



# MAN TRUCK & BUS UK LIMITED

## GENERAL TERMS & CONDITIONS OF CONTRACTS FOR

### RETAIL SUPPLY OF PARTS AND / OR VEHICLE SERVICES

#### NOTICE TO CUSTOMER:

All orders between the Customer and MAN Truck & Bus UK Limited (Company Number 02688514, Registered Office: Frankland Road, Blagrove, Swindon, SN5 8YU - 'MTBUK') for the retail supply of Parts and / or Vehicle Services are subject to (i) the following General Terms and Conditions of Contracts for the Retail Supply of Parts and / or Vehicle Services and (ii) to any applicable special terms and conditions set out in any applicable Order Confirmation and /or Job Card. Those documents will together comprise and evidence the legally binding 'Contract' between MTBUK and the Customer. Because of its formal nature, please read this document carefully.

#### CLAUSES 1 to 4 APPLY TO ALL CONTRACTS

- 1. DEFINITIONS & INTERPRETATION:** In these General Terms and Conditions, any applicable special terms and conditions and the Contract (as hereinafter defined), and except where the context otherwise requires, the words, expressions, and definitions set out in **bold** in Schedule 1 will have the meanings assigned to them in that Schedule and be interpreted accordingly. The rules of interpretation in Schedule 1 will similarly apply.
- 2. STATUS OF QUOTATIONS, DESCRIPTIVE MATTER ETC:** Any oral or written quotation, estimate, specification or proposal (including any containing prices or other financial information) given by MTBUK (or MAN) in relation to any goods, parts, materials, works or services or their supply or performance are merely indicative of MTBUK's intentions subject to Contract. Any descriptive matter or advertising produced by or on behalf of MTBUK (or MAN), including on any website, are produced for the sole purpose of giving an approximate idea of the particular goods, parts, materials, works or services to which they refer and shall not form any part of the Contract.
- 3. ORDERS / BASIS OF & FORMATION OF CONTRACT:**
- 3.1. When the Customer wishes to place an order, it shall deliver a signed Order Confirmation (in respect of Parts) and / or Job Card (in respect of Vehicle Services) to MTBUK. MTBUK shall be free to accept or decline any order at its absolute discretion. MTBUK will be under no obligation, and nor will it incur any liability for any failure, to sell or deliver any goods, parts or materials or to perform, carry out or otherwise provide any works, services, benefits or facilities unless and until the Customer has firstly signed and returned the relevant Order Confirmation or Job Card to MTBUK and which MTBUK also accepts in accordance with the provisions of clause 3.2. MTBUK may, in its absolute discretion, agree to accept orders submitted orally by the Customer. However, in that event, the Customer agrees to confirm any such oral orders by delivering a signed Order Confirmation and / or Job Card to MTBUK (bearing the additional words 'confirmation of oral order') within two Business Days of placing the order orally.
- 3.2. The Parties agree that:
- each order shall be deemed to be a separate offer by the Customer to enter in to a Contract to purchase Parts and / or Vehicle Services on the basis of and subject to both these General Terms & Conditions and any special terms and conditions appearing in any signed Order Confirmation and / or Job Card;
  - any such offer shall only be deemed to have been accepted when MTBUK issues written acceptance, or otherwise proceeds to comply with / perform the requirements, of the particular order to which the offer refers at which point and on which date a legally binding 'Contract' shall come into existence;
  - any such Contract shall be deemed to exclude all other terms and conditions including any which the Customer seeks to impose;
  - where these General Terms and Conditions are silent regarding or substantially inconsistent with any particular matter set out in the Order Confirmation and / or Job Card, any special terms and conditions appearing in the applicable Order Confirmation / Job Card will also apply to the relevant Contract.
- 3.3. MTBUK shall assign an order number to each order received from the Customer and inform the Customer of the said order number in the Order Confirmation / Job Card. Each Party shall use the relevant order number in all subsequent correspondence relating to the order.
- 3.4. MTBUK may, in its absolute discretion, agree to accept amendments to an order after a Contract has come into existence in which event any such amendments shall be subject to such terms and conditions as MTBUK may reasonably require including in accordance with the provisions of clause 18.
- 4. PRICE, PAYMENT & SECURITY:**
- 4.1. The price payable by the Customer for the Parts and / or Vehicle Services under the relevant Contract ('Price') shall be:
- as set out in the relevant Order Confirmation or Job Card sent to the Customer by MTBUK before the formation of the relevant Contract; or (if not set out therein)
  - as may be agreed between the Parties ( and as confirmed in writing by an authorised representative of MTBUK); or (in default of any such agreement )
  - a reasonable sum, which shall be determined by reference to the trade parts prices (in respect of Parts) and / or the trade labour rates (in respect of Vehicle Services) which at the material time MTBUK normally charges to its other trade customers (excluding any discounts or rebates or similar arrangements which may apply to any particular customer(s)) for the same or substantially similar Parts and / or Vehicle Services within the same territory in which they are delivered and / or performed by the same member of the Network and in all cases to include all of MTBUK's relevant costs and expenses incurred (including those paid to the Network) plus a reasonable profit margin.
- 4.2. Unless credit terms have previously been granted and confirmed in writing by an authorised representative of MTBUK, the Customer must pay the Price in full and in cleared funds, prior to completion of delivery and / or performance of the Parts and / or Vehicle Services and as the case may be. If credit terms have been granted and confirmed as aforesaid, the Customer must pay the applicable Price in full and in cleared funds on or before the date confirmed.

4.3. The Customer will also pay all VAT and any other applicable taxes and duties or similar charges which shall be additionally invoiced to and payable by the Customer at the rate and in the manner from time to time prescribed by law.

4.4. Time is of the essence as to payment of the Price, VAT and all applicable taxes, duties and similar charges. Payment must be made to the credit of MTBUK's bank account.

4.5. If the Customer fails to pay the Price, or any part of it or any other sums payable by the Customer to MTBUK under the Contract in accordance with its terms, then, and without limiting any of MTBUK's other rights, the Customer shall pay:

- a) interest on all sums remaining unpaid in accordance with, and at the rates prescribed from time to time in, the Late Payment of Commercial Debts (Interest) Act 1998 ('Late Payment Act') as may be amended; plus
- b) the fixed charges that MTBUK may claim under the Late Payment Act as compensation for the cost of recovering the applicable debt; plus
- c) all other reasonable costs of recovery incurred by MTBUK; alternatively and in the event that the Late Payment Act is held by a court of competent jurisdiction not to apply for any reason
- d) interest on all sums remaining unpaid for the period from the due date of payment up to the actual date of payment, whether before or after any judgment, at the rate of eight per cent per annum above the base lending rate from time to time of HSBC Bank; plus
- e) all reasonable costs (including all legal and other professional fees, costs and expenses) incurred by MTBUK in process of recovery including by way of legal action.

4.6. MTBUK is entitled to set off any amounts owed to it by the Customer against any amounts payable by it to the Customer.

4.7. MTBUK may, at any time and for any reason, require the Customer to provide proper and adequate security for the discharge of any financial obligation of the Customer to MTBUK under the Contract, including by the payment of a deposit and / or by the provision of a third party guarantee of payment. Any failure by the Customer to provide such security shall be deemed to be a breach of a material term of the Contract entitling MTBUK, in its absolute discretion, to suspend or withdraw delivery of the Parts and / or Vehicle Services and / or to terminate the Contract, without further or any liability to the Customer.

#### **CLAUSES 5 to 9 APPLY TO ALL CONTRACTS FOR THE SUPPLY OF PARTS**

##### **5. TIME OF / DELIVERY OF THE PARTS**

5.1. The Customer acknowledges and agrees variously that MTBUK are solely importers and / or distributors and that the Manufacturer/Supplier, as applicable, does not give any precise assurances or guarantees as regards the time or date of delivery of the Parts to MTBUK. Consequently time of delivery of the Parts cannot be guaranteed by MTBUK and time of delivery shall not be of the essence in the Contract.

5.2. Notwithstanding the provisions of clause 5.1, MTBUK shall use reasonable endeavours to effect delivery of the Parts to the Customer within a reasonable time of any estimated delivery date including any as may be set out in any applicable Order Confirmation. The Customer may, at any time after the expiry of any estimated delivery date set out in any applicable Order Confirmation, make time of delivery of the essence by delivering written Notice to that effect to MTBUK save that any such written Notice shall not require delivery of the Parts to be effected any sooner than before the last Business Day of the month following the month in which any such Notice is delivered to MTBUK.

5.3. Delivery of the Parts to the Customer shall be deemed to have been completed when MTBUK places the Parts at the Customer's disposal.

5.4. Any failure by the Customer to take physical delivery of possession of the Parts, when required by MTBUK to do so, shall be deemed to be an ongoing breach of a material term of the Contract entitling MTBUK, at its own election, to terminate the same and without any further or any liability to the Customer. Upon any such failure or any such termination MTBUK shall be entitled (but shall not be obliged) to store or resell the Parts and to charge the Customer for any costs or expenses incurred in storing the Parts and / or, if applicable, for any shortfall between the Price and the amount recovered by MTBUK upon any such resale. The Customer agrees to pay any such costs or expenses or shortfall to MTBUK, as a debt, within five Business Days of demand being made by MTBUK for payment of the same.

##### **6. TITLE, RISK & INSURANCE IN RELATION TO THE PARTS:**

6.1. Risk in the Parts shall pass to the Customer upon completion of delivery within the meaning of clause 5.3. Title to the Parts shall not pass to the Customer until MTBUK has received payment of the Price in full and in cleared funds and for any other goods, Parts and / or Vehicle Services and / or any other goods and / or services that MTBUK has supplied to the Customer in respect of which payment has become due.

6.2. From delivery and until such time as MTBUK has received payment of the Price, the Customer shall variously and at its own cost and expense:

- a) hold the Parts on a fiduciary basis as MTBUK's Bailee;
- b) store them separately from all other goods held by the Customer so that the Parts remains readily identifiable as MTBUK's property;
- c) not remove, deface or obscure any identifying mark, including any MAN logo;
- d) maintain them in good and satisfactory condition and in full and proper working order and repair;
- e) keep them insured on MTBUK's behalf with an insurer that is acceptable to MTBUK, to a value of not less than the Price, comprehensively against all risks of loss, damage or destruction; pay to the insurer any premiums required to maintain the said policy of insurance (and in the event that the Customer fails to pay and MTBUK pays such premiums to the insurer on the Customers behalf, to pay the same to MTBUK forthwith on demand being made by MTBUK); ensure that such policy be endorsed to name MTBUK as a loss payee in relation to any claim relating to the Parts; pay any deductibles due on any claims under such policy; provide MTBUK with at least twenty Business Days' prior written notice of cancellation or material change in the applicable policy of insurance; not do or permit to be done anything which could invalidate the said policy; on demand, supply MTBUK with copies of the relevant policy documents and such other documents as MTBUK may require to evidence the implementation and maintenance of the said insurance policy, the noting of MTBUK's interests thereon, and the payment of the premiums;
- f) give MTBUK full details by immediate Notice (and also by telephone and email) in the event of any loss, accident or damage to the Parts;
- g) on demand allow MTBUK access to the Parts at any time and for any reason.

6.3. If after completion of delivery, and before title to the Parts has passed to the Customer, MTBUK has any reasonable cause to believe or suspect that the Customer may fail to comply with any of its obligations under the Contract, then MTBUK may at any time, without limiting any other of its rights or remedies, require the Customer to deliver up physical possession of the Parts and, if the Customer fails to do so promptly, MTBUK may, and the Customer irrevocably agrees to procure that MTBUK may, by itself or by any MTBUK Representative, enter any premises of the Customer or of any third party where any of the relevant Parts are held in order to recover them.

#### 7. MTBUK'S WARRANTIES IN RELATION TO MAN PARTS:

7.1. MTBUK warrants that upon delivery to the Customer and payment of the Price, any Parts which are MAN Parts shall:

- a) conform in all material respects with any applicable Specification; and
- b) during the particular Warranty Period set out in the following table (commencing on and calculated from, in each case and in relation to each individual Part, the date of delivery to the Customer), be reasonably fit for their normal commercial purpose as a part intended for installation in to and / or to replace (in each case and in relation to each individual Part) the parts of the particular MAN Vehicle for which the particular MAN Parts are supplied by the Manufacturer:

Parts	Warranty Period
MAN Genuine Parts ®	12 months
MAN Genuine Accessories®	12 months
MAN Genuine Exchange Parts ®	12 months

7.2. The Customer acknowledges and agrees that in relation to any Parts which are not MAN Parts, it shall only be entitled to the benefit of such warranties, if any, as are set out in clause 9 and that the provisions of clause 15.1 shall also and particularly apply.

#### 8. MTBUK'S REPLACEMENT OR REPAIR WARRANTIES IN RELATION TO MAN PARTS:

8.1. Subject to the provisions of clause 10 hereof, MTBUK will procure (in its absolute discretion) either the replacement of any MAN Part containing a Material Defect, or the repair of any Material Defect occurring in any MAN Part, during the Warranty Period set out in clause 7.1, at no extra charge to the Customer.

8.2. MTBUK warrants that any:

- a) MAN Parts which are replaced or repaired under clause 8.1 MAN Parts shall conform with the warranties, for the remainder of the original Warranty Period, set out in clause 7.1;
- b) repairs which are carried out under clause 8.1 will be performed with reasonable care and skill.

8.3. For the purposes of any replacement or repairs which are to be carried out under this clause 8, the Customer shall at its own cost and expense deliver the particular MAN Parts to such Workshop as MTBUK may nominate and direct.

8.4. The Customer shall not be entitled to require MTBUK to undertake any replacement or repair of any MAN Parts by reason of Fair Wear and Tear. All and any replacements or repairs of any Parts which are not MAN Parts are excluded from the particular provisions of this clause.

#### 9. WARRANTIES IN RELATION TO ANY PARTS WHICH ARE NOT MAN PARTS:

9.1. In relation to all Parts which are not MAN Parts, the Customer acknowledges and agrees that:

- a) all such Parts will be resourced through and / or supplied by third party Suppliers pursuant to the Customers instructions; and that
- b) it shall be entitled only to such Suppliers Warranty, if any, as MTBUK has received from the particular Supplier thereof and, in that event, in the terms, if any, which are communicated to the Customer in writing by MTBUK before the formation of a Contract on the basis set out in clause 3.

9.2. Without prejudice to clause 9.1, MTBUK warrants that upon delivery to the Customer and payment of the Price, any Parts which are not MAN Parts shall conform in all material respects with any applicable Agreed Specification.

9.3. Save as appears in this clause 9, no further conditions, warranties, assurances or other terms, express or implied shall apply in relation to any Parts which are not MAN Parts and the Customer acknowledges and agrees that the provisions of clause 15.1 shall particularly apply.

#### CLAUSES 10 & 11 APPLY TO ALL CONTRACTS FOR THE SUPPLY OF VEHICLE SERVICES:

#### 10. PARTICULAR OBLIGATIONS & WARRANTIES OF THE PARTIES IN RELATION TO THE SERVICES:

10.1. Subject to the terms and conditions of the Contract MTBUK shall use reasonable endeavours to procure the supply of the particular Vehicle Services, as they are more particularly set out in the Job Card:

- a) in relation to the particular Vehicle referred to therein;
- b) by the Network;
- c) using reasonable care and skill;
- d) at the Workshop;
- e) during Normal Business Hours.

10.2. The Customer acknowledges and agrees that given the often uncertain and / or indeterminate nature of the works and services which may ultimately be required, MTBUK does not give any precise assurances or guarantees as regards the time or date of performance of delivery of any Vehicle Services. Any indications which may have been given in relation thereto by MTBUK (and / or the Network and whether in the Order Confirmation or Job Card or otherwise howsoever) shall be estimates only and time shall not be of the essence for the performance of the Vehicle Services.

10.3. The Parties will co-operate with each other in all matters relating to the supply of the Vehicle Services including insofar as may be reasonably required or necessary to facilitate their supply on or within a reasonable time of any dates that may have been given previously.

10.4. The Customer acknowledges and agrees that risk in relation to the Vehicle (including any risk of loss, theft, damage or destruction thereof) shall not pass to MTBUK (or the Network) on delivery whether for the purposes of the Vehicle Services or

otherwise or at any other time. The Customer shall at all times maintain, at its own cost and expense, all usual and necessary insurances in relation to the Vehicle.

**11. MTBUK'S OBLIGATIONS & WARRANTIES IN RELATION TO ANY ADDITIONAL SERVICES:**

11.1. The Parties agree that in the event that MTBUK is requested by the Customer to carry out any Additional Services MTBUK may, in their absolute discretion, refuse or agree to do so. If MTBUK agrees to do so all of these General Terms and Conditions and any applicable special terms & conditions will apply with the modification, where the context permits, that all applicable references to 'Vehicle Services' shall be deemed to include 'Additional Services' and which shall be subject to such special terms and conditions as MTBUK may impose or require including any as may appear in any relevant Order Confirmation or Job Card.

11.2. MTBUK will be under no obligation to perform, nor will it incur any liability for any failure to carry out or provide any works, services, benefits or facilities under this clause unless and until the Customer has firstly signed and returned the relevant Order Confirmation or Job Card to MTBUK and which MTBUK also confirms and signs.

11.3. In the event that MTBUK is requested to and agrees to provide Additional Services in accordance with the provisions of this clause, MTBUK warrants that it shall use reasonable endeavours to procure that they be provided by the Network using reasonable care and skill.

**CLAUSES 12 to 24 APPLY TO ALL CONTRACTS:**

**12. CONTRACT EXCLUSIONS:** No works, services, benefits, facilities, goods, parts or materials which are not expressly noted in the applicable Order Confirmation or Job Card shall form any part of MTBUK's obligations and responsibilities under any Contract.

**13. WARRANTY CLAIMS:**

13.1. The Parties will use reasonable endeavours to co-operate with each other in all matters relating to , and insofar as may be reasonably required or necessary to facilitate the early resolution of , any claims made by the Customer for breach of any warranties given in relation to Parts supplied and / or Vehicle Services performed under any Contract.

13.2. Without prejudice to the provisions of clause 13.1, MTBUK shall have no obligation to meet any of the claims set out in the following provisions of this clause unless until and strictly provided, the Customer firstly:

i. delivers Notice to MTBUK in writing giving full particulars of all facts and matters on which it relies as evidencing its claim:

(a) in the case of any claim that any of the applicable Parts fail to conform to any applicable Specification, or Agreed Specification or that any of them are not reasonably fit for their normal commercial purpose by reason of any defect, Material Defect or fault that is (or which should have been reasonably) apparent on either normal visual inspection or during normal use of the Parts, within five Business Days of completion of delivery of physical possession of the Parts to the Customer; or

(b) in the case of any claim that any of the Parts are not reasonably fit for their normal commercial purpose by reason of any latent defect, including any latent Material Defect, or fault within five Business Days of the latent defect or fault having first become apparent to the Customer; and

(c) in all other cases, including any relating to any Vehicle Services, as soon as it is reasonably practical to do so.

ii. permits and gives all necessary assistance to MTBUK to allow them (or the Manufacturer or Network and as MTBUK may more particularly nominate and direct) to make a full examination of and to perform such investigations or tests on the Parts and / or Vehicle Services as MTBUK may consider to be reasonably required or necessary for the purposes of determining the cause, and the materiality, of the alleged defect or fault or in respect of any other cause for the claim;

iii. delivers the relevant Parts and / or returns the relevant Vehicle at its own cost and expense, to such Workshop as MTBUK may nominate and direct.

13.3. Furthermore, MTBUK shall not be liable for any claim in any of the following events or circumstances:

(a) if any such claim, defect or fault materialised or occurred as a result of or otherwise in connection with any act or omission (negligent or otherwise) by any person other than MTBUK, any MTBUK Representative , the Network or the Manufacturer;

(b) if any such claim, defect or fault materialised or occurred as a result of or otherwise in connection with any act or omission (negligent or otherwise) by the Customer or any Customer Agent;

(c) if the claim, defect or fault arises as a result of MTBUK, any MTBUK Representative , the Network or the Manufacturer following, using or acting upon any information, data, design, detail, drawing, illustration, instruction, process, request or direction or any form of information or any assistance, goods , parts or materials supplied or provided by the Customer or on its behalf;

(d) if the Customer or any Customer Agent alters, fixes or repairs (or attempts any of the same in relation to) the relevant Parts or Vehicle Services without the express written consent of MTBUK;

(e) if the defect or fault arises (or appears reasonably to MTBUK to arise) as a result of Fair Wear & Tear, wilful damage, negligence, or abnormal storage or working conditions or abnormal or excessive use.

13.4. If the Customer fails to give Notice of any claim in accordance with the earlier provisions of this clause, it shall be deemed to have accepted the relevant Parts and / or Vehicle Services.

13.5. For the purposes of any replacement of or any repairs to Parts or the re-performance of any Vehicle Services under the provisions of this clause, MTBUK shall use reasonable endeavours to effect the same (by itself, the Manufacturer or Network and as MTBUK may nominate and elect) within a reasonable time of delivery of the Parts by the Customer to such Workshop as MTBUK may have nominated and directed.

**14. EXCLUSIONS AND LIMITATION OF MTBUK'S LIABILITY / PARTICULAR LIABILITIES OF BOTH PARTIES PRESERVED. (THE CUSTOMERS ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE):**

14.1. To enable the Parties to anticipate and manage their commercial expectation and risk under the Contract, the Parties agree that these General Terms and Conditions set out the full extent of MTBUK's obligations, responsibilities and liabilities (including those of any MTBUK Representative, the Network or the Manufacturer) under the Contract. In particular, there are no conditions, warranties, assurances or other terms, express or implied in relation to Parts and / or Vehicle Services that are binding on MTBUK except as specifically stated in the Contract. Any condition, warranty or other term concerning the Parts and / or Vehicle Services which might otherwise be inferred or implied into or incorporated within the Contract, and whether by statute common law or otherwise howsoever, is hereby and expressly excluded to the fullest extent permissible by law.

14.2. The Customer:

a) agrees that its sole remedy in respect of any claim for breach of any of the warranties set out in clauses 7 to 11 inclusive shall be to require MTBUK to procure the replacement of any MAN Part containing a Material Defect or the repair of any Material

Defect occurring in any MAN Part or the re-performance of the applicable Vehicle Services (and as the nature and circumstances of the alleged breach of the particular warranty may require) all at no extra charge to the Customer in accordance with the various provisions of those clauses;

- b) irrevocably waives all and any entitlement to make or claim any other remedy in relation thereto at any time;
- c) irrevocably waives all and any entitlement to claim against MTBUK at any time, for any of the following, and in each and every case howsoever caused even if foreseeable: loss of profit; loss of revenue; loss of business; loss of goodwill; the liabilities of the Customer to any third party; any indirect or consequential loss or damage;
- d) agrees that MTBUK shall be under no obligation to:
  - i. replace or repair any Parts to after the expiry of the applicable Warranty Period (in the case of MAN Parts) or any warranty period set out in any Suppliers Warranty (in the case of any Parts which are not MAN Parts);
  - ii. re-perform any Vehicle Services within five Business Days of the applicable Vehicle being returned to the possession of the Customer following performance of the original Vehicle Services;

14.3. Further the Parties agree that MTBUK's total liability (including any liability for the acts or omissions of any MTBUK Representative, the Network or the Manufacturer):

- a) under the provisions of any of the warranties contained in clauses 7 to 11 inclusive shall in no circumstances exceed, or extend beyond, the particular liability as set out in each those clauses and as the case may be;
- b) in the event that MTBUK fails to effect delivery of the Parts within any time required by any Notice making time of delivery of the essence (given in accordance with and subject to the provisions of Clause 5.2) shall in no circumstances exceed the actual costs and expenses incurred by the Customer in obtaining a replacement goods of similar description, specification, performance and quality in the cheapest market available;
- c) in the event that MTBUK fails to repair or replace any Parts in accordance with and subject to the provisions of clauses 7 to 11 shall in no circumstances exceed the actual costs and expenses incurred by the Customer in obtaining repaired or replacement parts of similar description, specification, performance and quality in the cheapest market available
- d) in the event that MTBUK fails to re-perform any of the Vehicle Services using reasonable care and skill or within a reasonable time shall in no circumstances exceed the actual costs and expenses incurred by the Customer in obtaining re-performance of services of similar description, specification, performance and quality in the cheapest market available.
- e) for all other claims concerning any other breach of the Contract, whether arising in contract, misrepresentation, tort (including negligence), or otherwise, shall in no circumstances exceed the amount of the Price paid for the particular Parts or Vehicle Services to which any such breach relates.

14.4. MTBUK shall have no liability for any loss or damage, including any indirect or consequential loss or damage, which may be suffered, nor any liability to perform any works or services, arising out of or in connection with or otherwise as a result of or attributable to any Customer Default, the Customer's negligence, any of the events or circumstances set out in clause 10.3 or any events, circumstances or causes beyond MTBUK's reasonable control.

14.5. Nothing in any Contract shall restrict or in any way limit:

- a) the Customer's general obligation in law to mitigate any loss or damage it may suffer or incur as a result of an event that may give rise to a claim under the Contract; or
- b) either MTBUK's or the Customer's liability for death or personal injury caused by its own negligence or the negligence of any MTBUK Representative or Customer Agent (as applicable) or for fraud or fraudulent misrepresentation or
- c) any other liability which cannot be excluded by law.

#### 15. CUSTOMERS PARTICULAR UNDERTAKINGS, WARRANTIES & FURTHER ASSURANCES:

15.1. The Customer shall variously and promptly:

- a) provide MTBUK with all such particular information and assistance as MTBUK may reasonably request for the purposes of enabling MTBUK to discharge its obligations and responsibilities under the Contract;
- b) generally co-operate with MTBUK in all matters relating to the supply of the Parts and / or Vehicle Services ;
- c) use reasonable endeavours to co-operate with MTBUK in all matters relating to, and insofar as may be reasonably required or necessary to facilitate the early resolution of, any claims made by the Customer for breach of any warranties given in relation to Parts supplied and / or Vehicle Services performed under any Contract.

15.2. The Customer agrees that MTBUK shall (without limiting its other rights or remedies) have the right:

- a) if MTBUK's performance of any of its obligations under any particular Contract is prevented or delayed by any Customer Default, to suspend performance of the said Contract, and any other Contract, until the Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any of its obligations,;
- b) to terminate any Contract with immediate effect by giving written Notice to the Customer if:
  - i. the Customer commits a material breach of its obligations under any Contract and (if such breach is remediable) fails to remedy that breach within ten Business Days after delivery of Notice requiring the Customer to do so;
  - ii. the Customer's financial position deteriorates, or appears to deteriorate, to such an extent that in MTBUK's opinion the Customer's capability to adequately fulfil its obligations under any Contract has been placed in jeopardy;
  - iii. the Customer fails to pay the Price or any other amount due under any Contract on the due date for payment.

15.3. The Customer further agrees that upon termination of any Contract for any reason:

- a) it shall immediately pay to MTBUK all of MTBUK's outstanding unpaid invoices and interest and, in respect of Parts and / or Vehicle Services supplied but for which no invoice has yet been submitted, MTBUK shall submit an invoice, which shall be payable by the Customer immediately on receipt; in default of any of which
- b) MTBUK may, and the Customer irrevocably agrees to procure that MTBUK may, by itself or by any MTBUK Representative, enter any premises of the Customer or of any third party where any of the relevant Parts are held in order to recover them.

15.4. The Customer variously warrants and agrees that it is entering in to the Contract wholly or predominantly for the purposes of the business carried on by it or intended to be carried on by it and that it is not entering in to the Contract, or otherwise dealing with MTBUK, as a 'Consumer' (including within the definitions, meanings and effect of any statute or statutory provision which might otherwise apply).

**16. ASSIGNMENT AND SUBCONTRACTING:** MTBUK may at any time assign, transfer, charge, delegate, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract (including to the Manufacturer or any member of the Network) without further notice or formality. The Customer may not assign, transfer, delegate charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

**17. CHANGE MANAGEMENT:**

17.1. If either Party wishes to amend or change the scope or performance of the Contract (or any other aspect of it) it shall submit details of the requested change to the other Party by way of formal written Request for Change ('RFC') in MTBUK's standard form.

17.2. Subject to the remaining provisions of this clause, each Party will use their best endeavours to respond constructively and positively to all RFC's made by the other Party and will not unreasonably refuse to agree to or otherwise decline to implement any of the same at any time.

17.3. MTBUK shall be under no obligation to agree to any part of any RFC if the Customer declines or fails to agree, on terms acceptable to MTBUK, to indemnify MTBUK in relation to any additional costs or expenses or any liabilities which are likely to be incurred in implementing or performing any part of the applicable RFC or which may conflict with any of MTBUK's obligations or responsibilities to any third party (including the Manufacturer or the Network) or which may oblige MTBUK to undertake a substantial or unnecessary commercial risk.

17.4. Any such agreement reached by the Parties in relation to the applicable RFC, including all applicable terms and conditions, must be recorded in writing in the same RFC form and be signed by properly authorised representatives of both of them. Any such agreement shall be of no legal effect unless and until they are recorded and signed by both Parties as aforesaid whereupon the signed RFC shall be deemed to vary, and to be incorporated into, the Contract without further notice or formality. Save as appears in any such agreed and signed RFC all other provisions of the Contract shall be unaffected and remain in full force and effect.

17.5. Without prejudice to the previous provisions of this clause, the Parties are free to agree to and (subject to any such agreement) may make minor or financially inconsequential changes to, and / or any which do not materially alter any of the key terms of, the Contract on whatever basis and understandings as may be agreed between them and strictly providing that any such agreement is also confirmed in writing (including by email) by MTBUK.

**18. ENTIRE AGREEMENT:** The terms and conditions of the applicable Contract shall constitute the whole agreement between the Parties and supersede all previous agreements between the Parties relating to its subject matter. Each Party:

a) acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently or orally or in writing or otherwise howsoever) which is not expressly set out in the Contract;

b) agrees that all liabilities for and any remedies in respect of any statement, representation, assurance or warranty which is not expressly set out in the Contract are excluded.

**19. FORCE MAJEURE:** Neither Party shall be in breach of the Contract nor liable for any delay in performing or any failure to perform any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond the reasonable control of the affected Party ('Force Majeure Event.'). For the avoidance of doubt the Customer shall not be entitled to suspend or delay payment of the Price, or any other financial liability to MTBUK, on the grounds of any alleged Force Majeure Event.

**20. NOTICE(S):** Any Notice under the Contract, shall be given in writing, written in English, and be delivered personally or by commercial courier or by recorded delivery post to each Party required to receive the Notice at its registered office (if a company) or its principal place of business or sent by fax to the other Party's main fax number or by email (in the case of MTBUK to [aftersalesadminuk@man.eu](mailto:aftersalesadminuk@man.eu)). Any Notice or other communication shall be deemed to have been received if delivered personally or by commercial courier at the time the Notice is left at the proper address, or if sent by recorded delivery post on the second Business Day after posting or if sent by fax or email, at 9.00 am on the next Business Day after transmission.

**21. SEVERANCE:** If any Court or Tribunal of competent authority finds any provision of the Contract (or part of any such provision) to be invalid, illegal or unenforceable, that particular provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any such invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted under the preceding sentence the provision shall continue to apply with the minimum modification necessary to make it legal, valid and enforceable.

**22. THIRD PARTIES:** Any party who is not named as a Party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise howsoever.

**23. VARIATION OR WAIVER:** No variation of the Contract, or any waiver of any of MTBUK's rights or remedies provided under the Contract or by law, shall be effective unless contained in a document headed as a 'Contract Variation', 'RFC' or a 'Contract Waiver' (and as the case may be) and which is signed by MTBUK (or its authorised representative) or, in the particular case of any minor or financially inconsequential changes under clause 17.5, as confirmed in writing (including by email) by MTBUK. All of MTBUK's rights and remedies arising under the Contract are cumulative and do not exclude, or effect any waiver of any of, its rights provided by law.

**24. GOVERNING LAW AND JURISDICTION:** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

#### SCHEDULE 1 - WORDS, EXPRESSIONS AND DEFINITIONS

**Additional Services:** any works, services, benefits or facilities requested by the Customer which do not form part of the applicable Contract at the time it was made under the provisions of clause 3.

**Agreed Specification:** any particular specification as to the Parts and / or Vehicle Services which has been agreed between authorised representatives of both Parties and which is also confirmed in writing by each of them before the formation of a Contract on the basis set out in clause 3.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Contract:** any contract between MTBUK and the Customer for the supply of Parts and / or the performance of Vehicle Services which is made in accordance with clause 3.

**Customer:** the Party who purchases the Parts and / or Vehicle Services from MTBUK subject to the terms and conditions of the Contract.

**Customer Agent:** any of the Customers directors, employees, servants or agents or any contractor or other third party which it engages or instructs for the general or any specific purposes of any applicable Contract.

**Customer Default:** any act or omission or failure by the Customer or any Customer Agent to perform any relevant obligation or responsibility under any applicable Contract.

**Fair Wear & Tear:** any wear and tear, including deterioration, on the normal appearance, construction, usage, workings and operation of the Parts (including any of their individual component parts and materials) and / or in relation to their physical, electrical, or mechanical integrity or their performance or output which occurs by reason of the normal impact and operation of natural forces or other influences beyond human control.

**General Terms and Conditions:** these General Terms and Conditions for the Retail Supply of Parts and / or Vehicle Services including the Schedules.

**Job Card:** MTBUK's standard form job card detailing the Vehicle Services which the Customer has requested MTBUK to perform under the Contract.

**MAN Parts:** any of the Parts which are goods, parts or materials genuinely manufactured by, or produced to the direct order of, MAN specifically for the purposes of installation in to or to replace any parts or components of a MAN Vehicle (including any which are or may be sold under any of the following brand names and registered trademarks: MAN Genuine Parts®, MAN Genuine Exchange Spare Parts® and MAN Genuine Accessories®).

**MAN Vehicle:** the particular vehicle (manufactured by MAN, in relation to which the Customer has requested MTBUK to perform the Vehicle Services) which is identified in any applicable Order Confirmation or Job Card.

**Manufacturer:** the manufacturer of MAN Parts and any MAN Vehicle, namely MAN Truck & Bus AG, Dachauer Straße 667, D-80995 München, Germany. ('MAN' may also be used to describe and refer to the Manufacturer.)

**Material Defect:** any defect or fault in the parts, design, material or workmanship used in the manufacture of the Parts and / or performance of the Vehicle Services and which causes a substantial and materially adverse effect on the normal commercial use, operation and workings of the Vehicle (excluding all other defects or faults and any in any other part of the Parts and / or Vehicle Services and also excluding all superficial or cosmetic defects or faults and any caused by Fair Wear & Tear).

**MTBUK Representative:** any of MTBUK's directors, employees, servants or agents or any contractor, including any member of the Network, or other third party which it engages for the purposes of the Contract.

**Network:** MTBUK's network of wholly owned branches and independent third-party, parts sales and vehicle repair and maintenance operatives which MTBUK engages for the specific purposes of any particular Contract.

**Normal Business Hours:** between 6am to 10pm Monday to Friday (inclusive) and 7am to 1pm on Saturdays.

**Notice:** any notice referred to in these General Terms and Conditions as a Notice.

**Order Confirmation:** MTBUK's standard form order confirmation detailing the Parts which the Customer has requested MTBUK to supply under the Contract.

**Parts:** the goods, parts or materials, including any MAN Parts, ordered by and supplied to the Customer under any applicable Contract including those which are set out in any applicable Order Confirmation.

**Party:** MTBUK or the Customer. ('Parties' shall mean both of them.)

**Price:** the price of the Parts and / or Vehicle Services as set out in / determined in accordance with the provisions of clause 4.1.

**Schedules:** the schedules to these General Terms and Conditions.

**Specification:** any particular specification as to the Parts and / or Vehicle Services, which is not an Agreed Specification, which has been confirmed to the Customer by MTBUK in writing before the formation of a Contract on the basis set out in clause 3.

**Supplier:** the third-party supplier of any Parts which are not MAN Parts.

**Suppliers Warranty:** the warranty, if any, given by the Supplier of any Parts which are not MAN Parts.

**Vehicle:** the vehicle in relation to which the Vehicle Services are to be performed and as identified in the Job Card.

**Vehicle Services:** the works, services, benefits or facilities ordered by and / or supplied to the Customer by MTBUK to the Customer under any applicable Contract including those which are more particularly set out in any applicable Job Card.

**Warranty Period:** the warranty period, in relation to MAN Parts set out in clause 7.1.

**Workshop:** the workshop / premises at which any Parts are to be returned or repaired or any Vehicle Services are to be performed.

#### SCHEDULE 1 (CONTINUED) - RULES OF INTERPRETATION

- (a) The Schedules form part of the Contract and shall have effect as if set out in full in the body of these General Terms and Conditions and any reference to the said General Terms and Conditions includes the Schedules;
- (b) clause and paragraph headings are indicative of their subject matter but shall not otherwise affect the interpretation of either these General Terms and Conditions;
- (c) references to clauses and schedules are to the relevant clauses and schedules of these General Terms and Conditions;
- (d) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it;
- (e) unless the context otherwise requires, words in the singular shall include the plural and vice versa;
- (f) any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (g) all references to the Customer shall include all Customer Agents save where the Customer Agent is not a party to the act or omission referred to;
- (h) any obligation in these General Terms and Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.