

## **STANDARD TERMS & CONDITIONS OF PURCHASE**

### **1. PARTIES**

- 1.1. This document sets out the standard terms which will govern the contractual relationship between MAHLE BEHR South Africa (Pty) Ltd ("MBZA") on the one hand, and any person ("the Supplier") from which MBZA acquires Goods or Services, on the other.
- 1.2. The term "person" includes a natural person, a juristic person, a foreign company and a trust, irrespective of whether or not it was established within or outside South Africa.

### **2. ACCEPTANCE**

- 2.1. These Standard Terms of Purchase shall apply automatically upon acceptance by the Supplier of any order from MBZA, or the supply of any Goods, the commencement of any work, or the performance of any Services by the Supplier, and specifically excludes any terms that have been given by the Supplier in any prior quotation given by the Supplier to MBZA.
- 2.2. In the case of a conflict between these Standard Terms and the terms set out in a Purchase Order (Order), the latter shall prevail.
- 2.3. No agreement or understanding relating to the supply of Goods or Services which is at variance with these Standard Terms shall be of any force or effect unless in writing and signed by the Parties.

### **3. DELIVERY**

- 3.1 Goods shall be delivered to MBZA, INCO 2010 "EXW", unless otherwise stated.
- 3.2 Deliveries are to be made in the quantities and at the dates and times specified by MBZA. Where the date of delivery of Goods is to be specified after the placing of the Order, the Supplier shall give MBZA reasonable notice of the specified date.
- 3.3 A packing note quoting the number of the Order must accompany each delivery or consignment of Goods and must be displayed prominently.
- 3.4 If Goods are to be delivered by instalments, the Order or contract will be treated as a single Order or contract and not severable.
- 3.5 MBZA shall not be liable for payment for Goods delivered to MBZA which are in excess of the quantities specified in the delivery schedules unless such excess is drawn to MBZA's attention and is consciously accepted by MBZA on delivery.
- 3.6 MBZA may from time to time change delivery schedules or declare a temporary suspension of scheduled shipments.
- 3.7 MBZA shall be entitled to call for delivery of Goods by a method of transportation other than the method originally specified by MBZA, in which event MBZA shall reimburse the Supplier the increased transportation costs, unless the substituted method of transportation was occasioned by the Supplier's failure to deliver Goods timeously.

- 3.8 Receipt of Goods delivered to MBZA stores shall be acknowledged in writing by an authorized MBZA employee, failing which MBZA shall not be held responsible for deliveries alleged to have been made.
- 3.9 Notwithstanding the provisions of clause 3.8 MBZA shall be entitled to notify the Supplier in writing within three (3) business days following delivery of the Goods, of any shortfall in the quantity.
- 3.10 MBZA will be entitled within a reasonable time to reject any Goods which are delivered to it which are not in accordance with an Order or which exhibit discrepancies in quantity or externally identifiable damage, MBZA shall not at any time be precluded from rejecting Goods which are discovered to contain latent defects, upon ascertaining such defects.
- 3.11 The Supplier shall supply MBZA in good time with any instructions or other information required to enable MBZA to accept delivery of Goods.
- 3.12 MBZA shall not be obliged to return to the Supplier any packaging or packing materials for Goods supplied, whether or not any Goods are accepted by MBZA.
- 3.13 If any Goods are rejected by MBZA the Supplier shall at its expense forthwith collect the same or MBZA may at its option return the same to the Supplier at the cost (including without limitation packaging and repackaging) and risk of the Supplier.

#### **4. PACKAGING**

- 4.1 All Goods shall be properly packed, marked and shipped in accordance with the requirements of the carrier transporting such Goods, in accordance with MBZA's requirements and in a manner which will permit the securing of the most cost effective transportation rates.
- 4.2 The Supplier shall reimburse MBZA for all expenses incurred by MBZA as a result of improper packing, marking or routing of Goods.
- 4.3 Unless otherwise provided in the Order, no charges shall be accepted by MBZA for containers, crating, boxing, bundling and packaging.

#### **5. RISK AND PROPERTY**

- 5.1 Risk of damage to or loss of Goods shall pass to MBZA on delivery to MBZA in accordance with the Order and contract.
- 5.2 The ownership of Goods shall pass to MBZA on delivery, unless payment for Goods is made prior to delivery, when the ownership shall pass to MBZA once payment has been made and Goods have been appropriated to the contract.

#### **6. DOCUMENTATION**

- 6.1 Documentation relating to the supply of Goods and Services including but not limited to packaging slips, delivery notes, bills of lading and invoices shall reflect MBZA's part number and Order number, failing which MBZA shall be entitled to reject such Goods, or withhold payment pending reconciliation.
- 6.2 Where an Order requires the Supplier's hand-book, manual and/or quality guidelines, such Order will be deemed to include the same and so that without limitation such Order will not

be fulfilled unless all such items are delivered to MBZA by the Supplier.

- 6.3 Invoices for Goods and Services delivered, bearing MBZA's VAT number, shall be delivered to MBZA within seven (7) days after the delivery of the Goods and Services, failing which MBZA shall only be obliged to make payment therefor in the month following that in which the Goods was delivered.
- 6.4 In order to achieve prompt approval for payment, the Suppliers' invoices dated on the day of shipment, priced and extended, bearing MBZA's part numbers, the numbers of all Orders for Goods covered by such invoices and accompanied where appropriate by Bills of Lading, is required for each shipment. In case of delay in payment, loss of documentation or of any related queries arising, it is incumbent upon the Supplier to communicate fully with MBZA, in writing, quoting the relevant part numbers and Order number.
- 6.5 Any transportation charges paid by the Supplier, with respect to which the Supplier is entitled to reimbursement, shall be added to the Supplier's invoice as a separate item and the receipt freight bill shall be attached thereto.
- 6.6 The Supplier acknowledges that it is aware of the requirements of the Departments of Trade and Industry and Customs and Excise which entitle rebates and refunds of duty in favour of MBZA and/or MBZA's customers in terms of the regulations governing the Automotive Production Development Programme. The Supplier shall keep accurate records of the Supplier's foreign currency content of all Goods and shall timeously provide all necessary information and verifications for MBZA and/or MBZA's customer to substantiate the foreign content information contained in Form C1 Declaration of Imported Component Values certificate supplied to MBZA by the Supplier. The Supplier indemnifies MBZA and MBZA's customer against any financial loss suffered in consequence of the Supplier's omission to store, keep or furnish accurate information and accurate Form C1 Declaration of Imported Component Value certificates and / or through the late provision of such information and / or certificates. The Supplier undertakes to provide MBZA with Form C1 Declaration of Imported Component Value certificates within thirty (30) days of the end of a calendar quarter. MBZA reserves the right to request that the Supplier provides an annual unqualified audit report, at the Supplier's expense, as required in terms of the regulations governing the Automotive Production Development Programme.

## 7. WARRANTY

- 7.1 The Supplier warrants that Goods will conform to the specifications, drawings, samples or other description as furnished by MBZA, and will be merchantable, of good material and workmanship and free from defects. The Supplier further warrants that all Goods will be fit and sufficient for the purposes intended and will comply with all statutory requirements and regulations relating to the Goods.
- 7.2 The periods of the foregoing warranties in respect of each of the Goods which may be acquired by MBZA for its production requirements shall endure for the full periods of MBZA's warranty obligations covering the manufactured products supplied to MBZA's customers. The onus shall be on the Supplier to acquaint itself with MBZA's warranty obligations to its customers from time to time, the objective being that save for non-production Goods the Supplier's warranties to MBZA shall be no less favourable as to the content and duration than MBZA's warranties to its customers, and notwithstanding anything herein where there are serial defects such warranties shall be unlimited in time.
- 7.3 In respect of all and any component parts obtained by the Supplier from a third party for in- corporation or use in connection with the Goods, to the extent that the Supplier has

received a more extensive warranty or remedy from such supplier in connection with such components the Supplier will extend to MBZA such warranties and remedies applicable to such component parts to correspond with the warranties which the Supplier receives and:

- 7.3.1 such extended warranties will be in addition to the warranties otherwise applicable; and
- 7.3.2 the Supplier shall observe all relevant procedures to ensure preservation of its warranties from its suppliers to the maximum extent.
- 7.4 Without limiting any other remedy, if any Goods and Services are not supplied or performed in accordance with the contract, then MBZA shall be entitled:
  - 7.4.1 to require the Supplier to repair Goods or to supply replacement Goods in accordance with the contract within seven (7) days; or
  - 7.4.2 at MBZA's sole option, and whether or not MBZA has previously required the Supplier to repair Goods or to supply any replacement Goods, to treat the contract as discharged by the Supplier's breach and require the repayment of any part of the price which has been paid.
- 7.5 The Supplier warrants that its Goods and the sale or use of its Goods alone or in combination will not infringe any intellectual property rights whatsoever.
- 7.6 The Supplier shall at its own cost take out and maintain product liability and product recall insurance cover with a reputable insurer in such amounts which may be specified periodically by MBZA. The interests of MBZA shall be noted on the policy and a copy of the policy shall be lodged with MBZA..
- 7.7. The Supplier indemnifies and holds MBZA harmless against any action and liability under the Consumer Protection Act 68 of 2008, as amended from time to time, resulting from any claim made thereunder by a consumer, and the Supplier agrees it shall, upon MBZA's request and at the Supplier's own expense, defend or assist the defence of any proceedings which may be brought against MBZA by reason of any alleged infringement.

## 8. HAZARDOUS SUBSTANCES

- 8.1 Should any Goods to be supplied by the Supplier to MBZA contain any hazardous substance the Supplier shall furnish MBZA, prior to delivery, with a full written description of the hazardous substance, including the group under which it falls if it has been declared a grouped hazardous substance under the legislation.
- 8.2 The Supplier hereby undertakes to defend and hereby indemnifies and holds MBZA harmless from any claims, actions, liabilities, losses, costs and expenses arising from any actual or alleged death or injury to any person or damage to any property resulting, or claimed to result, from the actual or alleged breach of the provisions of clause 8.1.
- 8.3 The Supplier agrees to furnish to MBZA upon written request, a list of all materials used in the Goods.
- 8.4 The Supplier shall ensure that all materials which are used to manufacture the Goods shall satisfy current Governmental safety constraints, environmental, electrical and electro magnetic considerations, on restricted, toxic and hazardous materials.

## 9. INSPECTION

- 9.1 Goods shall be received subject to MBZA's inspection and possible rejection. Defective or incorrect Goods not in accordance with MBZA's specification will be held by MBZA pending the Supplier's instruction, at the Supplier's risk and if necessary will be returned at the Supplier's expense.
- 9.2 A handling fee of twenty percentum (20%) of the invoice value of the Goods returned shall be levied and debited to the Supplier's account to defray MBZA's expenses. No Goods returned as defective or incorrect shall be replaced without a new Order.
- 9.3 Where requested by MBZA, the Supplier shall supply conformance certification and evidence of statistical process control relating to Goods supplied to MBZA.

### 10. TERMINATION

- 10.1 MBZA may terminate any Order at its option, in whole or in part, at any time, by written notice to the Supplier.
- 10.2 After receipt of notice of termination the Supplier shall immediately cease all work in the process of completion, and shall unless otherwise directed by MBZA:
  - 10.2.1 terminate all Orders and sub-contracts relating to the performance of the work terminated by the notice of termination;
  - 10.2.2 settle all claims arising out of such termination of Orders and sub-contracts;
  - 10.2.3 transfer title and deliver to MBZA:
    - 10.2.3.1 all completed work which conforms in quality, to the requirements of the Order;
    - 10.2.3.2 all reasonable quantities of work in process and Goods produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing supplies which conform to the requirements of the Order and which cannot reasonably be used by the Supplier in producing supplies for itself or its other customers;
  - 10.2.4 take all action necessary to protect any property in the Supplier's possession in which MBZA has or may acquire an interest;
  - 10.2.5 submit to MBZA promptly but not later than two (2) months from the date of termination, its termination claim, provided however that in the event of failure of the Supplier to submit its termination claim within such period, MBZA may determine on the basis of information available to it the amount, if any, due to the Supplier with respect to the termination, and such determination shall be final.
- 10.3 Upon termination by MBZA in terms of this clause, MBZA shall pay to the Supplier the following amounts:
  - 10.3.1 the Order price for all Goods which has been delivered in accordance with the Order and not previously paid for;
  - 10.3.2 the actual costs incurred by the Supplier in accordance with the Order, to the extent that such costs are reasonable and properly accounted for relating to the termination portion of the Order, including the actual costs of work in process and Goods delivered to MBZA in

accordance with clause 10.2, and including the actual costs of discharging liabilities which are so allocated;

- 10.3.3 the reasonable costs incurred by the Supplier in protecting property in its possession in which MBZA has or may acquire an interest;
- 10.4 Claims made in terms of clause 10.3 shall not exceed the aggregate price specified in the Order less payments otherwise made or to be made.
- 10.5 Should the Supplier wish to terminate its relationship with MBZA then it may do so:
  - 10.5.1 on not less than six (6) months written notice to MBZA; and
  - 10.5.2 against payment to MBZA of all costs which MBZA estimates will be incurred to locate another supplier for the Goods being sourced from the Supplier; and
  - 10.5.3 payment by the Supplier to MBZA of the increased price (if any) payable by MBZA to the replacement supplier for the Goods for a period of six (6) months from the termination date of the relationship between the Supplier and MBZA;
  - 10.5.4 provided that the Supplier will not be entitled to terminate a binding contract to supply Goods or Services which are required by MBZA for series production purposes.
- 10.6 A certificate signed by a director of MBZA shall be *prima facie* proof of the amount of any claim against the Supplier under the provisions of this clause.

### 11. DEFAULT

- 11.1 If the Supplier breaches any of its obligations to MBZA then MBZA shall be entitled to deliver written notice to the Supplier which requires the Supplier to remedy the breach within seven (7) days after receipt of such notice.
- 11.2 If the Supplier fails to remedy the breach specified in the notice then MBZA will be entitled to either hold the Supplier to its obligations or cancel the Order, in either event without prejudice to MBZA's rights to damages and penalties.
- 11.3 If the Supplier is in material breach of its obligations to MBZA then MBZA shall be entitled, notwithstanding anything to the contrary in this Agreement, to summarily cancel the Order and any other outstanding Orders and claim damages and penalties from the Supplier.
- 11.4 If MBZA has specified a delivery date for Goods, within the proper lead-time quoted, then that date shall be deemed to be of the essence of the contract. An actual or anticipated failure to meet the stated deadline will be deemed to constitute a material breach which justifies summary termination of the Order.
- 11.5 A failure by the Supplier to meet the stated delivery deadline/s, within the proper lead-time quoted shall entitle MBZA to recover a penalty of two percentum (2%) of the purchase price of the Goods for each completed week that the Supplier remains in default of delivery, which penalty shall be in addition to any other damages to which MBZA will be entitled in consequence of the Supplier's breach of its obligations.
- 11.6 The Supplier shall be liable to MBZA for consequential losses suffered by MBZA, in addition to any other damages and/or penalties for which the Supplier may be liable.



## 12. FORCE MAJEURE

Neither the Supplier nor MBZA shall be liable to the other or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods and Services, if the delay or failure is beyond that party's reasonable control.

## 13. SPECIFICATIONS

- 13.1 The quantity, quality and description of the Goods shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable specification supplied by MBZA to the Supplier or agreed in writing by MBZA. MBZA shall not be bound to accept delivery of Goods in excess or below the number of those subject to an Order or contract and may at its sole unfettered option accept part delivery of Goods whilst treating the failure to supply the balance subject to an Order or contract as a breach of contract.
- 13.2 MBZA reserves the right at any time to make changes to drawings or specifications of any material and/or work covered by any Order. Any difference in price or time for performance resulting from such changes shall be adjusted and the order or contract shall be modified accordingly.
- 13.3 The Supplier shall not alter the specifications or constituent components or ingredients of the Goods nor relocate the place of production of the Goods without the prior written consent of MBZA.
- 13.4 The Supplier hereby irrevocably authorizes MBZA to repair, rebuild, relocate and to have repaired, rebuilt and relocated, any Goods purchased by MBZA.

## 14. TECHNOLOGY AND TOOLING

- 14.1 The Supplier shall not, whether directly or indirectly, use or in any other way exploit any of the intellectual property, technology or tooling furnished by MBZA to the Supplier, for any purpose other than for the fulfillment of an Order from MBZA. All intellectual property rights whatsoever and the tooling shall remain the property of MBZA at all times and under no circumstances may the same be copied or used for any purpose other than on MBZA's instructions.
- 14.2 All developments or improvements to the intellectual property and/or tooling shall accrue to MBZA, and all intellectual property and tooling and shall be surrendered to MBZA immediately upon demand by MBZA.
- 14.3 The Supplier shall ensure that all tooling used by the Supplier, whether or not owned by MBZA, is maintained in good order and condition, such that the Goods manufactured with the tooling shall at all times meet MBZA's product specification and quality levels. The cost of such maintenance shall be for the Supplier's account, unless agreed to the contrary in writing, prior to the commencement of such maintenance.

## 15. PRICES

- 15.1 Any variation from the prices quoted to MBZA and shown on any Order shall be advised to MBZA in writing at least thirty (30) days prior to the date of delivery of the Goods. On receipt of such advice, MBZA shall have the right, in its discretion, to cancel or amend the Order.

- 15.2 Subject to clauses 15.3 and 15.4 below the price of the Goods shall be as stated in an Order and, unless otherwise so stated, shall be:
- 15.2.1 exclusive of any applicable Value Added Tax (VAT) relating to the procurement of local Goods and Services (which shall be payable by MBZA subject to receipt of a VAT invoice); and
  - 15.2.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts or levies other than value added tax.
- 15.3 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the MBZA in writing.
- 15.4 The Supplier undertakes with MBZA to ensure that the price of Goods will at all times notwithstanding an Order or contract to be at the lowest price at which the Supplier has supplied or agreed to supply such or similar Goods to third parties at any time during the period of one month before the relevant Order or contract and final fulfilment of such Order or contract.

### 16. TERMS OF PAYMENT

- 16.1 The Supplier may invoice the MBZA on or at any time after delivery of Goods and Services, as the case may be, and each invoice shall quote the number of the Order.
- 16.2 Unless otherwise stated in the Order, MBZA shall pay the price of Goods and Services within ninety (90) days after the end of the month of receipt by MBZA of a proper invoice or, if later, after acceptance of Goods and Services in question by MBZA.
- 16.3 MBZA shall be entitled to any discount for bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on the Supplier's terms of sale.
- 16.4 Apart from trade discounts and unless otherwise stated on the Supplier's invoice and statement, an additional five percentum (5%) cash discount for payments made within thirty (30) days from the date of the Supplier's statement, and two and half percentum (2.5%) cash discount for payments made within sixty (60) days from the date of the Supplier's statement shall be allowed to MBZA.
- 16.5 MBZA may set off against the price any sums and/or liability owed by the Supplier to the MBZA or to any affiliate of MBZA.

### 17. SAMPLES

The Supplier shall supply samples free of charge if called for by MBZA.

### 18. COSTS

The Supplier shall pay any costs incurred by MBZA as a result of any breach by the Supplier of these Standard Terms, on the scale as between attorney and own client.

### 19. JURISDICTION

- 19.1 In any dispute between MBZA and the Supplier, or if MBZA has to enforce any right against



the Supplier then MBZA shall, at its option, be entitled to institute proceedings in any Magistrates Court notwithstanding the amount of such claim.

19.2 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to transactions concluded between MBZA and the Supplier.

19.3 The legal relations between the Parties shall be governed by and be construed in accordance with the laws of the Republic of South Africa.

### 20. AUTHORITY

No person other than a director of MBZA has any authority to contract on MBZA's behalf on terms or conditions other than those contained herein.

### 21. CONFIDENTIALITY

21.1 Both parties shall each keep confidential all information about each other which is in its nature confidential and which comes into either party's possession.

21.2 Neither party is permitted to disclose any confidential information about the other without the consent of the other, unless:

- a. that information has become publicly available; or
- b. disclosure is required by law;

21.3 Business secrets

21.3.1 The Service Provider undertakes to treat MBZA's orders and all commercial and technical details associated with this as a business secret. This obligation shall also apply after the end of the delivery contract, until this business secret is – without any involvement on the part of the Service Provider – in the public domain.

21.3.2 This information which pertains to, but is not limited to, all intellectual property rights, trade secrets, agreements, proposed agreements, knowledge obtained by research and development, irrespective of whether applicable to technical, business or financial aspects of MBZA;

21.3.3 Information of whatever nature which has been obtained by the Recipient, whether obtained directly from MBZA or indirectly or by examination, testing, inspection, analysis or otherwise howsoever;

21.3.4 Analyses, concepts, compilations, studies or other material prepared by or in the possession or control of the Recipient;

21.3.5 Technical, commercial, business knowledge, methods and experience of MBZA;

21.3.6 Information, know-how, ideas, in any form, which are shared with or transferred to the Recipient by MBZA or by MBZA to the Recipient;

- 21.4 Products that have been manufactured on the basis of documentation produced by MBZA such as drawings, master samples and similar, or using confidential information provided by MBZA or using MBZA's tools or tools copied from MBZA may not be used by the Service Provider itself or be offered or supplied to third parties;
- 21.5 Parts that have been developed or further developed by MBZA in conjunction with the Service Provider may only be delivered by the Service Provider to third parties with MBZA's written authorization;
- 21.6 Where the Service Provider has involved sub-contractors in the performance of his delivery obligation to MBZA, it shall provide MBZA with proof of an appropriate written agreement regarding confidentiality with its sub-contractors;
- 21.7 The Recipient shall be obliged to take the necessary steps to ensure that its employees are bound to these Standard Terms.

## 22. GENERAL

- 22.1 No relaxation or indulgence which MBZA may grant to the Supplier shall constitute a waiver of its rights to enforce strict compliance with these Standard Terms.
- 22.2 No variation of these Standard Terms shall be binding upon MBZA unless reduced to writing and signed by a director of MBZA.
- 22.3. The Supplier shall not delegate in any manner to any other person the performance of any work or the supplying of any Goods or Services under an Order, and the Supplier may not assign moneys due and to become due in terms of an Order, unless the prior written consent of MBZA has been obtained.