

# General Terms and Conditions

Mercedes-Benz Australia/Pacific Pty Ltd

General Terms and Conditions of Purchase for Digital Extras

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## **KEY TERMS THE CUSTOMER SHOULD BE AWARE OF:**

Pursuant to section 47A of the Fair Trading Act 1987 (NSW), please note that the following provisions are contained within the terms and conditions below. We recommend that you read the full terms and conditions before proceeding with any order or purchase.

### **The Provider has limited liability under these terms (see clauses 6.3, 6.5, 8.3- 8.5)**

- The Provider will not pay for any indirect loss, regardless of how it is caused.
- The Provider is not responsible for paying for any loss, costs or damages resulting from:
  - any inaccurate details included in the Customer's order;
  - any misuse of the Customer's ID, password, or the Services;
  - any acts or omissions by third parties and third party software;
  - any documentation or goods not provided by Mercedes;
  - anything outside the reasonable control of the Provider;
  - any modifications to the Services by anyone other than the Provider;
  - a failure by the Customer to follow these terms, or the Provider's Terms of Use; or
  - any act or failure to act that is directly within the Customers control.
- The Provider can suspend or withdraw any of the Services from sale at any time, and can cancel any Order before accepting it, without liability.

### **The Customer's personal data will be shared (see clauses 2.3b), 2.4b) and 5.7)**

- The Customer's personal data including email address, mobile phone number, payment details, vehicle identification number and billing address will be regularly communicated between Mercedes-Benz Australia/Pacific and Mercedes-Benz AG.

### **The Provider may cancel your orders and access to services at any time (see clauses 10.4 and 10.5)**

- The Provider can terminate these terms immediately, with notice to the customer, if:
  - The Customer breaches these terms, and either does not remedy the breach within 30 days (where fixing the breach is possible), or the breach cannot be remedied;
  - The Customer is no longer entitled to use the Vehicle, or the Vehicle has been destroyed;
  - The Provider's Terms of Use are terminated by the Provider for cause;

- The Customer cannot be contacted by the Provider after reasonable attempts; or
- An unexpected event occurs outside of the Provider's control.
- If the Provider terminates these terms, the Provider can also cancel all of the Customer's orders and access to the Services, in its absolute discretion.

**The Provider may cancel your order prior to accepting it (see clauses 2.7 and 6.3)**

- The Provider can cancel or reject the Customer's Order for any reason, at any time, prior to accepting the Order. The Provider will try to provide notice of cancellation, and any payment will be refunded to the Customer.

**The Provider will delete the Customer's Order after it is completed (clause 2.11)**

- After a Customer's Order is completed, the Provider will delete the data related to the Order. It is up to the Customer to keep a copy of the details of their Order and the terms which apply to it.

**The Provider can change its prices at any time (see clause 3.5)**

- The Provider can change its prices for any of the Services, at any time, without notice. If the Customer has already submitted an Order at a given price, the Provider will provide the Services at that price.

**The Provider can vary these terms at any time (see clause 11)**

- The Provider can make changes to these terms at any time due to technical developments or changes in the law, or for any other reason on giving 14 days' notice of the changes to the Customer. The Customer then has 14 days to object to any changes before the Customer is assumed to have accepted the changes.

**The Provider may pay a commission to a Mercedes-Benz Retailer (see clause 1.7).**

- The Provider may pay a commission to any Mercedes-Benz Retailer that assists or facilitates the sale of any Digital Extras.

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## **1. General**

1. These General Terms and Conditions of Purchase govern the purchase of Digital Extras from Mercedes-Benz Australia/Pacific Pty Ltd (ACN 004 411 410) of 44 Lexia Place, Mulgrave Victoria 3170 (**Provider**).
2. Placement of any order for Digital Extras (**Order(s)**) is deemed acceptance of these General Terms and Conditions of Purchase.

3. Digital Extras are available for purchase by individual, natural persons who purchase the services and features for the sole purpose of personal, domestic or household use or consumption (Customer(s)). Digital Extras are not available for purchase (and are not to be used) for commercial purposes.
4. Subject to these General Terms and Conditions of Purchase, and to the fullest extent permitted by law, the Provider may, acting reasonably, withdraw or suspend from sale any Digital Extras displayed or advertised for sale, either temporarily or permanently, at any time and without notice and without liability.
5. There are Digital Extras which the Customer can activate for a certain period (**Fee-Based Services**), and Digital Extras that are permanently enabled without a fixed term (**on-demand features**). All Digital Extras are vehicle-specific and can only be activated or enabled for the chosen vehicle. Section 4 shall apply for Fee-Based Services only. Section 5 shall apply for on-demand features only. All other sections shall apply for all Digital Extras.
6. In the event that the Customer references or supplies their own terms and conditions as part of any Order or purchase, the parties acknowledge and agree that these General Terms and Conditions of Purchase shall supersede any other terms and conditions and shall prevail.
7. The Customer acknowledges and agrees that MBAuP may pay a commission to any authorised retailer who assists with the sale or purchase of Digital Extras and the Customer consents to such a commission being paid.

## 2. Orders

1. All Orders placed to purchase Digital Extras are subject to these terms and conditions including without limitation Section 6 [Cancellation Policy].
2. To place an Order, the Customer must have:
  - a. a current and valid Mme Customer account which is actively paired with a connect-capable Mercedes-Benz vehicle (**Eligible Vehicle**);
  - b. accepted the Provider's Terms of Use for the Digital Extras (**Terms of Use**); and
  - c. a valid email address or a mobile phone number saved in their Mercedes me Customer account.
3. The ordering process via the Mercedes me Store website consists of the following steps:
  - a. Step one: the Customer selects the desired type and number of Digital Extras.
  - b. Step two: the Customer's personal data, including email address or mobile phone number and billing address are collected. Mercedes-Benz AG (who operates the back end) forwards the data required to process the Order from the Mercedes me

Customer account to the Provider. The Customer may only change this data in the Customer's Mercedes me Customer account.

- c. Step 3: the Customer chooses one of the payment methods described in clause 3.7 of these General Terms and Conditions of Purchase.
  - d. Step 4: the Customer can review all of the information again and, if necessary, correct it before completing the ordering process by submitting the Order. The Customer may, by clicking the "back" button, correct any entry errors before submitting their Order.
4. The ordering process via the Mercedes me Store located in the vehicle's multimedia system MBUX consists of the following steps:
- a. Step one: the Customer selects the desired Digital Extras.
  - b. Step two: the Customer is authenticated by means of an SMS code sent to the mobile phone number saved in the Customer's Mercedes me Customer account. Following verification, Mercedes-Benz AG forwards the data required to process the Order (eg: email address, mobile phone number, billing address and payment details) from the Mercedes me Customer account to the Provider, which is then displayed in an order summary. The Customer may only change this data in their Mercedes me Customer account.
  - c. Step 3: the Customer has the opportunity in the order summary to adjust the term of the Digital Extras selected by the Customer, to review all of the information again and, if necessary, correct it before completing the ordering process by submitting the Order.
5. By submitting an Order:
- a. the Customer represents and warrants to the Provider that all information contained in the Order is true and correct, is not misleading to any extent and that the Provider is entitled to rely on the information contained in the Order for the purposes of and to the extent required to provide the Digital Extras; and
  - b. to the fullest extent permitted by law, the Customer makes the Provider a binding offer to enter into a contract for the purchase of the Digital Extras for the price which shall remain open for acceptance by the Provider for seven (7) days from the date of submission. In the event that the Provider has not accepted the Order within seven (7) days of submission of the Order, the Customer shall be entitled to withdraw/cancel their Order subject to clause 6.2.
6. The Provider will confirm its receipt of the Order immediately by sending an order confirmation to the Customer (Order Confirmation) via the details nominated by the Customer as part of their Order (eg: the Customer's nominated email address, to the "My messages" inbox of the Customer's Mercedes me Customer account and/or a text message to the Customer's mobile phone number). The Customer acknowledges and agrees that the Order Confirmation is sent by the Provider merely to notify the Customer of receipt of their Order but any Order Confirmation shall in no way be considered or taken as an

acceptance of the Order by the Provider or create a binding commitment by the Provider to supply the Digital Extras.

7. The Provider, acting reasonably, reserves the right to cancel/reject the Customer's Order for any reason at any time prior to acceptance of the Order. Any such rejection shall be governed by clause 6.3. If the Provider cancels/rejects the Customer's Order, the Provider will endeavour to notify the Customer of that cancellation/rejection as reasonably practicable.
8. The Provider shall be deemed to have accepted the Order upon the earlier of:
  - a. the Provider confirming its acceptance of the Order via email (to the email address nominated by the Customer as part of their Order) or to the "My messages" inbox of the Mercedes me Customer account; or
  - b. The Customer activating the respective Digital Extras.

**(Acceptance).**

9. The Provider shall deliver the Digital Extras **(Deliver/Delivered/Delivery)** in accordance with the Order as soon as practicable to the Eligible Vehicle in accordance with the Order however time for Delivery shall not be of the essence.
10. Where more than one Digital Extra is ordered or a bundle of Digital Extras is ordered, the Customer acknowledges and agrees that the Provider shall be entitled to Deliver each individual Digital Extra separately and at different times and the Customer consents to such a delivery method.
11. The Customer acknowledges and agrees that once the ordering process is completed, the data from the Customer's Order will be deleted by the Provider and can no longer be retrieved. In this regard, it is the Customer's obligation to ensure that the details of their Order and these General Terms and Conditions of Purchase (including the information concerning the cancellation policy) which is sent to the Customer after the Order is placed is securely stored and can be retrieved.

### **3. Payment for Digital Extras**

1. Prior to Acceptance of an Order, the Provider will charge the Customer and the Customer agrees to pay the price and any applicable fees or other reasonable charges set out in these General Terms and Conditions of Purchase or as advertised **(Price(s))**.
2. All Prices are in Australian Dollars and, if GST applies, inclusive of GST (unless otherwise indicated). Any fees and charges (including delivery fees) imposed by these General Terms and Conditions also include GST (unless otherwise indicated).

3. The prices stated for Digital Extras are to be understood as final prices for the right to use the Services in the Eligible Vehicle during the agreed Term for the Digital Extras.
4. Unless otherwise stated, no shipping or delivery costs will be charged or payable by the Customer.
5. Where the Provider considers it reasonably commercially necessary to do so, the Provider reserves the right to change or alter Prices without notice. If the Customer has already submitted an Order at a particular Price, the Provider will supply the Digital Extras at that Price.
6. The Price of Digital Extras may not be the same or correspond to the prices in other Countries for the same Digital Extras and the Customer acknowledges and agrees that the Provider is not required or obliged to match any prices for any Digital Extras.
7. Payment methods are specified in the Mercedes me App, on the website, in the MBUX or explained by the consultant at the time the Customer places their Order (as applicable). Unless otherwise agreed, other methods of payment, including cash and cheques cannot be used to pay for Digital Extras. The Provider reserves the right to exclude certain methods of payment in its discretion, acting reasonably.
8. The name on any credit card or account used for payment must match the name on the Order.
9. Any payment for an Order must be cleared by the Provider before Digital Extras are Accepted. If the Customer's payment cannot be processed, the Order will be rejected and the Customer will be notified of this. If a payment cannot be processed, the Customer should contact their card issuer to try to resolve the problem, or use an alternative payment method in order to continue with the Order.
10. In paying or attempting to pay for Digital Extras, the Customer agrees that they have not engaged in any fraudulent conduct or contravened any law, regulation, rule or code.
11. The Provider (directly or via an authorised agent) reserves the right to conduct and implement fraud detection processes, including without limitation to validating the Customer's credit card details. If the Customer's nominated payment method triggers the Provider's fraud prevention protocols, the Provider (directly or via its authorised agent) may contact the Customer to confirm additional details, or cancel the transaction. In this case, the Customer's Order must pass the Provider's fraud prevention protocols before it will be Accepted. If the Customer does not provide the requested information within the required time frame, the Customer's Order will be cancelled in accordance with clause 6.3. These checks are completed to help protect credit card holders from online fraud.

## 4. Fee-Based Services

1. By purchasing a Fee-Based Service, the Customer will be entitled to use the Fee-Based Service for the period as agreed to by the Provider unless terminated earlier in accordance with these General Terms and Conditions of Purchase (**Fee-Based Service Term**).
2. The Fee-Based Service will be provided by the Provider.
3. When ordering a Digital Extra with monthly payment for the first time, the Customer will receive a free trial month for the Digital Extra in the selected Vehicle. The first billing date, and consequent billing dates for the respective Digital Extra can be viewed by the Customer in their Mercedes me Customer account.
4. The Customer's use of the Fee-Based Service will be governed by the Provider's Terms of Use.
5. The Provider, either directly or on behalf of Mercedes-Benz AG (MBAG) (as the case may be), shall be taken to have granted the Customer a non-exclusive right to use the Fee-Based Service for the Fee-Based Service Term:
  - a. In accordance with these General Terms and Conditions of Purchase;
  - b. In accordance with the Provider's Terms of Use;
  - c. For the Customer's own personal, domestic or household use or consumption;
  - d. For use in the Customer's Eligible Vehicle (as nominated at the time of the Order); and
  - e. within Australia;

unless the consent of the Provider is obtained to use the Fee-Based Service otherwise.

6. The Customer consents to the Provider alerting the Customer about an upcoming expiration of a Fee-Based Service Term either via email (to the email address nominated by the Customer as part of the Order or in Customer's Mercedes me Customer account), via a message to the "My messages" in-box of the Mercedes me Customer account, or via a text to the Customer's mobile phone number (as nominated by the Customer as part of the Order or the Customer's Mercedes me Customer account).
7. To use the Fee-Based Service in the Eligible Vehicle, the Customer must have a valid and active Mercedes me Customer account and the Eligible Vehicle must be connected to the Mercedes me Customer account.
8. It is the Customer's obligation to ensure that the Fee-Based Service is compatible with and suitable for the Customer's Eligible Vehicle. Information about the Fee-Based Services, including which Fee-Based Services are available for and compatible with the Eligible Vehicle, are available in the Mercedes me Customer account or in the Mercedes me Store or upon request from the Provider.

## 5. on-demand features

1. By purchasing an on-demand feature, the Customer will be entitled to use the on-demand feature indefinitely for the life the Eligible Vehicle unless terminated earlier in accordance with these General Terms and Conditions of Purchase (**on-demand feature Term**).
2. The on-demand feature will be provided by the Provider.
3. The Customer's use of the on-demand feature will be governed by the Provider's Terms of Use.
4. The Provider, either directly or on behalf of MBAG (as the case may be), shall be taken to have granted the Customer a non-exclusive right to use the On-demand feature for the on-demand feature Term:
  - a. In accordance with these General Terms and Conditions of Purchase;
  - b. In accordance with the Provider's Terms of Use;
  - c. For the Customer's own personal, domestic or household use or consumption;
  - d. For use in the Eligible Vehicle (as nominated at the time of the Order); and
  - e. within Australia;

unless the consent of the Provider is obtained to use the on-demand feature otherwise.

5. To activate and use the on-demand features:
  - a. the Customer must have a valid and active Mercedes me Customer account;
  - b. the Eligible Vehicle must be connected to the Mercedes me Customer account;
  - c. the ignition of the Eligible Vehicle must be switched on and then off again for several or so minutes; and
  - d. a connection to the Eligible Vehicle backend infrastructure of Mercedes-Benz AG must be established.
6. It is the Customer's obligation to ensure that the on-demand feature is compatible with and suitable for the Customer's Eligible Vehicle. Information about the on-demand features, including which on-demand features are available for and compatible with the Eligible Vehicle, are available in the Mercedes me Customer account or in the Mercedes me Store or upon request from the Provider.
7. The Customer acknowledges and agree that in order for the Provider to verify whether the available on-demand feature has been activated, the Eligible Vehicle regularly connects to the backend infrastructure of MBAG and transmits the vehicle identification number. This connection also involves regular transmissions of information about which on-demand feature is activated in the Eligible Vehicle. The Customer consents to such use and transmission.



## 6. Cancellation Policy

1. Nothing in this section is intended to limit, modify or restrict the rights and interests of the Customer under the Schedule 2 of the Competition and Consumer Act 2010 (Cth) (**“Australian Consumer Law”**) and shall apply in addition to any such rights and interest. To the extent that anything in this section conflicts with the Australian Consumer Law, the Australian Consumer Law shall prevail.  
Order cancellation – prior to Acceptance
2. Further to clause 2.5b), the Customer may at any time following seven (7) days after submitting an Order and prior to Acceptance of an Order, for any reason whatsoever cancel an Order without liability by providing written notice to the Provider. Any monies paid by the Customer prior to cancellation of an Order under this clause shall be refunded to the Customer within a reasonable period via the same method (and to the same card) as originally paid by the Customer.
3. Further to clause 2.7, the Provider may at any time prior to Acceptance of an Order, cancel an Order for any reason whatsoever without liability by providing written notice to the Customer. Any monies paid by the Customer prior to cancellation of an Order under this clause shall be refunded to the Customer within a reasonable period via the same method (and to the same card) as originally paid by the Customer.  
Order cancellation – post Acceptance
4. Within fourteen (14) calendar days of Acceptance of an Order, the Customer may for any reason whatsoever, cancel an Order without liability by providing written notice to the Provider. Any monies paid by the Customer prior to cancellation of an Order under this clause shall be refunded to the Customer within a reasonable period via the same method (and to the same card) as originally paid by the Customer.
5. To the fullest extent permitted by law, the Provider may cancel an Order (in whole or in part) after Acceptance of the Order if the Provider is not able to supply the ordered Digital Extra (in whole or in part) in accordance with section 9 [Force Majeure] or for reasons beyond its reasonable control. If the Provider cancels an order by reason of the above, any monies paid by the Customer prior to cancellation of an Order under this clause shall be refunded to the Customer within a reasonable period via the same method (and to the same card) as originally paid by the Customer.
6. The Customer and Purchaser shall have additional rights as set out in Section 10 [Termination].
7. Refunds (including pro rata refunds) will not be provided in the event that Customer wishes to switch between fee-based and on demand services.

## 7. Assignment

1. In the event that the Customer sells, assigns or otherwise transfers ownership in the Eligible Vehicle to a third party (New Vehicle Owner), the Customer shall be entitled to sell/assign/transfer (as applicable) their rights, liabilities and obligations under these General Terms and Conditions of Purchase and any active Digital Extras to the New Vehicle Owner without the consent of the Provider subject to the following:
  - a. The Customer not being in breach of these General Terms and Conditions of Purchase or the Provider's Terms of Use;
  - b. The Customer notifying the Provider of the sale/assignment/transfer in ownership and title in the Eligible Vehicle and provides all reasonably necessary details of the New Vehicle Owner (with the requisite New Vehicle Owner's consent) to the Provider prior to the New Vehicle Owner's use of Digital Extras;
  - c. The Customer, without undue delay, disconnects/unlinks the Eligible Vehicle from their Mercedes me Customer account. If the Customer does not fulfil their obligation to disconnect/unlink the Eligible Vehicle and another person successfully authenticates themselves as the New Vehicle Owner, then the Provider shall be entitled to disconnect the Eligible Vehicle without further warning to the Customer however will inform the Customer that the disconnection has taken place;
  - d. The New Vehicle Owner is an individual, natural person who shall use the Digital Extras for the sole purpose of personal, domestic or household use or consumption;
  - e. The Customer provides the New Vehicle Owner with a copy of these General Terms and Conditions of Purchase which they accept and agree to be bound by as if they were the Customer;
  - f. The New Vehicle Owner has or will have prior to using any Digital Extras:
    - i. a current and valid Mercedes me Customer account which is actively paired with the Eligible Vehicle;
    - ii. accepted the Provider's Terms of Use; and
    - iii. a valid email address or a mobile phone number saved in their Mercedes me Customer account.
2. Any sale/assignment/transfer under clause 7.1 shall on be effective on and from the sale/assignment/transfer date to the New Vehicle Owner (**Effective Date**) however shall not limit or exclude any rights or interests of the Customer which have accrued prior to the Effective Date or relieve the Customer of any obligations or liabilities arising prior to the Effective Date.
3. Once validly sold/assigned/transferred under clause 7.1, the New Vehicle Owner shall be entitled to use any active Digital Extras for any duration remaining on and from the Effective Date, subject to these General Terms and Conditions of Purchase as if they were the Customer.
4. Subject to clauses 7.1- 7.3, the Customer must not otherwise sell, assign or transfer, in whole or in part, its rights and interests and/or

obligations and liabilities under these General Terms and Conditions of Purchase without the Provider's prior written consent which consent shall not be unreasonably withheld. The Provider's consent may be subject to any conditions that the Provider, acting reasonably, considers appropriate.

5. The Provider may at any time assign in whole or in part any of its rights or obligations under these General Terms and Conditions of Purchase to MBAG, any Mercedes-Benz Company or Related Entity, provided written notice of such assignment is given to the Customer. The Customer irrevocably consents to such assignment.
6. 7.6 In this clause:  
"Mercedes-Benz Company" means any entity ultimately owned or held by MBAG or in which MBAG has a controlling interest;  
"Related Entity" has the meaning in section 9 of the Corporations Act 2001 (Cth).
7. This clause survives termination.

## 8. Warranties and Liability

1. Digital Extras come with guarantees that cannot be excluded under Schedule 2 of the Competition and Consumer Act 2010 (**Australian Consumer Law**) and nothing in this section intends to limit, restrict, exclude or modify the Australian Consumer Law guarantees or any other rights or interests that the Customer may have at law that cannot be limited, restricted, excluded or modified.
2. In accordance with the Australian Consumer Law:
  - a. if there is a minor issue with the Digital Extras, the Provider shall be entitled (in its absolute discretion) to:
    - i. fix the minor issue with the Digital Extras free of charge and within a reasonable period of time; or
    - ii. resupply the Digital Extras free of charge; or
    - iii. refund the Customer for the Digital Extras which are subject to the minor issue.
  - b. If there is a major issue with Digital Extras (including if there is a minor issue that cannot be remedied within a reasonable period), the Customer shall be entitled to (in its absolute discretion):
    - i. get someone else to fix the problem and have the Provider pay for the reasonable costs; or
    - ii. obtain a refund for the Digital Extras which are subject to the major issue; or
    - iii. keep the Digital Extras and obtain payment for any difference between the Digital Extras delivered (with the major issue) and the Price.

3. The Provider shall use its reasonable endeavours to provide uninterrupted availability and supply of the Digital Extras however such availability is subject to disruption, interruption and unavailability arising from various matters including maintenance and updates and matters beyond the reasonable control of the Provider.
4. For the purposes of clause 8.3 above, the Customer expressly acknowledges and agrees that:
  - a. it is technically impossible to make the Digital Extras available 24 hours a day and 365 days a year and free of disruption, interruption, unavailability or errors of any kind;
  - b. errors can lead to a temporary shutdown of Digital Extras and may impact the operation of the Vehicle; and
  - c. the availability of the Digital Extras is dependent on conditions and performance beyond the reasonable control of the Provider, including but not limited to transmission capacities and third party's making available their networks as well as any software or technical applications that the Digital Extras are based on or rely on.
5. Subject always to clause 8.1 and 8.2 above, and to the fullest extent permitted by law:
  - a. The Provider excludes all express or implied terms and warranties whether statutory or otherwise, including but not limited to any warranty that:
    - i. Digital Extras will be error free or complete in all instances;
    - ii. the use of Digital Extras will be uninterrupted and free from failure;
    - iii. Digital Extras will absolutely secure from unauthorised access;
    - iv. unless otherwise agreed, Digital Extras will meet the Customer's specific requirements; or
    - v. Digital Extras will provide any functionality or performance not expressly stated and agreed to by the Provider;
    - vi. any information, data or software arising from third parties which is made by made available to the Customer via Digital Extras (including third party websites) is accurate, complete or of any quality.
  - b. The Provider will not be liable for any loss, costs, expenses, damages, actions, claims and demands, including under any warranty or indemnity, however arising from or in relation to:
    - i. inaccurate or incomplete details provided in the Order;
    - ii. misuse of the Customer's ID, password or Eligible Vehicle security by anyone other than the Provider and its Affiliates;
    - iii. third party acts or omissions and third party software including but not limited to telecommunications failures and faults or defective network or internet connections and the malfunction, degradation, suspension,

- discontinuance, maintenance or unavailability of any third party services, materials, cloud environments or software;
- iv. all documentation, material, software, hardware, content or goods not provided by the Provider;
  - v. Force Majeure Events (as defined in section 9);
  - vi. enhancements, adaptations, translations or modifications of Digital Extras (including any source code) by anyone other than the Provider or its Affiliates (unless permitted in writing by the Provider);
  - vii. a failure by the Customer to comply with these General Terms and Conditions of Purchase or the Provider's Terms of Use;
  - viii. use of Digital Extras in a manner not contemplated by these General Terms and Conditions of Purchase or the Provider's Terms of Use;
  - ix. misuse, negligent use or abuse of Digital Extras by the Customer; or
  - x. any act or omission directly within the Customer's responsibility or control.
- c. Each party's liability for loss or damage of any kind arising out of these General Terms and Conditions of Purchase will be reduced or limited to the extent (if any) that the other party caused or contributed to the loss or damage;
  - d. The Provider will not be liable to extent that the loss or damage is for indirect loss however caused, including economic loss, loss or corruption of data, loss of production or operating time, or loss of anticipated savings, opportunity, revenue, profit or goodwill.
6. In this section:  
"Affiliate" means any director, officer, employee, agent, contractor, subcontractor, consultant or adviser or related entity of the Provider;
7. This clause survives termination.

## 9. Force Majeure

- 1. A party is excused from performing its obligations under these General Terms and Conditions of Purchase (other than the payment of money) to the extent that it is prevented by a Force Majeure Event (other than lack of funds for any reason) pursuant to this section 9. Notwithstanding any other provision in these General Terms and Conditions of Purchase, during a Force Majeure Event, these General Terms and Conditions of Purchase will remain in effect and that party will not be in default under these General Terms and Conditions of Purchase in respect of those obligations it is prevented from performing by a Force Majeure Event.
- 2. A party affected by a Force Majeure Event must:
  - a. use reasonable endeavours during the period of the Force Majeure Event to limit the effect of the Force Majeure Event;

- b. promptly notify the other party of the nature of the Force Majeure Event and the way in which, and the extent to which, that party's ability to perform its obligations under these General Terms and Conditions of Purchase has been affected;
  - c. promptly notify the other party of any material changes to the Force Majeure Event; and
  - d. recommence performing its obligations in accordance with these General Terms and Conditions of Purchase as soon as reasonably possible.
- 3. If a party is unable to wholly or partially perform any obligation in accordance with these General Terms and Conditions of Purchase due to a Force Majeure Event for a continuing period exceeding 30 days, the party affected by such non-performance may terminate these General Terms and Conditions of Purchase with immediate effect by serving notice on the non-performing party.
- 4. In this section:  
**"Force Majeure Event"** means anything outside the reasonable control of the Provider, including:
  - a. The failure, fault, defect, malfunction, degradation, suspension, discontinuance, maintenance or unavailability of third party services, hardware, software or applications including but not limited to telecommunications failures and faults, defective network or internet connections and the malfunction, degradation, suspension, discontinuance, maintenance or unavailability of any third party materials, cloud environments or software;
  - b. an act of God, lightning, fire, storm, explosion, flood, landslide, peril of sea or air, bushfire, volcano or earthquake;
  - c. strikes or other industrial action whether in Australia or overseas;
  - d. an act of public enemy, war (declared or undeclared), terrorism, piracy, sabotage, blockade, revolution, riot, insurrection, civil commotion, pandemics or epidemics;
  - e. any act or omission of a wharf or port authority, a government authority or agency or a shipping or transportation company;
  - f. the effect of any change in Applicable Laws; and
  - g. an embargo or power shortage.

## 10. Termination

- 1. The below rights are in addition to any other rights which the Customer or the Provider may have in these General Terms and Conditions of Purchase or at law.  
Termination by the Customer
- 2. The Customer may, terminate these General Terms and Conditions of Purchase immediately on written notice to the Provider if:
  - a. The Provider is in breach of these General Terms and Conditions of Purchase and if the breach is capable of remedy,

- the Provider has not remedied the breach within 30 days' (or such other period as required by law or that is reasonable) after receiving a written notice from the Customer requiring it to do so; or
    - b. The Provider is in breach of these General Terms and Conditions of Purchase and the breach is not capable of remedy by the Provider; or
    - c. The Provider's Terms of Use are terminated by the Customer for cause.
- 3. For the avoidance of doubt, deletion of the Mercedes me App, deactivation of the Mercedes me Customer account or deactivation/unlinking of the Eligible Vehicle shall not constitute a termination.  
Termination by the Provider
- 4. The Provider may terminate these General Terms and Conditions of Purchase immediately on written notice to the Customer if:
  - a. The Customer is in breach of these General Terms and Conditions of Purchase and if the breach is capable of remedy, the Customer has not remedied the breach within 30 days' (or such other period as required by law or that is reasonable) after receiving a written notice from the Provider requiring it to do so; or
  - b. The Customer is in breach of these General Terms and Conditions of Purchase and the breach is not capable of remedy by the Customer; or
  - c. The Provider's Terms of Use are terminated by the Provider for cause; or
  - d. the Customer is no longer entitled to use the Vehicle (other than assignment under section 7) or if the Vehicle has been destroyed/written off; or
  - e. If the Provider cannot contact the Customer about their Order using the contact details that the Customer provided in the Order, after having made reasonable attempts to contact the Customer; or
  - f. If due to a Force Majeure Event.
- 5. If the General Terms and Conditions of Purchase are terminated by the Provider in accordance with the above, in the Provider's absolute discretion, the Provider may elect that:
  - a. the individual Order governed by these General Terms and Conditions of Purchase giving rise to the right to termination and the associated Digital Extra under that Order shall also deemed terminated; or
  - b. all Digital Extras which had been supplied to the Customer under this Order and others shall be deemed terminated.
- 6. Any notice provided under this clause shall be in writing. In this regard, the Customer consents to receiving any notification via email, SMS or via message to the Customer's Mercedes me mailbox in accordance with any details provided by the Customer.

## **11. Variations**

1. The Provider is entitled to make changes and amendments to these General Terms and Conditions of Purchase at any time if:
  - a. required by new technical developments or change in law; or
  - b. the Provider, in its discretion acting reasonably, considers the change or amendments to be reasonably necessary, and the Provider gives 14 days' notice (or such other period as required by law or that is reasonable having regard to the amendments) to the Customer in writing, including by email or SMS (in accordance with any details provided by the Customer), or via message to the Customer's Mercedes me Mailbox, prior to the change or amendment taking effect. The amended General Terms and Conditions of Purchase are deemed to have been accepted if the Customer does not notify the Provider that they object to the change within 14 days of the date of notice of the change (or such other period as stated in any notice as required by law or that is reasonable having regard to the amendments). The Provider will inform the Customer separately of this legal consequence in its notification.
2. The Provider is entitled to make changes and amendments to Digital Extras in accordance with the Provider's Terms of Use [see section 13].

## **12. General**

1. Each party must do all things necessary to give effect to these General Terms and Conditions of Purchase and anything contemplated by these General Terms and Conditions of Purchase.
2. The person purporting to enter into these General Terms and Conditions of Purchase on behalf of the Customer warrants to the Provider that they are duly authorised to enter into these General Terms and Conditions of Purchase in that capacity.
3. If a provision in these General Terms and Conditions of Purchase is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required in this clause that provision is to be severed to the extent necessary without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these General Terms and Conditions of Purchase, and the rest of these General Terms and Conditions of Purchase remains in full force and effect.
4. A Party's failure or delay to exercise a power or right that it has under these General Terms and Conditions of Purchase, does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of



a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

5. These General Terms and Conditions of Purchase may be signed/accepted in counterparts and all counterparts taken together constitute one document. Once all counterparts have been executed, each counterpart is an effective instrument.
6. The laws of the State of Victoria, Australia govern these General Terms and Conditions of Purchase. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

Last updated May 2024.