

STRICTLY CONFIDENTIAL



## Claims Purchase Agreement

between

**TRANSPORTES GAZTELU SA**, NIF: A31066129,  
POLIGONO MOREA SUR 44, BERIAIN-NAVARRA, Spain,  
represented by its ADMINISTRADOR, MIGUEL ANGEL BARBARIN LARRIPA

– hereinafter: 'COMPANY' –

and

**Retail Cartel Damage Claims Société Anonyme**, R.C.S. Luxembourg B 190719,  
24, Bohey, L-9647 Doncols, LUXEMBOURG,  
represented by Dr. Ulrich Classen, acting under the special power of attorney granted  
by Retail Cartel Damage Claims Société Anonyme on 27 June 2017

– hereinafter: 'CDC' –

## Preamble

By decision of 19 July 2016 in Case COM 39824 – *Trucks* (as published in a provisional non-confidential version on the European Commission's website on 6 April 2017) the European Commission established that the trucks manufacturers MAN, Volvo/Renault, Daimler, Iveco and DAF from 1997 until 2011 participated in anticompetitive agreements and practices relating to the coordination of prices at gross list level in particular for medium and heavy duty trucks as well as the timing for the introduction of emission reduction technologies and the passing on of the costs for such technologies to customers. In view of this competition law infringement the Commission has imposed on the cartel participants – with the exception of Scania – fines of EUR 2.93 billion. Its decision in the meantime has become binding. Scania is not covered by this decision, and the cartel investigation will continue against Scania.

COMPANY respectively its predecessors has/have purchased medium and/or heavy duty trucks from different manufacturers during the infringement period found by the Commission and subsequent period and intend(s) to pursue damage claims caused by the cartel. However, a company affected by the cartel faces practical difficulties when quantifying cartel damages and enforcing potential damage claims on an individual basis. Against this background, COMPANY wishes to sell and assign its damage claims to CDC.

The parties agree as follows:

## 1. Definitions

1.1. 'AGREEMENT' shall mean this Agreement together with its Annexes as they are or will be explicitly concluded thereto and entered into by the PARTIES.

1.2. 'PARTY' respectively 'PARTIES' shall mean the party respectively parties to this AGREEMENT, COMPANY (and)/or CDC, including their respective successors and predecessors.

1.3. 'THIRD PARTY' respectively 'THIRD PARTIES' shall mean any natural or legal person or non-incorporated company which is not PARTY to this AGREEMENT. Not considered as THIRD PARTIES are AFFILIATED COMPANIES of CDC and/or its personnel.

1.4. 'AFFILIATED COMPANY' respectively 'AFFILIATED COMPANIES' shall mean any natural or legal person or non-incorporated company which is affiliated to (one of) the PARTIES. A person or non-incorporated company is considered as affiliated when, within the meaning of the EU Merger Control Regulation, (i) it controls one of the PARTIES, (ii) it is under the control of a person or non-incorporated company

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who/which is controlling one of the PARTIES, (iii) it is controlled by one of the PARTIES or (iv) it is under joint control of one of the PARTIES. For the purpose of this AGREEMENT, CDC Consulting SCRL, Avenue Louise 475, 1050 Brussels, BELGIUM, shall be regarded as AFFILIATED COMPANY of CDC.

1.5. 'CARTEL' shall mean all anticompetitive agreements and practices which were or are subject or consequence of the infringement of European competition law (in particular Art. 101 TFEU, ex-Art. 81/85 EC, Art. 53 EEA and/or the corresponding provisions of agreements establishing an association between the European Communities, their Member states and future Member States, 'Europe Agreements') and/or national competition law by trucks manufacturers as found by the European Commission in its decision of 19 July 2016 in Case COM 39824 – *Trucks* (as published in a provisional non-confidential version on the Commission's website on 6 April 2017) and as will be found by the European Commission in Case COM 39824 – *Trucks*. The term 'CARTEL' includes all such agreements and practices established in the binding decision of the European Commission of 19 July 2016 as well as all such agreements and practices that will be established in a decision of the European Commission in Case COM 39824 – *Trucks* against companies of the Scania group, without having regard to how these agreements or practices can or must be legally distinguished or combined.

1.6. 'CARTEL PARTICIPANTS' shall mean all natural and/or legal persons and/or non-incorporated companies which themselves and/or whose personnel and/or organs and/or their affiliated companies contributed through active behaviour or failure to act, though there was or is a legal duty to act, to the infringement pursuant to provision 1.5., or those to which such infringement can be attributed including, but not limited to the addressees of the European Commission's decision in Case COM 39824 – *Trucks* MAN SE, Munich, MAN Truck & Bus AG, Munich, MAN Truck and Bus Deutschland GmbH, Munich, AB Volvo (publ), Gothenburg, Volvo Lastvagnar AB, Gothenburg, Volvo Group Trucks Central Europe GmbH, Ismaning, Renault Trucks SAS, Saint Priest, Daimler AG, Stuttgart, Fiat Chrysler Automobiles N.V., Amsterdam/London, Iveco Magirus AG, Ulm, Iveco S.p.A., Turin, CNH Industrial N.V., Amsterdam/London, DAF Trucks N.V., Eindhoven, DAF Trucks Deutschland GmbH, Frechen, PACCAR Inc., Bellevue (see Art. 4 of the provisional non-confidential version of the decision in Case COM 39824 – *Trucks* published on the Commission's website on 6 April 2017). Also considered as CARTEL PARTICIPANTS are all natural and/or legal persons and non-incorporated companies of the Scania group who/which have contributed through active behavior or failure to act, though there was or is a legal duty to act, to the




infringement pursuant to provision 1.5., or those to which such infringement can be attributed.

1.7. 'INFRINGEMENT PERIOD' shall mean the time period of the CARTEL infringement as found by the European Commission, i.e. according to its decision (see Art. 1 of the provisional non-confidential version of the decision in Case COM 39824 – *Trucks* published on the Commission's website on 6 April 2017) from January 1997 to January 2011.

1.8. 'DAMAGE PERIOD' shall mean the period in which the CARTEL resulted in quantifiable damages. This period is not limited to the INFRINGEMENT PERIOD.

1.9. 'DAMAGE CLAIMS' shall mean any and all forms and manners of damage claims against CARTEL PARTICIPANTS resulting from the CARTEL and/or relating to damages caused by the CARTEL, related to the supply of TRUCKS (in particular purchase, leasing and renting) and/or the operation of TRUCKS in the DAMAGE PERIOD, including, but not limited to price overcharges for TRUCKS (including damages from lingering effects and from umbrella effects of the CARTEL), additional costs for motor fuel and operating fluids, higher financing costs, higher expenses for taxes and royalties, road charges and tolls, loss of profit, interest which has already accrued or in the future will accrue. Encompassed are also respective unjust enrichment claims, including interest, as well as all accessory rights (e.g. claims on access to information).

1.10. 'DEED OF TRANSFER' shall mean the deed of transfer (within the meaning of Article 3:94 Dutch Civil Code) that pursuant to Provision 2 of this AGREEMENT shall be concluded in a separate document between COMPANY and CDC regarding the assignment and the transfer of the entitlement to the DAMAGE CLAIMS from COMPANY to CDC.

1.11. 'TRUCK' respectively 'TRUCKS' shall mean any truck respectively all trucks as found by the European Commission to have been concerned by the CARTEL, in particular medium duty trucks (weighing between 6 and 16 tons) and heavy duty trucks (weighing over 16 tons).

1.12. 'ECONOMIC DAMAGE ANALYSIS' respectively 'ANALYSIS' shall mean the analysis that CDC together with external experts will conduct on the damages, in particular, but not limited to price overcharges for TRUCKS (including damages from lingering effects and from umbrella effects of the CARTEL), additional costs for motor fuel and operating fluids, higher financing costs, higher expenses for taxes and royalties, road charges and tolls, loss of profit, interest which has already accrued or in the future will accrue, caused by the CARTEL to ASSIGNORS.

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1.13. 'SETTLEMENT' shall mean any and all manners of agreements between CDC and one and/or several CARTEL PARTICIPANT/S by which DAMAGE CLAIMS will be settled and not further pursued.

1.14. 'PROCEEDS OF THE CASE' shall mean all financial advantages, in particular damages and interest, that can be expressed in monetary terms and that were effectively and bindingly transferred to CDC as a result of the enforcement of the DAMAGE CLAIMS assigned by various ASSIGNORS to CDC in and/or out-of court, minus reasonable external costs and expenses of CDC. These costs and expenses include in particular documented external costs and expenses of the claims enforcement (e.g. lawyers, court fees), damage quantification (e.g. external economists, experts) and costs which CDC may incur in relation to the funding of the reasonable external costs. However, the total amount deducted as any such costs and expenses shall not exceed 5% (in words: five percent) of the total amount of said financial advantages.

1.15. 'ASSIGNORS' shall mean all natural and/or legal persons as well as non-incorporated companies, including COMPANY, which have sold, assigned and transferred or will sell, assign and transfer DAMAGE CLAIMS to CDC.

1.16. 'INFORMATION' shall mean any information and/or data which has been or will be provided by CDC and/or its AFFILIATED COMPANIES and/or its personnel to COMPANY, as well as any information and/or data which has been or will be provided by COMPANY and/or its AFFILIATED COMPANIES and/or its personnel to CDC, AFFILIATED COMPANIES of CDC and/or THIRD PARTIES mandated by CDC, regardless of whether such information and/or data exists in electronic or non-electronic form, and irrespective of the way such information and/or data has been or will be provided. INFORMATION in particular includes, without being limited to, company-specific information and/or data of a commercial, financial, legal or technical nature, as well as agreements with THIRD PARTIES. INFORMATION also includes information on the business model, facts, know-how, IT-tools, purchase prices, leasing rates, rebates, supplied volumes and units, costs, capacities and turnover, together with information on suppliers and customers.

## **Part I**

### **Purchase of Damage Claims**

#### **2. Claims Purchase**

2.1. COMPANY hereby agrees to fully and finally sell, assign and transfer to CDC any and all DAMAGE CLAIMS that COMPANY has or will have in its own right or as a



legal successor.

2.2. CDC hereby agrees to fully and finally purchase from COMPANY any and all DAMAGE CLAIMS that COMPANY has or will have in its own right or as a legal successor.

2.3. The PARTIES will execute the obligations set forth under Provisions 2.1. and 2.2. in a separate DEED OF TRANSFER. As from the date of the signature of COMPANY under the DEED OF TRANSFER CDC has the exclusive authority to notify (within the meaning of Article 3:94 subsection 1 Dutch Civil Code) the CARTEL PARTICIPANTS of this transfer and/or to present the AGREEMENT and DEED OF TRANSFER for registration within the meaning of Article 3:94 subsection 3 Dutch Civil Code, under which the entitlement to the DAMAGE CLAIMS will pass from COMPANY to CDC.

2.4. CDC agrees to pay to COMPANY for the DAMAGE CLAIMS referred to in Provision 2.1. and 2.2. a purchase price in accordance with Provision 3.

### **3. Purchase Price**

3.1. The purchase price for the DAMAGE CLAIMS shall consist of a fixed part, a part in relation to documented TRUCKS, and a variable part.

- (i) CDC will pay to COMPANY a fixed part of the purchase price of 200 EUR (in words: Euro), within one month after the conclusion of this AGREEMENT. The fixed part of the purchase price covers all DAMAGE CLAIMS sold, assigned, and transferred to CDC in accordance with Provision 2.
- (ii) The part of the purchase price in relation to documented TRUCKS shall amount to 100 EUR (in words: one hundred Euro) per new TRUCK purchased by COMPANY and 50 EUR (in words: fifty Euro) per new TRUCK leased by COMPANY in the INFRINGEMENT PERIOD. The payment of the part of the purchase price in relation to documented TRUCKS is due within 14 days after COMPANY has informed CDC in written form of the number of TRUCKS purchased or supplied in that period and after COMPANY has adequately documented to CDC such purchases or leasing.
- (iii) The variable part of the purchase price will be due only under the condition that CDC realises PROCEEDS OF THE CASE. The variable part of the purchase price shall be the amount calculated as follows: The part of the PROCEEDS OF THE CASE that is allocated to COMPANY according to Provision 10.1. is multiplied by 0.7 (in words: zero point seven). From that 2.5. (in words: two-and-a-half) times the total amount paid under 3.1.(ii) is deducted. The remaining is

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the variable purchase price.

**Annex I** to this AGREEMENT sets out an example showing the allocation of the PROCEEDS OF THE CASE and the calculation of the variable part of the purchase price. The payment of the variable purchase price takes place pursuant to Provision 11.

3.2. Within seven days of conclusion of this AGREEMENT, COMPANY shall inform CDC of a bank account onto which all payments by CDC shall be made. COMPANY will inform CDC without undue delay if this bank account changes.

#### **4. Value Added Tax**

The sale of DAMAGE CLAIMS from COMPANY to CDC and their acquisition by CDC in the opinion of the PARTIES does not constitute a transaction within the meaning of value added tax. Should there exist, against the PARTIES' expectations, a payment within the meaning of value added tax, the tax liability lies with the beneficiary who has to declare the payment as value added tax in the reversed charge procedure. In this case, the performers of a payment are obliged to issue invoices without value added tax while pointing to the tax liability of the beneficiary.

### **Part II**

#### **Data collection and Economic Damage Analysis**

#### **5. Rights and Obligations of CDC**

5.1. CDC will, immediately after the conclusion of this AGREEMENT, take appropriate measures to allow for the quantification of DAMAGE CLAIMS in relation to COMPANY, taking specifically into account the information which shall and/or which already has been provided to CDC pursuant to Provision 6.1. These measures include in particular:

- (i) Identification and communication to COMPANY of relevant key parameters for the data collection and the variables required for the further quantification and enforcement of the DAMAGE CLAIMS as deemed suitable by CDC,
- (ii) Configuration and adaption of CDC's already existing IT-infrastructure and continuation of programming of the TRUCKS-case specific database,
- (iii) Data collection and its coordination with COMPANY and other ASSIGNORS,
- (iv) Data conversion and data harmonization, including data provided by COMPANY.

5.2. CDC will, on the basis of INFORMATION provided by COMPANY and other

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ASSIGNORS, undertake a well-founded ANALYSIS of damages caused by the CARTEL in relation to COMPANY.

5.3. CDC will inform COMPANY of the general findings of the ECONOMIC DAMAGE ANALYSIS in a summarized and written form. CDC will likewise inform other ASSIGNORS. Equally, CDC will notify COMPANY of the damages caused by the CARTEL in relation to COMPANY as found by CDC. CDC will keep COMPANY informed about all subsequent major developments in and of the ECONOMIC DAMAGE ANALYSIS which might evolve taking into account further relevant data and/or information available to and/or received by CDC.

5.4. The PARTIES presume that CDC in the ANALYSIS will come to the conclusion that there exist sufficient chances to demonstrate quantifiable, CARTEL-related damages. CDC, therefore, intends to initiate and to conduct measures to enforce the DAMAGE CLAIMS according to Provision 7, where deemed appropriate by CDC even before the completion of the ANALYSIS.

Should CDC, contrary to the PARTIES' expectations, come to the conclusion that the chances of successfully demonstrating quantifiable, CARTEL-related damages are not sufficient, COMPANY will be entitled to repurchase the claims at the price referred to in Provision 3.1. In this case CDC shall inform COMPANY of the reasons for such conclusion in writing.

5.5. In the data collection and damage analysis CDC will rely on the services of CDC Consulting SCRL, Avenue Louise 475, 1050 Brussels, BELGIUM, and VAT Services S.L., C/ José Abascal 57, 28003 Madrid, SPAIN. Equally, CDC will involve external economists and other experts who CDC deems suitable for the preparation of the ANALYSIS.

## **6. Rights and Obligations of COMPANY**

6.1. COMPANY will provide CDC with all INFORMATION that CDC identifies as relevant for the investigation and quantification of damages caused by the CARTEL, which are COMPANY-internally available and/or accessible with reasonable effort.

This includes, in particular, INFORMATION on the supply of TRUCKS (purchase or leasing or renting) to COMPANY and the operation of TRUCKS by COMPANY and/or its predecessors in the time period from 1 January 1995 to 31 December 2016, specifically, INFORMATION relating to:

- (i) the number of TRUCKS supplied and the date of TRUCKS' supplies (purchase or leasing or renting) with details on the respective manufacturer, type and

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configuration, as well as e.g. cancellations or supply transactions which retroactively change the total quantity of TRUCKS supplied in one year,

- (ii) the purchase price or the lease rate or the rental price for TRUCKS supplied with details on the respective manufacturer, type and configuration, as well as e.g. rebates or credit notes which retroactively change the prices or rates paid for TRUCKS in one year,
- (iii) the registration of TRUCKS as mandatory for any use in public following and in accordance with any relevant national or EU-specific regulation, including the vehicle identification number of the TRUCKS,
- (iv) contractual, invoice or delivery documents on the supply of TRUCKS (purchase or leasing or renting),
- (v) the costs of motor fuel, operating fluids and the operation of TRUCKS supplied (purchase or leasing or renting).

In the event that INFORMATION regarding the respective purchase prices or lease rates or rental price as well as the costs of motor fuel, operating fluids and the operation of the TRUCKS supplied is no longer documented by respective transaction data, COMPANY will specify the supply of TRUCKS by way of best estimates.

6.2. In addition, COMPANY will keep INFORMATION which might be considered as relevant by CDC or any competent Court in relation to the passing-on-defence when potentially raised by CARTEL PARTICIPANTS. COMPANY will provide such INFORMATION to CDC upon request. This includes particularly INFORMATION during the time period from 1 January 1995 to 31 December 2016 concerning:

- (i) the potential (resale) prices for TRUCKS supplied to COMPANY, including possible rebates or other price-relevant arrangements,
- (ii) INFORMATION on fundamental factors which in COMPANY's view influence the sales price of the products manufactured and/or services supplied by COMPANY,
- (iii) INFORMATION on fundamental cost elements regarding the products manufactured and/or services supplied by COMPANY,
- (iv) aggregated financial INFORMATION of COMPANY (e.g. annual accounts, P&L statements).

6.3. COMPANY will secure and preserve the INFORMATION referred to in Provision 6.1. and 6.2. as well as proof and documentation relating to such INFORMATION. COMPANY will transfer this INFORMATION, including where deemed appropriate by

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CDC proof and documentation thereof, to CDC electronically through entry and/or upload via an online data entry mask in accordance with the specifications by CDC, and, if required, in original form. This applies in particular to INFORMATION regarding the registration of TRUCKS as mandatory for any use in public following and in accordance with any relevant national or EU-specific regulation, contractual, invoice or delivery documents on the supply of TRUCKS (purchase or leasing or renting) as well as costs of motor fuel, operating fluids and the operation of the TRUCKS supplied. In view of the compliance with this obligation COMPANY will be reasonably assisted by CDC, for example regarding the correct entry and/or upload of INFORMATION.

6.4. COMPANY will keep safely proof and documentation related to INFORMATION referred to in Provision 6.1. and 6.2. until the end of the enforcement of DAMAGE CLAIMS. This applies irrespective of minimum retention obligations under tax and commercial law.

6.5. COMPANY will ensure that the INFORMATION provided to CDC according to Provision 6.1. to 6.3. are to its best knowledge and best possibility correct and true.

6.6. COMPANY shall provide to CDC the documentation confirming the authority of representation of the natural persons signing both this AGREEMENT and the DEED OF TRANSFER on behalf of COMPANY. This includes in particular:

- (i) excerpt from the commercial/company register confirming the current status of the power of representation,
- (ii) copy of each signing person's current powers as representatives of company,

6.7. Any communication and provision of documentation, data and INFORMATION by COMPANY in relation to the fulfillment of the obligations set forth under Provision 6.1. to 6.6. shall exclusively take place through VAT Services S.L., C/ José Abascal 57, 28003 Madrid, SPAIN.

### **Part III**

#### **Enforcement of Damage Claims**

#### **7. Claims Enforcement in and out-of Court**

7.1. CDC, as the full owner of DAMAGE CLAIMS, will assess and decide at its own discretion how and to what extent CDC will enforce the DAMAGE CLAIMS sold, assigned and transferred to it in accordance with Provision 2 against one or more CARTEL PARTICIPANTS. The enforcement by CDC includes the filing of legal actions

of any kind before courts and measures out-of-court. In the enforcement of DAMAGE CLAIMS in court CDC will mandate external lawyers it deems qualified. CDC is entitled to conclude agreements in relation to closing procedures and/or SETTLEMENTS with single, multiple or all CARTEL PARTICIPANTS concerning DAMAGE CLAIMS.

7.2. When deciding on how and to what extent to enforce DAMAGE CLAIMS, CDC will take into account the current status and/or the findings of the ECONOMIC DAMAGE ANALYSIS, indications and decisions by courts in proceedings relating to the enforcement of DAMAGE CLAIMS, as well as legal and economic submissions by defendants in such proceedings.

7.3. COMPANY is not and shall not be entitled to demand CDC to initiate or conduct a specific measure of claims enforcement.

7.4. CDC will keep COMPANY informed about all major procedural steps relating to the claims enforcement.

#### **8. Cooperation of COMPANY**

8.1. COMPANY agrees that CDC is entitled to use any INFORMATION which under this AGREEMENT is provided to CDC, its AFFILIATED COMPANIES and/or its external experts for the purpose of enforcing DAMAGE CLAIMS as sold, assigned and transferred by ASSIGNORS.

8.2. COMPANY will provide to CDC, if considered required and adequate by the external lawyers of CDC, the names of current and former employees and personnel who in the enforcement of DAMAGE CLAIMS might be considered as witnesses. COMPANY will do its best to render possible that those employees and personnel will be available to CDC to provide information and, if required, testify in Court.

#### **Part IV**

#### **Allocation of Proceeds of the Case**

#### **9. Information by CDC**

9.1. CDC will notify COMPANY in written form of any realisation of PROCEEDS OF THE CASE within two months. Equally, CDC will inform COMPANY to what extent the allocation of PROCEEDS OF THE CASE according to Provision 10 results in a variable purchase price pursuant to Provision 3.1.(iii), provided an ECONOMIC DAMAGE ANALYSIS pursuant to Provision 5.2. and 5.3. is completed. Otherwise, CDC will inform COMPANY within further two months following such completion of the ANALYSIS.

9.2. No later than four months after the end of the enforcement of DAMAGE CLAIMS

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CDC will inform COMPANY in written form about all realised PROCEEDS OF THE CASE. As part of this information CDC will include a confirmation, individualized for COMPANY, by a certified auditor to confirm that the allocation of PROCEEDS OF THE CASE by CDC has been made in accordance with the allocation key pursuant to Provision 10. Upon written request by COMPANY and at the own costs of COMPANY, CDC will grant access to the documents and business transactions relevant for the allocation of PROCEEDS OF THE CASE. This access will be granted in the premises of CDC to an independent tax accountant or certified auditor chosen by COMPANY who is compelled by professional secrecy rules.

9.3. CDC will establish with its external lawyers an escrow account (lawyer trust account) at a recognized international bank and will ensure that any realized PROCEEDS OF THE CASE will be transferred without delay to such escrow account. Any payment by CDC out of the escrow account to ASSIGNORS will follow the allocation key according to Provision 10 and shall include the interest incurring as from the date the respective PROCEEDS OF THE CASE were transferred to such escrow account.

## 10. Allocation Key

10.1. Following any realisation by CDC of PROCEEDS OF THE CASE through SETTLEMENT or court judgment, in a first step CDC will allocate the PROCEEDS OF THE CASE among the individual ASSIGNORS. In this context, CDC will determine for each ASSIGNOR a proceeds of the case rate according to the following rules:

- (i) The proceeds of the case rate of COMPANY will be determined according to the relationship between the damage, including interest, that the CARTEL caused to COMPANY and the summarized total damage, including interest, that the CARTEL caused to all ASSIGNORS.
- (ii) The damage, including interest, which the CARTEL caused to COMPANY will be determined according to the then current (i.e. on the date of SETTLEMENT or court judgment) version of the ECONOMIC DAMAGE ANALYSIS as prepared pursuant to Provision 5.2. and 5.3. This ANALYSIS will take into account potential (intermediate) binding findings by a court denying, partially or fully, the existence and/or value of DAMAGE CLAIMS as sold, assigned and transferred by ASSIGNORS and as enforced by CDC. Where following a SETTLEMENT the DAMAGE CLAIMS enforced by CDC have been reduced in relation to the share of the settling CARTEL PARTICIPANT, this shall not affect the participation of ASSIGNORS having purchased TRUCKS from such settling CARTEL PARTICIPANT in the

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future allocation of PROCEEDS OF THE CASE according to the principles set out in Provision 10.1.

10.2. In a second step CDC will determine for COMPANY the respective individual variable part of the purchase price according to Provision 3.1.(iii). The PARTIES include in – **Annex I** – to this AGREEMENT an example showing the allocation of the PROCEEDS OF THE CASE and the calculation of the variable part of the purchase price according to Provision 3.1.(iii).

Should AFFILIATED COMPANIES of COMPANY be also ASSIGNORS, CDC is entitled to propose an overall allocation of the respective PROCEEDS OF THE CASE and the corresponding calculation of the variable part of the purchase price regarding all such AFFILIATED COMPANIES, including COMPANY. This applies as well should COMPANY and such AFFILIATED COMPANIES stop being affiliated as defined in Provision 1.4 after the conclusion of the AGREEMENT and before the realization of the PROCEEDS OF THE CASE.

10.3. Should the number of ASSIGNORS increase after CDC has notified COMPANY of the findings of the ECONOMIC DAMAGE ANALYSIS, CDC will extend the ANALYSIS to the new ASSIGNORS in so far as it includes the DAMAGE CLAIMS assigned by them into the enforcement of DAMAGE CLAIMS.

New ASSIGNORS shall not participate retroactively in the allocation of PROCEEDS OF THE CASE which have been realised by CDC. New ASSIGNORS will only participate in the allocation of PROCEEDS OF THE CASE as from the date of enforcement of DAMAGE CLAIMS of such new ASSIGNORS.

## **11.Payment of Variable Purchase Price**

CDC will pay to COMPANY the variable purchase price which is due following the allocation of the PROCEEDS OF THE CASE within one month after the information according to Provision 9.1., sentence 2 and 3.

## **Part V Costs, Warranties, Liability**

### **12.Costs and Securities**

12.1. CDC will bear all costs, expenses and expenditures incurred by CDC in the course of the data collection and analysis as well as the enforcement of DAMAGE CLAIMS, insofar as not otherwise contractually provided for by the PARTIES. In case of

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an enforcement of DAMAGE CLAIMS in court, CDC will ensure the funding and payment of applicable court fees, costs of experts and other costs of procedure (including expenses) and will effect these payments.

12.2. In order to cover the risk of potential defendant claims for cost reimbursement and other foreseeable cost risks at the moment of filing a legal action CDC will put in place in addition to the measures pursuant to Provision 12.1. sufficient funds or security for litigation costs (e.g. deposit on escrow account with irrevocable instruction by CDC).

### **13. Warranties by COMPANY**

13.1. COMPANY assures that COMPANY and/or its predecessors has/have fully paid for the supplied TRUCKS (purchase or leasing or renting) and the costs for motor fuel, operating fluids and for the operation of the TRUCKS as indicated to CDC.

13.2. COMPANY assures that until signature of this AGREEMENT COMPANY and/or its predecessors has/have not yet disposed of, waived and/or encumbered the DAMAGE CLAIMS sold and assigned to CDC according to this AGREEMENT by way of settlement, set-off agreement or any other form.

13.3. As from the signature of this AGREEMENT exclusively CDC will conduct with and/or towards THIRD PARTIES, in particular CARTEL PARTICIPANTS, discussions, negotiations and similar measures regarding the enforcement of the DAMAGE CLAIMS sold and assigned to CDC. COMPANY will abstain from such (own) measures, and from conducting measures which affect the enforceability of the DAMAGE CLAIMS, their existence or value (e.g. settlement or waiver).

### **14. Warranties by CDC**

14.1. CDC assures that it will transfer the DAMAGE CLAIMS assigned to CDC by COMPANY to potential successors only together with all obligations under this AGREEMENT.

14.2. With regard to the purpose of this AGREEMENT CDC does not give any assurance that on the basis of the findings of the ECONOMIC DAMAGE ANALYSIS a CARTEL-related damage of COMPANY can be demonstrated and/or proven, nor that DAMAGE CLAIMS can be successfully enforced on the basis of the activities of CDC.

### **15. Liability**

15.1. The individual liability of the PARTIES for breach of an obligation, which is not an

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essential obligation, is limited to deliberate action and gross negligence.

15.2. Equally, the individual liability of the PARTIES and their vicarious agents is limited to damages which are foreseeable when the contract is concluded and which are typical for the contract.

15.3. However, not affected by Provisions 15.1. and 15.2. is the liability for injury to life, physical integrity or health.

## **Part VI**

### **General Provisions**

#### **16. Confidentiality and Data Security**

16.1. CDC will keep in strict confidence and will not disclose to any THIRD PARTY INFORMATION relating to COMPANY. Notwithstanding, CDC can disclose such INFORMATION insofar as it is public domain. In the event that CDC is required by law or court order or for the enforcement of the DAMAGE CLAIMS, CDC will decide at its due discretion on the necessity of disclosing INFORMATION relating to COMPANY.

16.2. Given the sensitive nature of all INFORMATION which are relevant for a reliable analysis and quantification of damages caused by the CARTEL, CDC will also ensure an adequate protection of the collected INFORMATION. CDC will take care of the following:

- (i) all ANALYSIS-related INFORMATION which COMPANY will provide to CDC will be safely stored and protected in a data center with high level of security;
- (ii) CDC will ensure that no company damaged by the CARTEL, including COMPANY, will get access to INFORMATION from other damaged companies.

16.3. COMPANY will keep in strict confidence and will not disclose to any THIRD PARTY INFORMATION on current or future activities of CDC regarding this AGREEMENT and the CARTEL. This also applies to INFORMATION on the data collection and damage analysis procedure as set forth in this AGREEMENT and the cooperation of CDC with external experts. However, COMPANY is entitled to disclose to other companies potentially damaged by the CARTEL general INFORMATION on its cooperation with CDC.

16.4. The PARTIES are not entitled to use the above-mentioned INFORMATION for other purposes than the purposes mentioned in and/or intended by this AGREEMENT.

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16.5. The PARTIES will ensure that all personnel, representatives, lawyers, experts or other natural or legal persons having access to INFORMATION, which under this AGREEMENT are considered as confidential, have agreed to the above-mentioned confidentiality obligations.

16.6. Potential confidentiality agreements that COMPANY and CDC have concluded previous to this AGREEMENT will lose their effectiveness as from the conclusion of this AGREEMENT. Henceforth, only Provision 16 of this AGREEMENT is relevant as regards the protection of INFORMATION.

## **17. Exclusion of Assignments and Encumbrance**

17.1. All rights and claims of one PARTY established under this AGREEMENT may not be sold, assigned, sublicensed or otherwise transferred or encumbered without prior written consent of the other PARTY. Such consent shall not be unreasonably withheld by the PARTY concerned.

17.2. Notwithstanding Provision 17.1., the PARTIES shall be entitled to sell, assign, delegate, sublicense or otherwise transfer its rights and claims established under this AGREEMENT to one or more AFFILIATED PARTIES, provided that the latter has/have agreed to the confidentiality obligations under Provision 16.

## **18. Protection of Personal Data**

The PARTIES engage themselves to comply with applicable data protection rules and to adopt the required safety measures in order to protect any personal data. CDC shall not use any personal data obtained as a result of this AGREEMENT for purposes other than the quantification and/or the enforcement of DAMAGE CLAIMS as foreseen in this AGREEMENT.

## **19. Applicable Law**

This AGREEMENT is governed by Dutch law.

## **20. Arbitration Clause**

All disputes arising in connection with the present AGREEMENT, or further agreement resulting therefrom, or regarding its validity shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (<http://www.nai-nl.org>) without recourse to the ordinary Courts of law. The seat of arbitration will be Rotterdam, The Netherlands. The Arbitration Tribunal shall consist of one arbitrator, unless one of the PARTIES requests an Arbitration Tribunal composed of three members. The language

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of the arbitration shall be English.

## **21. Form and Language**

The conclusion of this AGREEMENT, including its Annexes, as well as any modification or supplement thereto is valid only in written form. This applies also to any waiver of the necessity of the written form.

The original language of this AGREEMENT is English. In case of a translation of this Agreement into another language, the English version shall prevail.

## **22. Third Parties**

THIRD PARTIES have no right to enforce or enjoy the benefit of any provision of this AGREEMENT.

## **23. Severability Clause**

23.1. Should one or more provision(s) of this AGREEMENT be or become fully or partly invalid, impracticable or unenforceable, or that the AGREEMENT should reveal a gap, the other provisions of the AGREEMENT, including Annexes and supplements thereto, shall remain valid. The provision(s) invalid, impracticable or unenforceable shall be replaced and the contractual gap shall be completed by an appropriate provision which as far as possible corresponds to the intention of the Parties taking into account the commercial and economic objectives of the AGREEMENT.

23.2. In the event and to the extent that the purchase or the assignment and/or the transfer of entitlement of DAMAGE CLAIMS from COMPANY to CDC, as described in Provision 2 above, is invalid, improperly executed or unenforceable, COMPANY and CDC agree that, taking into account the purpose of this AGREEMENT, CDC is hereby granted exclusive mandate ("privatieve last") under article 7:423 Dutch Civil Code to do all that it deems legally necessary or desirable to enforce the DAMAGE CLAIMS including but not limited to interrupting the applicable limitation period and filing proceedings, all in CDC's own name and at its own risk and expense. This exclusive mandate is, mutatis mutandis, subject to the terms and conditions of this AGREEMENT including but not limited to the terms and conditions with respect to the PROCEEDS OF THE CASE and subject to Provision 12.2.

## **24. Representation of CDC**

COMPANY hereby acknowledges that CDC in the conclusion of this AGREEMENT and

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the DEED OF TRANSFER is represented by Dr. Ulrich Classen, acting under the special power of attorney granted by Retail Cartel Damage Claims Société Anonyme on 27 June 2017, and accepts that this power of attorney is governed by Luxembourgish law.

The PARTIES, by their duly authorised representatives have entered into this Agreement as of the effective date(s) below.

**For TRANSPORTES GAZTELU SA:**

MIGUEL, 5-7 2017  
(place) (date and time)

MIGUEL ANGEL BARBARIN LARRIPA, ADMINISTRADOR

(Signature)

**For Retail Cartel Damage Claims Société Anonyme:**

Dorcols, 06. 7 2017

Dr. Ulrich Classen, acting under the special power of attorney granted by Retail Cartel Damage Claims Société Anonyme on 27 June 2017

(Signature)

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**Annex I**

Exemplification of the allocation of proceeds of the case and the calculation of the variable part of the purchase price according to Provision 3.1.(iii) and 10.2.

PROCEEDS OF THE CASE pursuant to provision 1.14 in EUR:		30.000.000				
		Assignor 1	Assignor 2	Assignor 3	Assignor 4	Assignor 5
Assumptions:	Payment according to provision 3.1 (ii) per purchased TRUCK:	100 €	100 €	100 €	100 €	100 €
	Payment according to provision 3.1 (ii) per leased TRUCK:	50 €	50 €	50 €	50 €	50 €
	Factor according to provision 3.1 (iii):	0,7	0,7	0,7	0,7	0,7
	Number of documented TRUCKS purchased in the INFRINGEMENT PERIOD:	1.000	1.800	100	2.500	25
	Number of documented TRUCKS leased in the INFRINGEMENT PERIOD:	400	1.200	900	3.230	10
Damages (including interest) caused to the ASSIGNOR by the CARTEL according to the ANALYSIS:		12.500.000 €	17.500.000 €	5.000.000 €	35.000.000 €	300.000 €
<b>First Step:</b>						
Allocation of PROCEEDS OF THE CASE amongst assignors according to provision 10.1 of the AGREEMENT		Assignor 1	Assignor 2	Assignor 3	Assignor 4	Assignor 5
ASSIGNOR's proceeds of the case rate:		17,78%	24,89%	7,11%	49,79%	0,43%
Proceeds of the case allocated to ASSIGNOR:		5.334.282 €	7.467.994 €	2.133.713 €	14.935.989 €	128.023 €
<b>Second Step:</b>						
Calculation of the three parts of the purchase price pursuant to provision 3 of the AGREEMENT		Assignor 1	Assignor 2	Assignor 3	Assignor 4	Assignor 5
Fixed part of the purchase price paid by CDC to ASSIGNOR according to provision 3.1 (i)		1.000 €	1.000 €	1.000 €	1.000 €	1.000 €
Documented TRUCKS part of the purchase price pursuant to provision 3.1 (ii)		120.000 €	240.000 €	55.000 €	411.500 €	3.000 €
Variable purchase price to be paid by CDC to ASSIGNOR according to provision 3.1 (iii)		3.433.997 €	4.627.596 €	1.356.099 €	9.426.442 €	82.116 €

TRANSPORTES GAZTELU SATRANSPORTES GAZTELU SA--CPA,EN--