



General Terms and Conditions for the Lease of XENTRY Diagnosis Hardware (this "Agreement")

1. Contracting Parties, Service Content and General Terms and Conditions

- 1.1 The ordering party (hereinafter the "Lessee") leases from Mercedes-Benz USA, LLC ("MBUSA") the XENTRY Diagnosis Hardware in accordance with Section 1.3, consisting of Hardware components and accessories as well as hardware-related software, without data content. The entirety of these elements is hereinafter referred to as "Hardware".
- 1.2 The subject of this Agreement is all services provided by MBUSA in connection with the provision of Hardware, for example in the form of rental of Hardware in all its product variants, regardless of whether it is the one currently available to order in accordance with Section 1.3 or a predecessor model of the Hardware. The terms and conditions apply mutatis mutandis to Hardware provided free of charge.
- 1.3 Currently, the Hardware offered includes, depending on the order by the Lessee, among others: XENTRY Diagnosis Kit 5, XENTRY Diagnosis Kit 5 Scope, XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope.
- 1.4 The accessories for the Hardware approved by MBUSA must be purchased separately by the Lessee, unless they are included in the respective order placed by Lessee.
- 1.5 Lessee acknowledges that the XENTRY Diagnosis Hardware in all its product variants, can only be used in conjunction with the corresponding fee-based XENTRY software (in particular XENTRY Diagnosis Software). This XENTRY software is to be distinguished from Hardware-related software, which is part of the Hardware in accordance with Section 1.1. The provision of applications and data content (incl. XENTRY Software) as well as software and data updates are the subject of a separate contract and are regulated in the "General Terms and Conditions for the Use of Applications and Data Content Provided by MBUSA for After-Sales". It is therefore solely the responsibility of the Lessee to obtain the necessary rights of use to the XENTRY software for a fee and by concluding a separate contract.
- 1.6 The current version of the T&Cs is available on the Internet at <https://xentry-shop.mercedes-benz.com/> at any time. The current version will be sent to the Lessee on request.
- 1.7 The Lessee's General Terms and Conditions shall not become part of the contract, even if they have not been explicitly contradicted.

2. Formation and Alteration of Contract

- 2.1 Lessee shall be bound by its order for fourteen (14) days. The contract is concluded when MBUSA has confirmed the acceptance of the order in writing within this period or the delivery has taken place. However, MBUSA will inform the Lessee without undue delay in writing if it does not intend to accept the order. MBUSA is not required to state a reason for not accepting the order.
- 2.2 All agreements must be documented in writing. This also applies to collateral agreements, warranties, as well as subsequent contractual amendments.
- 2.3 If there is a provision in a separate contract for the dynamic inclusion of the current version of this Agreement, the current version shall take precedence.
- 2.4 Notwithstanding the foregoing, MBUSA may change this Agreement from time to time, in its sole discretion. MBUSA will inform Lessee of any changes in writing (e.g. e-mail). If the Lessee does not object to the changes in writing within four (4) weeks after receipt of the respective change notice, the changes shall be deemed accepted and mutually changed with unopposed continuation of use of the Hardware and services. Should the Lessee object to the changes, both MBUSA and Lessee shall have the right to terminate this Agreement or the corresponding order with a notice period of four (4) weeks.

3. Scope of Performance

- 3.1 The scope of supply and services is specified in the respective orders. These list in detail the Hardware and services.
- 3.2 MBUSA reserves the right to make constructive or technical modifications, as well as changes to the scope of supply and services in the respective orders.
- 3.3 Upon request by MBUSA, Lessee shall replace the Hardware with new Hardware provided by MBUSA. Replacement of Hardware will be contingent upon the need for exchange resulting from ongoing further development in vehicle diagnosis technology, IT technology, telematics, etc.



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4. Delivery

- 4.1 Delivery dates and periods are only binding if they have been explicitly designated as binding in writing by Lessee and MBUSA in individual cases, otherwise all delivery dates and periods are non-binding.
- 4.2 If non-compliance with a delivery date or deadline is due to an event beyond the control of MBUSA, the delivery date or deadline shall be extended by a commercially reasonable period of time. In the event of a delay in delivery, Lessee has the right to withdraw from the contract in question in accordance with the applicable legal provisions after a commercially reasonable cure period .
- 4.3 The rights of Lessee pursuant to Section 12 of this Agreement and the applicable statutory rights of MBUSA, particularly in the event of an exclusion from its obligation to perform (for example where such performance and/or subsequent performance is impossible or unreasonable), remain unaffected.
- 4.4 MBUSA may deliver Hardware in installments subject to Lessee's consent to delivery of Hardware in installments.
- 4.5 The risk of accidental loss and accidental deterioration of the Hardware shall pass to the Lessee as soon as the Hardware has been handed over to the Lessee or a recipient commissioned by the Lessee at the agreed place of delivery.

5. Prices and Payments

- 5.1 The rental price is calculated in accordance with the applicable price lists and is to be payable upon receipt of the invoice. The applicable price list may be found via MBUSA's Netstar Newschannel messages and/or MBUSA's Lease Management System. Unless otherwise agreed, the rental price is invoiced monthly and is due and payable in advance on the first of each month. Prices are net and exclusive of applicable tax, which will be charged at the rate applicable on the date the rental price is due and are expressed in US dollars. Payment is considered to have been made when it has been credited to the account indicated on the invoice. Lessee must promptly obtain and maintain on an ongoing basis all regulatory or other approvals necessary to make payments to MBUSA and remit all necessary taxes and duties.

All banking charges and fees shall be borne by the Lessee.

- 5.2 The prices as indicated and agreed are net prices quoted without value added tax ("VAT"), and may in each case be increased by the amount of the national VAT that is applicable or by any other indirect taxes, if neither a tax exemption nor a zero rate or reverse charge procedure is applicable. In respect thereof, the Lessee shall support MBUSA in obtaining shipment and transport documentation in order to ensure its ability to invoice on a VAT-exempt basis for cross-border delivery of goods (e.g. DVD), provided that the other prerequisites thereto are met.

If an exemption from statutory VAT or other indirect taxes depends on further requirements, MBUSA may charge a respective VAT amount or VAT-deposit amount as a security, which shall be refunded without interest upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

- 5.3 If the Lessee does not pay the rental price owed on time, Lessee will be in default after MBUSA issues the first reminder of Lessee's non-payment. In the event of Lessee's default with respects to non-payment, MBUSA shall be entitled to claim damages by charging Lessee interest at the rate applicable under law. MBUSA may increase the amount it charges Lessee under this Section, provided MBUSA can prove damages greater than the interest at the rate applicable under law. A delay in payment of more than sixty (60) days from the due date of the invoice constitutes a material breach of contract.
- 5.4 MBUSA reserves the right to restrict or block the use of the Hardware until Lessee has paid the invoice and, if applicable, to terminate this Agreement and any additional contractual relationships.
- 5.5 If the Hardware is replaced by a new development or otherwise brought up to the latest technical standards and is also introduced in this form at MBUSA, MBUSA is entitled to adjust the rental price with a notice period of 2 months.
- 5.6 MBUSA will adjust the rental price corresponding to the proportion in which the list rental prices have also changed compared to the last status. If MBUSA demands a rent increase, Lessee may terminate the lease upon thirty (30) days prior written notice to MBUSA and return of the Hardware to MBUSA.
- 5.7 Lessee may offset its claims against claims by MBUSA only if Lessee's counterclaim is uncontested or if a legally binding judgment exists. Lessee is exclusively limited to counterclaims arising and related to the same lease agreement. Lessee may only assert a right of retention if it relates to claims arising from and related to the same contractual relationship. In no event shall Lessee retain a right of retention with respects to Hardware or any rent owed and payable under this Agreement or any Lessee order hereunder. Lessee may only assert a right to offset claims for any invoice for 3 months following Lessee's receipt of the applicable invoice, provided that Lessee must have returned the Hardware subject to the applicable invoice and its offset claims. Lessee bears sole responsibility



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for confirming that its Hardware return has been received in MBUSA's Lease Management System and any right to offset claims on the basis of any Hardware return not confirmed as having been received in MBUSA's Lease Management System shall be waived.

6. Taxes

- 6.1 All sales and use taxes, local taxes or other taxes or duties and surcharges or levies of any kind whatsoever in connection with payments made by the Lessee and imposed on MBUSA by the applicable tax authorities shall be borne by MBUSA. All taxes or levies of any kind whatsoever in connection with payments made by Lessee and imposed by an applicable tax jurisdiction shall be borne by the Lessee. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the applicable law.
- 6.2 To the extent that the Lessee is required to withhold taxes in accordance with any domestic law or applicable tax treaty, from payments under this Agreement, the Lessee shall exercise its best efforts to attain that the payment to MBUSA will be taxed at the applicable reduced rate under (i) the applicable tax treaty, if any, or (ii) domestic law, at the time of payment. So far as Lessee is required to withhold taxes in accordance with applicable law from the payments under these terms of lease, Lessee shall do everything within its power to ensure that the payment to MBUSA is taxed at the lowest possible rate under applicable law at the time of payment.
- 6.3 To the extent that the Lessee is required to withhold and remit taxes on payments made under this Agreement, the Lessee shall, without undue delay, provide MBUSA with other documentation evidencing MBUSA as the taxpayer, the amount of tax withheld, the specific tax law and the legal regulation under which the withhold was made, the applicable tax rate or base, and the date of tax payment. Lessee shall send a copy of the documents to the following e-mail address: withholdingtax@mercedes-benz.com.

7. Small Repairs, Due Diligence and Lessee's Liability

- 7.1 Lessee is liable for damage caused by external sources at a repair cost of up to \$300.00 USD- per contractual year, even if it did not cause the damage. The liability of Lessee for damages Lessee causes is unlimited.
- 7.2 Lessee shall handle the Hardware carefully. Culpable damage, e.g. damage due to negligence of due diligence or improper handling of the Hardware shall be charged to Lessee in full, including transport and handling costs. Lessee's due diligence obligations include, but are not limited to, the following:
- Securing the Hardware against theft as well as unintentional or willful damage.
 - Sufficient protection of the Hardware from dirt, not tampering with the marking, adhesive labels and/or protective seals.
 - Avoiding the exposure of the Hardware or the Hardware's batteries to heat or direct sunlight.
 - Not operating the Hardware in the rain or on a wet surface - This will prevent short-circuits and damage to the Hardware .
 - Never pouring fluids over the Hardware (water, solvents or cleaning agents, oil, etc.) or allowing foreign objects to remain in the Hardware.
 - Securing the Hardware from falling, not removing the rubber bumpers.
 - Always placing the Hardware on a level, non-slip surface.
 - Avoiding all contact with flammable vapors.
 - Adhering to the minimum distance of 46 cm (18 inches) from the Hardware to the floor.
 - Never covering the fans of the Hardware.
 - Never opening the Hardware or making structural modifications, unless there are instructions to do so from the Diagnosis User Help Desk (UHD).
 - Paying attention to the instructions on using and replacing batteries in the Hardware.
 - Operating the touchscreen of the XENTRY Pad only with the intended stylus or with a finger if need be.
 - Avoiding unnecessary pressure, tensile and torsional influences on the Hardware.
 - Unplugging the Hardware and cables after each use.
 - Exclusively using appropriate power sources.
 - Exclusively installing approved software and accessories on the Hardware.
 - Lessee may not order repairs itself or have repairs performed by a repairer not authorized by MBUSA.



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- Only commercially available cleaning agents approved for IT devices may be used for cleaning.
- For the use of Hardware, the due diligence obligations of Lessee stated in the "Guidelines for XENTRY Diagnosis Hardware User " also apply.

Lessee must not allow any lien or other encumbrance to be placed on the Hardware or any related equipment, and Lessee shall take any steps requested by MBUSA to remove any lien or encumbrance placed on the Hardware or any related equipment. MBUSA may, but is not obligated to, file a financing statement in appropriate government records to protect MBUSA's interest in the Hardware and any related equipment.

8. Rights of use, restrictions on use and contractual penalty

- 8.1 The Hardware is intended exclusively for use by the Authorized Users. Authorized Users within the meaning of these T&Cs are employees or legal representatives of the Lessee.
- 8.2 Lessee undertakes to use the Hardware, accessories, operating manuals and other documentation supplied by MBUSA in the respective order placed by Lessee exclusively for the purpose of diagnosing and repairing Mercedes-Benz vehicles and only in its company. Furthermore, the Lessee undertakes to ensure that the authorized User within the meaning of Section 8.1, the vehicle to be diagnosed or repaired and the Hardware on which the applications and data content are used is physically located at the same location. Use by third parties or for any other purpose is not permitted, unless otherwise agreed by the contracting parties. Section 8.3 remains unaffected.
- 8.3 The Hardware may only be used in the United States of America.
- 8.4 If the Lessee is an authorized country sales company for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG, Lessee is entitled or obliged to make the Hardware available for rent to the authorized service partners for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG as well as to the independent operators in its contract territory. **In this context, the authorized country sales company hereby undertakes to conclude corresponding lease agreements for the Hardware with the aforementioned authorized service partners and independent operators in its contract territory. In this case, MBUSA will not become a contractual partner of the aforementioned authorized service partners and independent operators.**
- 8.5 In the event that the Hardware falls into third-party hands, whether this is because Lessee or authorized User has intentionally or negligently disclosed it without authorization or has intentionally or negligently failed to secure it from being accessed by third parties, the Lessee shall owe a contractual penalty of \$30,000.00 USD for each breach. The assertion of damages taking into account the contractual penalty remains unaffected.
- 8.6 The Lessee is granted a simple, free and unlimited right of use to accessories provided free of charge, including the associated documentation.

9. Warranty

- 9.1 MBUSA warrants that the Hardware is free from defects at the time of risk transfer.
- 9.2 The warranty for the Hardware starts at the time of delivery. Lessee shall send defective Hardware or components of Hardware to MBUSA upon request.
- 9.3 In the event of a replacement, the defective Hardware or Hardware component must be returned to MBUSA immediately upon receipt of the replacement Hardware. Only the return documents and information provided by MBUSA may be used for returns. The risk of accidental loss and accidental deterioration of the Hardware shall only pass upon handover by the freight forwarder, carrier or other person designated to carry out the shipment to the service provider designated by MBUSA to take over the Hardware. If the Lessee fails to return the Hardware or makes a delayed return, the Lessee must compensate for the resulting damage in accordance with the applicable legal regulations. In particular, any customs and handling costs in the event of late return delivery shall be borne by the Lessee.
- 9.4 The warranty shall not apply if (i) a defect is caused by Lessee, (ii) if a third party or Lessee modifies, improperly uses, or repairs the Hardware without the consent of MBUSA or (iii) Lessee does not use and maintain the Hardware in accordance with the 'Guidelines for XENTRY Diagnosis Hardware User'.
- 9.5 The warranty requires that Lessee has complied with its inspection and notification obligations in accordance with Section 12.1. MBUSA shall not be liable for Hardware defects if Lessee fails to properly inspect and/or report defects in accordance with Section 12.1. Hardware defects not inspected and reported are not subject to the warranty

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9.6 If no basis for a warranty claim exists, then the costs of diagnosing and, if applicable, repairing the fault shall be borne by Lessee, provided a corresponding order has been placed.

10. Support and Service

Support and other services will be provided only if Lessee adheres to the prescribed service processes. This means that the diagnosis user help desk must be contacted when support and services are required. The instructions of the diagnosis user help desk are binding.

11. Term and Termination and Return of the Hardware

11.1 The term of the contract is indefinite, unless the contract has been terminated at the end of the minimum lease period. The minimum lease period is 42 months, after which termination can be given with a notice period of six months.

11.2 This Agreement can be canceled without notice for good cause and MBUSA may, at its option, terminate this Agreement at any time – even before the expiry of the minimum lease period – with a written notice provided to Lessee within six (6) weeks of MBUSA's termination for convenience. Notwithstanding the foregoing, MBUSA in particular can cancel the Agreement without notice if Lessee

- is no longer part of the authorized distribution network of MBUSA, or
- is in default of paying the rent or a considerable part of the rent for two successive due dates, or is in default of the payment of a part of the rent which amounts to the rent for two months, for a period which exceeds two due dates.

11.3 If MBUSA cancels this Agreement without notice for a good cause, MBUSA has the following rights:

- Claim for the immediate return of all relinquished Hardware;
- Entitlement to the payment of depreciation compensation as per section 11.5.
- Entitlement to compensation amounting to the agreed rent for the duration of the withholding of the Hardware, including the total equipment if Lessee does not return the Hardware to MBUSA after the end of this contract. In addition, any customs and handling costs in the event of the late return are to be borne by Lessee.

11.4 At the end of this Agreement, Lessee shall return the Hardware to MBUSA at Lessee's expense and in accordance with the scope stated in the agreement (including but not limited to Section 11). Lessee shall return the Hardware delivered according to the prescribed return process, at the expense of Lessee. Any cables provided within the scope of this Agreement are excluded from this requirement. Lessee shall bear the risk associated with the return of the Hardware to MBUSA.

If Hardware or Hardware components are not returned for reasons Lessee is responsible for, Lessee shall pay for the costs of replacement and any resulting damage according to the applicable legal requirements. Lessee shall continue to owe rent for the Hardware and billing for such rent shall continue until the Hardware are confirmed as fully received in MBUSA's Lease Management System.

11.5 If, at the end of this Agreement, the Hardware is not in a good condition taking into account their age and contractual use, and thereby are of lower value, Lessee must work with MBUSA to establish the proper condition and/or settle the reduced value plus VAT, if Lessee caused this as per section 7 due to a disregarding of its due diligence obligations or improper handling.

11.6 There shall be no obligation to accept the return of Hardware mistakenly ordered by Lessee. Notwithstanding the foregoing, MBUSA may, as a gesture of goodwill, accept the return of Hardware mistakenly ordered by the Lessee, provided that such Hardware is in its original, unopened packaging and has not been used. Lessee shall have no right to claim such goodwill. Any request for a return based on goodwill must be submitted via a support ticket through the XENTRY Support System under "XENTRY Pad". The Hardware may only be returned after MBUSA has given its approval in writing. In the event of a return based on goodwill, the Lessee shall bear all shipping and return shipping costs. In addition, the Lessee shall be charged a handling fee of \$300.00 per Hardware.

12 Liability

12.1 Lessee shall inspect the goods and give notice of defects. Should a defect become apparent during inspection or at a later date, MBUSA must be notified thereof in writing without undue delay. Timely dispatch by Lessee and receipt by MBUSA of the notice shall suffice for compliance with any applicable deadlines. If the Lessee fails to properly inspect the Hardware and/or give notice of defects, MBUSA shall not be liable for any defect not so reported. Irrespective of the foregoing, in the event of externally apparent transport damage, the Lessee shall be obliged to notify the delivering carrier of such damage in writing upon receipt of the Hardware and to provide MBUSA with a copy of the complaint within two working days.

12.2 Under no circumstances will MBUSA, or its representatives, agents, directors, officers or employees be liable for any indirect, special or consequential damages (including but not limited to lost revenue or lost profits) related to the Hardware or the use of the Hardware by Lessee, regardless of whether such damages may be foreseeable.



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The liability of the representatives, agents, directors, officers and employees of MBUSA for any damages that were caused by their negligence is excluded (disclaimed).

- 12.3 The aforementioned limitation of liability and the aforementioned liability disclaimer do not apply to damages that are attributable to the grossly negligent or intentional violation of duties on the part of MBUSA, its representatives or its agents, directors, officers and employees and do not apply to death, bodily injury and impairment of health, in which case MBUSA's liability for such damages will be limited to the total amount of rent, fees and other charges paid by Lessee to MBUSA under this Agreement.
- 12.4 Irrespective of any fault on the part of MBUSA, MBUSA shall remain liable for any fraudulent concealment of a defect and shall remain liable under applicable product liability laws.
- 12.5 Lessee shall immediately report in writing or have MBUSA record any damages and losses for which MBUSA must provide compensation.
- 12.6 Claims for damages due to simple negligence become statute-barred within one year from the date the claim arises.

13. Assignment

Lessee may assign or delegate its rights and obligations under this Agreement only with the prior consent of MBUSA in writing.

14. Compliance with Applicable Law

- 14.1 Lessee shall refrain and desist from all practices that could result in criminal charges against employees of Lessee or other third parties for fraud or breach of trust, insolvency crimes, anti-competition crimes, granting of advantages, or passive corruption. In the event of violation of the above, MBUSA has the right to withdraw from or terminate all legal transactions existing with Lessee and to break off all negotiations with immediate effect.

Notwithstanding the above, Lessee shall adhere to all laws and regulations applicable to both itself and the commercial relationship with MBUSA.

- 14.2 Lessee shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this Agreement.

In addition, Lessee shall also not sell, supply, export, license or transfer, directly or indirectly, in any other way intellectual property rights or trade secrets nor grant rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret to the Russian Federation or Belarus or for use in the Russian Federation or in Belarus. Lessee is required to prohibit possible sublicensees of such intellectual property rights or trade secret, from using such intellectual property rights, trade secrets or other information in connection with common high priority items as listed in Council Regulation (EU) 833/2014 and/or applicable U.S. laws and regulations that are intended for sale, supply, transfer or export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus.

- 14.3 Lessee shall undertake its best efforts to ensure that the purpose of Section 14.2 (above) is not frustrated by any third parties further down the commercial chain, including by possible resellers and/or possible sublicensees of such intellectual property rights or trade secret.
- 14.4 Lessee shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Section 14.2 (above).
- 14.5 Any violation of Sections 14.2, 14.3 and 14.4 (above) shall constitute a material breach of an essential element of this Agreement, and MBUSA shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of any costs, damage or liability incurred by MBUSA resulting from the infringement, including the imposition of fines.
- 14.6 Lessee shall immediately inform MBUSA about any problems in applying Sections 14.2, 14.3 or 14.4, including any relevant activities by third parties that could frustrate the purpose of Section 14.2. Lessee shall make available to MBUSA information concerning compliance with the obligations under Sections 14.2, 14.3 and 14.4 within two weeks of the request of such information.

15. Place of Performance, Place of Jurisdiction and Governing Law

The place of performance is Atlanta, Georgia and jurisdiction and venue shall lie exclusively with the competent courts of Atlanta, Georgia. The laws of the State of Georgia shall apply to the exclusion of any conflict of law rules.