

## **Scrap Disposal Agreement**

This Agreement is executed on this \_\_\_\_\_ **day of Oct 2018** at Village Asron, Distt. Shahid Bhagat Singh Nagar (Nawanshahar), Punjab

### **BETWEEN**

**M/s SML Isuzu Limited**, (formerly known as M/s Swaraj Mazda Ltd.) a company incorporated under the provisions of the Companies Act, 1956 and having its works and Registered Office at Village Asron, District Shahid Bhagat Singh Nagar (Nawanshahar), Punjab and it's Corporate Office at SCO No. 204-205, Sector 34 A, Chandigarh, through its \_\_\_\_\_, Sh. \_\_\_\_\_, duly authorized to execute the said agreement, hereinafter referred to as "**SMLI**", which expression shall unless repugnant to the subject or context shall mean and include its successors and assigns.

### **AND**

**M/s** \_\_\_\_\_, a firm functioning under the above said name and style, having their registered office at \_\_\_\_\_ and acting through its \_\_\_\_\_ Mr. \_\_\_\_\_ duly authorized to execute the said agreement, hereinafter referred to as "**the Contractor**" which expression shall unless repugnant to the subject or context shall mean and include its successors and assigns, legal heirs and administrators.

WHEREAS SMLI is engaged in the business of manufacturing Commercial Vehicles from the factory/plant situated in Village Asron, Distt. Shahid Bhagat Singh Nagar (Nawanshahar) hereinafter referred to as "**the plant**" and the Contractor is engaged in the business of sale and purchase of scrap.

SMLI for the purpose of disposal of the scrap generated in the process of manufacturing vehicles, is desirous of appointing the Contractor who may perform the desired work as detailed in the scope of work below.

The Contractor has approached SMLI and expressed a keen desire lift the scrap from the plant of SMLI. The Contractor has also represented that it has the necessary infrastructure, manpower and experience in providing the said services and that it possesses the requisite financial capabilities to perform the above functions and such other functions as may be assigned to the Contractor by SMLI from time to time.

On the basis of the aforesaid representation made by the Contractor to SMLI, the Parties here to have agreed to enter into an Agreement on the terms and conditions contained hereinafter.

**NOW THIS AGREEMENT WITNESSETH THE TERMS AND CONDITIONS AS DETAILED HEREUNDER.**

**A. SCOPE OF WORK**

1. The Contractor shall engage the minimum number of personnel as per SMLI requirement.
2. The Contractor, on the intimation received from SMLI, shall within three working days, get the scrap lifted from the plant of SMLI.
3. The Contractor shall ensure that the vehicle goes to that yard only which is designated for the type of scrap for which the contractor is authorised and has been called for and not to any other scrap yard.
4. **For Scrap which is measured by Weight:**
  - a) The Contractor shall get the weight of the empty vehicle checked from the weighing machine of SMLI situated inside the plant and obtain a receipt of the same.
  - b) The Contractor shall carry only a single type of scrap at a time in the vehicle and shall not mix up the multiple type of scraps in a single vehicle, unit of measurement of which is in Kilograms.
  - c) After loading the scrap, the contractor shall get the weight of the vehicle done from the weighing machine of SMLI situated inside the plant and obtain a receipt of the same.
  - d) The receipt of the weights are required to be submitted to the store of SMLI by the contractor and shall deposit the amount of the scrap lifted along with applicable taxes and levies in the bank account of SMLI.
5. **For Scrap which is measured in Units:**

- a) The contractor shall inform the quantity of the number of units loaded to the stores department of SMLI.
6. The contractor shall calculate the amount of scrap lifted by it and get the same cross verified from the accounts department of SMLI.
7. The contractor shall intimate the accounts department of SMLI about the deposit of payment and submit the proof of payment thereof to the accounts department of SMLI.
8. The contractor shall obtain the invoice from the stores department of SMLI and also obtain the NRGP (Non Returnable Gate Pass) number from the store which has to be intimated to the security gate of SMLI while taking out the vehicle.
9. The contractor shall clear the scrap as per the instructions from the concerned official of SMLI or as per the schedule provided by SMLI.

## **B. OBLIGATIONS OF THE CONTRACTOR**

1. The Contractor shall ensure that the personnel engaged by it for driving the vehicle involved in lifting the scrap from the plant of SMLI shall have a valid driving license and that the said vehicle is having a valid insurance in order to cover any untoward incident in the plant or outside the plant of SMLI.
2. The Contractor shall provide the services as per the requirements of SMLI and as detailed in the Scope of work referred above.
3. The Contractor alone shall be entitled to instruct and dictate to the personnel engaged by it for providing the services as detailed in the scope of work and about the manner of the execution without any interference or instruction or intervention whatsoever from SMLI
4. The Contractor shall have the sole discretion to discharge its obligations through the resources available with the Contractor at a particular point of time. SMLI shall not have any right to choose the personnel to be deployed for the same. As and when the scope of work referred above is completed,

the personnel deployed for the same may proceed for providing services to the other places wherever the Contractor wants.

5. The Contractor shall further ensure that the personnel engaged by it for lifting the scrap are fully covered under ESI and/or any other applicable act. The Contractor shall submit the challans pertaining to the deposit of ESI amount of the personnel engaged by it to SMLI prior to lifting the scrap.
6. The Contractor and the personnel engaged by it shall maintain the level of Confidentiality and Non Disclosure of any information to any third party.
7. The Contractor and the personnel engaged by it shall maintain due decorum at the SMLI office and plant. The Contractor and the personnel engaged by it shall not indulge in any such practices that are against the interest of SMLI. The Contractor shall be responsible for all the acts of the personnel engaged by it.
8. In case the Contractor or any of the personnel engaged by it misbehave, indulge into any practices which are illegal in the eyes of law, is/are found breaking the level of confidentiality as expected by SMLI, the Contractor shall be held responsible and shall be liable for such misconduct. In such case SMLI at its discretion may take any appropriate action it deems fit against the Contractor.
9. No subcontracting is permissible for the Contractor.
10. The Contractor will ensure that the personnel deputed by the Contractor are medically fit and do not suffer from any serious ailment.
11. The Contractor undertakes to indemnify SMLI for any act of commission or omission by any of the personnel deputed by the Contractor or the Contractor's representatives, for which SMLI bears any loss or is held liable by any third party. The Contractor agrees to bear the costs, borne by SMLI for any litigation etc arising due to deeds/misdeeds of personnel deputed by the Contractor.
12. The Contractor confirms to SMLI that there are no actions, suits, proceedings or investigations pending to its knowledge threatened against it and the personnel engaged by the contractor, before any court or any governmental department, commission, board or agency.

13. The Contractor shall be responsible for due compliance with all the labour law provisions as and where applicable under the following acts:

- a. The Contract Labour (Regulation & Abolition) Act, 1970.
- b. The Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- c. The Employees State Insurance Act, 1948.
- d. The Payment of Gratuity Act, 1972.
- e. The Workmen Compensation Act, 1923.
- f. The Maternity Benefit Act, 1961 (in case female labour is engaged)
- g. The Payment of Wages Act, 1936
- h. The Minimum Wages Act, 1948
- i. The Factories Act, 1948
- j. The Payment of Bonus Act, 1965

The above list is just illustrative and not exhaustive.

14. The Contractor shall ensure compliance with all applicable laws pertaining to safety of their deputed personnel. In the event of any loss or damage to health of any personnel of the contractor or any injury sustained by the contractor or its personnel, while in the course of segregating or lifting or loading the scrap, either inside or outside the plant of SMLI, then the Contractor shall make its own arrangement with respect to hospitalization/provision of timely medical aid transportation of its personnel at no cost to SMLI.

15. The Contractor has confirmed that he will get himself registered under “The Contract Labour (Regulation and Abolition) Act, 1970 and/or any other law as applicable. The Contractor hereby warrants that

- i) It has obtained all necessary approvals, consents and authorizations of the relevant Governmental Authorities (wherever required) to enter into this Agreement and to perform and carry out its obligations hereunder.
- ii) The person(s) executing this Agreement on its behalf have express authority to do so, and, in so doing, bind the Contractor thereto.

16. The segregation and loading of the scrap shall be the responsibility of the contractor. The same shall be done by the contractor at his own risk and cost.

17. The contractor shall ensure that the personnel engaged by it are equipped with all the safety gadgets / equipments which are required for the safety and security of the personnel.
18. The contractor shall ensure that neither the contractor himself nor the personnel engaged by him enter any other area in the plant for which they are not authorised to enter or which is not related to the scope of work as per this agreement.
19. The contractor shall get the scrap lifted from the plant of SMLI between 10:00 am to 04:00 pm only on all working days.
20. The contractor shall ensure that no theft or pilferage happens or is done by himself or by any of the personnel engaged by it.
21. The contractor shall not further sub-contract or delegate the scope of work or its obligations under this agreement to any other person or firm or company or any other contractor.
22. The contractor shall be liable to compensate SMLI and/or any other third party affected by the acts of omission or commission by it or its personnel.
23. The contractor shall be liable to compensate SMLI and/or any other third party for any damage caused by the contractor or its personnel to the life and/or property of SMLI or any other third party, while in the SMLI premises.
24. The contractor shall be responsible to arrange the labour, tools, tackles, forklifts, cranes or any other equipments required for segregating or lifting or loading the scrap at its own cost.
25. The Contractor shall nominate a Single Point of Contact, which will receive instructions from the nominated Single Point of Contact of SMLI only.
26. The contractor shall make payment to the SMLI only and not to any of the personnel in employment of SMLI. Under no circumstance personnel deputed by the Contractor shall make any claim towards SMLI in any regard.

27. The Contractor shall be solely liable for any retrenchment compensation, notice pay, gratuity, provident fund, ESIC or bonus or any other payment(s), if any, payable to the personnel engaged by the Contractor and the Contractor shall indemnify and keep SMLI and its officers, employees, Directors indemnified against any such liability.
28. The Contractor shall ensure that neither he nor his personnel click any photographs of any equipment/tools/work area.
29. The Contractor shall ensure that none of its personnel Smoke or Consume alcohol or any intoxicant substance inside the plant nor will the contractor engage such personnel who are under the impact of alcohol or any other intoxicant while they are entering the plant.
30. The contractor shall be responsible to pick up the scrap till the existence of last day of the validity of this agreement.

### **C. OBLIGATIONS OF SMLI**

1. SMLI shall not get the scrap lifted from any other party until and unless the same is not lifted by the contractor within the period specified above or the contractor shows his inability to lift the same.
2. SMLI shall provide the facility of weighing the scrap inside the plant without any cost to the contractor.
3. No interest shall be payable on the security deposit lying with the SMLI and the same shall be refunded back to the contractor only after successful completion of the terms and conditions of this agreement and after adjusting losses if any suffered by SMLI or any other third party due to the non fulfillment of the terms and conditions of this agreement.
4. SML shall nominate a Single Point of Contact, which will give instructions to nominated Single Point of Contact by the Contractor or to the Contractor only and will have nothing to do or be concerned with the conditions of employment of the personnel engaged by the Contractor.
5. SMLI shall not have any control/supervision either on the working of the personnel engaged by the Contractor for fulfillment of its obligations as per

this contract or on the manner of discharge, dismissal, retrenchment, attendance, employment or re-employment etc. of the personnel engaged by the Contractor.

6. SMLI will not be liable for any retrenchment compensation, notice pay, gratuity, provident fund, ESIC or bonus or any other payment(s), if any, payable to the personnel engaged by the Contractor.

#### **D. SECURITY DEPOSIT**

The earnest money deposited by the contractor along with the tender form equivalent to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) is being converted herein as a “Security Deposit”. The said security deposit shall be treated as an interest free deposit. The security deposit shall be valid till expiry or termination of this agreement. The Security Deposit shall be forfeited in case the material is not completely lifted by the contractor within six working days of being notified by SMLI. Security Deposit once forfeited shall not be refunded back, even if the scrap is lifted thereafter.

#### **E. TERM**

This Agreement shall be valid commencing from 01.04.2018 to 30.09.2018. This agreement supercedes all previous contracts/agreements between the Contractor and SMLI.

#### **F. PAYMENT TERMS**

1. The contractor shall deposit the exact amount of the scrap being lifted by it through RTGS/NEFT/Demand Draft in favour of SML ISUZU Ltd. If the payment is made through Demand Draft, the same shall be payable at Ropar. The said payment shall be made prior to dispatch of the vehicle. The vehicle containing the scrap shall be dispatched only after the said payment is credited to the account of SMLI and not prior to that.
2. The contractor shall pay the applicable GST and any other levies as and when applicable over and above the scrap value.

#### **G. TERMINATION FOR CAUSE**

This Agreement may be terminated in the following manner:

1. **Termination by SMLI:** Notwithstanding Clauses herein above, SMLI may terminate this Agreement for its convenience with or without cause at any time during the currency of this Agreement by giving 15 days prior notice in writing to the Contractor and SMLI shall suspend, withdraw and/or discontinue the allocation forthwith to the Contractor.
  
2. **Termination by the Contractor:** The Contractor shall have the right to terminate the Agreement by giving 60 (sixty) days prior notice in writing. The contractor shall be liable to lift the entire scrap till the last day of the validity of this agreement. Breach or violation of this clause shall lead to forfeiture of entire security deposit of the contractor lying with SMLI.
  
3. Notwithstanding what is stated hereinabove, SMLI shall have the right to terminate this Agreement forthwith by giving notice thereof in written to the Contractor at its last known address in case of happening or occurrence of events, including but not restricted to the following:
  - (a) Material breach of any terms or conditions of this Agreement by the contractor
  
  - (b) Failure of the Contractor to obtain or maintain any license or permit or the suspension or revocation of any license or permit necessary for conducting business by the contractor under this Agreement;
  
  - (c) Violation by the contractor of any law, rule of regulation of the land;
  
  - (d) If the appointment or continuance of the Contractor under this Agreement is likely to result in loss of goodwill or reputation to SMLI or any of its directors, the decision of SMLI in this regard shall be final and binding upon the Contractor.

- (e) If the assets of the Contractor, either in whole or part are acquired or otherwise comes under the direct or indirect control of any third party unless the said control is exercised by the Contractor's parent company.
  - (f) If the Contractor subcontracts, transfers or assigns this Agreement or its right and/or obligations hereunder to any other party.
  - (g) The Contractor repudiates this Agreement or otherwise evinces an intention not to be bound by this Agreement.
  - (h) Any other event which may be found to be reasonable to SMLI.
4. The exercise of the right of termination shall not have the effect of waiving any damages to which the terminating party might otherwise be entitled.

#### **G. CONSEQUENCES OF TERMINATION**

In the event of this Agreement being terminated, the following shall be the consequences:

- a. All the rights under this Agreement shall cease forthwith and no payment whatsoever shall be made to the Contractor for any loss of goodwill, loss of business, loss of profits, anticipated profits and any other claims or losses in respect of such termination. The Contractor hereby waives its rights to claim any compensation on account of termination of this Agreement.
- b. The cancellation, termination or expiration of this Agreement shall not relieve or release the Contractor from making payments which may be otherwise owed to SMLI under the terms of the Agreement. The Contractor and its agents/employees shall forthwith be restrained from representing to the public at large in particular manner that it is authorized to effect any

collections and/ or represent itself to be in any way connected with or authorized by SMLI.

## **H. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement and supersedes all prior Agreement and understanding entered between the parties hereto whether written or oral. This Agreement shall be signed by the authorized representatives of both parties.

## **I. INDEMNITY**

The Contractor (hereinafter the “Indemnifying Party”) agrees to indemnify, defend and hold harmless SMLI including its officers, directors, employees and agents (hereinafter the “Indemnified Party”) from all claims, demands and causes of action arising out of any claim or action threatened or brought for personal injury or physical property damage caused by the acts or omissions of its personnel, agent(s) and representative(s) or permitted sub-Contractor’s, if any. The Indemnifying Party shall so indemnify, defend and hold harmless Indemnified Party from claims made by the personnel, agent(s) and representative(s) etc. of the Indemnifying Party, other than claims arising out of the negligence or willful misconduct of the Indemnified Party, or its personnel, agent(s) and representative(s) or permitted sub-Contractor, if any. Under all circumstances, SMLI shall not be responsible for any act of commission or omission of the Contractor and/or its personnel, agent(s) and representative(s), amounting to an offence under any penal statute. The sole responsibility in such a case shall be that of the Contractor and SMLI will not be deemed to be involved in such act in any manner whatsoever including knowledge thereof or connivance thereof. Any loss thus suffered by SMLI or any third party shall be settled primarily from the security deposit of the Contractor and for the remaining amount of loss suffered by SMLI or any third party, the affected party may take legal recourse available to it.

## **J. INDEPENDENT CONTRACTOR**

- a. This Agreement is on a Principal to Principal basis and does not create any employer-employee relationship between the parties. The Contractor, its employees, agents and representatives shall provide services as an independent Contractor on a non-exclusive basis and nothing contained herein shall be deemed to create any partnership, employment or relationship of principal and agent between the parties hereto or between SMLI and the Contractor's representatives or employees or the personnel engaged by the contractor or to provide the contractor with any right, power or authority whether, express or implied, to create any such duty or obligation.
- b. The Contractor acknowledges that delivery of services is solely within its control, subject to the terms and conditions agreed upon between the parties hereto and agrees not to represent itself as an employee of SMLI or any subsidiary or affiliate thereof. The Contractor shall indemnify and keep SMLI indemnified against all disputes / claims raised / made by any of the employees/associates of the Contractor.

**K. No authority to Commit**

The Contractor, its agents and employees are not the legal representatives, employees or agents of SMLI for any purpose and have no right or authority in incurring any expenses on behalf of SMLI or to assume or to create, in writing or otherwise, any obligations of any kind, express or implied, in the name of or on behalf of SMLI and except to the extent specified herein.

**L. Assignment**

The Contractor shall not assign or transfer its rights and remedies nor transfer its obligations under this Agreement without prior concurrence and written consent of the authorized representative of SMLI. In any event, any assignment or transfer shall not operate to relieve the assigning party of any of its obligations hereunder, nor will any such assignment impose any obligation on the assignee except in the case of an express written assumption thereof by the assignee.

**M. Failure to enforce**

The failure of either party to enforce at any time the provisions hereof shall not be construed to be a waiver of such provisions or a waiver of the right of such party thereafter to enforce each and every such provision.

**N. Sever ability**

If any provision of this agreement shall be found by any Government of administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision with a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**O. MISCELLANEOUS**

a. The Contractor or its deputed personnel shall not give any promises/guarantees/ warranties written and or verbal on SMLI's behalf.

b. Any notices, requests, demands or other communications required to be given by one party to the other shall be given in writing by personal delivery, duly acknowledged or by Registered Post, A.D., addressed to such other party at the following address:-

a) If to SML: Mr Dhiraj Puri  
**(For all legal notices)**  
Legal Department  
SML ISUZU Corporate Office  
SCO No. 204-205  
Sector 34-A, Chandigarh

**(For all day to day operational issues)**  
Mr. Sanjay Sharma

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SML Isuzu Ltd.

If made to the Contractor:

Kind Attn: Mr \_\_\_\_\_

- i) Signed by an authorized representative of the sender.
  - ii) In English Language
  - iii) Sent in person or by Registered Mail or by Fax (report generated)
- c. This agreement is with the Contractor and the benefits and liabilities thereof shall not be assigned or subcontracted by the Contractor to anyone without the written consent of SMLI.
  - d. This agreement binds the Contractor and its heirs, executors, administrators, successors and assigns.
  - e. If any part of this agreement is held invalid the remaining provisions will remain unaffected and enforceable.
  - f. Both the parties shall sit from time to time, for the enforcement of various statutory compliances.

**P. ARBITRATION**

- a. All disputes, differences and / or claims arising out of this Agreement shall be settled by Arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or amendment thereof.
- b. All such disputes, differences and claims shall be referred to a sole arbitrator to be appointed by the Managing Director of SMLI or any person duly authorised by the Managing Director in this regard.
- c. The fee of the arbitrator shall be borne equally by the parties.
- d. The Arbitration proceedings shall be held at Chandigarh.
- e. The award of the Arbitrator shall be final and binding on both the parties.

**Q. AUTHORITY**

Each party hereto represents and warrants that:

- a. It has obtained all necessary approvals, consents and authorizations of the relevant Governmental Authorities to enter into this Agreement and to perform and carry out its obligations hereunder.
- b) The persons executing this Agreement on behalf of both the parties have express authority to do so, and, in so doing, bind the party thereto.

## **R. ENTIRE AGREEMENT**

This Agreement and the Appendices hereto constitute the entire understanding between the parties concerning the subject matter hereof and supercede all prior discussions, agreements and representations, whether oral or written and whether or not executed by the Contractor and SML.

## **S. FORCE MAJEURE**

- i) Neither party to this Agreement shall be liable for breach of its obligations under this Agreement to the other party if performance thereof is prevented or delayed wholly or in part by reason of prohibition or restriction by law or regulation of any Government, fire, flood, storms, weather, accident, riots, acts of GOD or any other events(s) beyond the control of the party in breach provided notice of happenings of any such event is given by either party to the other, within 15 days from the date of occurrence thereof.
- ii) If the performance of a party's obligations under this Agreement in the opinion of that party is likely to be hindered / delayed or affected by a reason falling within the clause above for more than 15 days, then the party so affected shall promptly notify the other party in writing and the parties shall meet to decide the future course of action.

## **T. JURISDICTION**

This Agreement shall be subject to the exclusive jurisdiction of the courts of Shahid Bhagat Singh Nagar (Nawanshahr) and no other court would have territorial jurisdiction with respect to the subject matter of this Agreement.

## **U. Prevention of Corruption**

- a) The Contractor or any persons associated with the Contractor will not, commit or be involved in committing an Act which is prohibited or punishable as per the laws of the land, in connection with the Contractor's obligations under this agreement.
- b) If SMLI concludes in its reasonable opinion that the Contractor (including any personnel associated with the Contractor in all cases whether or not acting with the Contractor's knowledge) has breached the above clause, then SMLI may immediately terminate this agreement on providing written notice to the Contractor. Any notice of termination under this clause shall specify
  - (i) the nature of the prohibited act
  - (ii) the identity of the party whom SMLI believes has committed the prohibited act.
  - (iii) the date on which the agreement will terminate
- c) The Contractor shall refrain from directly or indirectly exerting improper influence on the decisions of the SMLI's contact persons nominated by SMLI or of contact persons who become known to the Contractor during performance of the contract, by means of offer to pay, promises to pay or authorizing the payment of any monies or payments in kind or by granting other advantages.
- d) The Contractor understands that it is SMLI's policy to comply with the provisions and all legislations dealing with corrupt practices and the prevention of corruption act and any other applicable laws. The Contractor represents and undertakes to follow the SMLI policy in this regard.
- e) The Contractor represents and warrants that it has not paid or offered to pay, or has caused to be paid or offered or agreed to be paid directly or indirectly in respect of this agreement, any political contributions, fees or omissions as defined under any other applicable laws.

- f) The Contractor further agrees that it will not offer, pay, promise to pay, or authorize payment of any monies or offer, give promise to give or authorize the giving of anything of value or gift to any official of SMLI other than as permitted by SMLI.
- g) The Contractor shall immediately report to the Chairman – Audit Committee of the Board of SMLI in case of any illegal or unethical behavior by any of the employee, officer or Director of the company or any one purporting to be acting on behalf of SMLI or if anyone encourages or compels the Contractor to do such an act which is illegal and against the interest of SMLI.

Mr. P.K. Nanda  
Chairman – Audit Committee  
B-20, 3rd Floor, Maharani Bagh,  
New Delhi – 110 011  
*bodie.nanda@hotmail.com*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

**For**  
**SML ISUZU LIMITED**

**For**

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(\_\_\_\_\_)

(\_\_\_\_\_)

**Witnesses:**

1. (Sanjay Sharma)  
Sr. Manager- Purchase

2.