Extra time credits must also be purchased to use the Open Shell software. These time credits can be purchased in the form of hourly, daily, weekly, monthly or annual units.

8.3 Unless authorized by the Provider, it is prohibited to produce copies of the Open Shell Software. This does not include producing a back-up copy. The Customer may only use produce a back-up copy if this is necessary to ensure future use. Editing and revising the information by the Customer or third parties commissioned by it is prohibited. This provision also applies to the publication of such information under another name.

8.4 The Customer undertakes to use the Open Shell software exclusively in his business for the purpose of servicing the vehicles of its clientele which are physically located within his business or at the user's place of residence as well as at the location of the hardware, and not to pass it on or make it accessible to third parties - not even in extracts. He will also require his employees to give an equivalent undertaking, so far as is legally possible. This means that the user may not use or provide the applications and data content to other users or Customers via remote access outside of his business. Mercedes-Benz vehicles that are equipped by the manufacturer for remote diagnostics are not affected by this provision, provided that the manufacturer's remote processes are used.

8.5 Data storage devices, documentation and electronic copies that are no longer needed must be properly destroyed. Measures must be put in place to ensure that installations cannot be accessed by unauthorized persons.

8.6 If the Open Shell Software falls into third-party hands, e.g. because the Customer shares it or does not protect it against third-party access properly, an appropriate contractual penalty to be set at the Supplier's discretion must be paid, whereby the competent court may review whether this is appropriate in the event of disputes. The minimum amount is EUR 25,000.00 per Product ordered. This does not affect the right to enforce claims for damages, although such claims will then be offset against the penalty.

8.7 The Provider is entitled to take appropriate technical measures to protect against non-contractual use. The use of the supplies and services as contractually agreed cannot be impaired as a result.

8.8 The Provider can revoke the Customer's right of use and/or terminate the agreement if the Customer significantly transgresses its rights of use or breaches regulations on protection against unauthorized use. The Provider must in principle grant the Customer a reasonable grace period in which to remedy the situation.

8.9 Revocation of the right of use alone does not entail the concomitant termination of the Agreement. Following revocation, the Customer must give the Provider express written confirmation that it has ceased use.

8.10 The Provider's claim to payment for use in excess of the agreed use remains unaffected.

8.11 The Customer is entitled to have its right of use restored after it has proved that it has ceased non-conforming use and will refrain from non-conforming use in the future.

9. Contractual Term

9.1 The term of the Agreement is 12 months from conclusion.

9.2 The term of the contract can be extended by 12 months after expiry of the contract by paying a further usage fee in the Service Info Mercedes-Benz Trucks Portal if the technical requirements are met, the contract has not been terminated in accordance with Section 9.3 and the Open Shell software continues to be generally available.

9.3 The Supplier can terminate the Agreement without notice for good cause. In particular, the Supplier can terminate the Agreement without notice if the Customer

    a. reproduces, produces or has produced the Open Shell-Software in breach of contract,
    b. shares the Open Shell Software with third parties,
    c. no longer qualifies as an authorized person in accordance with subparagraph 3.2.

10. Taxes

10.1 Payments made by the Customer may be subject to withholding tax in the country of domicile, which must be paid by the Customer to the local tax authorities. Therefore, we recommend that the Customer obtain appropriate tax advice.

10.2 The parties will take all measures in accordance with domestic law and any treaty on the avoidance of double taxation between the Customer's country of residence and the Federal Republic of Germany ("the treaty") to ensure a reduction of or exemption from taxes that might become payable in connection with the present contract.

10.3 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Customer and imposed on the Provider by the German tax authorities will be borne by the Provider. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Customer and imposed or to be paid in a resident state of the Customer will be borne by the Customer. The preceding sentence does not apply to income taxes which are imposed or withheld in accordance with the domestic law and the Tax Treaty.

10.4 To the extent that Customer is required by national regulations and by the Treaty, if any, to withhold taxes on payments under this contract, the Customer will use his best efforts to cause the payment to Provider to be taxed at the reduced rate of withholding tax under the Treaty, if any, or under national regulations at the time of payment.

10.5 To the extent that the Customer is required to withhold and remit taxes on payments under this contract, the Customer will, without culpable delay, provide the Provider with the original withholding tax receipts from the national tax authority and any other documents identifying the Provider as the taxpayer, the amount of the tax payment, the tax law and statute upon which the tax payment is based, the

tax rate or the tax base on which the tax payment is based, as well as the date of the tax payment.

10.6 If the documents of the tax authority and the documents are issued in a language other than German or English, the Customer must have the documents translated into German or English at its own expense at the request of the Provider and have the correctness of such translation certified either officially or by a notary public.

11. Compliance with Applicable Law

The Customer is obligated to cease and desist from all actions that could result in criminal charges due to fraud or breach of trust, insolvency crimes, anti-competition crimes, the granting of advantages, or bribery on the part of persons employed by the Customer or other third parties. In the event of a breach of this provision, the Provider is entitled to rescind or terminate all existing legal transactions with the Customer and to break off all negotiations without notice. The above notwithstanding, the Customer is obligated to comply with all laws and regulations applicable to both itself and the business relationship with the Provider.

12. Other

12.1 The Customer is responsible for observing the import and export regulations applicable to the supplies or services. In the case of international supplies or services, the Customer must pay the arising duties, fees and other charges. The Customer is responsible for handling legal or administrative proceedings related to international supplies or services, unless otherwise expressly agreed.

12.2 The Customer cannot transfer rights and obligations arising from or in connection with the Agreement or the conclusion thereof to third parties without the Provider's consent.

12.3 The Customer can only offset its claims against claims on the part of the Provider if the Customer's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims of the Customer under the same lease agreement. The user can only assert the right to retention if it is based on claims from the same contractual relationship.

12.4 The Customer will conclude the necessary agreements on handling personal data with the Provider.

12.5 The Provider is entitled to transfer the present Agreement, or rights and obligations arising from the present Agreement or its fulfillment, to any Daimler Group company with a registered office in Germany, in particular, if this company is to operate this business unit in the framework of the implementation of a divisional structure of the Daimler Group in the future.

12.6 The exclusive place of jurisdiction is Friedberg (Hessen) Germany.

12.7 The law of the Federal Republic of Germany applies. The application of private international law and the UN Sales Convention is excluded.