**VEHICLE RENTAL AGREEMENT**

entered into by and between

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

**Registration No.: 1975/004250/07**

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

(“**MAN**”)

and

**[INSERT CUSTOMER NAME]**

**Registration No.: [INSERT]**

[INSERT CUSTOMER ADDRESS]

(“**Customer**”)

# **CONTENTS**

[1. DEFINITIONS 3](#_Toc493835873)

[2. INTRODUCTION 4](#_Toc493835874)

[3. WARRANTIES BY THE CUSTOMER 5](#_Toc493835875)

[4. OWNERSHIP, POSSESSION AND RISK 5](#_Toc493835876)

[5. RENTAL PAYMENTS 6](#_Toc493835877)

[6. LICENSING COSTS 6](#_Toc493835878)

[7. FINES AND TOLL FEES 6](#_Toc493835879)

[8. OPERATION AND USE OF THE RENTAL VEHICLES 7](#_Toc493835880)

[9. RETURN OF THE RENTAL VEHICLES 7](#_Toc493835881)

[10. INSURANCE 8](#_Toc493835882)

[11. INTEREST ON LATE PAYMENTS 8](#_Toc493835883)

[12. PERSONAL INFORMATION 10](#_Toc493835884)

[13. INDEMNITY 11](#_Toc493835885)

[14. BREACH AND TERMINATION 11](#_Toc493835886)

[15. *DOMICILIUM CITANDI ET EXECUTANDI* 13](#_Toc493835887)

[16. GENERAL 14](#_Toc493835888)

# **DEFINITIONS**

* 1. In this Agreement, unless the context indicates differently –
     1. “**Agreement**" means these terms and conditions, including any annexures attached hereto and all notices that MAN sends to the Customer;
     2. “**Business Day**” means any day except for a Saturday, Sunday or South African public holiday;
     3. “**Due Date**” means the date on which any payment is due from the Customer to MAN as specified in an invoice to be issued by MAN;
     4. “**Effective Date**” means **[INSERT DATE]** being the date on which the rentals will take effect;
     5. “**eNaTIS System**” means the electronic national administration traffic information system;
     6. “**Personal Information**” means information relating to an identifiable, living, or existing natural person, and where it is applicable an identifiable, existing juristic person, including, but not limited to-
        1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
        2. information relating to the education or the medical, financial, criminal or employment history of the person;
        3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
        4. the biometric information of the person;
        5. the personal opinions, views or preferences of the person;
        6. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
        7. the views or opinions of another individual about the person; and
        8. the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person;
     7. “**Prime Rate**” means the variable interest rate quoted from time to time by The South African Reserve Bank as its prime rate, as certified by any of its managers, whose appointment and designation need not be proved;
     8. “**Process/Processing**” means 'processing' means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including –
        1. the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
        2. dissemination by means of transmission, distribution or making available in any other form; or
        3. merging, linking, as well as restriction, degradation, erasure or destruction of information;
     9. “**Release note and Acknowledgment of Delivery**” means the authorisation which the Customer signs acknowledging that the Customer has received the Rental Vehicle in good order and condition;
     10. “**Rental Period**” means the period from the Effective Date until, in respect of each Rental Vehicle, such date when MAN delivers a new vehicle to the Customer to replace that Rental Vehicle;
     11. “**Rental Vehicle/s**” means thevehicle/s described in **Annexure A** hereto;
     12. “**VAT**” means value-added tax chargeable under the Value-Added Tax Act 89 of 1991;
  2. the headings of the various clauses in this Agreement have been inserted purely for the purpose of convenience and they will not be used to interpret the Agreement;
  3. any reference to a gender includes the other genders; and
  4. the singular includes the plural and vice versa (the other way around).

# **INTRODUCTION**

MAN undertakes to rent the Rental Vehicles to the Customer and the Customer undertakes to lease the Rental Vehicles from MAN for the Rental Period, subject to the terms and conditions of this Agreement.

# **WARRANTIES BY THE CUSTOMER**

* 1. By signing this Agreement, the Customer warrants that –
     1. it has full capacity to effect and carry out is obligations under this Agreement, and that it has obtained all approvals, authorisations and consents that may be required to enter into this Agreement;
     2. all the information that the Customer has provided to MAN in connection with this Agreement is in all aspects true, complete, current and accurate;
     3. it has inspected the Rental Vehicles and they are not defective in any way and are suitable for the purposes for which the Customer requires them;
     4. its asset value or annual turnover, at the time of entering into this Agreement, equals or exceeds R2,000,000 (two million rands), as calculated in accordance with South African generally accepted accounting standards; and
     5. it will rent the Rental Vehicles for the entire Rental Period.

# **OWNERSHIP, POSSESSION AND RISK**

* 1. Ownership of the Rental Vehicles will remain vested with MAN at all times.
  2. The Customer will sign a Release Note and Acknowledgment of Delivery on or before the Effective Date.
  3. All risk in and to the Rental Vehicles will remain with the Customer at all times during the Rental Period.

# **RENTAL PAYMENTS**

* 1. The rental fee payable by the Customer to MAN is **[INSERT AMOUNT]** per vehicle per month (excluding VAT).
  2. The Customer must pay the rental fee monthly in advance and all other amounts due in terms of this Agreement on the Due Dates stipulated on the invoices issued by MAN.
  3. If this Agreement is terminated by MAN and the Customer disputes such termination whilst remaining in possession of any Rental Vehicle/s, the Customer must continue to pay all amounts due in respect of such Rental Vehicle/s. MAN's acceptance of such payments will not detract from any of its rights of recourse in terms of this Agreement and in law.
  4. In the event of the Customer failing to pay any amount payable by it to MAN on a Due Date, then notwithstanding any other remedies available to MAN in such event in terms of this Agreement or at law, such overdue payment will bear interest in accordance with the provisions of clause 11 below.

# **LICENSING COSTS**

MAN will pay for the licensing of the Rental Vehicles, subject to the proviso that, at the end of the Rental Period, MAN will invoice the Customer for the *pro rata* cost of licensing the Rental Vehicle based on the duration of the Rental Period for such Rental Vehicle.

# **FINES AND TOLL FEES**

* 1. The Customer must nominate a designated person who will be responsible for the administration of all fines and toll fees incurred against the vehicle during the Rental Period.
  2. MAN will transfer all fines and toll fees incurred during the Rental Period to the designated person, and the Customer must pay for all such fines on demand either to MAN or to the relevant Road Traffic Management Office.
  3. All transportation permits required and the costs in respect thereof during the Rental Period remain the responsibility of the Customer. If the Rental Vehicle is impounded for any reason by any authority, the Customer must ensure the expeditious release thereof back to MAN.

# **OPERATION AND USE OF THE RENTAL VEHICLES**

* 1. The Customer must –
     1. use the Rental Vehicles only for the purpose for which the Rental Vehicles are designed and in accordance with this Agreement;
     2. not allow any unqualified or unlicensed operator to use the Rental Vehicle. The Rental Vehicles must be used exclusively by the Customer and its employees and/or contractors;
     3. ensure that the Rental Vehicles remain in the Customer's possession or control at all times and that the Customer informs MAN in writing on the signature date of this Agreement of the address where the Rental Vehicle is primarily kept;
     4. not modify the Rental Vehicles without MAN's prior written approval if the Customer adds any accessory to the Rental Vehicles, it will become part of the Rental Vehicles and MAN will not compensate the Customer for this;
     5. not allow the Rental Vehicles to become subject to any attachment, lien, hypothec or any legal claim;
     6. not use the Rental Vehicles or allow the Rental Vehicles to be used in an illegal manner or for an illegal purpose, in a manner which may invalidate any claim under an insurance policy in respect of the Rental Vehicle, to transport persons or Rental Vehicle for reward, or for any form of motor sport or other dangerous activity; and
     7. ensure that the Rental Vehicles are delivered to an MAN-approved workshop for the necessary servicing at the specified service intervals and/or for necessary repairs .

# **RETURN OF THE RENTAL VEHICLES**

* 1. The Customer must return the Rental Vehicles to MAN at the end of the Rental Period or upon termination of this Agreement for any reason on a date and to an address stipulated by MAN in writing.
  2. If the Customer fails to return such Rental Vehicle on the due date, the Customer will be liable for rental payments at a rate of **[INSERT AMOUNT]** per day or part thereof, excluding VAT.
  3. The Customer must ensure that the Vehicles are in the condition as stipulated in **Annexure B** hereto, failing which MAN will invoice the Customer for the cost of bringing the Vehicles to the requisite condition.

# **INSURANCE**

* 1. The Customer must –
     1. take out Comprehensive Insurance cover that covers against third parties and public liability at its own cost and keep the Rental Vehicles insured against all loss or damage for the duration of the Rental Period;
     2. ensure that all premiums due under the insurance policy are at all times paid in full on their due date and that the policy does not lapse at any time during the term of this Agreement;
     3. inform MAN immediately in writing if the insurance policy lapses for any reason; and
     4. note MAN’s interest in the Rental Vehicles as part of the insurance policy.
  2. If the Customer does not comply with its obligations in terms of this clause 10, MAN will be entitled to insure the Rental Vehicles and/or to pay the premiums on the Customer's behalf provided that MAN will be entitled to recover the costs thereof from the Customer.
  3. In the event of an insurer rejecting the Customer's claim for any reason the Customer will be liable to MAN of repairing or replacing the lost/damaged Rental Vehicle/s.

# **INTEREST ON LATE PAYMENTS**

* 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 –
     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 11.1, such interest (expressed as a percentage rate per annum) will be calculated on the basis of a 365‑day year and will 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 11.2.1 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; and
     5. at least 10 (ten) business days have elapsed since the MAN delivered the notice contemplated in clause 11.2.1; and
     6. in the case of a notice in terms of clause 11.2.1, 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 that such amount is due, owing and payable by the Customer, will be *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 is not necessary to prove the appointment of the person signing the certificate.

# **PERSONAL INFORMATION**

* 1. The Customer agrees that MAN may make enquiries to confirm and verify any information provided by the Customer.

* 1. The Customer acknowledges and expressly consents that MAN and/or its authorised employees, agents and/or sub-contractors may –
     1. Process the Personal Information of the Customer for purposes of this Agreement and complying with the instructions of the Customer;
     2. Process the Customer's Personal Information for purposes of the prevention and detection of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities;
     3. process and report on the Personal Information of the Customer to comply with an obligation imposed by applicable laws on MAN; and
     4. use the personal information for Customer satisfaction surveys conducted by MAN and/or its appointed agents.
  2. The Customer has the right to access its Personal Information held by MAN. MAN will grant the Customer such access during office hours within a reasonable time after receiving a written request for access.
  3. In the event of a change in the Customer’s Personal Information, the Customer must notify MAN of such changes as soon as is reasonably possible.
  4. The Customer undertakes to obtain the consent of its employees and or such other individuals whose personal information may have to be processed by MAN on the same grounds as those stated in clause 12.2 above

# **INDEMNITY**

* 1. To the extent permissible in law and without prejudice to any of the rights of MAN at law or in terms of any other provision of this Agreement, the Customer indemnifies MAN and undertakes to hold MAN harmless against any loss, damage, legal liability, expenses, legal costs (including costs on an attorney and client scale) or expenses of whatever nature MAN may suffer or become liable for alleged to arise or arising from –
     1. the use of the Rental Vehicle by the Customer, its employees, agents or contractors;
     2. the failure by the Customer and its employees, agents or contractors to comply with its obligations, undertakings and warranties under this Agreement;
     3. the failure by the Customer and its employees, agents or contractors to comply with applicable laws;
     4. toll fees and fines incurred by the Customer and its employees, agents or contractors;
     5. any negligent or fraudulent act or omission of the Customer, its employees, agents or contractors, save to the extent that any such claim arose by virtue of MAN acting in breach of its obligations under this Agreement.
  2. Notwithstanding anything to the contrary contained in this Agreement MAN will not be liable to the Customer for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

# **BREACH AND TERMINATION**

* 1. The Customer will be in default of this Agreement if –
     1. the Customer does not make payment of any rental amount on the Due Date;
     2. the Customer breaches any other provision of this Agreement and fails to remedy such breach within 14 (fourteen) days of receiving written notice from MAN Party requiring such remedy;
     3. any representation or warranty made in connection with this Agreement or any other document supplied by the Customer is materially incorrect or false;
     4. the Customer –
        1. is wound up, liquidated, dissolved or deregistered in any event whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;
        2. is deemed to be unable to pay its debts;
        3. resolves that it voluntarily begin business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated in section 132(1) of the Companies Act 71 of 2008;
        4. has a judgment of a competent court against such Party for the attachment of assets or for payment of any amount is not satisfied for more than 7 (seven) days after the date on which it is issued; or
        5. compromises or attempts to compromise with the Customer's creditors generally or defer payment of debts owing by the Customer to the Customer's creditors.
  2. MAN will be entitled, in the case of default by the Customer, without prejudice to its other rights in terms of this Agreement or at law, to –
     1. cancel this Agreement and demand the return of the Rental Vehicles or activate the remote engine cut-out system;
     2. claim immediate payment of all amounts payable in terms of this Agreement, irrespective of whether or not such amounts are due at that time; and
     3. retain all payments already made in terms hereof, and recover payment of such damages as it will be entitled to in the circumstances
  3. The Customer will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Customer owes to MAN.
  4. A certificate signed by a director, company secretary, credit manager or internal accountant of MAN Party, specifying the amount owing by the Customer and further stating that such amount is due, owing and payable by the Customer, will 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 will not be necessary to prove the appointment of the person signing any such certificate.

# ***DOMICILIUM CITANDI ET EXECUTANDI***

* 1. The parties choose as their respective *domicilium citandi et executandi* (“*Domicilium*”) 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 recorded on the front page of this Agreement.
  2. Either party will be 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).
  3. Unless the contrary is proved, all notices given in terms of this Agreement will be in writing and any notice given by any party to the other ("the addressee") which‑
     1. is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee *Domicilium* will be deemed to have been received by the addressee at the time of delivery; and
     2. if sent by prepaid registered post to its postal address for the time being, will be deemed to have been received by the addressee on the 7th(seventh) Business day after the date of posting thereof; and
  4. This clause 15 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 clause15.
  5. Any notice in terms of or in connection with this Agreement will be valid and effective only if in writing and if received or deemed to be received by the addressee.

# **GENERAL**

* 1. This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. The Parties are not 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.
  2. If any provision of the Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of the Agreement will not be affected thereby.
  3. No addition to, variation, novation or agreed cancellation of any provision of this Agreement will be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
  4. No waiver, indulgence or extension of time which either party ("Grantor") may grant to the other, nor any delay or failure by the Grantor to enforce, whether completely or partially, any of its rights, 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.
  5. Save as expressly provided in this Agreement, neither party will be entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, this Agreement to any third party without the prior written consent of the other party.
  6. No consent or approval in terms of or in connection with this Agreement will be valid or effective unless in writing and signed by or on behalf of the party giving such consent or approval.
  7. For the purposes of this Agreement‑
     1. no data message, as defined in the Electronic Communications and Transactions Act No25 of2002 (“**ECTA**”) other than an e-mail constitutes writing; and
     2. no electronic signature or advanced electronic signature, as defined in ECTA, will constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any consent or approval in terms of this Agreement.
  8. This Agreement is binding on the Parties’ successors‑in‑title.

***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 [INSERT CUSTOMER NAME], 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_