



August 2017

CLOSED BUY BACK AGREEMENT

between

MAN AUTOMOTIVE (SOUTH AFRICA) PROPRIETARY LIMITED

Registration number 1975/004250/07

The Views, Founders Hill Office Park, 18 Centenary Way, Modderfontein, 1613.

("MAN")

and

Click here to enter text.

Registration number **Click here to enter text.**

Address: **Click here to enter text.**

("Customer")

(hereinafter jointly referred to as the **"Parties"**)

August 2017

CONTENTS

PREAMBLE	2
1. INTERPRETATION	2
2. UNDERTAKINGS	4
3. MAINTENANCE OF THE VEHICLE/S	4
4. ACCIDENTS	5
5. INITIATION OF THE BUY BACK PROCESS	5
6. CONDITION OF THE VEHICLE/S	6
7. DELIVERY OF VEHICLE/S	6
8. AUTHORISATION TO SELL OR HIRE-OUT DELIVERED VEHICLE/S	7
9. CREDIT AGREEMENTS IN RESPECT OF THE VEHICLE/S	7
10. ADJUSTMENTS FOR UNDER-UTILISATION OR OVER-UTILISATION	8
11. DETERMINATION OF THE BUY BACK PRICE	8
12. PAYMENT	9
13. INTEREST ON LATE PAYMENTS	9
14. BREACH.....	11
15. TERMINATION	11
16. <i>DOMICILIUM</i> AND NOTICES	11
17. ARBITRATION	12
18. CESSION AND ASSIGNMENT	13
19. GENERAL	13
ANNEXURE A – BUY BACK DETAILS	16
ANNEXURE B – BUY BACK NOTICE FORM	17
ANNEXURE C – BUY BACK PROCESS.....	19
ANNEXURE D: BUY BACK CONDITION	21

PREAMBLE

WHEREAS MAN has sold or is about to sell the Vehicle/s to the Customer, pursuant to which sale, the Customer will become the owner and/or operator of the Vehicle/s.

AND WHEREAS MAN has agreed to buy the Vehicle/s back from the Customer, which has agreed to sell back the Vehicle/s to MAN, on the terms set forth in this Agreement;

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

1.1. In this Agreement,

1.1.1. clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention -

1.1.2. an expression which denotes –

1.1.2.1. any gender includes the other genders;

1.1.2.2. a natural person includes an artificial or juristic person and vice versa;

1.1.2.3. the singular includes the plural and vice versa;

1.1.3. where any term is defined within any particular clause such term will bear the meaning ascribed to it in that clause wherever it is used in this Agreement;

1.1.4. where any number of days is to be calculated from a particular day, such number must be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day will be deemed to be the next succeeding day which is a Business Day;

1.1.5. any reference to days (other than a reference to Business Days), months or years is a reference to calendar days, months or years, as the case may be;

1.1.6. the use of the word "including" followed by a specific example/s must not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule is not applicable in the interpretation of such general wording or such specific example/s.

1.1.7. the terms of this Agreement having been negotiated, the *contra proferentem* rule does not be apply in the interpretation of this Agreement.

1.2. the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.2.1. **“AFSA”** means the Arbitration Foundation of South Africa;
- 1.2.2. **“Agreement”** means this Closed Buy Back Agreement together with all of its Annexures, as amended from time to time;
- 1.2.3. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.2.4. **“Buy Back Dates”** means the dates specified in Annexure A;
- 1.2.5. **“Buy Back Notice”** means a notice that must be issued by the Customer to MAN in accordance with clause 5.1 below;
- 1.2.6. **“Buy Back Price”** means the actual price that is payable by MAN to the Customer for each Vehicle, as determined by MAN after the applicable deductions stipulated in this Agreement are made;
- 1.2.7. **“Buy Back Value”** means the anticipated value of each Vehicle at the Buy Back Date, as stipulated in **Annexure D** hereto;
- 1.2.8. **“Checklist”** means the MAN TopUsed Vehicle Inspection Checklist in **Annexure B** hereto, as may be amended by MAN from time to time;
- 1.2.9. **“Evaluator”** means the independent technical evaluator appointed by MAN;
- 1.2.10. **“Final Inspection”** means the second inspection to conducted by the Evaluator on the Buy Back;
- 1.2.11. **“Initial Inspection”** means the first inspection to conducted by the Evaluator within 5 (five) days of the issuing of the Buy Back Notice by MAN;
- 1.2.12. **“MAN”** means MAN Automotive (South Africa) Proprietary Limited Registration number 1975/004250/07, with its principal place of business being The Views, Founders Hill Office Park, 18 Centenary Way, Modderfontein, Johannesburg, 1613c and its successors-in-title or assigns and/or any entity which acquires all or any portion of the business of MAN;
- 1.2.13. **“MAN Site”** means the MAN Dealership that is approved as an intake site and which is stipulated by MAN, at which the Customer must deliver the Vehicle/s for the Final Inspection;

- 1.2.14. **“Over-utilisation”** means the distance by which the Actual Kilometre Usage of any Vehicle/s exceeds the Anticipated Kilometre Usage;
- 1.2.15. **“Over-utilisation Threshold”** means a level of Over-utilisation that is greater than or equal to 3% of the Anticipated Kilometre Usage, at which the Customer becomes entitled to a credit in accordance with clause below;
- 1.2.16. **“Signature Date”** means the date of signature of this Agreement by the signatory which signs it last;
- 1.2.17. **“Under-utilisation”** means the distance by which the Actual Kilometre Usage of any Vehicle/s is below the Anticipated Kilometre Usage;
- 1.2.18. **“Under-utilisation Threshold”** means a level of Under-utilisation that is greater than or equal to 3% of the Anticipated Kilometre Usage, at which the Customer becomes entitled to a credit in accordance with clause below;
- 1.2.19. **“Vehicle/s”** means the Vehicle/s that are subject to the buy back in terms of this Agreement, as specified in **Annexure A** hereto;

2. UNDERTAKINGS

- 2.1. Subject to the provisions of this Agreement, MAN undertakes to buy back the Vehicle/s from the Customer, and the Customer undertakes to deliver the Vehicle/s back to MAN, on the Buy Back Dates and at the Buy Back Price/s applicable.
- 2.2. MAN is not obliged to –
- 2.2.1. buy back any Vehicle/s unless such Vehicle/s is/are in the condition stipulated in clause 6 below and **Annexure D** hereto; or
- 2.2.2. make any payment to the Customer or to any third party, in respect of the Vehicle/s, unless the Vehicle/s are delivered to MAN in accordance with the provisions of clause 7 below and **Annexure C** hereto.

3. MAINTENANCE OF THE VEHICLE/S

- 3.1. The Customer must, on signature hereof, enter into a full maintenance contract with MAN in respect of each Vehicle, for a period terminating on the Buy Back Date for each Vehicle.
- 3.2. MAN retains the right, at all times, to inspect the Vehicle/s on notice to the Customer, in order to assess the condition of such Vehicle/s and the manner in which the Vehicle/s is/are being used.

- 3.3. All servicing to Vehicle/s may only be conducted by MAN or an authorised MAN workshop and the Customer must ensure that a complete record of each Vehicle's service record is maintained through the selling MAN branch/dealer.
- 3.4. All warranty work will be carried out through MAN or an MAN-authorized workshop.
- 3.5. All installations, bodies and conversions must be carried out in accordance with MAN's guidelines or subject to the approval of MAN.

4. ACCIDENTS

- 4.1. If the Vehicle/s are involved in an accident that is in excess of R50,000 (fifty thousand rands), the Customer must report such accident in writing to MAN as soon as practicable after the occurrence thereof, giving full particulars thereof and, at the request of MAN, furnish MAN with such further information regarding the accident as may be required by MAN. In the event of such an accident –
 - 4.1.1. repairs must be carried out in accordance with MAN's repair instructions;
 - 4.1.2. only parts which comply with MAN's technical standards and instructions may be used for the repairs;
 - 4.1.3. MAN reserves the right to inspect such Vehicle/s, during and after the repair to the Vehicle/s and in the event of the repairs not having been completed to MAN specifications, MAN has the right to elect not to proceed with the buy back of the Vehicle/s in question; and
 - 4.1.4. MAN reserves the right to terminate its buy back obligations in respect of the Vehicle/s in question by notice to the Customer.
- 4.2. MAN's obligation to buy back a Vehicle will not apply in the event that such Vehicle is totally written off as a result of an accident or is stolen or if its delivery to MAN becomes impossible for any other reason.

5. INITIATION OF THE BUY BACK PROCESS

- 5.1. The Buy Back process will commence upon dispatch by MAN of the Buy Back Notice to the Customer at least 90 (ninety) days prior to each Buy Back Date, after which the delivery process as stipulated in **Annexure C** hereto must be followed.
- 5.2. The Buy Back Notice must be in the format specified in **Annexure B** hereto and it must specify, *inter alia* –

- 5.2.1. a date within 5 (five) days of the issuing of the Buy Back Notice on which the Vehicle/s will be available for the Initial Inspection;
- 5.2.2. an address at which the Initial Inspection must take place;
- 5.2.3. a comparison of the Actual Kilometre Usage and the Anticipated Kilometre Usage for the Vehicle/s; and
- 5.2.4. details of any credit agreement in respect of the Vehicle and the outstanding amount/s owing in terms thereof.

6. **CONDITION OF THE VEHICLE/S**

- 6.1. The Vehicle/s must, upon delivery thereof to MAN, be in the condition stipulated in **Annexure D** hereto.
- 6.2. If the condition of any Vehicle/s is otherwise than as described in **Annexure D** hereto, or if such Vehicle/s sustain any damage for any reason, including having been used for a purpose other than the intended purpose or having been used in a negligent or reckless manner, MAN may –
 - 6.2.1. terminate the buy back of such Vehicle/s entirely, in the event of which the provisions of clause 15 below will apply; or
 - 6.2.2. proceed with the buy back of such Vehicle/s and deduct the cost of repairs to the Vehicle/s, in addition to any other applicable deductions, from the Buy Back Value.
- 6.3. MAN will appoint an Evaluator to conduct the inspections on the Vehicle/s and the decision of the Evaluator as to the condition of the Vehicle/s is final and binding on the Parties.

7. **DELIVERY OF VEHICLE/S**

- 7.1. Unless otherwise agreed to by MAN in writing, the Customer is not entitled to require MAN to buy back the Vehicle/s on any date other than on the specific Buy Back Date relating to such Vehicle/s.
- 7.2. The Vehicle/s must be delivered on or before the stipulated Buy Back Date to the MAN Site or to such other place advised by MAN in writing.
- 7.3. MAN is not obliged to pay any amount to license or register the Vehicle/s. In the event that MAN is required to pay any such amount, the amount so paid will be deducted from the Buy Back Value.

- 7.4. If the Customer fails to deliver a Vehicle on or before the Buy Back Date in respect thereof, MAN will apply a late delivery penalty calculated at 2.5% per month of the net invoice value of the Vehicle, or a daily rate of $\frac{1}{30}$ of 2.5% the net invoice value of the Vehicle, without prejudice to MAN's right to claim from the Customer any loss or damages sustained by MAN as a result of such late delivery.
- 7.5. If the Customer fails to deliver a Vehicle entirely, or fails to deliver the Vehicle within 3 (three) months of the Buy Back Date, or fails to comply with its obligations relating to the delivery of any Vehicle/s in terms of this clause 7 and **Annexure C** hereto, MAN may cancel the buy back and claim from the Customer –
- 7.5.1. a penalty fee of 10% of the Buy Back Value; and
- 7.5.2. any amount that MAN may already have paid to the Customer or to any third party;
- without prejudice to MAN's right to claim from the Customer any loss or damages sustained by MAN as a result of such failure.

8. AUTHORISATION TO SELL OR HIRE-OUT DELIVERED VEHICLE/S

Notwithstanding that any Vehicle/s is/are subject to a reservation of ownership in favour of the Customer or any third party at the time of delivery thereof to MAN, MAN is entitled to sell or hire-out the Vehicle/s in the normal course of its business and the Customer hereby authorises MAN to do so and undertakes to sign all such documents as may be required to confirm such authorisation.

9. CREDIT AGREEMENTS IN RESPECT OF THE VEHICLE/S

- 9.1. In the event that the Vehicle/s is/are subject to any credit agreement between the Customer and any third party, MAN will not be obliged to buy back such Vehicle/s –
- 9.1.1. if the amount owing to the third party exceeds the Buy Back Price applicable on the Buy Back Date; and
- 9.1.2. unless MAN is satisfied, in its sole discretion, that it will be able to acquire unfettered ownership of such Vehicle/s free of any encumbrance, credit agreement or claim by any third party.
- 9.2. MAN is not obliged to settle any outstanding amount owing in terms of a credit agreement in respect of the Vehicle/s. In the event that MAN is required to pay any such amount, the amount so paid will be deducted from the Buy Back Price of the Vehicle/s.

- 9.3. If the condition of any Vehicle/s is otherwise than as described in **Annexure D** hereto and MAN is obliged to settle any outstanding amounts on a credit agreement between the Customer and any third party financier, MAN reserves the right to claim the difference between the value of the Vehicle/s as determined by MAN and the amount of such settlement, from the Customer.

10. ADJUSTMENTS FOR UNDER-UTILISATION OR OVER-UTILISATION

- 10.1. If, on the Buy Back Date, there has been Under-utilisation of the Vehicle/s, the Buy Back Value will be increased by R0.43 per kilometre for each kilometre below the Under-utilisation Threshold, provided that the total amount of the increment may not exceed 10% of the Buy Back Value of the Vehicle/s.
- 10.2. If, on the Buy Back Date, there has been Over-utilisation of the Vehicle/s, MAN is entitled to either –
- 10.2.1. decline to buy back the Vehicle/s in question; or
- 10.2.2. buy back such Vehicle/s on condition that the Buy Back Price is reduced in accordance with clause 10.3 below.
- 10.3. In the situation provided for in clause 10.2.2 above, the Buy Back Value of the affected Vehicle/s will be decreased at R0.71 per kilometre calculated on the distance by which the Actual Kilometre Usage exceeds the Anticipated Kilometre Usage by more than 3% thereof.
- 10.4. If any dispute arises regarding the application of clauses 10.3, the matter will be referred for determination to MAN's external auditors whose decision shall be final and binding.

11. DETERMINATION OF THE BUY BACK PRICE

The Buy Back Price of the Vehicle/s will be determined after the deduction of the following amounts from the Buy Back Value –

- 11.1. the applicable percentage reduction for over-usage in terms of clause 10.3 above;
- 11.2. any licence or registration fees that are paid by MAN, in accordance with clause 7.3 above;
- 11.3. any outstanding amount owing in terms of a credit agreement in respect of the Vehicle/s, which amount is settled by MAN; and
- 11.4. any other amounts relating to a decrease in value of the Vehicle/s for any reason, including where the Vehicle/s have been used for a purpose other than the purpose stipulated by the Customer or having been used in a manner which has caused a decrease in value.

12. PAYMENT

- 12.1. Notwithstanding anything to the contrary in this Agreement, MAN is not obliged to make any payment to the Customer until the terms and conditions relating to the condition of the Vehicle/s and the delivery thereof to MAN are fully complied with.
- 12.2. The Buy Back Price of the Vehicle/s will be paid to the Customer within 14 (fourteen) Business Days of receipt by MAN of the relevant invoice/s, after the inspection and delivery process is completed.
- 12.3. Any amount that is payable to MAN in terms of this Agreement must be paid within 30 (thirty) days of the due date for such amount, which will be the date stipulated on an invoice issue by MAN in respect of such amount.

13. INTEREST ON LATE PAYMENTS

- 13.1. If any amount due to MAN, for example the purchase price for any goods delivered or the charges in respect of any services provided by MAN, is not paid to MAN on the due date for such amount, then –
 - 13.1.1. all amounts owing to MAN for whatever reason will become immediately due and payable, notwithstanding the fact that portions of such amounts might otherwise not yet be due and payable;
 - 13.1.2. the total amount which is due, owing and payable to MAN will, without prejudice to any of MAN's rights under this Agreement and/or at law, bear interest from such due date to the date of actual receipt of such amount by MAN in full (both dates inclusive) at 3% above the Prime Rate, or at the maximum prescribed interest rate if this Agreement is subject to the National Credit Act 34 of 2005 ("NCA") and the total amount plus interest will be payable on demand. The term "Prime Rate" means the prime overdraft rate of interest as publicly quoted by Nedbank Limited (or its successor in title), as certified by any manager of that bank whose appointment, designation or authority it will not be necessary to prove; provided however that for all purposes under this clause 13.1, such interest (expressed as a percentage rate per annum) will be calculated on the basis of a 365-day year and shall be compounded monthly in arrears.
- 13.2. If the Customer is in default and this Agreement is subject to the NCA, MAN may -
 - 13.2.1. give the Customer written notice of such default and may propose that the Customer refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that

the parties resolve any dispute under this Agreement or develop and agree on a plan to bring repayments up to date;

- 13.2.2. commence legal proceedings to enforce this Agreement including exercising its rights in terms of any of the securities and recover collection costs and default administration charges as defined in the NCA if -
 - 13.2.3. it has given the Customer notice as referred to in clause 13.2.1 above or it has given notice to terminate any debt review process under section 86 of the NCA which may then be underway in respect of this Agreement;
 - 13.2.4. the Customer is and has been in default under this Agreement for at least 20 (twenty) business days; and
 - 13.2.5. at least 10 (ten) business days have elapsed since MAN delivered the notice contemplated in clause 13.2.1; and
 - 13.2.6. in the case of a notice in terms of clause 13.2.1, the Customer has not responded to that notice; or responded to the notice by rejecting MAN's proposal.
- 13.3. If the Customer is in default of this Agreement and this Agreement is not subject to the NCA MAN may exercise its rights, as may be permissible in law and without prejudice to any of MAN's other rights, which include any one or more of the following -
- 13.3.1. suspending the delivery and provision of goods and services;
 - 13.3.2. demanding immediate payment of all outstanding amounts;
 - 13.3.3. terminating of this Agreement; and
 - 13.3.4. enforcing any security furnished in respect of the Agreement.
- 13.4. The Customer will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Customer owes MAN.
- 13.5. A certificate signed by a manager of MAN specifying the amount owing by the Customer and further stating that such amount is due, owing and payable by the Customer, shall be sufficient (prima facie) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against the Customer in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.

14. **BREACH**

- 14.1. In the event that any of the Parties commit a breach of any of the terms of this Agreement (“**Defaulting Party**”), and fails to remedy such a breach within a period of 7 (seven) days after receipt of written notice from the other party (“**Aggrieved Party**”) calling upon the Defaulting Party to so remedy, then the Aggrieved Party will be entitled, at its sole discretion and without prejudice to any other rights in law, either to –
- 14.1.1. claim specific performance in terms of this Agreement; or
 - 14.1.2. remedy the breach of the Defaulting Party; or
 - 14.1.3. cancel this Agreement forthwith without observing any further notice periods;
- 14.2. In all instances stipulated in clause 14.1 above, the Aggrieved Party may recover damages from the Defaulting Party, including the fair and reasonable costs and expenses of remedying the breach.

15. **TERMINATION**

- 15.1. Either Party may terminate this Agreement during the term by providing the other Party with 90 (ninety) days written notice, subject to the payment by the party that intends to cancel of a reasonable cancellation fee to be agreed to between the parties.
- 15.2. Either Party may terminate this Agreement for cause where the other Party –
- 15.2.1. becomes insolvent or files for bankruptcy, or has a petition of bankruptcy filed against it; or
 - 15.2.2. notwithstanding any of the above, immediately if the defaulting party fails to pay any of the charges pursuant to this Agreement.
 - 15.2.3. goes through a change in control as defined in this Agreement.

16. **DOMICILIUM AND NOTICES**

- 16.1. The Parties choose, as their respective *domicilium citandi et executandi* for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, the addresses stipulated on the first page of the Agreement.
- 16.2. A party is entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.

- 16.3. Any notice given or payment made by a party to any other party ("addressee") which is -
- 16.3.1. delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical domicilium for the time being, is deemed to have been received by the addressee at the time of delivery;
 - 16.3.2. posted by prepaid registered post to the addressee's postal domicilium for the time being, is deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.
- 16.4. Any notice given by a party to any other party which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.
- 16.5. This clause 16 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 16.
- 16.6. Any notice in terms of or in connection with this Agreement is valid and effective only if in writing and if received or deemed to be received by the addressee.

17. ARBITRATION

- 17.1. Aside from the specific dispute procedure and remedies provided for in clauses 6.3 and 10.4 above, any other dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the parties pursuant to this Agreement, shall be submitted to arbitration in accordance with this clause 13 and the arbitration laws for the time being in force in the Republic of South Africa.
- 17.2. The application of this clause 17 does not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 17.3. The arbitrator must –
- 17.3.1. if the dispute is primarily an accounting matter, be an independent practising accountant of not less than ten years' standing as such as agreed between the parties within 5 (five) working days of the dispute having arisen failing which

appointed, at the instance of either party, by the South African Institute of Chartered Accountants or its successor;

17.3.2. if the dispute is primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such as agreed between the parties within 5 (five) days of the dispute having arisen and failing agreement appointed, at the instance of either party, by the Arbitration Foundation of Southern Africa, Sandton or its successor body; and

17.3.3. if the dispute is any other matter, be a suitably qualified person as agreed between the parties within 5 (five) days of the dispute having arisen or, failing such agreement, be appointed by AFSA or its successor body, at the instance of either party.

17.4. The arbitration must be held at a venue in Johannesburg and in accordance with procedures determined by the arbitrator which shall include such procedures such as pleadings and/or discovery as will enable the arbitration to be conducted in a fair and impartial manner.

18. CESSION AND ASSIGNMENT

18.1. The Customer is not entitled to cede or assign its rights and obligations in terms of this Agreement without the prior written consent of MAN.

18.2. If the Customer is a juristic person, any change in its beneficial ownership and/or management after the date of this Agreement will be regarded as a cession or assignment requiring the prior written consent of MAN.

18.3. In the event that a bank or other third party becomes the owner of any of the Vehicle/s pursuant to financing arrangements between the Customer and such bank or third party, the Customer must procure that such bank or third party undertakes in writing to be bound by and to give effect to the provisions of this Agreement in a manner acceptable to MAN.

18.4. If the Customer fails to comply with the provisions of this clause 18.3 MAN will be entitled to terminate this Agreement.

19. GENERAL

19.1. No addition to, variation, novation or agreed cancellation of any provision of this Agreement is binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

19.2. No indulgence or extension of time which a party may grant to any other party will constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of

the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

- 19.3. Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party is bound by this Agreement.
- 19.4. This Agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. No party is bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

For MAN Automotive (South Africa) Proprietary Limited, warranting that they are duly authorised to sign on behalf of the entity:

Signed at _____ on ____ day of _____ 20 ____.

NAME: _____ NAME _____

SIGNATURE: _____ SIGNATURE _____

CAPACITY: _____ CAPACITY _____

WITNESSES:

1. _____ 1. _____

2. _____ 2. _____

**For _____
warranting that they are duly authorised to sign on behalf of the entity:**

Signed at _____ on ____ day of _____ 20 ____.

NAME: _____ NAME: _____

SIGNATURE: _____ SIGNATURE: _____

CAPACITY: _____ CAPACITY: _____

WITNESSES:

1. _____ 1. _____

2. _____ 2. _____

ANNEXURE A – BUY BACK DETAILS

ANNEXURE B – BUY BACK NOTICE FORM

ITEM	HEADING	DETAILS	
1.	Customer Name	Click here to enter text.	
2.	Vehicle Details	Registration no.	
		Chassis no.	
3.	Buy Back Date		
4.	Buy Back Value		
5.	Date from which the Vehicle is available for Initial Inspection		
6.	Usage comparison	Anticipated Kilometre Usage	
		Actual Kilometre Usage	
7.	Credit/finance arrangements relating to the Vehicle	Institution	
		Outstanding amount	
8.	<p>If the Vehicle is in the condition stipulated in the Closed Buy Back Agreement, please sign the declaration below:</p> <p>I, the undersigned:</p> <p>Name:</p> <p>warranting that I am duly authorised to sign this declaration on behalf of:</p> <p>Customer name:</p> <p>Reg/ID no.:</p> <p>do hereby declare that the Vehicle is in the condition stipulated in the Closed Buy Back Agreement and it has –</p> <ul style="list-style-type: none"> • not been in an accident; • no concealed defects; • not been driven with alternative fuels; • not sustained any damage; • been used in accordance with the stipulated purpose; • not been used in such a way as to decrease its Buy Back Value. <p>DATE: _____</p> <p>SIGNATURE: _____</p> <p>WITNESSES: 1. _____ 1. _____</p>		

9.	If the Vehicle is NOT in the condition stipulated in the Closed Buy Back Agreement, please specify the defects below and attach all the relevant documentation hereto:

I/we the undersigned declare that, to the best of our knowledge, the information contained in this Buy Back Notice Form is true and correct.

Signed at _____ on ____ day of _____,
20____

_____	_____
NAME: _____	NAME: _____
CAPACITY: _____	CAPACITY: _____

WITNESSES:

1. _____	1. _____
2. _____	2. _____

ANNEXURE C – BUY BACK PROCESS

1. INITIAL INSPECTION

- 1.1. The Customer must make the Vehicle/s available for the Initial Inspection on the date and at the place and time specified by MAN in the Buy Back Notice.
- 1.2. The Evaluator will conduct the Initial Inspection of the Vehicle/s and record the condition thereof on the Checklist.
- 1.3. On the date of the Initial Inspection, the Customer must furnish MAN with a report on the condition of the Vehicle/s or written confirmation that the Vehicle is in the condition referred to in clause 6 above and **Annexure D** hereto and has –
 - 1.3.1.1. not been in any accident;
 - 1.3.1.2. no concealed defects;
 - 1.3.1.3. not been driven with alternative fuels;
 - 1.3.1.4. not sustained any damage; and
 - 1.3.1.5. not decreased in value as referred to in clause 6.1 of this Agreement.
- 1.4. The Customer must sign each completed Checklist to confirm that the Initial Inspection has been conducted.
- 1.5. A copy of the completed Checklist and a detailed statement of all the repairs that are necessary will be provided to the Customer by MAN within 72 (seventy two) hours of the completion of the Initial Inspection.
- 1.6. The Customer must effect all necessary repairs to the Vehicle/s, as specified in the Checklist, prior to the Buy Back Date.

2. FINAL INSPECTION

- 2.1. The Customer must, at the time stipulated by MAN on the Buy Back Date, deliver the Vehicle/s to the MAN Site.
- 2.2. The Evaluator will conduct the Final Inspection of the Vehicle/s and record the condition thereof on the Checklist.
- 2.3. If the Evaluator determines that the defects to the Vehicle/s have not been repaired and/or that any Vehicle/s is/are still not in the condition stipulated in this **Annexure D** MAN will, within 7 (seven) days, notify the Customer of its election in accordance with clause 6 of the Agreement.

3. DELIVERY REQUIREMENTS

The delivery of the Vehicle/s must be effected in such a manner that the Vehicle/s can immediately be licensed and registered for road use. In particular the Vehicle/s must be delivered to MAN together with –

- 3.1. all registration and current licence papers (current and valid for a period of not less than 30 (thirty) Business Days following delivery of the Vehicle/s to MAN);
- 3.2. a valid certificate of fitness, properly completed and signed; and
- 3.3. transfer of ownership forms together with all other documents relating to the Vehicle/s or to the transfer of the Vehicle/s into the name of MAN;
- 3.4. the Vehicle's keys and spare keys;
- 3.5. all service records, including the Service Book.

4. INVOICING AND PAYMENT

After the completion of the process as set out in this **Annexure C**, the Customer must issue an invoice to MAN for the Buy Back Price and MAN will pay out such invoice/s within 14 (fourteen) days of receipt of such invoice/s.

ANNEXURE D: BUY BACK CONDITION

1. GENERAL CONDITIONS

Each Vehicle must, as at the Buy Back Date, be –

- 1.1. in good order and condition, fair wear and tear excepted, taking into account its year of manufacture, its actual kilometre usage and the purpose for which the Vehicle was to have been used as described in Annexure D hereto;
- 1.2. free of any damage such as bending, compression, an advanced degree of rust or premature wear and tear of the vehicle due to the application of non-mineral or alternative fuels (excluding scratches and stains not requiring any repair);
- 1.3. free of cracks, breakages and defects;
- 1.4. compliant with all South African Road Safety and Road Transport Regulations; and
- 1.5. returned to MAN with all parts, including accessories which were part of the original content of the vehicle properly affixed to the vehicle and free of leaks and without any modification in respect of standard features.

2. CONDITION OF SPECIFIED VEHICLE COMPONENTS

2.1. Engine

- 2.1.1. Operating efficiently without excessive oil consumption or blow-by.
- 2.1.2. Cylinder compression and oil pressure to be within OEM specifications, fair wear and tear accepted.
- 2.1.3. No noises indicating excessive internal wear (bearings, pistons, etc.) and free from cracks and excessive oil leakages.
- 2.1.4. The Vehicle/s must be provided with oil and antifreeze in accordance with the Manufacturer's manual.

2.2. Injection System

- 2.2.1. Must have been maintained as per the Manufacturer's specifications, thus ensuring smooth engine running, free from knocking and excessive smoking, fair wear and tear accepted. No leakages.
- 2.2.2. If the Customer has signed a maintenance agreement with MAN in respect of the Vehicle/s, the Customer may elect to have certain maintenance or service performed, provided that the Customer retains all the risk of "non-service" repairs and maintenance.

- 2.2.3. Test: Full service history by an appropriately authorised service centre as recorded on MAN's system is acceptable.

2.3. Cooling System

- 2.3.1. Must be operating efficiently and free from leaks or circulation obstruction.
- 2.3.2. Cooling system to be fitted with genuine MAN parts.
- 2.3.3. Patched or welded repairs on cooling system not accepted.
- 2.3.4. Test: Cooling system pressure must hold 1.3 bar for 3 (three) minutes.

2.4. Transmission

The transmission must be fully functional in every gear with no oil leaks.

2.5. Chassis/Frame

- 2.5.1. Free from fractures, distortions and welded repairs.
- 2.5.2. Riveted and / or bolted members in tight condition.
- 2.5.3. Fifth wheel to be the same as original and fully functional.
- 2.5.4. Equipment such as hydraulics etc. fitted after delivery must be professionally removed and all parts removed or re-located due to such fitment must be re-fitted to the Manufacturer's specifications at time of delivery.

2.6. Suspension and Wheels

- 2.6.1. Springs and shock absorbers must be in full operating condition.
- 2.6.2. Anchoring points and shackles must be in COF condition and free from excessive play.
- 2.6.3. Wheel studs/bolts must be in good order.

2.7. Steering

Must be in COF condition and free from excessive looseness or stiffness, with no play in linkages.

2.8. Brakes

- 2.8.1. Must be operating efficiently to COF standards.
- 2.8.2. Brake pads and/or discs remaining wear less than 30% needs to be renewed.
- 2.8.3. Brake discs or drums free from cracks. NO oversized drums accepted.

2.9. Tyres

- 2.9.1. Must be of correct size, free from tears and wall fractures with a minimum tyre tread depth of 6mm on each tyre and no flat spots.
- 2.9.2. Tyres must all be from the same manufacturer.
- 2.9.3. No re-treaded tyres will be accepted.
- 2.9.4. Tyre patterns on all axles to be of the same tread pattern
- 2.9.5. Rims must be as per original specification i.e. aluminium if originally fitted.
- 2.9.6. Spare wheel to be at least 50% and same tread pattern as drive axles (No-re-threaded tyres accepted).

2.10. Electrical

- 2.10.1. Generator or alternator, starter, ignition, all wiring and control equipment, lighting, indicating and warning units, including battery to be operating efficiently in all weather conditions.
- 2.10.2. Odometer and tachograph to be free of any damages and manipulation and in working order.
- 2.10.3. All fault codes displayed on the onboard computer to be repaired and cleared
- 2.10.4. Door control modules to be fully functional
- 2.10.5. Sunroof to be fully functional
- 2.10.6. Batteries to be to Manufacture's specifications, type and be fully functional.
- 2.10.7. Standard MAN radio to be fitted
- 2.10.8. All lights to be fully functional and damage/crack free.

2.11. Appearance

- 2.11.1. Exterior of cab must be rust free, although fading of paintwork due to natural deterioration accepted. The paintwork must be free from any scratches and dents caused by whatsoever reason.
- 2.11.2. The windscreen must be free from cracks and chip marks.
- 2.11.3. The cabin trim must be free from tears and the doors, windows, etc. must be in good order and reasonably clean (inside and out).
- 2.11.4. Roof and Cab Wall linings must be intact and stain free.
- 2.11.5. Plastic and/or steel bumpers, steps and mudguards must be free from cracks and damage.
- 2.11.6. All mirrors must be fully functional and original MAN fitted parts. Mirror covers must be damage free.

- 2.11.7. The air vents and plastic inserts inside the cab must be free from damage and intact.
- 2.11.8. The air conditioner (if fitted) must be fully functional.
- 2.11.9. All door locks must be fully functional (lockable with same key as ignition).
- 2.11.10. The fuel tank(s) must be dent/ accident free. Patched fuel tanks will not be accepted.
- 2.11.11. Any corporate identity markings (signage) other than MAN must be professionally removed without damage to the Vehicle's paintwork. All glue residue to be removed. Where the paintwork faded due to corporate markings (signage) after removal, such panels or cab should be re-sprayed in order to remove all traces.
- 2.11.12. The Vehicle/s must be returned in the standard manufacturer's cab & chassis colours.

3. ONGOING SERVICE RECORDS

Service records to be kept up to date by the customer through the MAN branch/dealer or an authorised MAN Service Partner, for all mandatory services.

4. STANDARD VEHICLE WARRANTY

- 4.1.1. The existence of a warranty does not negate the Customer's responsibility to maintain and deliver the Vehicle/s to MAN in the requisite condition.
- 4.1.2. Where any of the items listed in this Annexure C are covered by the standard warranty conditions, it remains the Customer's responsibility to ensure that these items are repaired.
- 4.1.3. The Customer is referred to the standard MAN warranty conditions and, specifically, in relation to the provisions around the circumstances where certain items may be excluded.