

**V O L V O**

**VOLVO TRUCKS**  
**SERVICE CONTRACTS**  
**GENERAL TERMS & CONDITIONS**

Entered with

Volvo Group Southern Africa (Pty) Ltd  
(Registration No. 2001/022060/07)  
("Volvo Trucks")

CONTENTS

1 INTERPRETATION .....3

2 DEFINITIONS ..... 4

3 SOLE BASIS .....6

4 VOLVO TRUCK OBLIGATIONS.....6

5 CUSTOMER OBLIGATIONS .....7

6 EXCLUDED SERVICES ..... 8

7 PAYMENT .....10

8 PRICE VARIATION .....11

9 VALUE ADDED TAX .....12

10 LIMITATIONS .....12

11 INSURANCE AND REPAIR OF VEHICLE.....12

12 PROTECTION OF PERSONAL INFORMATION.....12

13 BREACH AND TERMINATION .....13

14 DISPUTE RESOLUTION..... 14

15 DEFECTS AND APPLICATIONS OUTSIDE THE CONTRACT ..... 14

16 VEHICLES REMOVED FROM THESE TERMS AND CONDITIONS.....15

17 VOLVO TRUCKS LIABILITY AND INDEMNITY ..... 15

18 SET-OFF AND LIEN..... 16

19 APPLICABLE LAW AND LEGAL COMPLIANCE ..... 16

20 MISCELLANEOUS ..... 16

21 SEVERABILITY..... 16

22 DOMICILIUM .....17

23 ACCEPTANCE ..... 17

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## **1 INTERPRETATION**

- 1.1 Any reference in these Terms and Conditions to:
- 1.1.1 a “clause” shall, subject to any contrary indication, be construed as a reference to a clause hereof;
  - 1.1.2 “law” shall be construed as any law (including common or customary law), statute, constitution, decree, judgement, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;
- 1.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of these Terms and Conditions.

Unless inconsistent with the context, an expression which denotes:

- 1.2.1 any one gender includes the other gender;
  - 1.2.2 a natural person includes an artificial person and vice versa; and
  - 1.2.3 the singular includes the plural and vice versa.
- 1.3 When any number of days is prescribed in the Terms and Conditions, the time period shall be determined by including the first and excluding the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the immediately following business day.
- 1.4 In the event that the day for payment of any amount due in terms of these Terms and Conditions should fall on a day which is not a business day, then the relevant date for payment shall be the following business day.
- 1.5 Where figures are referred to in numbers and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Where any term is defined within the context of any particular clause in these Terms and Conditions, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of these Terms and Conditions, notwithstanding that such term has not been defined under “Definitions”.
- 1.7 Any reference to a legal provision in these Terms and Conditions is to that provision as at the commencement date and as amended from time to time during the term of these Terms and Conditions.
- 1.8 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting or preparation of the Terms and Conditions, shall not apply.
- 1.9 The expiration or termination of these Terms and Conditions shall not affect the provisions of these Terms and Conditions where it is expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **2 DEFINITIONS**

In these Terms and Conditions hereto, the following expressions have the meanings and related expressions have corresponding meanings:

**Agreement** means the terms and conditions of this Agreement and all annexures hereto read with the Contract.

**Annual kilometers** means the kilometers the Vehicle is estimated to cover during

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	the first and subsequent twelve month periods, determined from the Commencement Date
<b>Assessment Date</b>	means the assessment month, irrespective of the Commencement date of the Agreement
<b>Business Day</b>	means every day other than a Saturday, Sunday, and official public holiday in South Africa
<b>Contract period</b>	in respect of a Vehicle means the duration of the Agreement, from the Commencement date until the Termination date
<b>Commencement date</b>	means the warranty activation date reflected in the VDA, as the date these Terms and Conditions becomes effective in respect of a Vehicle, irrespective of date of signature
<b>CPK</b>	means the predicted budget costs expressed as monetary rate per kilometer
<b>Dealer</b>	means a wholly owned or duly appointed private dealer authorised by VGSA to provide maintenance and/or services on Vehicles
<b>Drive Train</b>	Means the engine, chassis, differential and related components of a vehicle
<b>Excess kilometer</b>	means the number of kilometers travelled annually which is in excess of the Annual kilometres as recorded in the applicable contract
<b>Contract</b>	Means each and every Vehicle specific Blue, Silver or Gold contract option selected and signed by the Customer and VGSA annexed hereto or in such amended form as may be required from time to time
<b>Force majeure</b>	Means an unforeseeable event or circumstance which is beyond the control of Volvo Trucks, rendering the performance of Volvo Trucks' obligations under the Agreement wholly or partially impossible
<b>Manuals</b>	means the Vehicle Manufacturer's official handbooks in respect of the Vehicle provided to the Customer on delivery of the Vehicle
<b>Maximum contract kilometers</b>	means the number of kilometres recorded as such in respect of a Vehicle in the applicable Contract or any adjustments thereof in terms of the agreement.
<b>Monitoring Equipment</b>	Means all equipment recording mileage or data and includes, but not limited to tachographs, data management services (telematics, VAS on call, Dynafleet, Uptime solutions etc).
<b>Monthly Fee</b>	means the payment payable by the Customer to Volvo Trucks for the duration of the Contract, calculated on the basis as set out in Clause F (price for the services), which includes any administration fees, subject to price variations.

<b>Parties</b>	means Volvo Trucks and the Customer
<b>Preventative maintenance</b>	means the normal, daily general maintenance to be performed by the Customer and includes but is not limited to, the checking of the engine oil level, all other lubricant and coolant levels, tyre pressures on all tyres, tyre wear and tear, and rust inspections
<b>Termination date</b>	means in respect of a Vehicle, the period reflected in the contract or the reaching of the Maximum contracted distance whichever occurs first, or the date of cancellation of a contract or these Terms and Conditions
<b>Manuals</b>	means the Vehicle Manufacturer's official handbooks in respect of the Vehicle provided to the Customer on delivery of the Vehicle
<b>Super Structure</b>	means body fitments and equipment fitted to the Vehicle
<b>VGSA</b>	refers to the legal entity "Volvo Group Southern Africa (Pty) Ltd registration number 2001/ 022060/07 (or its successor in title) duly incorporated in accordance with the laws of the Republic of South Africa
<b>VAT</b>	means Value Added Tax charged and levied in terms of the Value Added Tax Act No 89 of 1989, as amended, at the prevailing rate
<b>Vehicle</b>	means the Customer's vehicle together with all standard equipment as identified in the relevant contract
<b>Vehicle Application</b>	means the intended use and operating conditions of the Vehicle as indicated in the Conditions of Use of the relevant contract as disclosed to Volvo Trucks
<b>Work</b>	means services as per pre-agreed Volvo Optimised Service plans (VOSP) and/or repair work carried out by the Dealer under these Terms and Conditions and listed in the coverage document annexed hereto, but specifically excludes work carried out under warranty

**3 SOLE BASIS**

- 3.1 The Volvo Group Southern Africa (Pty) Ltd consists of various vehicle brands and concludes these Terms and Conditions with Customers purchasing a Volvo Vehicle. Vehicle details and the contract option selected by a Customer are set out in the Repair and Maintenance Contract.
- 3.2 These Terms and Conditions shall form the sole basis of the terms of agreement between the Parties.
- 3.3 The terms and conditions of the Agreement shall become applicable in respect of a Vehicle on the Commencement date specified in the relevant Repair and Maintenance contract, signed by the Customer and Volvo Trucks.
- 3.4 The provisions of the Agreement shall be applicable to the Customer together with all its subsidiary companies, the Customer warranting that it has the authority to bind its subsidiary companies.
- 3.5 The Customer has made a full disclosure of the relevant information pertaining to its business to assist Volvo Trucks in identifying the Vehicle Application. The Customer indemnifies Volvo Trucks against any claim that may be based on incorrect Vehicle Application due to insufficient, inaccurate or false

information disclosed to Volvo Trucks.

- 3.6 Notwithstanding the provisions in 3.5, the Customer acknowledges that it remains responsible to satisfy itself of the suitability of the Vehicle in its operations, and Volvo Trucks does not warrant the fitness of the Vehicle for the selected Vehicle Application.

#### **4 VOLVO TRUCK OBLIGATIONS**

- 4.1 In return for the payment of the Monthly Fee provided for in these Terms and Conditions, Volvo Trucks shall, for the Contract Period, perform the work.
- 4.2 The decision as to whether repair or replace any parts in carrying out the work shall be at the sole and absolute discretion of Volvo Trucks.
- 4.3 The Maintenance service to be provided in terms of these Terms and Conditions does not constitute a warranty but covers the known and anticipated costs of services for an agreed price as stipulated in the relevant contract during the Contract period.
- 4.4 Volvo Trucks shall, from the Commencement date to the Termination date, provide a service in terms of the provisions of these Terms and Conditions and in accordance with the Contract and shall consist of:
- 4.4.1 Authorising servicing in accordance with the Volvo Optimised Service Plans (VOSP schedule) and in accordance with the recommendations in the manufacturer's Manual and service handbook
  - 4.4.2 endeavour to ensure that the service be completed as expeditiously as possible by the Volvo Trucks Dealer and minimise inconvenience to the Customer; and
  - 4.4.3 not amend the Monthly Payment payable in terms of the contract or require additional payments from the Customer save in the circumstances specifically provided for in the Agreement.

The obligations of Volvo Trucks in terms of the Agreement shall always be subject to the proviso that the Customer is not, at the relevant time, in breach of any of its obligations in terms of the Agreement.

#### **5 CUSTOMER OBLIGATIONS**

The Customer shall provide every assistance to VGSA to enable Volvo Trucks to provide the Service and Maintenance service efficiently, and in particular, shall:

- 5.1 Use the Vehicle safely, legally, carefully and expertly and in accordance with the use for which the Vehicle is designed and in accordance with the Conditions of Use described in article H of the applicable Contract.
- 5.2 Ensure that the driver of the Vehicle has the expertise and physical and mental condition required to drive the Vehicle with due care and attention.
- 5.3 Ensure at all times that the Vehicle is roadworthy and complies with statutory provisions
- 5.4 Inform Volvo Trucks of any fault or breakdown of Volvo Monitoring equipment in the Vehicle and shall record the mileage driven by the Vehicle at any time during which the Volvo monitoring equipment is not functioning correctly. The necessary repairs have to be carried out immediately at the nearest Volvo Trucks dealer.
- 5.5 have the Vehicle inspected, serviced and maintained at a Dealer in accordance with the manufacturer's recommendations listed in the Vehicle's Manuals or as directed by Volvo Trucks from time to time during the Vehicle Contract period and report to a Dealer prior to the commencement of any work on any defect

which may be the subject of any current or future warranty claim;

- 5.6 upon reasonable notice, make the Vehicle available to Volvo Trucks or its appointed agent for inspection from time to time; and
- 5.7 advise Volvo Trucks of any work required to be done on the Vehicle other than routine servicing, as recommended by the manufacturer.
- 5.8 Ensure, subject to the applicable regulations and in accordance with the vehicle manual prescribed by the manufacturer, at its own expense that sufficient oil, grease, cooling fluid and antifreeze are present in the appropriate places in the Vehicle at all times. The Customer must also keep the tyre pressure correct at all times and, if necessary, tighten the wheel nuts.
- 5.9 ensure that repairs to and/or servicing of the Vehicle are carried out as per the schedule set out according to the Service and inspection intervals as set out in article E of the applicable Contract. In this regard, the Customer shall present the Vehicle for service when the Vehicle has reached the Volvo Trucks stipulated kilometre reading or within no more than 2000kms of that reading (whether more or less). If the Vehicle is not presented for service within the required kilometre range, any service work required outside of the parameters may be performed at the Customer's cost;
- 5.10 have all Services covered by the Contract carried out in the geographical area as set out in the Conditions of Use (article H) in the applicable Contract, unless Volvo Trucks, Volvo Action Services or the responsible Dealer has specifically given its permission on a particular occasion. If the Services are provided at a different location, Volvo Trucks has the right to charge the Customer a fee to reflect any additional costs and/or expenses.
- 5.11 Allow Volvo Trucks or Volvo Trucks authorized personnel to inspect vehicles for the purpose of compliance with these Terms and Conditions at all reasonable times.
- 5.12 Upon request of the Dealer or Volvo Trucks the Customer shall inform the Dealer, or Volvo Trucks as the case may be, about the extent the Customer has used any other service provider than the Dealer in respect of the Vehicle. The Dealer and/or Volvo Trucks shall be entitled to request for such information when he has grounds to assume that additional work and/or costs may result from work performed by another service provider. Such information shall in each case be given as soon as is practically possible and at latest before any initial, or further as the case may be, Service shall be provided under the relevant Contract. Unless permission to use another dealer has been given by the Dealer, Volvo Trucks may charge the Customer for any additional work or unforeseen expenses incurred by Volvo Trucks and/or the Dealer due to the fact that improper repair or maintenance work has been performed by a workshop other than the Dealer's workshop;
- 5.13 ensure that the Vehicle manufacturers running-in instructions and proper responses to systems warnings are fully understood and properly observed;
- 5.14 ensure that permitted Gross Vehicle and/or Gross Combination Mass and speed limits and engine speeds are not exceeded;
- 5.15 not overload the Vehicle nor use it for any purpose for which it is not designed;
- 5.16 ensure that no components of the Vehicle are removed or exchanged except where defective, in the course of normal service, repair or replacement including repair or replacement carried out as required in terms of a recall campaign, and generally ensure that the Vehicle is operated in a complete condition;
- 5.17 ensure Preventative Maintenance checks are carried out and that such levels are correctly maintained in accordance with the Manuals;

- 5.18 cause the Vehicle to be used only for the Specified Use;
- 5.19 in the event that the Vehicle is involved in a collision or accident, the customer shall immediately notify Volvo Trucks in writing of the nature and extent of the damage and the repairs proposed to be carried;
- 5.20 inform Volvo Trucks in the event of a change of deviations from the agreed mileages when Customer detects such deviation;
- 5.21 inform Volvo Trucks in writing when the Vehicle is sold, written off or traded.

## **6 EXCLUDED SERVICES**

Maintenance service contractual options exclude the cost of maintenance, repair or replacement of:

- 6.1 COF charges, tyres, wheel alignment, wheel studs and wheel nuts, suzi cables and hoses, antifreeze, fuel and oils used for topping-up between servicing;
- 6.2 all costs which are a result of accident or intentional damage, driver error, warranty, failure to follow manufacturer's recommendations, driver abuse, vandalism howsoever caused, or damage caused by civil commotion, labour disturbances, riot, strike or lockout or acts of God ("Force majeure"). In the event of Volvo Trucks invoking any of the exclusion provisions contained in this clause Volvo Trucks shall give to the Customer written notice thereof;
- 6.3 jump starting the vehicle
- 6.4 after hours and/or on-site servicing;
- 6.5 the theft of the Vehicle;
- 6.6 failure or malfunction of any Super Structure, component, or equipment which is not subject to these Terms and Conditions and/or any Super Structure fitted after the acceptance of the quoted contract;
- 6.7 any charges in respect of the repair, maintenance or replacement of any Super Structure, assessor, modification or equipment fitted to the Vehicle (whether by Volvo Trucks or by or on behalf of Volvo Trucks or otherwise) and including without limitation, the radio, extra lights, night heater, hydraulic equipment and all other equipment not fitted as standard to the Vehicle,
- 6.8 repair, maintenance or replacement of (but without limitation) lenses, glass, plastic, body, chrome parts, cab finishing chassis, upholstery or trim, emblems, paint damage, windscreens, irrespective of damages howsoever caused;
- 6.9 extra repair cost arising from restricted access to the chassis caused by the Super Structure or any other component or equipment which is not subject to the Contract
- 6.10 any charges which are as a result of failure by the Customer to carry out its obligations in terms of these Terms and Conditions;
- 6.11 any claim for direct, indirect, or consequential losses arising out of the provision of Maintenance services;
- 6.12 charges incurred outside the Republic of South Africa, except where prior approval was obtained from Volvo Trucks and provided that an authorised Volvo Dealer is based in that country. In this instance, VGSA shall pay the amount that would have been charged had the work been carried out within the Republic of South Africa;



- 6.13 any charges in respect of rust prevention, paint/trim preservation, body cleaning or treatment, additives unless recommended by the manufacturer, or engine cleaning, unless prior authorisation has been obtained for any such charges;
- 6.14 replacement of lost parts including, but not limited to, spare wheels, fire extinguishers, first-aid kits, warning lamps, tools, jack, service booklets and the like and any testing or maintenance of such items
- 6.15 any item missing from the engine/Drive Train, equipment and accessories;
- 6.16 washing (save for a complete wash of the chassis, engine, gearbox, front and rear axle, at the time of carrying out routine service and maintenance work)
- 6.17 the rectification of any and all damage caused by:
  - 6.17.1 the use of any parts other than Volvo genuine parts or Volvo approved parts and products;
  - 6.17.2 the use of the wrong, or contaminated fuels and oils;
  - 6.17.3 failure to take immediate action to avoid consequential damage in the event that the Vehicle's warning and monitoring systems are activated;
  - 6.17.4 the use in the Vehicle of oils and other service products which have not been approved by Volvo Trucks;
  - 6.17.5 neglect, misuse, abuse or improper handling of the Vehicle, which shall include but not be limited to, exceeding any of the permissible gross Vehicle or axle loads, payload or semi-trailer load as specified by Volvo Trucks, regardless of the ratings promulgated in terms of any Government Gazette, Statute or Ordinance;
  - 6.17.6 persons other than the authorised workmen, servants and employees of a VGSA Dealer or workshop approved by Volvo Trucks and authorised by VGSA, having performed work on the Vehicle;
  - 6.17.7 the fitments, service or repair of any parts or equipment necessary pursuant to any statutory or other government legislation or regulation.
  - 6.17.8 repair work on the chassis as a result of defects in the super structure or any other work arising from failure of malfunction of any component or equipment which is not subject to the Contract;
  - 6.17.9 the adding on to the Vehicle or repair of any parts or equipment necessary pursuant to legislation enacted after the Commencement Date of the Contract;
  - 6.17.10 the cost of work which the Customer is entitled to have carried out at the cost of any other party.
- 6.18 Vehicles delivered from 1 January 2025, a call out fee for all breakdowns logged through action service is chargeable to the Customer at 50% of the prevailing retail callout fee, which fee will be reviewed annually. This call out fee is payable by the Customer for all breakdowns logged.

**IMPORTANT:** The Excluded Services contained in this EXCLUDED SERVICES clause is made for illustration purposes only and is not exhaustive. Accordingly, Volvo Trucks reserves the right to determine other services which may be excluded in its sole judgment, and also to add other EXCLUDED SERVICES to its list at any time under the Contract. Any additions will be communicated.

In the event of a dispute arising between the Parties, either of the Parties may nominate an independent valuator with at least 10 (ten) years' experience to determine the matter in dispute. The Valuator shall be an independent person who, by his experience, knowledge and ability, is competent to determine the nature and probable cause that necessitates repair to the Vehicle and the costs thereof. If the Parties cannot agree on the appointment of a Valuator as aforementioned, the Automobile Association of South Africa shall, at the request of either Party, appoint an independent person selected by it in its sole discretion, having regard to the aforementioned qualifications, to act as Valuator. The determination of the Valuator in respect of either of the

aforementioned matters shall, in the absence of manifest error, be final and binding on the Parties. The Valuator shall have the authority to make an appropriate costs award.

**7 PAYMENT**

- 7.1 The Monthly Payment shall be paid within 30 days of date of statement.
- 7.2 The Customer agrees to pay Volvo Trucks all charges described in the Contract. Charges do not include applicable taxes, such as VAT, which Customer will pay pursuant to invoice.
- 7.3 Payments shall be made without set off, counterclaim or deduction irrespective of the Vehicle's condition or performance.
- 7.4 No third party is authorised to accept payments for Volvo Trucks.
- 7.5 All payments in terms of the Agreement shall be made promptly on the due date thereof and shall be made: -
  - 7.5.1 free of exchange and without any deduction or set off of whatsoever nature;
  - 7.5.2 within 30 days from date of statement;
  - 7.5.3 by electronic funds transfer (EFT), debit order or direct deposit into the nominated bank account of Volvo Trucks, unless Volvo Trucks directs otherwise in writing from time to time.
- 7.6 Without derogating from the Customer' obligations to pay and notwithstanding any prior dealings between Volvo Trucks and the Customer, all documents and other matter including cash, cheques, bank drafts and other remittances, sent to Volvo Trucks through the post shall be deemed not to have been received by Volvo Trucks unless and until they are actually delivered to Volvo Trucks by the postal authorities and all risk in and to such documents and other matter shall be at the risk of the Customer until actually delivered to the Customer acknowledging that Volvo Trucks does not authorise the use of the postal services for any of the a foregoing.
- 7.7 The Customer acknowledges that, unless otherwise specifically directed by Volvo Trucks in writing from time to time, cheque payments are not the preferred instrument of payment and in addition, no third party is authorised to accept any payment due in terms hereof for or on behalf of Volvo Trucks.
- 7.8 VAT or any tax in substitution for or in addition thereto, shall be borne and paid for by the Customer and unless otherwise specifically stated, all amounts payable shall be deemed to exclude VAT.
- 7.9 In the event of any amount payable in terms hereof not being paid on the due date thereof, the Customer shall be liable for interest thereon at 24% per annum calculated from the due date of such payment to the date of final payment thereof.
- 7.10 Volvo Trucks shall be entitled to appropriate any payments received for and on behalf of the Customer to any indebtedness of the Customer to Volvo Trucks from whatsoever cause arising.
- 7.11 Volvo Trucks records of Customer's account will be binding absent proof of clear error to the contrary
- 7.12 The Customer agrees that: -
  - 7.12.1 any servicing, maintenance and/or repairs carried out or undertaken by or on behalf of Volvo Trucks and falling outside the obligations of Volvo Trucks in terms hereof shall be charged to the Customer at Volvo Trucks usual rates for such work, or the rates of the third party which carried out or undertook the work, whichever is the greater, and shall be paid for by the Customer on presentation of invoice;

- 7.12.2 Volvo Trucks shall be entitled to set-off or transfer any liability, credit or rebate due to the Customer under this or any other present or future agreement between Volvo Trucks and the Customer in or towards the satisfaction of any of the liabilities of the Customer which are due and payable or which will become due and payable to VGSA under this or any other such agreement or in any other respect.
- 7.12.3 Granting of the necessary authorisation for any repairs to be undertaken and the continuance of any repair work in progress is subject to the receipt of any due payment for any month. Volvo Trucks may, without prejudice to any other rights it may have, withhold such authorisation and suspend all its obligations in terms of these Terms and Conditions until the condition is fulfilled and full payment is received ("suspended period").
- 7.12.4 The suspended period shall commence when the period for rectification, as set out in the letter of demand, has expired and the Customer has failed to rectify the default.
- 7.12.5 The Customer shall ensure that any maintenance and repairs as required in terms of the Agreement is carried out during the suspended period at the Customer's costs and indemnifies Volvo Trucks against any liability or damages including consequential damages the Customer may suffer during this period as a result of the non-fulfilment of its payment obligation.
- 7.12.6 Volvo Trucks shall not be obliged to consider a restructuring of any prevailing Contract, or grant any extension or any other indulgence if the Customer is in breach.

## **8 PRICE VARIATION**

- 8.1 The Monthly Payment may be adjusted based on any of the following:
  - 8.1.1 The Monthly Payment is calculated with reference to the retail charges of carrying out the Work (and including but not limited to, the cost of labour and importing spare parts) and shall be subject to adjustment by Volvo Trucks on an annual basis on the Assessment Date, in its sole and absolute discretion, by written notice to the Customer.
  - 8.1.2 Volvo Trucks has the right to restructure and review the Contract at any time if the actual kilometers differ from the Annual kilometers specified in Article C of the Contract, or where a price adjustment is required to absorb the impact of Force Majeure events, inflation, increases in raw material, exchange rate fluctuations and the like.
  - 8.1.3 If a change occurs in any of the conditions set out in article H ("Conditions of Use") of the Contract, the Customer shall inform Volvo Trucks in writing of this at once. In case of a change, Volvo Trucks may set a new price in accordance with the new conditions of use.

Either Party may initiate such review and/or the Monthly Payment may be adjusted accordingly.
- 8.2 Should the Customer disagree with the adjustment where the payment is adjusted upwards, and the Monthly Payment increases by more than 15 %, either Party may cancel these Terms and Conditions and the Contract upon giving 1 (one) month's written notice to the other without any other liability towards the other Party save as specifically provided for in these Terms and Conditions.

## **9 VALUE ADDED TAX**

The Customer shall, simultaneously with each Monthly Payment made in terms of the Agreement, pay to Volvo Trucks the amount of value added tax payable from time to time in respect of that payment. No claim for exemption from the payment of value added tax shall be recognised by Volvo Trucks.

## **10 LIMITATIONS**

- 10.1 The Agreement shall operate only for the Contract period or until the Termination date.
- 10.2 Nothing contained in the Agreement shall oblige Volvo Trucks to service and/or maintain the Vehicles after the Termination date or if the Customer sells or otherwise disposes of the Vehicle during the Contract

Period.

- 10.3 The Customer shall not assign or cede any of its rights and obligations under the Agreement to any other party, save with the prior written consent of Volvo Trucks, which consent shall not be unreasonably withheld.

## **11 INSURANCE AND REPAIR OF VEHICLE**

- 11.1 The Customer carries all the risks of losses and damages in respect of the Vehicle.
- 11.2 The Customer shall immediately notify Volvo Trucks in the event that the Vehicle is involved in a collision or accident.
- 11.3 The Customer shall have all damage caused to the Vehicle by such collision or accident repaired by a Volvo approved workshop. Prior to having such repair work carried out, the Customer shall inform Volvo Trucks in writing of the nature and extent of the damage and the repairs proposed to be carried out.
- 11.4 Volvo Trucks shall be entitled to suspend the performance of its obligations in terms of the Agreement pending a satisfactory inspection by Volvo Trucks of the repairs after they have been carried out and Volvo Trucks being satisfied pursuant to such inspection that the repairs have been carried out to a satisfactory standard.
- 11.5 Volvo Trucks shall be entitled to cancel the Agreement in the event that: -
- 11.5.1 The Customer fails to comply with its obligations in terms of this clause and/or
  - 11.5.2 Customer has repaired the Vehicle by fitting non-genuine Volvo parts;
  - 11.5.3 Volvo Trucks is not satisfied with the repairs undertaken.
- 11.6 The costs of all repair work to be undertaken as a result of such accident or collision shall be borne solely by the Customer.

## **12 PROTECTION OF PERSONAL INFORMATION**

Where either Party requires the other Party to process any personal information (as defined in the Protection of Personal Information Act ("POPIA")) belonging to that Party, or in case of the Customer, any other member of the Volvo Group (both acting as responsible parties as defined in POPIA) for reasons other than obtaining information required to ensure due contractual performance, the other Party agrees to: -

- 12.1 act in accordance with valid and legitimate instructions;
- 12.2 use appropriate technical and organisational measures to protect the personal information against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, use or disclosure;
- 12.3 not without the consent of the other Party other than on terms approved by the affected Party do anything, or omit to do anything that would cause personal information to be transferred to a country other than South Africa, India, United States of America or Sweden;
- 12.4 Comply with the applicable parts of POPIA or and similar legislations affecting data protection in any jurisdiction where the affected Party will be performing work related to the service; and
- 12.5 Not do or omit to do anything that would cause the requesting Party to be in breach of applicable

data Protection laws (save that for clarity that the Party is not responsible for monitoring or otherwise ensuring compliance by the requesting Party with applicable data protection laws).

- 12.6 Volvo Trucks and the Customer shall conclude a data management agreement ("DMA") and the parties respective rights and obligations pertaining to data shall be regulated in terms thereof.

### **13 BREACH AND TERMINATION**

#### 13.1 Should

13.1.1 the Customer fail to make any payment, which is due and payable in terms of the Contract on the due date thereof or the Customer breach any of the material provisions and Volvo Trucks having given the Customer 14 (fourteen) days' written notice to correct the default and the Customer has failed to do so;

13.1.2 the Customer breach any non-material provisions of the Agreement on more than 3 (three) occasions in any 12 (twelve) Month period;

13.1.3 the Customer does any act or omission which prejudices or places in jeopardy any of Volvo Truck's rights or interests in terms of the Agreement and fails to refrain from such act within 30 days of receipt of written notice from Volvo Trucks calling on it to refrain from such act;

13.1.4 the Customer be placed under compulsory or voluntary winding-up, judicial management, be subjected to a business rescue process, or being a natural person commit an act of insolvency, or be provisionally or finally sequestered; or

13.1.5 any judgement be obtained against the Customer in excess of R500 000.00 and remain unsatisfied for a period of 10 (ten) days or more; Volvo Trucks shall have the rights set out in 13.2

- 13.2 Upon the happening of any events specified in 13.1 Volvo Trucks shall be entitled without prejudice to any other right which it otherwise may have:

13.2.1 suspend its obligations to provide the services provided for in the Agreement until the breach has been rectified subject to clause 7.12.2; or

13.2.2 cancel the Agreement in respect of the Vehicle covered by the relevant Contract provided that if Volvo Trucks notifies the Customer of its intention to exercise its rights to cancel the Agreement, Volvo Trucks may decide that the breach of any one of the separate Contracts is constituted to be a breach of any or all Contracts; or

13.2.3 recover from the Customer all outstanding payments, reasonable legal fees, costs and disbursements and all other costs incurred by Volvo Trucks, irrespective of the Court in which action may be instituted on a scale as between attorney and his own client.

- 13.3 Save as otherwise provided for in the Agreement, the Customer shall not be entitled to terminate the Agreement prior to the expiry of the Contract period without Volvo Trucks' written approval which approval, if given, may be made subject to such conditions and the payment of such settlement amounts as may be due to Volvo Trucks.

- 13.4 Should Volvo Trucks fail to perform its obligations in terms of the Agreement, the Customer may notify Volvo Trucks of such failure, by giving written notice, where after Volvo Trucks will have 30 (Thirty) days to rectify such failure. Should Volvo Trucks not comply with its obligations to the satisfaction of the Customer within this period, the Customer may cancel the Agreement in respect of the relevant Vehicle/s.

- 13.5 In the event of termination in terms of the Agreement due to breach by the Customer, the Customer shall fulfil all the contractual obligations in terms of the Agreement and pay all outstanding amounts to Volvo Trucks, including over-mileage, charges, interest, administration costs and all specified ancillary costs reasonably associated with the Agreement that may be due and payable.

13.6 None of the Parties' common law rights that it may have, is excluded.

#### **14 DISPUTE RESOLUTION**

14.1 Save to the extent expressly otherwise provided for in the Agreement, any dispute arising out of, or in connection with the Agreement or the subject matter hereof (other than where interim and/or urgent relief is sought from a court of competent jurisdiction), shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA), by a single arbitrator appointed by the foundation, and which arbitration shall be held at a venue in Johannesburg. The Parties may elect to commercial arbitration.

14.2 Subject to clause 14.4 hereunder, the provisions of this clause:-

14.2.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and none of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings;

14.2.2 are severable from the rest of the provisions set out in the Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of any terms and conditions for any reason whatsoever.

14.3 The receipt by any party to the Agreement of a notice calling for arbitration shall constitute the service of a process for the purpose of interruption of prescription in terms of Section 13 of the Prescription Act, No. 68 of 1969, or the corresponding provision in any amendment thereto or replacement legislation.

14.4 Notwithstanding the arbitration provisions contained above, the Customer hereby agrees and consents that Volvo Trucks shall be entitled, at its sole and absolute discretion, to institute legal proceedings for the recovery of any amount due by the Customer to Volvo Trucks arising out of or in connection with the Agreement in any Magistrate's Court having jurisdiction and notwithstanding that such claim may exceed the ordinary jurisdiction of the Magistrate's Court. Similarly, Volvo Trucks shall be entitled to institute such proceedings in the appropriate High Court having jurisdiction and nothing contained herein shall operate to preclude Volvo Trucks from electing to institute any such action in the High Court.

#### **15 DEFECTS AND APPLICATIONS OUTSIDE THE CONTRACT**

15.1 When, in the opinion of the relevant Dealer, any part or component of the Vehicle is defective beyond repair and is impairing, or likely to impair, the efficient, safe and reliable operation of the Vehicle, or is likely to cause damage to the Vehicle and the rectification of such defect is outside the scope of the Contract, the Parties shall procure that the relevant dealership notify both Volvo Trucks and the Customer in writing of such opinion and recommend the replacement of the part or component, and the cost of such replacement.

15.2 If the Customer unreasonably refuses or fails to have such replacement carried out within 14 (fourteen) days of receiving such notice, then Volvo Trucks shall be absolved until the replacement is made, be absolved from all obligations hereunder in relation to the Vehicle and from any liability in connection with the operation of the Vehicle, including but not limited to any claim based on product liability.

15.3 Whenever it comes to the attention of Volvo Trucks that any Vehicle is used for a Vehicle Application other than that specified in the Contract and the application, in the opinion of Volvo Trucks, is likely to increase the responsibility hereunder, increase the costs of performing the work, or the kilometres travelled are likely to exceed or fall short of the Annual kilometres, Volvo Trucks may notify the Customer in writing that it must forthwith cease such application. If, on receiving such

notice, the Customer unreasonably refuses or fails to cease such application, Volvo Trucks may, at its sole discretion:

15.3.1 notify the Customer in writing that such a Vehicle is no longer subject to the Contract and

thereafter Volvo Trucks shall be absolved from all obligations hereunder in relation to that Vehicle; or

15.3.2 notify the Customer in writing of a revised increased Monthly Payment, taking account of the additional responsibilities or costs created by that Vehicle's different application and the Customer shall pay such revised Monthly Payment as provided for in Clause 8.

15.4 The Customer acknowledges that Volvo Trucks may be obliged to take actions required in terms of a recall campaign that may be launched from time to time:

15.4.1 The Customer shall respond and make its Vehicle available to a Dealer within the time frame stipulated in the communication, and shall, where required, take the specific actions necessary to comply with the conditions of recall campaigns.

15.4.2 The Customer further authorizes the Dealer to do the work required in terms of recall campaigns while the Vehicle is at the Volvo Trucks dealer for Work in terms of the Agreement.

## **16 VEHICLES REMOVED FROM THESE TERMS AND CONDITIONS**

16.1 If a Vehicle is repossessed from the Customer under any instalment sale agreement or by the lessor from the Customer under any lease agreement or destroyed before the expiration hereof then the Customer shall immediately notify Volvo Trucks of such fact and the Agreement shall be deemed to have terminated from the date of such occurrence. In such event the Customer shall be liable to pay to Volvo Trucks upon demand any over-mileage charge for excess kilometres to date of Termination plus any outstanding amounts owing to Volvo Trucks.

16.2 In the event of a Vehicle being disposed by the Customer to an affiliate, subsidiary company or another purchaser in the normal course of business, the Customer shall only be released from the operation of the Agreement with Volvo Trucks' prior written consent and subject to the provision of adequate security for the due performance of the cessionary's obligations, to the satisfaction of Volvo Trucks.

16.3 In the event of a Vehicle being disposed of by a Customer during the sale of its business as part of its business assets, the Customer shall immediately notify Volvo Trucks in writing of such fact. The Contract relating to the relevant Vehicle shall be deemed to have terminated from date of such occurrence. The Customer shall be liable to affect payment to Volvo Trucks for any amounts outstanding in terms of the Agreement.

## **17 VOLVO TRUCKS LIABILITY AND INDEMNITY**

17.1 Volvo Trucks shall use all reasonable endeavours to perform the Work with reasonable care and skill and within a reasonable time. Subject to the foregoing all express or implied warranties, conditions and undertakings (whether statutory or otherwise) in respect of the performance by Volvo Trucks of the Work are excluded.

17.2 Notwithstanding anything to the contrary in the Agreement:

17.2.1 the Customer shall have no claim of whatsoever nature against Volvo Trucks in the event that it is deprived of the use of the Vehicle and shall be obliged to fulfil its payment obligation by paying the Monthly Payment on the due dates; and

17.2.2 Volvo Trucks shall not be liable to the Customer or any other person for any loss of profits, direct or indirect damages, or any other consequential loss or damages arising from any cause whatsoever, and irrespective of whether it is contractually or delictually. The Customer hereby indemnifies Volvo Trucks and holds Volvo Trucks harmless against any claim which may be made against VGSA in respect of any matter for which the liability of Volvo Trucks is excluded in terms hereof; and

17.2.3 Volvo Trucks shall not be obliged to arrange a loan vehicle suitable to the Vehicle being repaired or serviced; and

17.2.4 The Customer shall have no claim against Volvo Trucks for any loss or damage to any property left in or upon the Vehicle for any reason whatsoever, or the Vehicle itself, when the Vehicle is in the custody of any Dealer for any purpose under these Terms and Conditions.

## **18 SET-OFF AND LIEN**

The Customer shall not set-off any claims it may have against the relevant Dealer or Volvo Trucks against the amounts it is required to pay hereunder, nor shall he exert any lien, unless such counterclaims or liens are recognised by Volvo Trucks or have been declared to be legally effective by a Court of competent jurisdiction.

## **19 APPLICABLE LAW AND LEGAL COMPLIANCE**

- 19.1 The Customer shall duly comply with all applicable laws, regulations, and directives (including laws and regulations pertaining to competition, tax, data privacy, corruption, and accounting) ("Legislation"), and shall obtain and maintain all such licenses, approvals and consents as may be necessary for the performance and observance of its obligations hereunder. In performing its obligations in terms of the Agreement, the Customer shall not do anything, which may cause Volvo Trucks or any other entity in the Volvo Group to contravene any applicable Legislation.
- 19.2 The Agreement shall be interpreted and be subjected to the laws of the Republic of South Africa, as may be amended from time to time.
- 19.3 VGSA may conduct, or provide a mandate to a third party, to conduct a due diligence assessment and/or a risk-based assessment from time to time, in respect of the Customer's business activities, including but not limited to the company, partnerships, associations, holding company, group companies, affiliates, shareholders, directors, and the like.
- 19.4 VGSA may conduct the activities referred to in clause 19.3 and take appropriate actions as may be required in terms of the Volvo Group's policies, procedures, legislation, and legislative changes, regulations, (including all amendments from time to time), such as legislation pertaining to anti-corruption, anti-competitive behavior, anti-money laundering, export and import controls, tax, personal data protection and cybersecurity but not limited thereto.

## **20 MISCELLANEOUS**

- 20.1 The Agreement hereto constitutes the sole and exclusive record of the agreement between the Parties relating to the subject matter hereof and no warranty, representation, undertaking, guarantee or any term or condition of whatever nature not contained and /or recorded herein, or amendments not specifically provided for herein, shall be binding on any of the Parties.
- 20.2 No variation, modification of any provision of the Agreement, or consent to any waiver by any of the Parties, shall be of any force or effect unless the same shall be confirmed in writing, signed by or on behalf of both Parties, and then shall be effective only in the specific instance and for the purpose and to the extent for which made or given.

## **21 SEVERABILITY**

- 21.1 Each clause and/or term and/or provision of the Agreement is severable from the rest of the Agreement and should such clause, term, or provision be found to be unenforceable, it will not affect the validity of the remainder of the Agreement, or the enforceability thereof.

## **22 DOMICILIUM**

- 22.1 The Customer hereby chooses domicilium citandi et executandi for all purposes arising out of or in connection with the Agreement at the Customer's address set out in the Contract where all notices and or processes may validly be delivered by hand to or served upon the Customer. The Customer may change its domicilium to another within the Republic of South Africa by written notice delivered by email,



hand or sent by prepaid registered post to Volvo Trucks.

22.2 The Customer shall notify Volvo in writing immediately of any change in the Customer's registered office and or normal place of business and /or residential address.

22.3 The Parties' domicilium for purposes of the Agreement and legal proceedings shall be:

**VOLVO TRUCKS SOUTH AFRICA**  
a division of Volvo Group Southern Africa (Pty) Ltd  
Cnr Jet Park Road and Saligna Street  
Hughes Business Park  
Witfield, Boksburg

**CUSTOMER:**

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

**23 ACCEPTANCE**

The Customer states that he has reviewed the terms and conditions of the Agreement as published on the website, is familiar with the contents and accepts it accordingly.