



# GENERAL TERMS & CONDITIONS OF CONTRACTS FOR SUPPLY OF VEHICLE SERVICES

**NOTICE TO CUSTOMER:**

All orders for the supply of Vehicle Services between MAN Truck & Bus UK Limited ('MTBUK') (Company Number 02688514, Registered Office: Frankland Road, Blagrove, Swindon, SN5 8YU) and the Customer are subject to (i) the following General Terms and Conditions of Contracts for Supply of Vehicle Services, including the Schedules, and (ii) to any special terms and conditions appearing in the Purchase Order. Please note that those documents (read and taken together and when the Purchase Order has been signed by both Parties and after a signed copy has been delivered to the Customer by MTBUK), will together comprise and evidence the legally binding 'Contract' between MTBUK and the Customer. Because of its formal nature, please read this document carefully.

**1. DEFINITIONS & INTERPRETATION:** In these General Terms and Conditions, the Purchase Order and the Contract (all as hereinafter defined), and except where the context otherwise requires, the words, expressions and definitions and the rules of interpretation set out in Schedule 1 shall have the meanings assigned to them in that Schedule and be interpreted accordingly.

**2. STATUS OF QUOTATIONS, DESCRIPTIVE MATTER ETC:** Any quotation, specification or proposal given by MTBUK in relation to the Services or their supply (including any prices or estimates contained therein) 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 Services described in them and shall not form part of the Contract.

**3. BASIS OF & FORMATION OF CONTRACT:**

3.1. All orders and any Contract between the Parties for the supply of the Services shall be strictly subject to these General Terms and Conditions and the special terms and conditions set out in the applicable Purchase Order. Where these General Terms and Conditions are silent regarding or inconsistent in relation to any matter set out in the Purchase Order, the terms and conditions of the applicable Purchase Order will apply.

3.2. The Customer variously represents, warrants and agrees that:

(a) all of the details and information contained or disclosed in the Purchase Order which are material to or relevant to the Customer (including as to Monthly Charges, payment terms and all and any information, description or specification relating to the Vehicle or the Services) are true, complete and accurate in all respects;

(b) its signature to the said Purchase Order shall be given for and on its behalf by a properly authorised person and shall comprise formal confirmation that it agrees to purchase the Services subject to the various terms and conditions set out in these General Terms and Conditions and the Purchase Order and to the exclusion of all others whenever and however communicated.

3.3. Subject to clause 3.4, the relevant Purchase Order and these General Terms and Conditions (and providing always that the relevant Purchase Order has been signed by both Parties) will together both comprise and evidence the legally binding, and separately enforceable, 'Contract' between MTBUK and the Customer, in relation to the Services and to all other matters set out in those documents.

3.4. The Purchase Order shall only be deemed to be accepted by MTBUK, and a legally binding Contract will only be deemed to come into existence, when MTBUK issues and delivers a copy of its written acceptance of the Purchase Order to the Customer. The Customer will deliver to MTBUK the signed original of any faxed, emailed, scanned or PDF copy of its signed copy of the Purchase Order within two Business Days of the date of its transmission; in default MTBUK may decline to accept the Customer's order and / or terminate any Contract without further or any liability to the Customer.

**4. TERM OF CONTRACT:**

The Term of the Contract shall commence on the Start Date and end on the End Date subject to either Party giving the other Party sixty Business Days written Notice of termination during the Term. The provisions of this clause are subject to any of the other provisions of the Contract providing for earlier termination and / or expiry.

**5. PAYMENT OF MONTHLY CHARGES / INCREASES / SECURITY:**

5.1. The Customer shall pay the Monthly Charges to MTBUK in the sums set out and on the dates appearing in the Purchase Order. 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. Time is of the essence as to payment of the Monthly Charges, VAT and all applicable taxes, duties and similar charges.

5.2. The Customer acknowledges and agrees that:

(a) if (at any time during the Contract Year) the usage of the Vehicle (as it appears from the mileage recorded on the Vehicle odometer) exceeds the Permissible Contract KM's, the Monthly Charges shall be increased and payable at the rate of 'Pence per KM payable by Customer in excess of Permissible Contract KM's' and all as variously set out in the Purchase Order; in which event

(b) the Customer will pay to MTBUK (within 30 Business Days of delivery of Notice in relation thereto) the aggregate of the said rate of Pence per KM payable by Customer in excess of Permissible Contract KM's multiplied by the number of KM's exceeding the Permissible Contract KM's (plus any applicable VAT which may be additionally chargeable to and payable by the Customer at the time) in the sums set out in such Notice.

5.3. Furthermore, the Customer acknowledges and agrees that MTBUK shall be entitled at any time:

(a) to make any changes to the works and services comprising the Services in the event that such changes are deemed by MTBUK to be reasonably required or necessary to comply with any applicable law or other relevant legal or health or safety requirement, or which do not materially affect the nature or quality of the Services;

(b) to revise and increase the amount of the Monthly Charges by an amount that reflects any increased cost to MTBUK of providing the Services (including as to labour, parts and materials) and which preserves its profit margin in relation thereto; and in either event

(c) the Customer will pay to MTBUK (within 30 Business Days of delivery of Notice in relation thereto) the revised and increased Monthly Charges (plus any applicable VAT which may be additionally payable by the Customer at the time) in the sums set out in and on the dates appearing in the Notice.

5.4. All payments to be made by the Customer under the Contract (including the Monthly Charges) shall be made in full and without any form of deduction, withholding or set-off and whether on account of any disputes, counterclaims or for any other reason whatsoever.

5.5. Payment of the Monthly Charges (and all other sums payable by the Customer to MTBUK under the Contract), shall be made by the Customer by way of direct debit mandate from its bank account to the credit of MTBUK's bank account and as may be notified to the Customer from time to time. Any cancellation of the said direct debit mandate, without prior Notice to MTBUK and without agreement with MTBUK as to an alternative mode of payment, shall be deemed to be a breach of a material term of the Contract entitling MTBUK to terminate the same without any liability to the Customer.

5.6. If the Customer fails to pay any Monthly Charges (or any other sums payable by the Customer to MTBUK under the Contract) by the due date for payment then, and without limiting any of MTBUK's other rights, the Customer shall pay interest on such sums for the period from the due date of payment up to the actual date of payment, whether before or after any judgment. The interest shall be paid at the rate of four per cent per annum above the base lending rate from time to time of HSBC Bank.

5.7. If the Customer disputes any invoice or other statement of monies due, the Customer must immediately notify MTBUK by Notice. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. Where only part of an invoice is disputed, the Customer must pay the undisputed amount on the due date. In the event that the Customer fails or neglects to negotiate as aforesaid (and / or to respond promptly and fully to all or any requests for information, documentation or assistance requested by MTBUK during such negotiations) MTBUK will be entitled to suspend or withdraw the supply of the Services, pending the resolution of any such payment dispute, without incurring any liability to the Customer in relation thereto.

5.8. MTBUK is entitled, at any time, to set off any amounts owed to it by the Customer against any amounts payable by it to the Customer.

5.9. MTBUK may, at any time, require the Customer to provide (in such form and sum as MTBUK deems reasonably appropriate and / or necessary, including by way of payment of a Deposit or by way of third-party guarantee of payment) proper and adequate security for the discharge of any financial obligation by the Customer to MTBUK under the Contract including payment of the Monthly Charges.

5.10. 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 sole discretion, to suspend or withdraw the supply of the Services and / or terminate the Contract at any time without further or any liability to the Customer.

5.11. MTBUK may exercise any of its legal rights of lien over the Vehicle, at any time, in the event that the Customer fails or neglects to make any payment due to MTBUK by the due date.

## **6. MTBUK'S OBLIGATIONS & WARRANTIES IN RELATION TO THE SERVICES:**

6.1. Subject to the terms and conditions of the Contract MTBUK shall use reasonable endeavours to procure the supply of the Services (and the Customer hereby agrees that it shall only be entitled to require that the Services be supplied) : (a) in relation to the Vehicle; (b) by the Network; (c) in accordance with the Service Plan; (d) at the Workshop; (e) during Normal Business Hours; (f) during the Term.

6.2. Given the often indeterminate nature of the works and services that may ultimately be required, any date(s) that may have been given as to the time of performance of the Services by MTBUK (and / or the Network and whether in the Purchase Order or Service Plan or otherwise howsoever) shall be estimates only and time shall not be of the essence for the performance of the Services.

However, the Parties will co-operate with each other in all matters relating to the supply of the 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 indicated in the relevant Purchase Order or Service Plan).

6.3. MTBUK shall use reasonable endeavours to procure that the Services be provided by the Network using reasonable care and skill.

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

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

7.2. 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 Purchase Order to MTBUK and which MTBUK also confirms and signs.

7.3. 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.

## **8. CONTRACT EXCLUSIONS:**

8.1. No works, services, benefits, facilities, goods, parts or materials which are not expressly noted as a 'Contract Inclusion' in the applicable Purchase Order form any part of MTBUK's obligations and responsibilities under the Contract.

8.2. In particular, all of the works, services, benefits, facilities, goods, parts or materials of the type set out in and more particularly described in the list appearing in Schedule 2 as 'Contract Exclusions' are wholly excluded from MTBUK's obligations and responsibilities under the Contract, unless expressly noted as a 'Contract Inclusion' in the applicable Purchase Order.

8.3. For the avoidance of doubt, MTBUK shall be under no obligation or responsibility under the Contract to provide any works, services, benefits, facilities, goods, parts or materials whether as part of the Services or otherwise howsoever (or to incur any cost or other liability in relation thereto) in relation to any Ancillary Equipment / Bodywork save in relation to any of the same which are expressly noted as a 'Contract Inclusion' in the applicable Purchase Order.

## **9. MTBUK'S EXCLUSION OF ALL OTHER WARRANTIES / LIMITATION OF LIABILITY (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE):**

9.1. These General Terms and Conditions set out the full extent of MTBUK's obligations, responsibilities and liabilities (including any liability for the acts or omissions of any MTBUK Representative) under the Contract. In particular, there are no conditions, warranties or other terms, express or implied in relation to the Services or any Additional Services (including as to their time of supply of and / or quality or performance, care, skill or fitness for a particular purpose or of any other kind whatsoever) that are binding on MTBUK except as specifically stated in the Contract.

9.2. Any warranty or other term or condition concerning the Services or Additional Services (including as to their quality or performance) or concerning any of MTBUK's other obligations or responsibilities under the Contract, which might otherwise be inferred or implied into or incorporated within the Contract, and whether by statute (including the Supply of Goods and Services Act 1982), common law or otherwise howsoever, is hereby and expressly excluded to the fullest extent permissible by law.

9.3. The Parties recognise and accept that the Vehicle (because of its mechanical nature, normal commercial purpose and in the ordinary course of its use and operation by the Customer) will require regular service, repair and maintenance and be susceptible to breakdown and damage (accidental and otherwise) often for indeterminate reasons or periods (which may not be predictable or foreseeable) or for other factors not reasonably within the control or responsibility, or which might not otherwise be attributable to any act or

omission, of either Party. In the interests of commercial certainty and foreseeability in their dealings with each other, and because of the difficulty in obtaining (and the cost of maintaining) a policy of insurance in relation thereto (and so as to reduce the management time and cost likely to be involved in investigating, processing or pursuing and resolving any dispute, claim or litigation in relation thereto) the Parties agree to spread and share the risk of any breach, loss or damage and as hereinafter appears.

9.4. In consideration of the mutual understandings, expectations and assurances contained in the preceding paragraphs of this clause and of the warranties given by MTBUK in the Contract:

(a) the Customer hereby and irrevocably agrees to waive 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;

(b) it is agreed that MTBUK's total liability (including any liability for the acts or omissions of any MTBUK Representative):

i. for breach of any of the warranties contained in clauses 6 and 7 hereof, shall in no circumstances exceed, or extend beyond, the liability to either, and in any event subject to MTBUK's sole discretion and election in relation thereto, replace or alter, or procure the repair of any defect or fault in, the Services at no extra charge to the Customer;

ii. in the event that MTBUK fails to provide the Services within a reasonable time of any dates that may have been indicated in the relevant Purchase Order or Service Plan, shall in no circumstances exceed the actual costs and expenses incurred by the Customer in obtaining replacement services of similar description, specification, performance and quality in the cheapest market available;

iii. for any other breach of the Contract, whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed, and the Customer hereby and irrevocably waives all and any entitlement to claim at any time for any amount in excess of such proportion of the Monthly Charges as has been paid, in the applicable Contract Year, in relation to the particular Vehicle to which any such breach relates;

(c) it is agreed that 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 of the following: any Customer Default; the Customers own negligence, or the negligence of any Customer Agent; any events, circumstances or causes beyond MTBUK's reasonable control.

9.5. Nothing in this clause shall restrict or limit the Customer's general obligation in law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under the Contract.

9.6. Nothing in this clause shall exclude or in any way limit either Party's liability for death or personal injury caused by its own negligence or the negligence of its employees, servants, agents or subcontractors (as applicable); or for fraud or fraudulent misrepresentation; or any other liability which cannot be excluded by law.

## **10. THE CUSTOMER'S ADDITIONAL OBLIGATIONS, RESPONSIBILITIES, REPRESENTATIONS & INDEMNITIES:**

10.1. Without prejudice to, and in addition to, all of its other obligations and responsibilities under the Contract the Customer shall variously and promptly:

(a) provide MTBUK with all such information and assistance as MTBUK may reasonably request for the purposes of MTBUK discharging its obligations and responsibilities under the Contract; generally co-operate with MTBUK in all matters relating both to the Services and as to the resolution of any claims, including warranty claims, instigated by the Customer at any time;

(b) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

(c) observe all health and safety rules and regulations and any security requirements that apply at any Workshop;

(d) notify MTBUK and / or the Network immediately in the event that any MTBUK Materials come in to the Customers possession; hold all MTBUK Materials in safe custody at the Customers own risk; maintain all MTBUK Materials in good condition until returned to MTBUK; not dispose of or use any MTBUK Materials otherwise than in accordance with MTBUK's written instructions or authorisation; return all MTBUK Materials to MTBUK on demand;

(e) not do or omit to do anything which may cause MTBUK to lose any licence, authority, consent or permission upon which it relies for the purposes of the Services;

(f) ensure that any information it provides, or which is provided on its behalf, in for the purposes of the Services is complete and accurate in all respects.

10.2. If MTBUK's performance of any of its obligations under the Contract, (including any which may have been delegated or subcontracted to any MTBUK Representative) is prevented or delayed by any Customer Default MTBUK shall without limiting its other rights or remedies have the right to suspend performance of the 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 to the extent the Customer Default prevents or delays MTBUK's performance of any of its obligations; the Customer shall reimburse MTBUK on written demand for any costs, extra costs, expenses, damages or losses sustained or incurred by MTBUK arising directly or indirectly from the Customer Default.

10.3. The Customer variously represents and irrevocably 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; it is not entering in to the Contract, or otherwise dealing with MTBUK, as a consumer (including within the meanings and effect of the Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regulations 1999 and the Supply of Goods and Services Act 1982); the Contract is not intended to be regulated by and the Customer will not assert or otherwise rely on any right to the benefit of any protection and / or any remedies that might otherwise be available to it under the Consumer Credit Act 1974.

10.4. The Customer will fully indemnify MTBUK against all liabilities, costs, extra costs, expenses (including all legal and any other professional costs and expenses), damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation) and all interest or penalties suffered or incurred by MTBUK arising out of or in connection with:

- (a) any Customer Default including any in relation to clause 10.1;
- (b) the enforcement of the Contract;
- (c) any claim made against MTBUK by a third party (including the Network and any customer or supplier of the Customer) to the extent that any such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Customer or a Customer Agent;
- (d) any claim made against MTBUK by a third party for death, personal injury or damage to property, to the extent that such claim is attributable to the acts or omissions of the Customer or a Customer Agent;
- (e) any act or omission or requirement by the Customer which obliges MTBUK to perform (or to incur costs, extra costs or expenses in relation to) any works or services (which are not Services) otherwise than by the Network in accordance with the Service Plan, at the Workshop, during Normal Business Hours, during the Term or otherwise than in accordance with the terms of the Contract (including when the Customer requires or otherwise initiates a call-out to a breakdown when the Customer could in MTBUK's reasonable opinion have delivered the Vehicle to the Network and / or the Workshop or a call-out to a breakdown where no fault is found).

**11. DELIVERY OF THE VEHICLE TO THE WORKSHOP BY THE CUSTOMER:**

The Customer will ensure and procure that its duly authorised representative: be present at Delivery of the Vehicle to the Network at the Workshop on due date and time and in accordance with the Service Plan; notifies MTBUK (and / or the Network) no later than on Delivery of the Vehicle of each and every defect or fault in or want of repair arising or which has become apparent in relation to the Vehicle and / or which may require particular attention or care in the supply of the Services and ensure that such information is complete and accurate in all respects.

**12. RISK AND INSURANCE IN RELATION TO THE VEHICLE:** Risk in relation to the Vehicle shall at all times remain with the Customer. The risk of loss, theft, damage or destruction of the Vehicle shall not pass to MTBUK (or Network) on Delivery or otherwise howsoever at any time. The Customer shall at all times maintain, at its own cost and expense, all usual and necessary insurances in relation to the Vehicle.

**13. MTBUK'S RIGHTS OF TERMINATION FOR MATERIAL BREACH /**

**INSOLVENCY EVENT:** MTBUK may, without prejudice to any other right or remedy which may be available to it, terminate the Contract immediately by written Notice to the Customer if the Customer commits a material breach of the terms of the Contract which breach is irremediable; or commits a material breach of the Contract which breach, if remediable, is not remedied within seven Business Days after the delivery of written Notice requiring them to do so or is subject to, or otherwise suffers, an Insolvency Event. In particular, a breach by the Customer of any of its obligations under any of the clauses herein which relate to Payment of Monthly Charges / Increases / Security & Deposit, Customer's Additional Obligations, Responsibilities, Representations & Indemnities shall be deemed to a material breach of the terms of the Contract entitling MTBUK to terminate the same without any further or any liability to the Customer.

**14. TERMINATION OF CONTRACT BY MTBUK FOR OTHER BREACH OR**

**CAUSE:** MTBUK may, without any further or any liability to the Customer and without prejudice to any other right or remedy which may be available to MTBUK, terminate the Contract in whole or in part immediately by written Notice to the Customer at any time if: (a) MTBUK has any reasonable cause to believe or suspect (including as a consequence of anything said or done or any act or omission by the Customer or any Customer Agent) that the Customer may not be able to or might otherwise fail to comply with any of its responsibilities or obligations under or in accordance with the terms and conditions of the Contract ('Anticipatory Breach') (including as to payment of the Monthly Charges on due

date) or may not be able to pay its debts as and when they fall due for payment; (b) the Customer is in any repeated or ongoing breach of any term or other requirement or obligation of the Contract which is not remedied within seven Business Days after the delivery of written Notice requiring them to do so; (c) MTBUK is by reason of any Customer Default or any Anticipatory Breach by the Customer, or any Customer Agent, in actual, threatened or likely breach of any material obligation that MTBUK may have to any third party (including the Network) or which may expose MTBUK to any substantial or unnecessary commercial risk.

**15. 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 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.

**16. CHANGE MANAGEMENT:** If either Party wishes to 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. 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. MTBUK shall be under no obligation to agree to any part of any RFC if the Customer will not agree to indemnify MTBUK, on terms acceptable to 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 or which may oblige MTBUK to undertake a substantial or unnecessary commercial risk. 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. 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 which do not materially alter any of the key terms of, the Contract on whatever basis and understandings as may be agreed between, and as are agreed in writing (including by email) by, properly authorised representatives of both of them.

**17. ENTIRE AGREEMENT:** The terms and conditions of the 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 liability for and any remedies in respect of any statement, representation, assurance or warranty which is not expressly set out in the Contract are excluded.

**18. FORCE MAJEURE:** Neither Party shall be in breach of the Contract nor liable for delay in performing, or 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 Monthly Charges on the grounds of any alleged Force Majeure Event.

**19. NOTICES:** 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 (to MTBUK at [cmrandmaplications@man.eu](mailto:cmrandmaplications@man.eu) and in the case of the Customer to its last known email address). 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 proper and successful transmission.

**20. 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 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.

**21. 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. For the avoidance of doubt, no member of the Network is a Party.

**22. 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). 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.

**23. 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 which are requested by the Customer or which are supplied or afforded by MTBUK for or on behalf of the Customer which are not 'Services' within the meaning, description, definitions and interpretation of the Contract.
- **Ancillary Equipment / Bodywork :** any part of the Vehicle which is on, attached, affixed, fitted, connected to or contained or which operates within or which is otherwise connected to but which did not form part of the chassis or applicable drivers cab of the Vehicle when it was originally manufactured or produced or sold by the Manufacturer including all tyres, appliances, materials, machines (including any computers and any other electronic instruments); tools, devices, equipment, (including any tail lift, crane, drawbar coupling device, ramp, chair-lift, hydraulic pumping equipment, tipping system, skip loader, moving floor, wet kit, fridge, heating, air-conditioning and temperature control equipment, weighing equipment, power take off, mixer or tank); any casing, curtain, panel, siding, shutter, housing or frame (or similar form of construction) and any structure, fixture, fixing, fitting or bodywork or coachwork and whether permanent, temporary or removable or of any other kind whatsoever.
- **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- **Contract:** the contract made between MTBUK and the Customer, for the supply of the Services, in accordance with these General Terms and Conditions which is formed in the manner more particularly described in clause 3.
- **Contract Exclusions:** all and any of the various works, services, benefits or facilities set out in Schedule 2 as well as any others expressly noted as a 'Contract Exclusion' in the relevant Purchase Order.
- **Contract Inclusions:** the Services and any other works, services, benefits or facilities which are set out in and expressly noted as a 'Contract Inclusion' (and in that event subject to their applicable terms and conditions) in the relevant Purchase Order.
- **Contract Year:** each period of 12 months commencing on the Start Date.
- **Customer:** the Party who purchases the 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 that it engages.
- **Customer Default:** any act or omission or failure by the Customer or any Customer Agent to perform any relevant obligation or responsibility under the Contract.
- **Delivery:** the temporary transfer of physical possession of the Vehicle to MTBUK (acting by the Network) at the Workshop for the purposes of the supply of the Services.
- **Deposit:** the deposit amount, if any, payable by the Customer as set out in the Purchase Order or as may be thereafter required by MTBUK under the terms of the Contract.
- **End Date:** the end date of the Contract and as set out in the relevant Purchase Order.
- **Fair Wear & Tear:** any wear and tear, including deterioration, which occurs solely by reason of the impact and operation of natural forces on the normal usage and operation of the Vehicle including in relation to its physical, electrical or mechanical integrity or its appearance or its construction, workings or operation or in relation to any of its component parts (and excluding all other forms of wear and tear or damage, including third party damage and however caused).

- **General Terms and Conditions:** these General Terms and Conditions of Contracts for Supply of Vehicle Services, including the Schedules.
- **Insolvency Event:** any event which would entitle a creditor or any statutory or regulatory body to issue execution against or to effect distraint over (or to appoint, or to apply to a court to make an order as to the appointment of a liquidator, supervisor, administrator, administrative receiver or receiver in relation to) all or any of the goods, chattels, assets, undertaking, property or business of the Party concerned; or when a Party (being an individual or a partner in and / or a firm) is the subject of or suffers any similar process of execution or distraint in relation to any of the same or if a bankruptcy petition is issued against him or if he makes an application for an individual voluntary arrangement or makes an application to a court for protection from his creditors, or if he dies or when, by reason of illness or incapacity (and whether mental or physical), he is incapable of managing his own affairs or becomes a patient under any mental health legislation; or when the Party concerned suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or, in the case of the Customer, when the Customer's financial position deteriorates to such an extent that in MTBUK's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- **Monthly Charge(s):** the charges to be paid by the Customer for the Services in the amount(s) and on the date(s) set out in the Purchase Order.
- **Manufacturer:** the original manufacturer of the Vehicle.
- **MTBUK Materials:** any property of MTBUK or the Network which comes in to the possession of the Customer.
- **Network:** the member of MTBUK's network of independent repair and maintenance operatives which is referred to as 'Network/Dealer' on the relevant Purchase Order or as may be notified to the Customer by MTBUK from time to time.
- **Normal Office 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.
- **Party:** MTBUK or the Customer. ('Parties' shall mean both of them.)
- **Permissible Contract KM's:** the anticipated mileage of the Vehicle during any Contract Year (expressed in kilometres - 'KM's') and described as 'Permissible Contract KMs' in the relevant Purchase Order.
- **Purchase Order:** the Customer's order for the supply of the Services (or any Additional Services) substantially in MTBUK's standard written form, which is submitted to, approved by and signed by the Customer and which is then confirmed by the approval and signature of MTBUK.
- **Schedules:** the schedules set out in these General Terms and Conditions (and any others attached or appended thereto which are signed by the Parties).
- **Services:** the works, services, benefits or facilities which are noted as a 'Contract Inclusion' in the applicable Purchase Order.
- **Service Plan:** the plan and / or timetable for the supply of the Services in relation to the Vehicle which is agreed between MTBUK (and / or Network) and the Customer or, in default of such agreement, as may be determined by MTBUK and / or Network and as notified to the Customer from time to time.
- **Start Date:** the start date of the Contract and as set out in the relevant Purchase Order.
- **Term:** the term of the Contract starting on the Start Date and ending on the End Date.
- **Vehicle(s):** the chassis and applicable drivers cab (including their component parts) of the commercial vehicle referred to in the Purchase Order but excluding all and any Ancillary Equipment /Bodywork (unless any such Ancillary Equipment /Bodywork is noted as a 'Contract Inclusion' in the applicable Purchase Order).
- **Workshop:** the workshop and premises at which the Vehicle will be delivered by the Customer to the Network for the purposes of the Services.

#### 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.

- 23. Repairs to or replacement of tyres for any reason (including where due to any of the following: punctures; blowouts impact damage; incorrect inflation);
- 24. Any works, services, benefits, facilities, goods, parts or materials in relation to any Ancillary Equipment / Bodywork

## SCHEDULE 2 - CONTRACT EXCLUSIONS

### NOTICE TO CUSTOMER:

This Schedule 2 should be read in conjunction with clause 8 of these General Terms and Conditions. All and any of the following 'Contract Exclusions' remain the sole and exclusive responsibility of the Customer at all times, save in relation to any of the same which are expressly noted as a 'Contract Inclusion' in the applicable Purchase Order.

1. Fair Wear & Tear repairs to or maintenance of the Vehicle;
2. Repair or rectification of damage caused by any act or omission or default of the Customer or any third-party (including, but not limited to, any failure to operate the Vehicle in accordance with the instructions of the Supplier, Manufacturer and / or MTBUK);
3. Servicing or repair to non-standard equipment and accessories (including air management systems and / or radio equipment and / or spotlights);
4. Servicing or repair or maintenance which may be required or otherwise rendered necessary to make good any damage caused to the Vehicle by any party other than MTBUK / the Network;
5. Washing, care of paintwork and any cosmetic repairs;
6. Cleaning of as well as any repairs to the fuel system and injection equipment of the Vehicle (and whether or not required or otherwise rendered necessary to make good any damage caused to the Vehicle including by reason of dirty fuel or waxing or otherwise howsoever);
7. Steam cleaning the Vehicle except for the purposes of any applicable annual MOT presentation (Note: the replacement of faded or discoloured marker or identification plates is not a contract inclusion in any Contract.);
8. Replacement of lost or stolen parts including, spare wheels, fire extinguishers, first aid kits, warning lamp, tools, jack, wedge and any testing or maintenance of or any replacement of any such items;
9. Replacement of worn or damaged tyres;
10. Replacement of wheel fixings or any wheel nut indicators;
11. Broken or scratched windscreen or other cab glasswork or internal and external mirrors;
12. Supply of all daily and other top-up, oils, lubricants, coolants, water-coolants and all other hydraulic fluids and screen-washes and all other normal and day-to-day safety requirements;
13. Supply, removal and / or replacement of light bulbs and fuses;
14. Repair of any upholstery, including seats and seat cushions;
15. Modifications required as a result of any changes in the law after the date of the Contract;
16. Flat batteries (whether or not caused by over-use of items consuming electricity);
17. Loading of the Vehicle and / or other provision of a loaded trailer for MOT test, or any other or similar purposes;
18. Rolling road test fees (and any other fees which are required or payable outside of the normal requirements of a standard pre-MOT test);
19. Repair of damage caused by or otherwise incidental to the use or introduction of biodiesel or any alternative fuel or fuel additives in to the Vehicle
20. Service or repair or maintenance or replacement of any trailer/body/ancillary connecting cables and leads (including electrical susies, air lines and wanderleads, and any related cab controls);
21. Service or repair or maintenance of any items or parts following damage to the Vehicle of any type or nature (including excessive wear and tear and any which is or appears to be or is caused by any loss blockage, fuel starvation, lubricant or coolant content inadequacy, incorrect use, excessive cleaning, fuel or ad-blue contamination, incorrect fuel use, load spillage or deterioration);
22. Service or repair or maintenance of: any scrapes and scratches to the paintwork (where polishing will not restore the finish and / or where repainting is necessary); dents or other impact damage to bodywork or bumpers; broken or cracked glass; any tears, rips, cuts to seats, interior trim carpets and headlining; any stains resulting from oil, glue, chemicals or other matter which cannot be easily removed; and any damage wear and tear which is excessive having regard to the mileage recorded on the Vehicle ;