**TRADE BACK AGREEMENT**

between

**MAN AUTOMOTIVE (SOUTH AFRICA) PROPRIETARY LIMITED**

**Registration number 1975/004250/07**

The Views, Founders Hill Office Park, 18 Centenary Way,

Founders Hill, Modderfontein

(“**MAN**”)

and

**Name:** XXXXXXXXX

**Registration Number: XXXXXXXXXXX**

**Address: XXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

(“**Customer**”)

(hereinafter jointly referred to as the “**Parties**”)

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PREAMBLE

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

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

**NOW THEREFORE** the Parties agree as follows:

1. INTERPRETATION
   1. In this Agreement,
      1. clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention ‑
      2. an expression which denotes –
         1. any gender includes the other genders;
         2. a natural person includes an artificial or juristic person and vice versa;
         3. the singular includes the plural and vice versa;
      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;
      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;
      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;
      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.
      7. the terms of this Agreement having been negotiated, the *contra proferentem* rule does not be apply in the interpretation of this Agreement.
   2. the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
      1. “**Agreement**” means this Closed Trade Back Agreement together with all of its Annexures, as amended from time to time;
      2. “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
      3. “**Trade Back Dates**” means the dates specified in **Annexure A** or any date thereafter on which the Customer presents the Trade Back Vehicle/s to MAN for the trade back;
      4. “**Trade Back Notice**” means a notice that must be issued by the Customer to MAN in accordance with clause 5.1 below;
      5. “**Trade Back Price**” means the actual price that is payable by MAN to the Customer for each Trade Back Vehicle, as determined by MAN after the applicable deductions and adjustments stipulated in this Agreement are applied;
      6. “**Trade Back Value**” means the anticipated value of each Trade Back Vehicle at the Trade Back Date, as stipulated in **Annexure D** hereto;
      7. “**Trade Back Vehicle/s**” means the vehicle/s that are subject to the trade back in terms of this Agreement, as specified in **Annexure A** hereto;
      8. “**MAN Site**” means the MAN premises at which the Customer must deliver the Trade Back Vehicle, being Click here to enter text.
      9. “**Over-utilisation**” means the distance by which the Actual Kilometre Usage of any Trade Back Vehicle/s exceeds the Anticipated Kilometre Usage;
      10. “**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;
      11. “**Purchase Price**” means the list selling price – as at the Trade Back Date – for the new MAN vehicle/s to be purchased by the Customer as part of the trade back transaction;
      12. “**Signature Date**” means the date of signature of this Agreement by the signatory which signs it last;
      13. “**Under-utilisation**” means the distance by which the Actual Kilometre Usage of any Trade Back Vehicle/s is below the Anticipated Kilometre Usage;
      14. “**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 11 below;
2. UNDERTAKINGS
   1. Subject to the provisions of this Agreement, MAN undertakes to trade back the Trade Back Vehicle/s from the Customer against the purchase by the Customer from MAN of new MAN vehicle/s of a model or models similar to the Trade Back Vehicle/s.
   2. MAN is not obliged to trade back any Trade Back Vehicle unless –
      1. such Trade Back Vehicle has a full service history record and it is in the condition stipulated in clause 6 below and **Annexure B** hereto; and
      2. the Customer purchases new MAN vehicle/s as stipulated in clause 2.1 above.
3. MAINTENANCE OF THE VEHICLE/S
   1. The Customer must ensure that each Trade Back Vehicle is properly serviced, repaired and maintained and the Customer keep a complete record of each Trade Back Vehicle’s service history and present it to MAN when the Trade Back Vehicle is presented for the trade back.
   2. All warranty work must be carried out through an MAN-authorised workshop so as to avoid the invalidation of applicable warranties and/or the ability to obtain extended warranties.
4. ACCIDENTS OR THEFT

MAN has no obligation to trade back any Trade Back Vehicle that is involved in an accident or is stolen or if the delivery of such Trade Back Vehicle to MAN becomes impossible for any other reason.

1. INITIATION OF THE TRADE BACK PROCESS
   1. The Trade Back process will commence upon receipt by MAN of the Trade Back Notice from the Customer at least 30 (thirty) days prior to each Trade Back Date, after which the delivery process as stipulated in **Annexure B** hereto must be followed.
   2. The Trade Back Notice must be in the format specified in **Annexure A** hereto and it must specify, *inter alia* –
      1. a date on which the Trade Back Vehicle/s will be available for inspection;
      2. an address at which the inspection must take place;
      3. a comparison of the Actual Kilometre Usage and the Anticipated Kilometre Usage for the Trade Back Vehicle/s;
      4. a report on the condition of the Trade Back Vehicle/s or written confirmation that the Trade Back Vehicle is in the condition referred to in clause 6 and **Annexure C** and has –
         1. not been in any accident;
         2. no concealed defects;
         3. not been driven with alternative fuels;
         4. not sustained any damage; and
         5. not decreased in value as referred to in clause 7.1 below.
      5. details of any credit agreement in respect of the Trade Back Vehicle and the outstanding amount/s owing in terms thereof.
2. PURCHASE OF THE NEW MAN VEHICLES
   1. The Purchase Price is payable by the Customer to MAN prior to the delivery of the new MAN vehicle/s to the Customer, unless otherwise agreed in writing at the time.
   2. In the event of a failure by the Customer to pay the purchase price, MAN is entitled to immediately cancel the trade back transaction and make the Trade Back Vehicle/s available for collection by the Customer at the Customer’s expense, without any obligation on MAN to pay the Trade Back Price.
   3. In the event of a dispute regarding the Purchase Price will be as certified by MAN's auditors whose decision will be final and binding.

* 1. If the Customer requires finance from a bank or other third party to acquire the new MAN vehicle/s in accordance with the provisions of clause 2.1 above, and be unable for whatever reason to obtain such finance, MAN is not obliged to trade back the Trade Back Vehicle/s which it would otherwise have traded in against the purchase of such new vehicles.
  2. In the event referred to in clause 6.4 above, it will be a material provision of the affected trade back transaction by MAN will be conditional on the customer obtaining the necessary finance to acquire the new MAN vehicle/s.

1. CONDITION OF THE VEHICLE/S
   1. The Trade Back Vehicle/s must, upon delivery thereof to MAN, be in the condition stipulated in **Annexure C** hereto.
   2. If the condition of any Trade Back Vehicle/s is otherwise than as described in **Annexure C** hereto, or if such Trade Back 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 –
      1. terminate the trade back of such Trade Back Vehicle/s entirely, in the event of which the provisions of clause 16 below will apply; or
      2. proceed with the trade back of such Trade Back Vehicle/s and deduct the cost of repairs to the Trade Back Vehicle/s, in addition to any other applicable deductions, from the Trade Back Price.
   3. If a dispute arises between the Parties regarding the application of this clause 7, the matter must be referred to an independent technical expert appointed by MAN, whose decision will be final and binding on the Parties.
2. DELIVERY OF VEHICLE/S
   1. Unless otherwise agreed to by MAN in writing, the Customer is not entitled to require MAN to trade back the Trade Back Vehicle/s on any date other than on the specific Trade Back Date relating to such Trade Back Vehicle/s.
   2. The Trade Back Vehicle/s must be delivered on or before the stipulated Trade Back Date to the MAN Site or to such other place advised by MAN in writing.
   3. MAN is not obliged to pay any amount to license or register the Trade Back Vehicle/s. In the event that MAN is required to pay any such amount, the amount so paid will be deducted from the Trade Back Price of the Trade Back Vehicle/s.
3. AUTHORISATION TO SELL OR HIRE-OUT DELIVERED VEHICLE/S

Notwithstanding that any Trade Back 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 Trade Back 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.

1. CREDIT AGREEMENTS IN RESPECT OF THE VEHICLE/S
   1. In the event that any Trade Back Vehicle is subject to a credit agreement between the Customer and any third party, MAN will not be obliged to trade back such Trade Back Vehicle –
      1. if the amount owing to the third party exceeds the Trade Back Value of the Trade Back Vehicle/s on the Trade Back Date; and
      2. unless MAN is satisfied, in its sole discretion, that it will be able to acquire unfettered ownership of such Trade Back Vehicle/s free of any encumbrance, credit agreement or claim by any third party.
   2. MAN is not obliged to settle any outstanding amount owing in terms of a credit agreement in respect of the Trade Back Vehicle/s. In the event that MAN is required to pay any such amount, the amount so paid will be deducted from the Trade Back Price of the Trade Back Vehicle/s.
2. ADJUSTMENTS FOR UNDER-UTILISATION OR OVER-UTLISATION
   1. If, on the Trade Back Date, there has been Under-utilisation of the Trade Back Vehicle/s, the Trade 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 Trade Back Price of the Trade Back Vehicle/s.
   2. If, on the Trade Back Date, there has been Over-utilisation of the Trade Back Vehicle/s, MAN is entitled to either –
      1. decline to trade back the Trade Back Vehicle/s in question; or
      2. trade back such Trade Back Vehicle/s on condition that the Trade Back Price is reduced in accordance with clause 0 below.

* 1. In the situation provided for in clause 11.2.2 above, the Trade Back Price of the affected Trade Back 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.
  2. If any dispute arises regarding the application of this clause 11, the matter will be referred for determination to MAN's external auditors whose decision will be final and binding on the Parties.

1. DETERMINATION OF THE TRADE BACK VALUE

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

* 1. the applicable percentage reduction for over-usage in terms of clause 0 above;
  2. any licence or registration fees that are paid by MAN, in accordance with clause 8.3 above;
  3. any outstanding amount owing in terms of a credit agreement in respect of the Trade Back Vehicle/s, which amount is settled by MAN; and
  4. any other amounts relating to a decrease in value of the Trade Back Vehicle/s for any reason, including where the Trade Back 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.

1. PAYMENT
   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 Trade Back Vehicle/s and the delivery thereof to MAN are fully complied with.
   2. The Trade Back Value of the Trade Back 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.
   3. MAN is not obliged to make any payment to the Customer in respect of any Trade Back Vehicle unless it is delivered to MAN in accordance with and subject to the provisions of clause 8 above.
   4. In the event that MAN has completed payment in respect of the trade back of any Trade Back Vehicle/s and the Customer thereafter fails to purchase a new MAN vehicle/s, MAN is entitled to claim repayment from the Customer on demand of any monies paid by MAN to the Customer and all other costs incurred by MAN in respect of such trade back.
2. INTEREST ON LATE PAYMENTS
   1. If any amount due to MAN is not paid to MAN on the due date for such amount, then –
      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;
      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 14.1, such interest (expressed as a percentage rate per annum) will be calculated on the basis of a 365‑day year and be compounded monthly in arrears.
   2. If the Customer is in default and this Agreement is subject to the NCA, MAN may -
      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;
      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 -
      3. it has given the Customer notice as referred to in clause 14.2.1 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;
      4. the Customer is and has been in default under this Agreement for at least 20 (twenty) business days;
      5. at least 10 (ten) business days have elapsed since MAN delivered the notice contemplated in clause 14.2.1 above; and
      6. in the case of a notice in terms of clause 14.2.1 above, the Customer has not responded to that notice; or responded to the notice by rejecting MAN's proposal.
   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 -
      1. suspending the delivery and provision of goods and services;
      2. demanding immediate payment of all outstanding amounts;
      3. terminating of this Agreement; and
      4. enforcing any security furnished in respect of the Agreement.
   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.
   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.
3. BREACH
   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 –
      1. claim specific performance in terms of this Agreement; or
      2. remedy the breach of the Defaulting Party; or
      3. cancel this Agreement forthwith without observing any further notice periods;
   2. In all instances stipulated in clause 15.1 above, the Aggrieved Party may recover damages from the Defaulting Party, including the fair and reasonable costs and expenses of remedying the breach.
4. TERMINATION
   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.
   2. Either Party may terminate this Agreement for cause where the other Party –
      1. becomes insolvent or files for bankruptcy, or has a petition of bankruptcy filed against it; or
      2. notwithstanding any of the above, immediately if the defaulting party fails to pay any of the charges pursuant to this Agreement.
      3. goes through a change in control as defined in this Agreement.
5. DOMICILIUM AND NOTICES
   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.
   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.
   3. Any notice given or payment made by a party to any other party ("addressee") which is -
      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;
      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.
   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 will 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.
   5. This clause 17 will 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 17.
   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.
6. ARBITRATION
   1. Aside from the specific dispute procedure and remedies provided for in clauses 7.3 and 11.4 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, must be submitted to arbitration in accordance with this clause 18 and the arbitration laws for the time being in force in the Republic of South Africa.
   2. The application of this clause 18 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.
   3. The arbitrator must –
      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;
      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 (“**AFSA**”) or its successor body; and
      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.
   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.
7. CESSION AND ASSIGNMENT
   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.
   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.
   3. In the event that a bank or other third party becomes the owner of any of the Trade Back 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.
   4. If the Customer fails to comply with the provisions of this clause 19.3 MAN will be entitled to terminate this Agreement.
8. GENERAL
   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.
   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.
   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.
   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 the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20 \_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES:

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20 \_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES:

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANNEXURE A – DETAILS OF THE TRADE BACK VEHICLES

ANNEXURE B – TRADE BACK NOTICE FORM

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **HEADING** | **DETAILS** | | | |
|  | Customer Name |  | | | |
|  | Trade Back Vehicle Details | Registration no. | |  | |
| Chassis no. | |  | |
|  | Trade Back Date |  | | | |
|  | Trade Back Value |  | | | |
|  | Date from which the Trade Back Vehicle is available for Initial Inspection |  | | | |
|  | Usage comparison | Anticipated Kilometre Usage | | |  |
| Actual Kilometre Usage | | |  |
|  | Credit/finance arrangements relating to the Trade Back Vehicle | Institution |  | | |
| Outstanding amount |  | | |
|  | If the Trade Back Vehicle is in the condition stipulated in the Closed Trade Back Agreement, please sign the declaration below: | | | | |
| I, the undersigned:  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  warranting that I am duly authorised to sign this declaration on behalf of:  Customer name:  Reg/ID no.:  do hereby declare that the Trade Back Vehicle is in the condition stipulated in the Closed Trade Back Agreement and it has –   * 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 Trade Back Value.   DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  WITNESSES: 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | |
|  | If the Trade Back Vehicle is NOT in the condition stipulated in the Closed Trade Back Agreement, please specify the defects below and attach all the relevant documentation hereto: | | | | |
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I/we the undersigned declare that, to the best of our knowledge, the information contained in this Trade Back Notice Form is true and correct.

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CAPACITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANNEXURE C – TRADE BACK PROCESS

1. **INITIAL INSPECTION**
   1. Within 5 (five) days of receiving the Trade Back Notice, MAN will provide the Customer with a date and place at which the Customer must deliver the Trade Back Vehicle/s for the first inspection (“**Initial Inspection**”).
   2. Upon delivery of the Trade Back Vehicle/s to MAN for the Initial Inspection, MAN will appoint an MAN evaluator (“**Evaluator**”) who will conduct the Initial Inspection of the Trade Back Vehicle/s and record the condition thereof on an MAN TopUsed Trade Back Vehicle Inspection Checklist (“**Checklist**”).
   3. The Customer must sign each completed Checklist to confirm that the First Inspection has been conducted. 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.
2. **REVIEW AND ELECTION BY MAN**
   1. MAN will review the Checklist and inform the Customer, within 7 (seven) days after the Initial Inspection, whether MAN has –
      1. approved the trade back unconditionally;
      2. rejected the trade back; or
      3. approved the trade back on condition that the Customer effects repairs of any cosmetic, structural and/or technical defects.
3. **FINAL INSPECTION**
   1. If MAN elects to conditionally approve the trade back in accordance with clause 2.1.3 above of this **Annexure C**, the Customer must immediately begin to effect the requisite repairs and report the status of the repairs to MAN within 14 (fourteen) days after MAN informs the Customer of MAN’s election.
   2. MAN will provide the Customer with a date and place at which the Customer must deliver the Trade Back Vehicle/s for the second inspection (“**Final Inspection**”).
   3. Upon delivery of the Trade Back Vehicle/s to MAN for the Final Inspection, MAN will appoint an Evaluator who will conduct the Final Inspection of the Trade Back Vehicle/s and record the condition thereof on the Checklist.
   4. If the Evaluator determines that the defects to the Trade Back Vehicle/s have not been repaired and/or that any Trade Back Vehicle/s is/are still not in the condition stipulated in clause 6 of this Agreement and Annexure C hereto, MAN will not trade back the Trade Back Vehicle/s.
   5. Subject to clause 7.3 of this Agreement, the Evaluator’s determination as to the condition of the Trade Back Vehicle/s is final.
4. **DELIVERY REQUIREMENTS**

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

* 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 Trade Back Vehicle/s to MAN);
  2. a valid certificate of fitness, properly completed and signed; and
  3. transfer of ownership forms together with all other documents relating to the Trade Back Vehicle/s or to the transfer of the Trade Back Vehicle/s into the name of MAN;
  4. the Trade Back Vehicle’s keys and spare keys;
  5. all service records, including the Service Book.

1. **INVOICING AND PAYMENT**

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

ANNEXURE D: TRADE BACK CONDITION

1. **GENERAL CONDITIONS**

Each Trade Back Vehicle must, upon delivery thereof to MAN for the purposes of a trade back –

* 1. be 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 Trade Back Vehicle was to have been used as described in Annexure D hereto;
  2. be 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);
  3. be free of cracks, breakages and defects;
  4. be compliant with South African Road safety and Road Transport Regulations; and
  5. be 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.

1. **CONDITION OF SPECIFIED VEHICLE COMPONENTS**
   1. Engine
      1. Operating efficiently without excessive oil consumption or blow-by.
      2. Cylinder compression and oil pressure to be within OEM specifications, fair wear and tear accepted.
      3. No noises indicating excessive internal wear (bearings, pistons, etc.) and free from cracks and excessive oil leakages.
      4. The Trade Back Vehicle/s must be provided with oil and antifreeze in accordance with the Manufacturer’s manual.
   2. Injection System
      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. If the Customer has signed a maintenance agreement with MAN in respect of the Trade Back 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.
      3. Test: Full service history by an appropriately authorised service centre as recorded on MAN’s system is acceptable.
   3. Cooling System
      1. Must be operating efficiently and free from leaks or circulation obstruction.
      2. Cooling system to be fitted with genuine MAN parts.
      3. Patched or welded repairs on cooling system not accepted.
      4. Test: Cooling system pressure must hold 1.3 bar for 3 (three) minutes.
   4. Transmission

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

* 1. Chassis/Frame
     1. Free from fractures, distortions and welded repairs.
     2. Riveted and / or bolted members in tight condition.
     3. Fifth wheel to be the same as original and fully functional.
     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. Suspension and Wheels
     1. Springs and shock absorbers must be in full operating condition.
     2. Anchoring points and shackles must be in COF condition and free from excessive play.
     3. Wheel studs/bolts must be in good order.
  3. Steering

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

* 1. Brakes
     1. Must be operating efficiently to COF standards.
     2. Brake pads and/or discs remaining wear to be more than 60% from new.
     3. Brake discs or drums free from cracks. NO oversized drums accepted.
  2. Tyres
     1. Must be of correct size, free from tears and wall fractures with a minimum 50% tyre tread depth on each tyre and no flat spots.
     2. Tyres must all be from the same manufacturer.
     3. No re-treaded tyres will be accepted.
     4. Tyre patterns on all axles to be of the same tread pattern
     5. Rims must be as per original specification i.e. aluminium if originally fitted.
     6. Spare wheel to be at least 50% and same tread pattern as drive axles (No-re‑threaded tyres accepted).
  3. Electrical
     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. Odometer and tachograph to be free of any damages and manipulation and in working order.
     3. All fault codes displayed on the on-board computer to be repaired and cleared
     4. Door control modules to be fully functional
     5. Sunroof to be fully functional
     6. Batteries to be to Manufacture’s specifications, type and be fully functional.
     7. Standard MAN radio to be fitted
     8. All lights to be fully functional and damage/crack free.
  4. Appearance
     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. The windscreen must be free from cracks and chip marks.
     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).
     4. Roof and Cab Wall linings must be intact and stain free.
     5. Plastic and/or steel bumpers, steps and mudguards must be free from cracks and damage.
     6. All mirrors must be fully functional and original MAN fitted parts. Mirror covers must be damage free.
     7. The air vents and plastic inserts inside the cab must be free from damage and intact.
     8. The air conditioner (if fitted) must be fully functional.
     9. All door locks must be fully functional (lockable with same key as ignition).
     10. The fuel tank(s) must be dent/ accident free. Patched fuel tanks will not be accepted.
     11. Any corporate identity markings (signage) other than MAN must be professionally removed without damage to the Trade Back 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.
     12. The Trade Back Vehicle/s must be returned in the standard manufacturer’s cab & chassis colours.

1. **ON-GOING 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.

1. **STANDARD VEHICLE WARRANTY**
   * 1. The existence of a warranty does not negate the Customer’s responsibility to maintain and deliver the Trade Back Vehicle/s to MAN in the requisite condition.
     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.
     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.