

## General Terms and Conditions of Sales and Delivery for Spare Parts Business of MAHLE Aftermarket GmbH

### I. Definition, Area of Application

1. The following General Terms and Conditions of Sales and Delivery apply to the business conducted by MAHLE Aftermarket GmbH (hereinafter referred to as "MAHLE") regarding sales and delivery of spare parts (hereinafter referred to as "Delivered Goods"). These Terms and Conditions shall solely apply; contradicting terms or such terms deviating from these Terms and Conditions that the contractual partner (hereinafter referred to as the "Ordering Party") may have shall not be recognised by MAHLE, unless MAHLE has expressly agreed to their applicability in writing. These Terms and Conditions shall also apply when MAHLE is aware of contradicting terms or such terms deviating from these Terms and Conditions that the Ordering Party may have and still surrenders the Delivered Goods to the Ordering Party without any reservation. These Terms and Conditions shall only apply if the Ordering Party is a businessperson (as defined by Article 14 German Civil Code).

2. Individual agreements made with the Ordering Party in particular cases (including side agreements supplements and amendments), shall take precedence over these Terms and Conditions in all cases. But, a written contract or written confirmation by MAHLE shall be deemed crucial for the content of such agreements. The Parties to the contract shall satisfy the requirement of the written form even when sending documents by e-mail or fax.

3. These Terms and Conditions shall also apply in their respective version as a framework agreement covering future contracts for the sale of Delivered Goods without the need for MAHLE to refer to them in each individual case.

### II. Conclusion of Contract (Offer, Offer Documents, Confirmation of Order)

1. Offers made by MAHLE are without commitment and subject to confirmation. When the Ordering Party orders goods, this is deemed a binding offer as per Article 145 German Civil Code. Insofar as not otherwise stated in the order, MAHLE can accept this offer of contract within 4 weeks of receiving it.

2. MAHLE hereby reserves all property rights and copyrights to drafts, drawings, calculations, catalogues, images, product illustrations and other documents. This shall also apply to such written documents that are marked "confidential". The Ordering Party shall require express written permission by MAHLE before disclosing these. The details in drafts, drawings, calculations and other documents are without commitment. MAHLE shall not assume any responsibility for recommendations for use of the Delivered Goods.

3. A contract for delivery shall not be formed until MAHLE has provided a written confirmation of the order for the Delivered Goods at the latest. If, by presenting the sent report, MAHLE can prove

having sent a declaration by e-mail or fax, it shall be assumed that the Ordering Party has received the declaration.

### III. Prices, Terms of Payment

1. Insofar as not otherwise stated in the confirmation of order, all prices shall be considered to be "FCA – free carrier (MAHLE)" as per Incoterms 2010 including packaging; plus statutory value added tax valid at the time of invoice. The price shall be calculated on the date of delivery as per the prices applicable on MAHLE's price list.

2. Insofar as no other terms of payment are agreed, payments must be effected as follows: Within 30 days of date of invoice without deductions. Payment shall be effected by bank transfer. The receipt of payment by MAHLE shall be the factor determining the timeliness of payment.

3. If the Ordering Party defaults in payment, MAHLE shall be entitled to charge interest on arrears totaling 9% above the basic interest rate as defined by Article 247 German Civil Code.

4. If the Ordering Party is in arrears, MAHLE shall be entitled to regain possession of the Delivered Goods until fully paid for, without waiving their entitlements, or withdraw from the contract. Furthermore, MAHLE is entitled to hold back all goods and services until fully paid for.

5. The Ordering Party may only claim set off against undisputed counterclaims accepted in writing by MAHLE or such that have been established as final and absolute.

6. The Ordering Party is only allowed to exert a right of retention to the extent their counterclaim is based on the same contractual relationship.

7. After conclusion of the contract, if MAHLE becomes aware of circumstances that challenge the Ordering Party's creditworthiness or if a significant threat to the pecuniary claim arises due to a financial collapse of the Ordering Party, or if the Ordering Party defaults in the payment of the purchase price, MAHLE can demand an advance payment or the provision of securities within an appropriate period and can refuse performance until the conditions have been fulfilled.

8. Upon refusal by the Ordering Party or unsuccessful expiry of the term, MAHLE shall be entitled to withdraw from the contract in full or partially and demand compensation.

### IV. Retention of Title

1. MAHLE hereby reserves the right to ownership of the Delivered Goods until all full payments arising from the business connection with the Ordering Party have been received.

2. In the event of the Ordering Party's behaviour being contrary to the contract, in particular in the event of default, MAHLE shall be entitled to demand the surrender of the Delivered Goods without having to set another deadline. A prior withdrawal from the contract is not required for demanding the surrender.

3. The assertion of the retention of title as well as the seizure of the Delivered Goods by MAHLE are not deemed as withdrawal from the contract.

4. The Ordering Party is entitled to resell the Delivered Goods in the course of a proper business transaction. However, they relinquish to MAHLE with immediate effect all payments amounting to the sales price agreed between MAHLE and the Ordering Party (including value added tax) that the Ordering Party receives from the resale and, indeed, irrespective of whether the Delivered Goods are resold before or after reprocessing. The Ordering Party is authorised to collect these payments after having relinquished them. The power MAHLE has to collect the payments themselves shall remain unaffected hereby. However, MAHLE pledges to not collect the payments as long as the Ordering Party fulfils their payment obligations in a proper manner and is not in arrears. But if the Ordering Party is in arrears, MAHLE may demand that the Ordering Party discloses the relinquished payments and the debtors thereof, provides all the associated information, hands over the corresponding documents and informs the debtors (third parties) of the relinquishment.

5. Processing or alterations to the Delivered Goods shall always be performed by the Ordering Party for MAHLE. If the Delivered Goods are processed with other goods that do not come from MAHLE, MAHLE shall obtain co-ownership of the new goods to the proportion of the value of the Delivered Goods compared with the other processed goods at the time of processing.

6. If the Delivered Goods are inseparably combined with other goods that do not come from MAHLE, MAHLE shall obtain co-ownership of the new article to the proportion of the value of the Delivered Goods compared with the other combined goods. The Ordering Party shall keep in safe custody the co-ownership for MAHLE free of charge.

7. The Ordering Party is not permitted to pledge the Delivered Goods nor transfer them as security. In the event of seizure or confiscation or other dispositions by third parties, the Ordering Party must inform MAHLE of this without delay, and provide them with all information and documents that are necessary for them to protect their rights. Enforcement officers or third parties must be informed of MAHLE's ownership.

## V. Delivery, Delivery Time

1. The possibility of supply shall remain reserved in all events. The delivery dates are not binding for MAHLE but will be observed where possible. The observance presupposes that all technical issues have been clarified and any duties to cooperate, in particular the timely receipt of all supplies, documents, authorisations, tests, approvals, agreed terms of payment and other terms have been observed or fulfilled by the Ordering Party in due time.

2. MAHLE is entitled to provide partial delivery and corresponding invoices insofar as this does not result in disadvantages for the use of the Delivered Goods and partial deliveries are acceptable to the Ordering Party under prudent appreciation of their interests warranting protection. MAHLE shall reserve the right to excess and short deliveries of up to 1%.

3. The term of delivery shall be extended in the event of force majeure or other events outlying MAHLE's area of influence such as employment disputes (including strikes and lockouts—even at MAHLE's premises). MAHLE shall inform the Ordering Party of such circumstances as soon as possible. If the preceding hindrances last longer than six months, both parties are entitled to withdraw from the contract with regard to the unfulfilled part. MAHLE shall not be obliged to procure a replacement. Compensation claims by the Ordering Party towards MAHLE are excluded in the event of the preceding hindrances.

4. Insofar as MAHLE cannot observe binding delivery dates for reasons of no fault of their own (non-availability of the supply), MAHLE shall inform the Ordering Party of this promptly and state the estimated new delivery date at the same time. If the supply is equally not available within the new term of delivery, MAHLE is entitled to withdraw from the contract in full or in part. MAHLE shall reimburse without delay any counter-performance rendered by the Ordering Party. A case of non-availability of the supply in this spirit is, in particular, the late delivery to MAHLE by a supplier if a congruent covering transaction was concluded with this supplier.

5. If the Ordering Party delays in accepting delivery, neglects a cooperation or delays in delivery by MAHLE for other reasons caused by the Ordering Party, MAHLE shall be entitled to demand compensation for the damage caused by this including additional expenses (e.g. storage fees). To this end, MAHLE shall invoice a lump-sum fee totalling 0.5% of the net remuneration (value of the Delivered Goods) per calendar week up to a total of 5% of the net remuneration with notice of the readiness to deliver the Delivered Goods. MAHLE will not demand a lump-sum fee that would exceed damage expected in the normal course of things. The right to provision of proof of greater damage as well as other statutory claims (in particular the reimbursement of additional expenses, cancellation) of MAHLE shall remain unaffected, whereby the lump sum is to be deducted from further monetary claims. The Ordering Party is allowed to provide proof that MAHLE was not subjected to any damage whatso-

ever or only less damage than the afore-mentioned lump sum. In this case, MAHLE is entitled to prefer other third-party orders and extend the delivery time appropriately.

## VI. Delay in delivery

1. A delay in delivery is defined by statutory regulations. In all events, the Ordering Party must send a reminder.

2. MAHLE is liable for delays in delivery as defined in Section IX of these Terms and Conditions.

## VII. Dispatch, Transfer of Risk, Acceptance

1. Insofar as not otherwise stated in the confirmation of order, the delivery is agreed as "FCA – free carrier (MAHLE)" as per Incoterms 2010. This shall also apply to partial deliveries and return deliveries.

2. Transportation and other disposable packaging as per the respectively valid regulation on packaging shall become the property of the Ordering Party and shall not be removed by MAHLE. The Ordering Party is obliged to cater for the disposal of the packaging at their own expense.

## VIII. Material Defects Claims by the Ordering Party

1. Material defect claims made by the Ordering Party presuppose that they have fulfilled their statutory obligation to inspect and complain (Articles 377, 381 German Commercial Code). If a defect is discovered upon inspection or at a later date, MAHLE must be notified about this in writing without delay. MAHLE is exempt from liability for the defects that are not so notified by the Ordering Party.

2. Insofar as no composition was agreed upon, it must be assessed in line with statutory regulation as to whether there is a defect or not (Article 434 German Civil Code). MAHLE does not, however, assume any liability for public announcements by the manufacturer, the Ordering Party or other third parties (e.g. advertising messages). The same shall apply to public statements made by MAHLE.

3. In the event of the delivery of defective parts, the Ordering Party can primarily demand subsequent performance. MAHLE is entitled to choose whether there will be a repair or a new delivery. MAHLE's right to refuse subsequent performance under statutory requirements shall remain unaffected.

4. In the event of repairs, MAHLE is obliged to bear all the expenses required for the purpose of rectifying the defects, in particular costs of transportation, travel, labour and materials. However, this shall only apply as long as the costs do not increase because of the fact that the Delivered Goods has been taken to a place other than the place of performance.

5. The Ordering Party must make the defective parts available immediately if requested to do so by MAHLE.

6. In the event of repeated failures to provide subsequent performance or if a deadline set by the Ordering Party for subsequent performance has expired or is superfluous according to statutory regulations, or if the subsequent performance is disproportionate, the Ordering Party can withdraw from the contract or reduce the purchase price.

7. Claims by the Ordering Party based on material defects shall not exist if these defects can be traced back to a breach in operating, servicing and installation instructions, unsuitable or improper processing or use, overloads (e.g. by modifications to increase performance), wrong or careless handling or natural wear and tear as well as interferences with the Delivered Goods by the Ordering Party or third parties.

8. The Ordering Party's claims due to material defects shall lapse in accordance with the provisions of law upon the expiration of 12 months after the transfer of risk.

9. If it turns out that there is no material defect or that the material defect is based on a circumstance that does not oblige MAHLE to liability for defects, the Ordering Party shall reimburse MAHLE all costs arising therefrom.

## IX. General Liability

MAHLE shall be liable for claims by the Ordering Party for compensation and/or wasted expenses, for whatever legal reasons, as follows:

1. Unless a different provision on liability has been agreed elsewhere in these Terms and Conditions, MAHLE shall only be obliged to reimburse the damage incurred by the Ordering Party directly or indirectly arising from a wrong delivery, due to a violation of official safety regulations or for any other legal reasons attributable to MAHLE.

2. If the Delivered Goods cannot be used as per the contract at the fault of MAHLE due to neglected or defective performance of the recommendations and advice provided prior to or after conclusion of the contract or by a breach of other contractual secondary duties, in particular, instructions as to the operation and servicing of the Delivered Goods, the provisions of Sections VIII and IX of these Terms and Conditions shall apply accordingly under the exclusion of further claims by the Ordering Party.

3. MAHLE shall not be liable for damages that have not been caused by the Delivered Goods itself, for whatever legal reasons, except when caused by intent, gross negligence by the bodies, executive managers or vicarious agents, by culpable injury to life, body or health, for defects that MAHLE maliciously concealed or whose absence MAHLE had guaranteed and as per the mandatory valid liability regulations (in particular in accordance with the provisions of the Product Liability Act).

4. In the event of a culpable breach of essential contractual duties (the duty whose fulfilment is what actually enables the performance of the contract in the first place and in the observance of which

the Ordering Party regularly trusts and may trust), MAHLE shall also be liable for gross negligence of non-executive management and for slight negligence, but in the latter case, only for damages reasonably foreseeable and typical of a contract at the time of conclusion of the contract.

5. If a claim is made by third parties against the Ordering Party on the basis of non-mandatory liability towards third parties, MAHLE shall compensate the Ordering Party to the extent that MAHLE would also be directly liable to third parties. The principles of Article 254 German Civil Code shall apply accordingly for the compensation of damages between the Ordering Party and MAHLE. This shall also apply in the case of a direct claim against MAHLE by third parties. The duty to replace is excluded insofar as the Ordering Party on their part have effectively limited liability towards their customers. At the same time, the Ordering Party shall make the effort to agree limitations in liability to a legally permissible extent, i.e. in favour of MAHLE.

registered seat or usual place of residence is not known at the time of filing proceedings.

3. Solely German law shall apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 ("CISG") is excluded. Requirements and effects of the retention of title as per Section IV of these Terms and Conditions in contrast are subject to the laws at the respective storage location of the article insofar as, according to this, the choice of law made is not permitted or ineffective in favour of German law.

4. If any provision of these Terms and Conditions is or becomes invalid, the rest of the contract shall not be affected thereby. The parties to the contract are obliged to replace the invalid provisions by a provision coming closest to it in term of economic success.

Stuttgart, November 2016

## **X. Confidentiality**

1. All business or technical information (including properties that can be taken from the likes of items or software provided and other knowledge and experience) originating from MAHLE must be kept confidential from third parties for as long as and to the extent that it has not been provably announced in public or has been intended in writing by MAHLE for resale by the Ordering Party, and may only be made available to such person in their own business premises that have to be called on for its use and who are equally bound to confidentiality. It shall remain the sole property of MAHLE. Such information may not be copied or used for business purposes without prior written permission. All information (including all copies and records made where applicable) and items that were lent out must be handed over promptly and fully to MAHLE or destroyed at MAHLE's request. This does not apply to confidential information and copies thereof which have to be maintained by the Ordering Party in line with mandatory applicable laws.

2. MAHLE reserves the rights to all information named in Section X of these Terms and Conditions (including copyrights and the right to apply for industrial property rights such as patents, utility patents, etc.).

## **XI. Place of Performance, Jurisdiction, Applicable Law, Severability Clause**

1. Unless otherwise agreed, the registered seat of MAHLE is the place of performance.

2. The court of jurisdiction is court competent for the registered seat of MAHLE. MAHLE is however entitled to file proceedings against the Ordering Party at their general court of jurisdiction. The same shall apply if the Ordering Party has no general court of jurisdiction in Germany, moves their registered seat or usual place of residence from Germany after conclusion of the contract or if their usual