

Domination and Profit and Loss Transfer Agreement (Beherrschungs- und Gewinnabführungsvertrag)

between

(1) Truck & Bus GmbH

having its registered office in Wolfsburg, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) Braunschweig under company number HRB 100261,

- herein referred to as "**Truck & Bus GmbH**" -

and

(2) MAN SE

having its registered office in Munich, registered in the commercial register at the Local Court (*Amtsgericht*) Munich under company number HRB 179426,

- herein referred to as "**MAN**" -

1 Management Control and Instructions

1.1 MAN submits the management control (*Leitung*) of its company to Truck & Bus GmbH. Truck & Bus GmbH is accordingly entitled to issue instructions (*Weisungen*) to the Executive Board of MAN with regard to the management control of the company. The Executive Board of MAN is required to comply with the instructions of Truck & Bus GmbH.

1.2 Truck & Bus GmbH is not entitled to issue an instruction to the Executive Board of MAN to amend, maintain or terminate this Agreement.

1.3 Any instructions require text form (*Textform*) or, if the instructions are issued orally, they shall be confirmed in text form without undue delay.

2 Transfer of Profit

2.1 MAN undertakes to transfer its entire annual profit (*Gewinnabführung*), as determined in accordance with commercial law, to Truck & Bus GmbH. Subject to establishing or dissolving reserves in accordance with Clauses 2.2 and 2.3 below, the maximum amount permissible under section 301 German Stock Corporations Act (*Aktiengesetz*) ("**AktG**"), as amended from time to time, shall be transferred.

2.2 If and only to the extent permissible under commercial law and as economically justified by reasonable commercial judgement and with the consent of Truck & Bus GmbH, MAN may

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allocate parts of its annual profit to other profit reserves (section 272 para. 3 German Commercial Code (*Handelsgesetzbuch*) ("**HGB**").

2.3 Upon the written request of Truck & Bus GmbH, MAN shall dissolve other profit reserves within the meaning of section 272 para. 3 HGB established during the course of this Agreement and use the proceeds to compensate for any annual loss or transfer the proceeds as profit. Other reserves or profits carried forward from the period prior to the term of this Agreement may neither be transferred as profit to Truck & Bus GmbH nor be used by MAN to compensate for any annual loss.

2.4 The obligation on MAN to transfer its annual profit applies for the first time to the entire profit for the fiscal year of MAN beginning on 1 January 2014 or for whichever subsequent fiscal year of MAN in which this Agreement becomes effective. The claim of Truck & Bus GmbH for a transfer of profit under this Clause 2 becomes due at the end of the last day of the fiscal year of MAN for which the respective claim exists. The claim must be fulfilled within four weeks from determination of the annual financial statements of MAN. Interest shall accrue in accordance with statutory law for the time between the due date of the claim for the transfer of the profit and its fulfillment.

Claims based on any default in payment remain unaffected.

3 Assumption of Losses

3.1 An assumption of any annual losses (*Verlustübernahme*) of MAN by Truck & Bus GmbH is agreed by reference to the provisions in section 302 AktG, as amended from time to time.

3.2 The obligation to assume losses applies for the first time for the entire fiscal year of MAN in which this Agreement becomes effective. The claim of MAN with regard to the compensation of any annual losses under Clause 3 becomes due at the end of the last day of a fiscal year of MAN for which the respective claim exists. The claim must be fulfilled at the latest upon expiration of four weeks after determination of the respective annual financial statements of MAN. Interest shall accrue in accordance with statutory law for the time between the due date of the claim for the compensation of the annual losses and its fulfillment.

Claims based on any default in payment remain unaffected.

4 Guaranteed Dividend and Recurring Compensation Payment

4.1 Truck & Bus GmbH guarantees that it will pay to the outside shareholders of MAN in respect of the fiscal year 2013 of MAN a certain portion of the profit pursuant to Clause 4.3 below as adequate cash compensation ("**Guaranteed Dividend**") (*Garantiedividende*). To the extent that the dividend paid for the fiscal year 2013 of MAN (including any payments on account) for each share of MAN falls short of the Guaranteed Dividend, Truck & Bus GmbH will pay to each outside shareholder of MAN the corresponding difference per share. Payment of any such difference is due on the first banking day after the ordinary general shareholders' meeting of MAN for the fiscal year 2013 of MAN.

4.2 From and including the fiscal year of MAN in relation to which the claim of Truck & Bus GmbH for the transfer of the annual profit under Clause 2 takes effect, and for the remainder of the term of this Agreement, Truck & Bus GmbH undertakes to pay to the outside shareholders of MAN as adequate recurring compensation an annual cash compensation ("**Recurring Compensation Payment**") (*Ausgleich*). The Recurring Compensation Payment is due on the first banking day following the ordinary general shareholders' meeting of MAN for the preceding fiscal year, but in any event within eight months following expiration of the relevant fiscal year.

- 4.3** For each full fiscal year of MAN, the Guaranteed Dividend or the Recurring Compensation Payment, respectively, for each bearer share of MAN representing a mathematical portion of EUR 2.56 in the share capital ("**MAN Share**"), i.e. for each bearer common share of MAN representing a mathematical portion in the share capital of EUR 2.56 ("**MAN Common Share**") as well as for each bearer nonvoting preferred share of MAN representing a mathematical portion in the share capital of EUR 2.56 ("**MAN Preferred Share**"), in each case amounts to a gross sum of EUR 3.30 ("**Gross Recurring Compensation Payment**") minus the amount of any corporate income tax and the solidarity surcharge in accordance with the respective tax rate applicable for these taxes for the relevant fiscal year, provided that this deduction is only made on the portion of the Gross Recurring Compensation Payment in the amount of EUR 1.43 per MAN Share which relates to the profits of MAN that are subject to German corporate income tax.

Based on the situation at the time of conclusion of this Agreement, the portion of the Gross Recurring Compensation Payment of EUR 1.43 per MAN Share which relates to the profits of MAN that are subject to German corporate income tax is subject to a deduction of 15% corporate income tax plus 5.5% solidarity surcharge, i.e. EUR 0.23. Together with the remaining portion of the Gross Recurring Compensation Payment of EUR 1.87 per MAN Share which relates to profits that are not subject to German corporate income tax, the aggregate amount of the Guaranteed Dividend or of the Recurring Compensation Payment amounts to EUR 3.07 per MAN Share for a full fiscal year based on the situation at the time of conclusion of this Agreement.

- 4.4** The Guaranteed Dividend is granted for the fiscal year 2013 of MAN if this Agreement becomes effective in the year 2013. The Recurring Compensation Payment is granted for the first time for the fiscal year of MAN for which the claim of Truck & Bus GmbH for transfer of profit under Clause 2 becomes effective.
- 4.5** If this Agreement ends during a fiscal year of MAN or if MAN establishes an abbreviated fiscal year (*Rumpfgeschäftsjahr*) during the term of this Agreement, the Gross Recurring Compensation Payment is reduced proportionately *pro rata temporis* for the relevant fiscal year.
- 4.6** If the share capital of MAN is increased using corporate funds in exchange for the issuance of new shares, the Gross Recurring Compensation Payment per MAN Share is reduced to such an extent that the total amount of the Gross Recurring Compensation Payment remains unchanged. If the share capital of MAN is increased by cash contributions and/or contributions in kind, the rights under this Clause 4 also apply for the shares subscribed to by outside shareholders in such capital increase. The beginning of such entitlement pursuant to this Clause 4 of the new shares corresponds to the dividend entitlement set by MAN when issuing the new shares.
- 4.7** If judicial appraisal proceedings (*Spruchverfahren*) regarding a judicial determination of the adequate recurring compensation are initiated and the court adjudicates a legally binding higher Guaranteed Dividend and/or a higher Recurring Compensation Payment for each MAN Common Share or each MAN Preferred Share, the outside shareholders are entitled to demand a corresponding payment in addition to the Guaranteed Dividend and/or Recurring Compensation Payment per MAN Common Share or MAN Preferred Share which they have already received, even if they have already received the Compensation pursuant to Clause 5 of this Agreement. All other outside shareholders in the respective class of stock will be treated in the same way if Truck & Bus GmbH undertakes to pay a higher Guaranteed Dividend and/or a higher Recurring Compensation Payment to an outside shareholder of MAN in a settlement for the purpose of avoiding or settling judicial appraisal proceedings.

5 Compensation

- 5.1 Truck & Bus GmbH undertakes upon demand of each outside shareholder of MAN to purchase such shareholder's MAN Shares in exchange for a cash compensation in the amount of EUR 80.89 per MAN Common Share and EUR 80.89 per MAN Preferred Share ("**Compensation**") (*Abfindung*).
- 5.2 The obligation of Truck & Bus GmbH under Clause 5.1 of this Agreement is for a limited period of time. The time limitation period ends two months after the date on which the registration of this Agreement in the commercial register has been announced pursuant to section 10 HGB. An extension of the time limitation period pursuant to section 305 para. 4 sentence 3 AktG as a result of a motion for determination of the adequate recurring compensation or Compensation by a court pursuant to section 2 of the German Act on Special Court Proceedings (*Spruchverfahrensgesetz*) remains unaffected; in this event, the time limitation period ends two months after the date on which the decision on the last motion ruled on has been announced in the Federal Gazette (*Bundesanzeiger*).
- 5.3 The transfer of the MAN Shares for payment of the Compensation is free of costs for the outside shareholders of MAN.
- 5.4 If the share capital of MAN is increased using corporate funds in exchange for the issuance of new shares prior to the expiration of the time limitation period set forth in Clause 5.2 of this Agreement, the Compensation per MAN Share is reduced accordingly to such an extent that the total amount of the Compensation remains unchanged. If the share capital of MAN is increased prior to the expiration of the time limitation period set forth in Clause 5.2 of this Agreement by means of cash contributions and/or contributions in kind, the rights under this Clause 5 also apply for the shares subscribed to by the outside shareholders in such capital increase.
- 5.5 If judicial appraisal proceedings regarding a judicial determination of the adequate Compensation are initiated and the court adjudicates a legally binding higher Compensation for each MAN Common Share or each MAN Preferred Share, the outside shareholders are entitled to demand a corresponding additional payment to the Compensation for each MAN Common Share or each MAN Preferred Share, even if they have already received the Compensation stipulated in this Agreement. All other outside shareholders in the same class of stock will be treated in the same way if Truck & Bus GmbH undertakes to pay a higher Compensation to an outside shareholder of MAN in a settlement for the purpose of avoiding or settling judicial appraisal proceedings.
- 5.6 If this Agreement is terminated by notice of termination by Truck & Bus GmbH or MAN at a point in time when the time limitation period set forth in Clause 5.2 for accepting the Compensation pursuant to Clause 5.1 has already expired, each outside shareholder of MAN at that time is entitled to sell his MAN Shares held at the time of the termination of this Agreement to Truck & Bus GmbH in exchange for payment of the Compensation set forth in Clause 5.1 for each MAN Common Share and each MAN Preferred Share, and Truck & Bus GmbH is required to purchase the shares of each outside shareholders upon request of such outside shareholder. If the Compensation set forth in Clause 5.1 for each MAN Common Share or each MAN Preferred Share is increased by a legally binding decision in judicial appraisal proceedings or by a settlement for the purpose of avoiding or settling judicial appraisal proceedings, Truck & Bus GmbH will purchase the shares of the outside shareholders under the preconditions set forth in sentence 1 in exchange for payment of the amount established for each MAN Common Share or each MAN Preferred Share in the judicial appraisal proceedings or in the settlement. This right to sell is for a limited period of time. The time limitation period ends two months after the date on which the registration of the termination of this Agreement in the

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commercial register of MAN is announced pursuant to section 10 HGB. Clause 5.3 and Clause 5.4 apply accordingly.

6 Effectiveness, Term and Termination of this Agreement

- 6.1** This Agreement requires the consent of the general shareholders' meeting of MAN as well as the consent of the shareholders' meeting of Truck & Bus GmbH. This Agreement becomes effective upon registration in the commercial register of MAN.
- 6.2** This Agreement is concluded for an indefinite period of time. This Agreement can be terminated for the first time as of the end of the fiscal year of MAN which ends at least five years (*Zeitjahre*) after the beginning of the fiscal year of MAN for which the claim of Truck & Bus GmbH under Clause 2 takes effect. The term of this Agreement is extended subsequently in each case by one year unless this Agreement is terminated by one of the Parties by giving six months' notice prior to the expiration.
- 6.3** Notwithstanding the above Clause 6.2, this Agreement can be terminated for just cause (*wichtiger Grund*) without compliance with any notice period. Just cause exists if just cause for purposes of tax law for the termination of this Agreement exists. Just cause also exists if Truck & Bus GmbH no longer directly or indirectly holds the majority of the voting rights under the MAN Shares or if Truck & Bus GmbH undertakes to transfer, subject to the fulfillment of external conditions, if any, the shares in MAN to a third party so that Truck & Bus GmbH would no longer directly or indirectly have the majority of the voting rights under the MAN Shares upon the closing of the contract, or in the event of a merger, spin-off or liquidation of Truck & Bus GmbH or MAN.
- 6.4** Any notice of termination must be in writing.

7 Letter of Affiliation and Comfort

- 7.1** Volkswagen Aktiengesellschaft, having its registered office in Wolfsburg, as the sole shareholder of Truck & Bus GmbH, without joining this Agreement as a party, has issued a Letter of Affiliation and Comfort (*Organschafts- und Patronatserklärung*) which is attached as an **Annex** to this Agreement for information purposes. In this letter, Volkswagen Aktiengesellschaft confirms that it does not intend to terminate the domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and Truck & Bus GmbH. Moreover, Volkswagen Aktiengesellschaft has undertaken in the Letter of Affiliation and Comfort to inform MAN in a timely fashion of any termination of the domination and profit and loss transfer agreement existing between Volkswagen Aktiengesellschaft and Truck & Bus GmbH so that MAN and any shareholders of MAN who have claims against Truck & Bus GmbH under this Agreement are in a position to assert their claim for security to be provided pursuant to section 303 AktG in a timely fashion. Furthermore, Volkswagen Aktiengesellschaft has undertaken to ensure that Truck & Bus GmbH will inform MAN without undue delay of any material deterioration in the assets or financial situation of Truck & Bus GmbH, and to waive the defense of requiring that a complaint be filed first against the principal obligor (*Einrede der Vorausklage*) for the benefit of MAN and the shareholders of MAN who have claims against Truck & Bus GmbH under this Agreement in the event that Volkswagen Aktiengesellschaft will provide security with a surety (*Bürgschaft*) pursuant to section 303 para. 3 AktG.
- 7.2** In addition, Volkswagen Aktiengesellschaft undertakes in the Letter of Affiliation and Comfort that it will ensure that Truck & Bus GmbH is managed and financially equipped in such a way that Truck & Bus GmbH is able to fulfill its liabilities under Clause 5 of this Agreement in a timely fashion.

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8 Final Provisions

8.1 The applicable law is German law.

8.2 If any provision of this Agreement is or becomes invalid, or if this Agreement does not contain a necessary provision, the validity of the remaining provisions of this Agreement shall not be affected. In place of the invalid provision, or in order to remedy an omission in this Agreement, a legally permissible provision will be deemed to have been agreed which corresponds as far as possible to what the Parties intended or would have intended in accordance with the intent and purpose of this Agreement if they had been aware of the invalidity of the relevant provision or the omission.

Truck & Bus GmbH

Wolfsburg, 26 April 2013

Dr. h.c. Leif Östling
Managing Director

Hans Dieter Pötsch
Managing Director

MAN SE

Munich, 26 April 2013

Dr. Georg Pachta-Reyhofen
Chairman of the Executive Board

Jochen Schumm
Member of the Executive Board

Annex: Letter of Affiliation and Comfort of Volkswagen Aktiengesellschaft

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Note:

The Annex (the Letter of Affiliation and Comfort of Volkswagen Aktiengesellschaft) is not attached to this pdf document but is separately accessible under www.man.eu/agm.