



# GENERAL TERMS & CONDITIONS OF CONTRACTS FOR VEHICLE HIRE

**NOTICE TO CUSTOMER:**

All orders for Vehicle Hire 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 Vehicle Hire, including the Schedules, and (ii) to any special terms and conditions appearing in the Vehicle Hire Order. Please note that those documents (read and taken together and when the Vehicle Hire 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 Vehicle Hire 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 will 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 Vehicle or its hire, rental, production, or delivery or any prices contained therein or as regards the supply of the Services 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 Vehicle 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 hire of the Vehicle and 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 Vehicle Hire Order. Where these General Terms and Conditions are silent regarding or inconsistent in relation to any matter set out in the Vehicle Hire Order the terms and conditions of the applicable Vehicle Hire Order will apply.

3.2. Upon receipt of a draft Vehicle Hire Order from MTBUK, the Customer shall variously and promptly liaise with MTBUK so as to discuss and determine and, having done so and if it wishes to proceed with its order, reach agreement in relation to the form and content of the Vehicle Hire Order.

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

(a) all of the details and information (including as to Rental Payments, payment terms and those relating to the Vehicle and the Services) which are material to or relevant to the Customer are contained or disclosed in the Vehicle Hire Order and are true, complete and accurate in all respects;

(b) its signature to the said Vehicle Hire Order shall be given for and on its behalf by a properly authorised person and shall comprise formal confirmation that it agrees to take the Vehicle on hire, and to pay for the Services, subject to the various terms and conditions set out in these General Terms and Conditions and the Vehicle Hire Order and to the exclusion of all others whensoever and howsoever communicated.

3.4. Subject to clause 3.5, the Parties agree that the relevant Vehicle Hire Order and these General Terms and Conditions will together both comprise and evidence the legally binding 'Contract' between MTBUK and the Customer regarding all matters set out in those documents.

3.5. The Vehicle Hire Order shall only be deemed to be accepted by MTBUK, and a legally binding Contract will only be deemed to come in to existence, when MTBUK issues and delivers a copy of its written acceptance of the Vehicle Hire 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 Vehicle Hire 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. VEHICLE HIRE / HIRE PERIOD:**

4.1. Subject to the terms and conditions of the Contract, MTBUK shall hire the Vehicle and procure the supply of Services to the Customer during the Hire Period.

4.2. The Hire Period shall be for the minimum fixed term as set out in the Vehicle Hire Order (which minimum fixed term shall start on the Commencement Date and end on the End Date) and automatically continue monthly thereafter unless and until terminated after the End Date by either Party giving the other Party written Notice of termination of hire such Notice expiring on the last Business Day of the month following the month in which such Notice is deemed received by the other Party.

4.3. The provisions of this clause are subject to any of the other provisions of the Contract providing for earlier termination and / or expiry.

**5. DELIVERY OF THE VEHICLE:**

5.1. The Customer variously acknowledges and agrees that: MTBUK are importers and distributors of the Chassis; the Chassis requires a custom build to order by the Manufacturer as well as importation from overseas and subsequent conversion and production in to the Vehicle by the Bodybuilder; neither the Manufacturer nor the Bodybuilder give any precise assurances or guarantees as regards the time or date of delivery of the Chassis or the production or delivery of the completed Vehicle to

MTBUK. Consequently the time or date of delivery of the Vehicle to the Customer cannot be guaranteed by MTBUK and 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 Vehicle to the Customer within a reasonable time of any estimated delivery date set out in any applicable Vehicle Hire Order. The Customer may, at any time after the expiry of any estimated delivery date set out in the applicable Vehicle Hire Order, 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 Vehicle 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 Vehicle to the Customer shall be deemed to have been completed at the earlier of either the arrival of the Vehicle at the delivery location (if any) set out in the Vehicle Hire Order or when MTBUK places the Vehicle at the Customer's disposal.

5.4. Any failure by the Customer to take physical delivery of possession of the Vehicle, 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 by written Notice and without any further or any liability to the Customer. Upon any such failure by the Customer to take physical delivery of possession of the Vehicle or any such termination MTBUK shall be entitled (but shall not be obliged) to store or resell the Vehicle and to charge the Customer for any costs or expenses incurred in storing and / or for any shortfall between the Retail Sales Value of the Vehicle 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 seven Business Days of demand being made by MTBUK for payment of the same.

**6. PAYMENT OF RENTAL CHARGES / INCREASES / SECURITY & DEPOSIT:**

6.1. The Customer shall pay the Rental Charges to MTBUK in the sums set out in and no later than on the dates appearing in the Vehicle Hire 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 Rental Charges, VAT and all applicable taxes, duties and similar charges.

6.2. 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 Rental Charges shall be increased and payable at the rate of 'Pence per KM payable by Customer in excess of Permissible Contract KM's' all as variously set out in the Vehicle Hire 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 payable by the Customer at the time) in the sums set out in such Notice.

6.3. 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 Rental 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 Rental Charges (plus any applicable VAT which may be additionally chargeable to and payable by the Customer at the time) in the sums set out in and on the dates appearing in the Notice.

6.4. All payments to be made by the Customer under the Contract (including the Rental 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.

6.5. Payment of the Rental 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.

6.6. If the Customer fails to pay any Rental 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.

6.7. 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 as part of such negotiations) MTBUK will be entitled to suspend or withdraw the hire of the Vehicle and / or the supply of the Services, pending the resolution of any such payment dispute, without incurring any liability to the Customer in relation thereto.

6.8. 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.

6.9. 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 and / or by way of a 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 Rental Charges.

6.10. 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 hire of the Vehicle and / or the supply of the Services and / or to terminate the Contract, without further or any liability to the Customer.

#### **7. MTBUK'S OBLIGATIONS & WARRANTIES IN RELATION TO THE VEHICLE DURING THE TERM / WARRANTY CLAIMS:**

7.1. Subject to the terms and conditions of the Contract, MTBUK warrants that, during the Term, the Vehicle shall conform in all material respects with any applicable Specification, be free of Material Defect and be reasonably fit for its normal commercial purpose.

7.2. To enable the Parties to anticipate and manage their commercial expectation and risk under the Contract, the Customer agrees that its sole remedy (and the Customer irrevocably waives all and any entitlement to make or claim any other remedy in relation thereto at any time) in respect of any claim for breach of the warranties in clause 7.1 shall be to require MTBUK to either (and in any event subject to MTBUK's sole discretion and election in relation thereto) replace or alter the Vehicle or to repair any Material Defect in the Vehicle occurring during the Term, subject to and in accordance with the remaining provisions of this clause.

7.3. However, MTBUK will not be under any obligation to replace or alter the Vehicle or to repair any Material Defect in the Vehicle (whether in relation to claims under clause 7.1 or otherwise howsoever), unless, and strictly provided, the Customer firstly:

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

(a) in the case of any claim of failure to conform to any applicable Specification, within five Business Days of completion of delivery of physical possession of the Vehicle;

(b) in the case of any claim that the Vehicle is not reasonably fit for its 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 Vehicle, within five Business Days of completion of delivery of physical possession of the Vehicle;

(c) in the case of any claim that the Vehicle is not reasonably fit for its normal commercial purpose by reason of a latent defect, including any latent Material Defect, or fault within five Business Days of the latent defect or fault having first become apparent;

(d) in all other cases, as soon as it is reasonably practical to do so.

ii. permits and gives all necessary assistance to MTBUK (or the Manufacturer, Bodybuilder or the Network and as MTBUK may more particularly nominate and direct) to allow them to make a full examination of and to perform such investigations or tests on the Vehicle as MTBUK (or the Manufacturer, Bodybuilder or the Network) may consider reasonably required or necessary for the purposes of

determining the cause, and the materiality, of the alleged defect or fault or any other cause for the claim;

iii. delivers physical possession of the Vehicle, at its own cost and expense, to MTBUK (or the Manufacturer or Bodybuilder or to such member of the Network and as MTBUK may more particularly nominate and direct) and otherwise complies with all of MTBUK's and any of MTBUK's Representatives reasonable instructions, requests or requirements in relation thereto.

7.4. Furthermore, MTBUK shall not be liable for any claim (including any claim under any of the warranties set out in clauses 7, 8 or 9 or as regards any relating to any alleged defect, including any Material Defect, or fault in the Vehicle) 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 or any of the Manufacturer, Bodybuilder or Network;

(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;

(c) if the Customer makes any further use of the Vehicle after the defect or fault first became known or apparent or ought reasonably to have become known or apparent and / or without the express written permission of MTBUK;

(d) if the claim, defect or fault arises because the Customer failed to follow any of the following: the Manufacturers operating instructions regarding the use, operation and maintenance of the Vehicle; the Manufacturers other relevant requirements or procedures; MTBUK's or any MTBUK Representative's oral or written instructions or recommendations regarding any of the same;

(e) if the claim, defect or fault arises as a result of MTBUK, the Manufacturer or any MTBUK Representative, following, using or acting upon any information, data, design, detail, drawing, illustration, instruction, process, request or direction or any other form of information (including any of the same which may have been incorporated in to the manufacture or production of the Vehicle which was also contained or within any applicable Specification) which was supplied or provided by the Customer or on its behalf, or as a result of any assistance, parts or materials supplied or provided by the Customer or on its behalf;

(f) if the Customer alters, fixes or repairs (or attempts any of the same in relation to) the Vehicle without the express written permission of MTBUK;

(g) if the defect or fault arises (or appears reasonably to MTBUK or any MTBUK Representative to arise) as a result of Fair Wear and Tear, wilful damage, negligence, or abnormal storage or working conditions or abnormal or excessive use;

(h) if the claim, defect or fault materialised or occurred outside of the Term.

7.5. If the Customer fails to give Notice of any claim accordance with the earlier provisions of this clause, it shall be deemed to have accepted the Vehicle.

7.6. For the purposes of any replacement or alteration of the Vehicle or any repairs to the Vehicle under the provisions of this clause, MTBUK shall use reasonable endeavours to effect the same, by the Manufacturer, Bodybuilder or Network, within a reasonable time of delivery of the Vehicle by the Customer to the Manufacturer or Bodybuilder or to such Workshop of such member of the Network as MTBUK may have nominated and directed.

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

8.1. 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.

8.2. 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 Vehicle Hire 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 Vehicle Hire Order or Service Plan).

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

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

9.1. 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 'Vehicle Hire Order' shall be deemed to include 'Purchase Order' and be subject to such special terms and conditions as MTBUK may impose or require including as may appear in any relevant Purchase Order.

9.2. 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.

9.3. 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.

#### **10. CONTRACT EXCLUSIONS:**

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

10.2. 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 Vehicle Hire Order (or Purchase Order).

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

11.1. These General Terms and Conditions set out the full extent of MTBUK's obligations, responsibilities and liabilities (including any obligation, responsibility or 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 Vehicle (including as to its production, hire, time of delivery, quality or performance or fitness for a particular purpose or conformity with any applicable Specification or otherwise howsoever) or the Services or any Additional Services (including in relation to their time of supply, quality or performance, care, skill or fitness for a particular purpose), that are binding on MTBUK except as specifically stated in the Contract.

11.2. Any warranty or other term or condition concerning the Vehicle (including as to its production, hire, supply, delivery, quality or performance or replacement or repair) or the Services or 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.

11.3. 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.

11.4. In consideration of the mutual understandings, expectations and assurances contained in the foregoing paragraph 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. in the event that MTBUK fails to effect delivery of the Vehicle within any time required by any Notice making time of delivery of the essence (and which Notice is given in accordance with and subject to the provisions of Clause 5.2) shall in no circumstances exceed, or extend beyond, the actual costs and expenses incurred by the Customer in hiring a replacement Vehicle of similar description, specification, performance and quality in the cheapest market available;

ii. for breach of any of the warranties contained in clauses 7, 8 or 9 hereof shall in no circumstances exceed, or extend beyond, the actual costs and expenses incurred by the Customer in hiring a replacement Vehicle, or obtaining replacement Services (and as the case may be) 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 the amount of Rental Charges 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 of the events or circumstances set out in clause 7.4; any events, circumstances or causes beyond MTBUK's reasonable control.

11.5. Nothing in this clause shall restrict or 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 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.

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

12.1. During the Hire Period, and in any event until such time as the Vehicle has been returned to the physical possession of MTBUK, the Customer will, at its own cost and expense, and as a general and ongoing responsibility, maintain the Vehicle in as good and substantial repair, appearance and mechanical and operating condition as it was on the Commencement Date (Fair Wear and Tear only excepted) (the 'Repair Conditions') including by the replacement of any worn, damaged, lost or stolen parts, and by the repair and otherwise making good of all and any damage to the Vehicle and however caused.

12.2. Without prejudice to the provisions and requirements of any other clause in the Contract, the Customer undertakes and agrees throughout the Hire Period and in any event until such time as the Vehicle has been returned to the physical possession of MTBUK to discharge and perform all of the responsibilities and obligations which are more particularly set out in Schedule 3.

12.3. 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 discharging its obligations and responsibilities under the Contract; generally co-operate with MTBUK in all matters relating both to the Vehicle (and its production, supply, delivery and hire) and as to the resolution of any claims, including warranty claims, instigated by the Customer;

(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 of the Network's Workshop's;

(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 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 hire of the Vehicle and the supply of the Services;

(f) ensure that any information it provides, or which is provided on its behalf, in relation to the production and hire of the Vehicle or for the purposes of the Services (including any contained in or relating to the Specification, Vehicle Hire Order or Purchase Order) is complete and accurate in all respects.

12.4. 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:

(a) 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; and

(b) 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.

12.5. 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 and that it is not entering in to the Contract, or otherwise dealing with MTBUK, as a consumer (including within the meanings and effect of any of the Consumer Credit Act 1974, 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.

12.6. 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 in relation to any of the obligations and responsibilities contained in Schedule 3);
- (b) the enforcement of the Contract;
- (c) any claim made against MTBUK by a third party (including the Manufacturer, Bodybuilder, Network or Funder and any customer or supplier of the Customer) to the extent that 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 the claim is attributable to the acts or omissions of the Customer or any 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);
- (f) any damage (including any accident damage, but excluding any which is solely attributable to Fair Wear & Tear) caused to the Vehicle whilst the Vehicle is in the custody, possession, power or control of the Customer and in any event until such time as the Vehicle has been returned to the physical possession of MTBUK including any of the following: any scrapes or scratches to the paintwork (where polishing will not restore the finish and 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 or headlining; any stains resulting from oil, glue, chemicals or other matter; any damage wear and tear which is excessive having regard to the mileage recorded on the Vehicle; any tyre tread depth loss, (measured by the millimetre shortfall in depth divided by the millimetres usable depth when used and multiplied by the then current price of a new tyre produced by the same manufacturer); any damage which is caused by any failure by the Customer to replace or replenish all necessary water, coolant and other hydraulic fluids, lubricant top-ups or to replace any light bulbs or fuses.

### **13. 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.

### **14. TITLE, RISK AND INSURANCE IN RELATION TO THE VEHICLE / TOTAL LOSS EVENT:**

14.1. The Vehicle shall at all times remain the property of MTBUK.

14.2. The risk of loss, theft, damage or destruction of the Vehicle shall pass to the Customer on the date of completion of delivery within the meaning of clause 5.3 and shall thereafter remain at the sole risk of the Customer until such time as the Vehicle has been returned to the physical possession of MTBUK by the Customer in accordance with the provisions of the Contract.

14.3. From the Commencement Date and until such time as the Vehicle has been returned to the physical possession of MTBUK in accordance with the provisions of the Contract, the Customer shall, at its own cost and expense:

- (a) hold the Vehicle on a fiduciary basis as MTBUK's bailee; store it separately from all other goods and other vehicles held by the Customer so that it remains readily identifiable as MTBUK's property; not remove, deface or obscure any identifying mark (including any MAN logo) on or relating to it; allow MTBUK to inspect the Vehicle at any time upon request being made to do so;
- (b) obtain and maintain, in relation to the Vehicle and its use and operation, the following insurances: to a value of not less than the Retail Sales Value comprehensively against all risks of loss, damage or destruction by fire, theft or accident; for such amounts as a prudent owner or operator thereof would insure it to (or for such amount as MTBUK may from time to time reasonably require so as to) cover any third party or public liability risks of whatever nature and however arising; and in any event against such other or further risks as may be required by law, together with such other insurances as MTBUK may from time to time consider to be reasonably required or necessary and nominate and notify to the Customer in writing.

14.4. All insurance policies required to be obtained and maintained by the Customer under this clause shall be endorsed to provide MTBUK with at least twenty Business Days' prior written Notice of cancellation or material change (including any reduction in coverage or policy amount) and shall name MTBUK on the policies as a loss payee. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

14.5. The Customer will not do or permit to be done anything which could invalidate the insurances referred to in this clause. Without prejudice to that obligation, and if the Customer fails to effect or maintain any of the said insurances, MTBUK shall be entitled (but is not otherwise obliged) to effect and maintain the same and to pay such premiums as may be required or necessary and to recover the same as a debt due from the Customer and which the Customer will pay on demand being given by MTBUK.

14.6. The Customer shall, on demand, supply MTBUK with true copies of such of the relevant insurance policies and / or such other documents as MTBUK may require to evidence their implementation and maintenance, the noting of MTBUK's interests thereon, and the payment of the premiums.

14.7. In the event of any loss, accident or damage to the Vehicle, or of any Total Loss Event in relation thereto, at any time after delivery (and whether during the Customer's, or any third party's, custody, possession, power or control or use or operation of the Vehicle or otherwise howsoever) the Customer shall notify MTBUK of such event forthwith upon its occurrence (both by telephone and email) and in any event shall give MTBUK full particulars of all relevant facts and circumstances by Notice in writing within five Business Days of such occurrence.

14.8. If a Total Loss Event occurs in relation to the Vehicle then all of MTBUK's obligations under the Contract shall immediately terminate and the Customer shall within ten Business Days pay to MTBUK the Termination Payment.

### **15. MTBUK'S RIGHTS OF TERMINATION FOR MATERIAL BREACH / INSOLVENCY EVENT:**

15.1. MTBUK may, without prejudice to any other right or remedy which may be available to it, terminate the relevant Contract immediately by written Notice to the Customer if the other Customer commits a material breach of the terms of the relevant 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.

15.2. In particular, a breach by the Customer of any of its obligations under any of the clauses herein which relate to Payment of Rental Charges / Increases / Security & Deposit, Delivery / Failure to take Delivery, Customer's Warranties, Additional Obligations, Responsibilities & Indemnities, Title, Risk and Insurance shall be deemed to a material breach of the terms of the relevant Contract entitling MTBUK to terminate the same without any further or any liability to the Customer whether under the Contract or otherwise howsoever.

### **16. 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) a Total Loss Event occurs;
  - (b) 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 Rental Charges on due date) or may not be able to pay its debts as and when they fall due for payment;
  - (c) 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;
  - (d) 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 Manufacturer, Bodybuilder, Network or Funder) or which may otherwise expose MTBUK to any substantial or unnecessary commercial risk.
- ### **17. CONSEQUENCES OF TERMINATION AND / OR EXPIRY OF CONTRACT:**
- 17.1. Upon any termination or expiry of the Contract, the Customer's right to access to and any right to possession of the Vehicle, and any entitlement to the Services, shall immediately cease whereupon the Customer will forthwith:
- (a) deliver up the Vehicle to MTBUK;
  - (b) deliver up all MTBUK Materials that have come in to the possession of the Customer, to MTBUK; and
  - (c) pay the Termination Payment to MTBUK.

17.2. In the event that the Customer fails to deliver up the Vehicle to MTBUK or any MTBUK Materials as required by clause 17.1 MTBUK may (without limiting any other right or remedy MTBUK may have) by itself or by its authorised representatives, without notice and at the Customer's expense, enter, and the Customer irrevocably agrees and will procure that MTBUK (and / or the Network) is

permitted to, enter upon any premises of the Customer or of any third party at which the Vehicle or any MTBUK Materials may be located or held in order to recover the same.

17.3. The rights granted and conferred on MTBUK in the previous paragraph shall also apply if the Customer is in default of any of its payment obligations or is otherwise in Customer Default or becomes subject to an Insolvency Event or if MTBUK reasonably believes that any such event is about to happen and notifies the Customer accordingly.

#### **18. RETURN OF VEHICLE BY CUSTOMER UPON TERMINATION OR EXPIRY OF CONTRACT:**

18.1. Upon any termination or expiry of the Contract, however and whenever caused or arising, and upon delivery up of the Vehicle to MTBUK in accordance with the provisions of clause 17.1, the Customer will ensure and procure, at its own cost and expense, and otherwise in accordance with its responsibilities and obligations under clause 12.1, that the Vehicle (including any instruction books, registration documents, MOT certificate - with a minimum 6 months remaining - and plating certificates) is returned to MTBUK in as good and substantial repair and in as good appearance and mechanical and operating condition as it was on the Commencement Date (Fair Wear and Tear only excepted) (the 'Return Conditions') including particularly by reference to the following criteria and standards:

•**Ancillary Equipment / Bodywork:** Clean secure, sound and free from all and any damage and / or distortion and in a condition commensurate with Fair Wear and Tear only.

•**Batteries:** To be (in any event and notwithstanding Fair Wear and Tear) in such condition as to enable the engine to be started from cold.

•**Cab:** Steam cleaned and free from offensive smell, undamaged and free from (and treated as required or necessary so as to properly and adequately cure) any apparent, corrosion; cab interior valeted.

•**Chassis:** Clean, secure, sound and free from all and any damage and / or distortion and in a condition commensurate with Fair Wear and Tear only.

•**Glass:** All to be intact and free from all and any breakages, cracks and scratches.

•**Lenses:** All to be intact, secure and undamaged.

•**Mechanical, electrical, electronic or hydraulic equipment:** All to be intact, free of defect or fault and in good mechanical and operating condition.

•**Parts:** All worn or damaged or lost parts are to be replaced by identical parts (or by those of similar make and model or by an improved and / or an advanced version of the same and in those events subject at all times to MTBUK's prior written permission and approval).

•**Tools and Spare Wheel(s):** All tools and spare wheel(s) to be returned as supplied on delivery or, in the case of any replacements thereof, as approved by the Manufacturer.

•**Tyres:** All tyres (including the spare tyre) are to be 'legal' and to conform in all respects with all applicable legal or other statutory requirement or guidance or specification in force and relating thereto at all times having in any event, and (by way of representative example only) at very least a minimum tread depth of 7mm of uncut rubber (with no lumps or bulges nor any surface cuts in excess of 25mm long) and be of the equivalent specification as those originally supplied on delivery (with no cross matching of tyres or tread type on the same axle). (Note: Any remoulded tyres may only be fitted to the drive axle of the Vehicle.)

•**Vehicle / Bodywork/Interior:** Free from all and any livery or lettering which was not applied to or which did not otherwise appear on the Vehicle on delivery and with any residue left as a result of removal to be polished off.

18.2. If the Customer fails to return any of the instruction books, registration documents, MOT certificate or plating certificates as aforesaid, MTBUK shall be entitled to charge the Customer and the Customer will pay to MTBUK a reasonable sum to compensate MTBUK for:

(a) (in circumstances where the documents can be easily replaced) the cost of replacing any of those documents; or

(b) (in circumstances where the documents cannot be easily replaced) a sum equal to the resulting diminution in the Residual Value of the Vehicle, and as the case may be.

18.3. The Customer will, no later than 7 Business Days prior to any such termination or expiry (unless the circumstances of such termination or expiry render this impractical and in that event within such time period as MTBUK may reasonably require) grant to the MTBUK the opportunity and all facilities reasonably required or necessary to carry out an inspection of the Vehicle and its service records at a mutually agreed location within Normal Business Hours or, in default of such agreement as to such location, at MTBUK's premises or at the premises of such member of the Network as may be notified to the Customer by MTBUK. The Customer will contact MTBUK no later than 14 Business Days prior to any such termination or expiry to make arrangements for such inspection. The Vehicle and its service records shall be made available by the Customer to MTBUK for such inspection for a period of not less than three hours. If upon any such inspection (or any subsequent and agreed re-inspection) the Vehicle appears to MTBUK to satisfy the Return Conditions, MTBUK will confirm the same to the Customer in writing.

18.4. If upon any such inspection (or upon any subsequent and agreed re-inspection) the Vehicle does not appear to MTBUK to comply with the Return

Conditions the Customer shall at its own cost and expense carry out all necessary works and services required (and as confirmed in writing, by MTBUK) to comply with the Return Conditions. The Customer shall then re-present the Vehicle to MTBUK at MTBUK's Vehicle Return Centre (currently Frankland Road, Blagrove, Swindon, SN5 8YU) for re-inspection no later than, in the case of an expiry of the Contract on the End Date or, in the case of any termination of the Contract, on the date that MTBUK shall have previously required by Notice in writing to the Customer.

#### **19. RETURNS DISPUTES:**

19.1. In the event of any dispute between the Parties as to whether the Vehicle has been returned in accordance with the Return Conditions the Parties shall liaise with each other to endeavour to reach an agreement as to the resolution of any such dispute. In the event that agreement is reached under this clause, such agreement shall be recorded in a document signed by the authorised representatives of both Parties.

19.2. In the event that agreement is not reached under clause 19.1 (and strictly providing always that the Customer has firstly complied with its obligation to deliver up the Vehicle to MTBUK under clause 17.1) the matter will be treated by the Parties as subject to a 'Returns Dispute'. The Parties agree that the Freight Transport Association shall nominate its representative as an independent expert (the 'Expert') to resolve the Returns Dispute. The Expert shall act as an expert and not as an arbitrator

19.3. The Parties will cooperate with each other and the Expert and promptly (and in any event within such time period(s) as the Expert may determine) do all such things and provide all such information as the Expert may reasonably request to assist him to determine and resolve the Returns Dispute. If either Party fails to assist the Expert in the manner and within the time period(s) requested by the Expert, the Expert may proceed to determine the Dispute notwithstanding the applicable Party's failure to do so.

19.4. The determination of the Dispute shall comprise an assessment by the Expert, in his expert opinion, of the respects in which, if at all, the Vehicle fails to meet and, if so, of the cost of the works and parts necessary to procure that the Vehicle meets the Return Conditions. The Experts written decision on all matters referred to him in the Returns Dispute shall be final and binding on the Parties in the absence of manifest error or fraud.

19.5. The Customer will be responsible for and hereby undertakes to pay (and in any event to indemnify MTBUK in relation to) the costs and fees of the Freight Transport Association / the Expert relating to the Returns Dispute within ten Business Days of receiving their invoice in relation thereto.

19.6. All and any sums determined by the Expert as being payable by the Customer in the Experts written decision shall be payable to MTBUK as a debt and shall be paid in full (and without any form of deduction, withholding or set-off and whether on account of any other disputes, counterclaims or for any other reason whatsoever) within ten Business Days of the date of the Experts written decision in relation thereto.

**20. 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.

**21. 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, and 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.

**22. 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.

**23. 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 Rental Charges on the grounds of any alleged Force Majeure Event.

**24. 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 [rentaladminuk@man.eu](mailto:rentaladminuk@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 transmission.

**25. 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.

**26. 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.

**27. 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.

**28. 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 and 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.

• **Bodybuilder:** any contractor appointed by MTBUK to convert the Chassis into and / or otherwise perform the custom production of the Vehicle, including by the affixation of any Ancillary Equipment / Bodywork.

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

• **Chassis:** the chassis, and applicable chassis cab (and all of its component parts), for the commercial vehicle more particularly described in the Vehicle Hire Order, which is manufactured by the Manufacturer.

• **Commencement Date:** the date on which delivery of the Vehicle to the Customer shall be deemed to have been completed in accordance with clause 5.3.

• **Contract:** the contract between MTBUK and the Customer for the production of and the hire of the Vehicle and the provision of the Services in accordance with the various terms and conditions appearing in these General Terms and Conditions and in the relevant Vehicle Hire Order, which is formed on the basis set out 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 applicable Vehicle Hire Order.

• **Contract Inclusions:** the Services and any other works, services, benefits or facilities which are expressly noted as a 'Contract Inclusion' (and in that event subject to their applicable terms and conditions) in the applicable Vehicle Hire Order.

• **Contract Year:** each period of 12 months commencing on the Start Date.

• **Customer:** the Party who requests the production of and hires the Vehicle and purchases the Services from MTBUK subject to the terms and conditions of the Contract.

• **Customer Agent:** any of the Customer's 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.

• **Deposit:** the deposit amount, if any, payable by the Customer as set out in the Vehicle Hire 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 Vehicle Hire 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).

• **Funder:** the provider of any finance or finance facility utilised by MTBUK in its acquisition of the Vehicle under the terms of any relevant Operating Lease.

• **General Terms and Conditions:** these General Terms and Conditions of Contracts for Vehicle Hire, including the Schedules.

• **Hire Period:** the minimum fixed term as set out in the Vehicle Hire Order and continuing monthly thereafter and otherwise as set out in clause 4 of these General Terms and Conditions.

• **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.

• **Manufacturer:** the manufacturer of the Chassis, MAN Truck & Bus AG, Dachauer Straße 667, D-80995 München, Germany. ('MAN' may also be used to refer to the Manufacturer.)

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

• **MTBUK Materials:** all materials, equipment, documents and other property of MTBUK and of any MTBUK Representative, including the Network coming in to the possession of the Customer or any Customer Agent.

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

• **Network:** the member of MTBUK's network of independent repair and maintenance operatives which is referred to as 'Network/Dealer' on the relevant Vehicle Hire Order (or Purchase Order) or as may be otherwise determined by MTBUK and as notified to the Customer 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.

• **Operating Lease:** the lease or any other operative agreement between MTBUK and the Funder by which MTBUK acquired finance or other financial consideration or facility utilised in the funding of the production of or otherwise in connection with its acquisition of the Vehicle.

• **Operators License:** any valid vehicle operator's licence(s) required by law for the ownership, use, operation, running and driving of the Vehicle including any required by operation of or pursuant to the Goods Vehicles (Licensing of Operators) Act 1995, the Goods Vehicles (Licensing of Operators) Regulations 1995, and the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995.

• **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 KM's' in the relevant Vehicle Hire Order.

• **Purchase Order:** the Customer's order for Additional Services, 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.

• **Rental Charges:** the charges to be paid by the Customer for the hire of the Vehicle and the provision of the Services in the amount(s) and on the date(s) set out in the Vehicle Hire Order.

• **Residual Value:** the residual value of the Vehicle as determined by the Funder.

• **Retail Sales Value:** the retail sales value of the Vehicle as set out in the Vehicle Hire Order.

• **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 Vehicle Hire 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 the 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.

• **Specification:** any technical data, configuration or other specification for the Vehicle which is agreed in writing between the Parties in a document signed by them both before the formation of a Contract on the basis set out in clause 3.

• **Start Date:** the start date of the Contract and as set out in the relevant Vehicle Hire Order.

• **Term:** the term of the relevant Contract beginning on the Start Date and ending on the End Date.

• **Termination Payment:** the aggregate sum of:

(i) all Rental Charges and any other sums due and payable to MTBUK under the Contract, as at the date of termination or expiry; plus (and as an agreed contribution to MTBUK's loss and damage) a sum equal to;

(ii) the whole of the Rental Charges that would (but for the termination or expiry) have been payable if the Contract had continued to the end of the Hire Period (less a discount for accelerated payment at the rate of 5% per annum calculated and payable pro rata for part years); plus

(iii) all sums, if any, owed to and / or in respect of which MTBUK may be otherwise liable to pay to the Funder (including the Residual Value of the Vehicle as determined by the Funder) pursuant to the terms and conditions of the Operating Lease.

• **Total Loss Event:** the event which occurs when the Vehicle is, or appears in MTBUK's reasonable opinion to be, lost, damaged, destroyed, stolen, seized or confiscated or when it is, in the reasonable opinion of MTBUK's insurer(s), damaged beyond reasonable repair.

• **Vehicle:** the vehicle (including, where the context requires, any replacement thereof) more particularly described in the Vehicle Hire Order (including, where the context requires, any replacement thereof and any instruction books, registration documents, MOT Certificate and plating certificates).

• **Vehicle Handover Sheet:** the vehicle handover sheet that will be delivered to the Customer by MTBUK upon delivery of the Vehicle.

• **Vehicle Hire Order:** the Customer's order for the hire of the Vehicle, and the provision of the Services, in MTBUK's standard written form, which is submitted to and signed by the Customer and which is then confirmed by the approval and signature of MTBUK. (A 'draft Vehicle Hire Order' shall mean one that has been submitted to the Customer for consideration by MTBUK in MTBUK's standard form but which has not yet been signed by the Customer.)

• **Workshop:** the workshop and premises to which the Vehicle will be delivered by the Customer to the Network for the provision 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 or where the context does not permit otherwise;

(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.



**NOTICE TO CUSTOMER:**

This Schedule 2 should be read in conjunction with clause 10 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 Vehicle Hire Order ( or 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 ;
23. Repairs to or replacement of tyres for any reason (including where due to any of the following: punctures; blowouts impact damage; incorrect inflation).

**1. Customer's General Responsibilities and Obligations:** The Customer will: effect, and shall procure that its duly authorised representative be present at, delivery of the Vehicle to the Network at the Workshop on due date and time, during Normal Office Hours, and otherwise in accordance with the Service Plan for the purposes of the Services; procure and ensure that its duly authorised representative be present at the time agreed for, and for the purposes of recovering the Vehicle after the Services have been performed and that he sign a Vehicle Handover Sheet and / or such other document as MTBUK (or the Network) may require to evidence and confirm recovery of the Vehicle and the performance of the Services ; otherwise and generally co-operate with MTBUK and the Network in all matters relating to the hire of the Vehicle and the supply of the Services; and at all times ensure that they obtain and maintain all and any necessary licences, insurances, permissions and consents relating to the Vehicle and its use which may be required to facilitate the hire of the Vehicle and the supply of the Services.

**2. Record Keeping & Reporting:** The Customer will: give all such assistance , information and data or other documentary materials as many be reasonably required or considered necessary by MTBUK and / or the Network for the purpose of enabling them to hire the Vehicle and supply the Services ; ensure that such information is complete and accurate in all material respects ; keep and properly maintain detailed operating and maintenance records in relation to the Vehicle and send true copies of such records to MTBUK and / or the Network as and when they may reasonably require.

**3. Servicing and Testing:** Where the Vehicle becomes due for service or testing (including in accordance with any Service Plan and / or any Manufacturers recommended service intervals or in accordance with any legal, statutory or other mandatory, requirements , including those required or recommended by the Department for Transport ) the Customer shall at its own cost and expense: deliver the Vehicle to such address or servicing or test centre and on such date and time as is appointed for such service or testing and / or as MTBUK and / or the Network shall otherwise nominate or require; and in any event and when doing so will ensure that the Vehicle is empty of all and any property , including personal belongings and / or third party property. (Note: MTBUK accepts no liability, and hereby disclaims all and any liability to the maximum extent permissible by law, for any damage to or loss to any property left in , or for damage caused to , the Vehicle by items which are left in the Vehicle by the Customer during the course of the Services.)

**4. Operators Licence:** The Customer will: obtain, pay for and keep up to date its Operator's Licence and any other licences prescribed by the Road Traffic Acts or any other applicable Act of Parliament, legislation or regulations for the time being in force; provide MTBUK with an up to date certified copy of the Operator's Licence, on demand and annually thereafter (or sooner if MTBUK requires) until either termination or expiry of the Contract or the return of physical possession of the Vehicle to MTBUK whichever is the sooner; inform MTBUK, by Notice of and within 5 Business days of the occurrence of any changes made to the Operator's Licence, including its revocation, and of any orders for a public or other similarly official inquiry made in relation to the Operator's Licence and in that event also as to the outcome of any such inquiry.