
General Terms and Conditions of Arvato SE for the Purchase of Daimler Truck Diagnostics Kit 1, Daimler Truck Diagnostics VCI and Accessories ('T&C') - valid from 06/2024

1. Scope and Subject Matter

- 1.1. All goods and services provided by Arvato SE (hereinafter referred to as "Arvato" or "Seller") and agreements in connection with the sale of the diagnosis systems Daimler Truck Diagnostics Kit 1, Daimler Truck Diagnostics VCI and Accessories between Arvato and the respective Buyer are subject to these terms and conditions.
- 1.2. Buyer is purchasing from Seller the diagnosis systems Daimler Truck Diagnostics Kit 1, Daimler Truck Diagnostics VCI and Accessories (hereinafter referred to as '**Systems**'). Buyer is aware that the Systems can be used only in connection with the corresponding Daimler Truck Diagnostics Software, for which charges apply and which is not part of the subject matter of the Agreement. Buyer alone is responsible for obtaining a corresponding right to use the Daimler Truck Diagnostics Software in return for a fee and by means of a separate agreement. For the sake of clarity it is expressly stated that Arvato is neither rights owner nor licensor in this context. Buyer shall be obliged to contact third parties with regards to the granting of the aforementioned right to use the Daimler Truck Diagnostics Software and to conclude separate agreements.
- 1.3. Buyer shall purchase the Seller-approved accessories for the Systems separately, unless these are included as part of the original delivery.

2. Further Provisions

- 2.1. All agreements must be documented in textual form. This also applies to collateral agreements, warranties, as well as subsequent contract amendments.
- 2.2. Buyer's general terms and conditions of business shall not be deemed incorporated into this Agreement, even if these conditions have been attached to invitations to tender, purchase orders, or declarations of acceptance and have not been explicitly rejected.

3. Formation of Contract

Seller's offers shall be non-binding. By placing an order, Buyer makes a binding offer to purchase the respective product, to which Buyer is bound for a maximum of 21 days. Seller shall send a confirmation of receipt of the offer to Buyer immediately after receipt of the offer, which shall not constitute an acceptance of the offer. A contract is formed when Seller has confirmed acceptance of the order in textual form within this period or when Seller has performed delivery of the goods or services. However, Seller is obliged to inform Buyer in textual form without undue delay if it does not intend to accept the order.

4. Type and Scope of Performance

The scope of supply and services is specified in the respective order as well as any further contractual agreements. These list in detail the Systems and services and also provide product information. Seller reserves the right to make changes to the design, technology, and scope of supply and services during the delivery period, provided these changes remain reasonable for Buyer while taking into account the interests of Seller.

5. Delivery

- 5.1. Delivery dates and periods are binding in individual cases where they have been designated in textual form as binding by Buyer and Seller; otherwise, all delivery dates and periods are non-binding.
- 5.2. Seller shall not be liable for impossibility of delivery or for delays in delivery due to force majeure (including, but not limited to, epidemics, pandemics) or other events which are unforeseeable at the time of conclusion of the Agreement and which are beyond Seller's reasonable control (e.g. operational disruptions, labor disputes, riots, official measures) on the part of Seller or its suppliers. If non-compliance with a delivery date or period can be attributed to an unforeseen event that is beyond Seller's control (in particular any disturbances to operations occurring at the Seller's or its suppliers'), the delivery date or period will be postponed or extended by an appropriate amount of time. In the event of a delayed delivery, Buyer has the right to withdraw from the agreement in question in accordance with the applicable statutory provisions after an appropriate grace period has elapsed to no avail.
- 5.3. If a delivery by Seller is delayed, Buyer may demand liquidated damages for the delay. The liquidated damages will amount to 0.5 percent of the net purchase price (delivery value) for each full calendar week of delay, but subject in total to a maximum of 5 percent of the delivery value of the delayed Systems. Seller reserves the right to demonstrate that Buyer's loss was lower than the foregoing liquidated damages or that no loss was incurred at all.
- 5.4. The rights of Buyer pursuant to clause 10 of these General Terms and Conditions and the applicable statutory rights of Seller, particularly in the event of an exclusion of its obligation to perform (for example where such performance and/or subsequent performance is impossible or unreasonable), remain unaffected.

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- 5.5 Seller's delivery obligations shall be subject to correct and timely self-delivery, unless Seller is responsible for the incorrect or delayed self-delivery. In the event that the products cannot be delivered for a reason not attributable to Seller or cannot be delivered in time despite timely reordering, Seller shall be entitled to withdraw from the Agreement. Seller shall without undue delay notify Buyer of the non-availability of the products and shall immediately reimburse Buyer for any payments already made in the event of withdrawal.
- 5.6 Seller is entitled to deliver the goods or services in installments provided that this is acceptable to Buyer.
- 5.7 Deliveries shall be made in accordance with DAP Incoterms© 2020 to the place designated by Buyer.
- 5.8 In the event that Buyer fails to pay customs duties in the receiving country on time, the respective carrier will hold Arvato responsible. In such cases, Arvato will issue an invoice to Buyer for the customs duties, including a handling fee.
- 5.9 Buyer is obliged to dispose the product packaging at its own expense in accordance with the applicable packaging regulations.

6. Reservation of Title

Ownership of the Systems is transferred to Buyer only after full payment of the total purchase price and any other receivables in connection with this Agreement.

- 6.1 This reservation of title also extends to any substitute deliveries. Buyer cannot acquire ownership of the delivered Systems by integrating them into other equipment or devices. Where Buyer integrates the Equipment into third-party goods, Seller will become co-owner of the resulting new products by reference to the proportional value of the third-party goods used. The products thus created are also deemed to be subject to reservation of title by Seller.
- 6.2 Where the Systems are subject to reservation of title, these may be sold, pledged, provided as security, leased, or disposed of or changed in any other way that impairs Seller's rights to security only with Seller's prior consent in textual form.
- 6.3 If the reserved-title goods are seized by third parties, Buyer must indicate Seller's ownership of said goods and inform Seller immediately.
- 6.4 If Buyer does not properly fulfill its payment obligations, Seller is authorized to repossess the reserved-title goods at any time, without this constituting a withdrawal from the Agreement.

7. Usage Rights

- 7.1 Buyer undertakes to use the Systems, the accessories provided by Seller as part of the original delivery, the operating instructions, separately ordered accessories and the other documentation solely within its business and not to permit their use by any third parties, unless the Parties have agreed otherwise in this respect.
- 7.2 If Buyer is a foreign Daimler Truck Group sales company or a foreign general distributor for Daimler Truck for the distribution of Trucks and Busses for the brands Mercedes-Benz, FUSO, Setra, RIZON, Freightliner and BharatBenz, it is entitled and obliged to make the Systems available for purchase to any authorized repairers and independent operators within its contract territory (including fleet owner's workshops with/without facilities for processing warranties and goodwill, and fleet owners). In this connection, Buyer hereby undertakes to form its own corresponding sales agreements for the Systems with the above-mentioned authorized repairers and independent operators within its contract territory.
- 7.3 Buyer must ensure that no documentation is accessible to third parties without the prior consent of Seller in textual form. No copies may be made. Furthermore, all information on the documentation is subject to a nondisclosure undertaking.

8. Warranty

- 8.1 Seller warrants that the Systems are free from defects at the time of risk transfer.
The warranty for the Systems starts at the time of delivery (at the place designated by Buyer.). The warranty period for the individual components of the Systems is:
- Bosch VCI = 36 months
 - 16-pin diagnostic cable = 12 months
 - tester USB cable 5m = 12 months
 - large transport case = 12 months
 - small transport case = 12 months
 - Winmate Pad = 42 months
 - Batteries = 36 months
 - Accessories => 12 months
- Seller undertakes to repair or replace any defective Systems, at its own discretion. Buyer shall send defective Systems or hardware components to Seller upon request.

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- 8.2** In the event that a replacement is provided, the defective System or hardware components must be promptly returned to Seller upon receipt of the replacement System. The defective system must be shipped in the original packed case and with the return label provided by Arvato. A dangerous goods protocol must be completed and confirmed by Buyer in advance in order to ensure that there is no damaged battery in the System. Any damaged battery must be removed by Buyer prior to return. A damaged battery must not be shipped. If Buyer delays returning said item(s) or does not return it/them at all, Buyer must reimburse any losses incurred as a result, in accordance with the applicable statutory provisions. In particular, any customs charges or handling expenses due to a delayed return will be borne by Buyer.
- 8.3** In the event that subsequent performance is unsuccessful, Buyer has pursuant to the applicable statutory provisions the right to demand a reduction in the purchase price, or to withdraw from the agreement. Buyer will grant Seller the time and opportunity required to render any subsequent performance as it sees fit. Seller will be released from its obligation to render subsequent performance if Buyer refuses to do this. If Buyer refuses the subsequent performance, it will bear sole responsibility for the subsequent use of the System in its defective state and for the results obtained in this way.
- 8.4** The warranty shall not apply if a defect is caused by Buyer or a third party having modified, improperly used, or repaired the Systems without the consent of Seller or because the Systems have not been used and looked after in accordance with the **"Guidelines for system users of the Daimler Truck Diagnostics (DTD) product family"**.
- 8.5** The provision of the warranty is conditional upon Buyer fulfilling its statutory obligations to inspect goods and report defects (sections [377](#) and [381](#) of the German Commercial Code (HGB)). Should a defect be discovered during the inspection or at a later date, notice of this must be provided to Seller in textual form without undue delay. The prompt dispatch of this notification is sufficient for the purposes of meeting this deadline. If Buyer fails to carry out a proper inspection and/or to provide notification of any defects, Seller will not be liable for the unreported defect. Regardless of this and in the event of any externally visible damage in transit, Buyer is obliged to provide the delivering carrier with written notification of the damage in transit upon receipt of the items and to present Seller with a copy of the complaint within two working days.
- 8.6** In the exceptional event that a replacement System is provided temporarily, Buyer shall be obliged to promptly return the replacement System to Arvato upon receipt of the repaired System. If Buyer delays returning said item(s) or does not return it/them at all, Arvato reserves the right to charge the replacement System to Buyer at the new goods price.
- 8.7** If no basis for a warranty claim exists, then the costs of diagnosing and, if applicable, repairing the fault will be borne by Buyer, provided a corresponding order has been placed.

9. Support and Service

Support and other services relating to the Systems will be provided only if Buyer adheres to the prescribed service processes. This means that Daimler Truck Customer Service and Parts Support (pool-id.diagnosticsupport@daimlertruck.com) must be contacted when support and services are required. The instructions of Daimler Truck Customer Service and Parts Support are binding.

10. Liability

- 10.1** If Seller must compensate for damages based on the statutory provisions and if such damages were caused by simple negligence (*leichte Fahrlässigkeit*), then Seller's liability shall be limited as follows:
The liability will arise only when there has been a breach of material contractual duties, such as those that the contract seeks to impose on Seller based on its content and purpose or the fulfillment of which cannot even arise unless or until the contract is duly performed and upon which the Buyer can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was formed.
The personal liability of the statutory representatives, vicarious agents and plant members of Seller for any damages that were caused by their simple negligence is excluded (disclaimed).
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 Seller, its statutory representative or its vicarious agent and do not apply to death, bodily injury and impairment of health.
- 10.2** Irrespective of any fault on the part of Seller, Seller shall remain liable for any fraudulent concealment of a defect, for the issuance of a guarantee or for a procurement risk and shall remain liable as prescribed under the Product Liability Act.

11. Assignment

Buyer may assign or delegate its rights and obligations under this Agreement only with the prior consent of Seller in textual form.

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12. Prices/Payment Terms

- 12.1** Prices are net and exclusive of legally applicable value added tax.
- 12.2** The Seller informs the Buyer during the order process how the payment is to be made.
- 12.3** In the event that payment is made on account the purchase price is payable within 15 days upon receipt of the invoice and has to be paid cashless. The prices listed in the applicable price list apply.
- 12.4** In the event that payment is made in advance the purchase price is due immediately upon receipt of the order confirmation and account details. The Buyer will receive the invoice with receipt of the payment as confirmation of payment. Payment in cash is not possible. The prices listed in the applicable price list apply.
- 12.5** The prices are in Euro. The payment of the Buyer shall be made in Euro.
- 12.6** Any fees such as bank charges in international payment transactions shall be borne by the Buyer.
- 12.7** In the event that the Buyer fails to pay by the due date and defaults on a payment obligation that is already due, the Seller shall be entitled to claim default interest and/ or other damages for default in accordance with the statutory provisions.
- 12.8** In the event that payment is to be made in advance and no payment has been received by the Seller within 21 days, the order will be cancelled in writing.
- 12.9** The Buyer may offset its claims against claims by Seller only if the Buyer's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims of the Buyer from the same contract of sale. The Buyer can only assert a right of retention if it relates to claims arising from the same contractual relationship.
- 12.10** Unless otherwise described in the check-out process, the following freight and logistics costs will be charged for orders that include accessories:
- Recipients located in Germany - € 5,00
 - Recipients located in the EU - € 20,00
 - Recipients located RoW (Rest of World) - € 150,00

13. Taxes

The prices do not include indirect taxes (if any) owed by law. These are to be paid additionally by the Buyer.

Arvato SE will regularly check the value added tax identification number (VAT-ID). In case of a negative check, Arvato SE will charge the Buyer for the legally owed indirect taxes.

All taxes or levies of any kind whatsoever in connection with payments made by the Buyer and imposed on the Seller by the German tax authorities will be borne by the Seller. The above rate shall not apply to indirect taxes additionally payable by the Buyer.

All taxes or levies of any kind whatsoever in connection with payments made by the Buyer and imposed or to be paid in its home state will be borne by the Buyer. The foregoing sentence does not apply to tax on income that is imposed or deducted at source in accordance with the Treaty on the Avoidance of Double Taxation between the Buyer's state and the Federal Republic of Germany ('the Treaty'). The Parties will take all measures in accordance with domestic law and the Treaty to ensure a reduction of or exemption from taxes that might become payable in connection with these delivery terms.

So far as the Buyer is required to withhold taxes in accordance with the Treaty from the payments under these delivery terms, the Buyer will do everything within its power to ensure that the payment to the Seller is taxed at the reduced rate under the Treaty at the time of payment.

So far as the Treaty requires the Buyer to withhold and pay over taxes from payments under these delivery terms, the Buyer shall, without culpable delay, provide the Seller with original tax receipts issued by the tax authority and any other documents that specify the Seller as taxpayer and show the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate or the basis on which the tax payment is assessed, and the date on which the tax was paid.

If the documents of the tax authority are issued in a language other than German or English, the Buyer agrees to have the documents translated into German or English at its own expense at the request of the Seller and to have the correctness of such translation certified either officially or by a notary.

The Buyer shall act as the importer under customs law in the receiving country.

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14. Data Protection

Seller shall process and store the data relating to the respective agreements only within the scope of the applicable statutory provisions. The details result from the privacy policy ([Data privacy \(arvato-digital.com\)](https://www.arvato-digital.com)).

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

The place of performance is Guetersloh, Germany and jurisdiction and venue shall lie with the competent courts of Guetersloh, Germany. The laws of the Federal Republic of Germany shall apply, to the exclusion of any conflict of law rules. The contracting parties agree to exclude the application of the uniform United Nations (UN) law of sales that is based on the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.

16. Final provision

If any provision of these T&C is invalid in whole or in part, this shall not affect the validity of the remaining provisions of these T&C. The invalid provision shall be replaced by a valid provision which comes closest to the meaning and purpose of the invalid provision. The same shall apply in the event of gaps.

June, 15th, 2024