

## Warranty Agreement

Between

MAHLE Behr Industry GmbH & Co. KG  
Heilbronner Str. 380  
70469 Stuttgart

- hereinafter referred to as "MBI" -

and

«name\_1»  
«name\_2»  
«street»  
«zipcode\_\_street» «city»  
«country»

- hereinafter referred to as "contracting party" -

Change status 4, 08.09.2010

## **1.0 Scope of warranty obligation**

- 1.1 The subject of this agreement shall be the warranty and liability for all products supplied by the contracting party, unless separate written agreements have been concluded for individual parts.
- 1.2 A product is deemed to be free from defects when the contracting party proves that it has the agreed properties, complies with the specifications and is suitable for the application stipulated by MBI.
- 1.3 The contracting party shall check any products for defects which have been claimed by MBI to be defective. The tests and test results shall be documented in a suitable form and presented to MBI. The test extent and depth shall be agreed with MBI, so that it can take account of any specific demands made by the customer. MBI shall be notified immediately about the test results, including agreed corrective action and implementation dates.

The contracting party shall carry out regular checks regarding the effectiveness of the corrective action and shall inform MBI accordingly. If the contracting party is unable to carry out its own tests, MBI can perform these tests itself or arrange for them to be carried out by a third party. The costs of these tests shall be borne by the contracting party.

- 1.4 Warranty and/or liability claims shall be settled, invoiced and remunerated between MBI and the contracting party or, alternatively, at the request of MBI, between MBI's particular customer and the contracting party.
- 1.5 Subject to the provisions in Clause 3.3, products forming the subject of complaints shall be replaced in the vehicle by new parts.
- 1.6 The warranty shall not cover any damage which is caused through improper handling, delivery or transportation at MBI.
- 1.7 Unless this agreement contains provisions to the contrary, the latest versions of MBI's Conditions of Purchase, Quality Regulations, Dispatch Regulations, Packing Regulations and Tool Conditions or the latest versions of the Conditions of Purchase and other regulations of MBI's particular customer shall apply to the delivery agreement if they are more far-reaching as regards obligations. These shall also apply if the supplier bases the individual agreement on his terms of delivery or standard terms and conditions.

## **2. Warranty period**

- 2.1 The warranty for installed products shall end:
- after 36 months from the date when the vehicle was first registered or the date on which spare parts were installed in Germany and abroad, excluding North America (U.S.A., Canada, Puerto Rico)
  - after 60 months from the date when the vehicle was first registered or when spare parts were installed in North America

The warranty period shall also be reduced or extended by the warranty (warranty period and/or mileage) which MBI also grants to its customer at the latter's request. MBI shall take steps here to ensure that this warranty period is restricted as far as possible.

- 2.2 In the case of parts relating to exhaust emissions or safety, the warranty period shall be based on the latest valid legal regulations of the individual countries to which MBI's particular customer exports vehicles, if the valid legal warranty regulations in these countries exceed the periods mentioned in 2.1 and 2.2.

### **3. Warranty for zero-mileage defects**

- 3.1 Zero mileage defects shall include complaints

- regarding incoming goods
- during further processing of semi-finished products
- on the assembly line or during function tests after assembly at MBI
- on the assembly line or during function tests after assembly at MBI's customer - up until the delivery of the vehicle in question to the end customer.

- 3.2 MBI shall prepare a test report and a list of the expenditure which was incurred, return the parts forming the subject of the complaint to the contracting party and shall invoice the costs, based on the process and expenditure. These refundable costs shall also include the costs invoiced by MBI's customer for removal and installation, as well as any other incidental costs (for example transportation, customs duties, handling charges, packing costs).

- 3.3 MBI's prior approval is required before any rework of rejected parts is conducted at MBI's customer, MBI or the contracting party. If the contracting party is able to remedy the defect through rework, the time limits set by MBI or MBI's customer shall be observed. The contracting party shall pay any additional costs incurred by MBI or MBI's customer due to the rework and/or delay in rework.

- 3.4 If the quality of the delivered parts as defined in clause 3.1 does not meet the between the contracting parties agreed to requirements (e.g. ppm-Values, picture samples or minimum acceptable quality samples, drawing requirements and / or the same quality problems appear repeatedly) then MBI is entitled to hire a Third Party Inspection (e.g. VDE, TÜV, Bureau Veritas) at the contracting parties cost to conduct a 100% outgoing inspection.

The quality department of MBI will after verification of the corrective measures and confirmation of the agreed to quality level suspend the Third Party Inspection. The release must happen in writing.

### **4. Warranty for failures in service**

Failures in service are defects, which are found in parts delivered by the contracting party and which occur after the vehicles containing these parts have been delivered to end customers of the vehicle manufacturer, as well as the damage caused to these vehicles by these parts.

4.1 Construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles:

MBI shall provide the contracting party with representative samples of parts damaged in service for testing purposes, if MBI received the products in turn from its customer, from its reference markets for testing.

MBI shall deliver the parts damaged in service to the location specified by MBI or its customer or send the parts to the contracting party. The contracting party shall pay any costs incurred from sending the products and from testing the parts.

These samples also serve as the basis for determining the fault factor and the related cost sharing by the contracting party towards MBI. The proportion of responsibility of the contracting party is determined in the form of the "Technical Factor" based on the test results.

Appendix 1 entitled "Regulation on Establishing Technical Factors Regarding Field Claims" includes detailed specifications for the test procedure and the calculation of the Technical Factor.

4.2 Other product groups (without 4.1):

For other product groups, e.g. railway vehicles, aviation, special vehicles, large motors, due to the generally low number of units and higher value of the components, the following regulations shall apply: MBI will provide the contracting party with the parts damaged in service, if and as long as MBI has been provided with the products for testing from the customer, its reference markets.

MBI shall deliver the parts damaged in service to the location specified by MBI or its customer or send the parts to the contracting party. The contracting party shall pay any costs incurred from sending the products and from testing the parts.

4.3 Parts which are found to be free from defects during the test conducted by the contracting party shall be returned to MBI immediately or, if MBI so requests, to MBI's customer. Returned parts shall correspond to the complaint status. In the case of destructive tests, the parts in question shall not be returned.

If a part is found to be free from defects, the original warranty for this part shall continue.

4.4 If MBI receives no parts from its customer for testing - e.g. if a customer refuses to return parts from certain countries due to cost reasons -, MBI's customer shall normally carry out the defect test itself. The parts shall not be sent or supplied to the contracting party.

4.5 The accounting basis shall be the warranty scopes from all markets ascertained by MBI's customer and/or MBI, as well as the technical factors as stipulated in Clause 4.1.

The contracting party shall reimburse MBI for the replacement costs of the failed scope of supply, incidental costs and any other costs which are invoiced to MBI by its customer, each assigned with the Technical Factor. The contracting party shall also reimburse any costs incurred by MBI.

The warranty costs shall include, for example, the following costs:

- Replacement costs of the failed scope of supply
- plus country-specific labor costs – especially for parts removal and installation - plus country specific customs duties, handling charges, packing costs and freight costs.
- plus processing and handling costs incurred by MBI or its customer (e.g. administrative costs which are incurred by MBI or its customer and are invoiced to MBI).

## **5. Recurrent claims**

### **5.1 Construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles:**

Recurrent claims are accumulations of recurrent warranty claims with the same defect cause, which are incurred over a vehicle production period of at least four weeks to the order of more than 5,000 ppm of the vehicle production amount supplied in the same period.

Recurrent claims shall also include continuous quality defects. The contracting party shall be obliged to provide defect-free parts for series production and for the field as quickly as possible.

### **5.2 Other product groups (without 5.1):**

For other product groups, e.g. railway vehicles, aviation, special vehicles, large motors, due to the generally low number of units and higher value of the components, the following regulations shall apply:

Recurrent claims are accumulations of recurrent warranty claims with the same defect cause, which are incurred over a vehicle production period of at least twelve weeks to the order of more than 3% of the vehicle production amount supplied in the same period.

Recurrent claims shall also include continuous quality defects. The contracting party shall be obliged to provide defect-free parts for series production and for the field as quickly as possible.

### **5.3 The regulations specified in Clause 4 also apply to recurrent claims. The following also applies:**

If parts are replaced and/or updating of software (also without parts replacement) also takes place during a preventive customer service measure (including recall) which has been carried out or is to be carried out by MBI or MBI's customer, the contracting party shall release MBI from any costs and expenditures as defined below. This provision shall also apply to the period before a decision on such a customer service measure is taken and in which corresponding parts were replaced due to the same cause of damage. If such a customer service measure is not possible due to lacking parts availability or is not necessary due to damage limitation reasons, this accounting method shall also apply to repair cases relating to specific customer complaints.

The costs and expenditures for customer service measures shall cover, for example, the following factors:

- Replacement costs of the failed scope of supply
- plus country-specific labor costs – especially for parts removal and installation
- plus country-specific customs duties, handling charges, packing costs and freight costs
- plus processing and handling costs incurred by MBI or its customer (e.g. recall costs which are incurred by MBI or its customer and are invoiced to MBI)

5.4 Any further claims from MBI, particularly concerning deficiencies in safety, remain unaffected.

## **6 . Insurance**

The contracting party shall be obliged to take out suitable insurance for third-party liability and recall costs. At the request of MBI, the contracting party shall provide documentary evidence of this insurance in the form of a certificate from the insurance company showing the insured amount and warranty period. The contracting party shall assign the claims against the insurance company to MBI already at this point of time.

## **7 . Agreement with suppliers**

If the contracting party commissions a third party to manufacture parts or purchases parts from a third party, he shall ensure that a warranty agreement with similar contents is concluded with this third party. For security reasons, the contracting party shall assign the claims from this agreement against this third party to MBI already at this point of time.

## **8 . Duration**

This agreement comes into effect with the signature of both contracting parties and can be terminated with six months' notice to take effect at the end of the year, for the first time, however, after two years of day of signing this agreement.

Irrespective hereof, this agreement is applied, even in the event of termination, for processing warranty claims which occur in projects that have been awarded to the contracting parties during the duration of this agreement.

Any termination must be submitted by registered letter.

## **9. Affiliated corporations**

This agreement also applies to companies and associated companies that are affiliated under group law.

**10. Written form**

The written form shall apply to this agreement. This provision shall also apply to the waiver of the written form requirement. Incidental agreements and other changes and additions to this agreement shall also be made in writing.

**11. Severability clause**

If individual provisions of this agreement turn out to be legally invalid, the validity of the other provisions shall not be affected. The contracting parties shall be obliged to change the invalid provisions in such a way that they are legally valid and come as close as possible to their original economic purpose. This shall also apply if individual provisions of the agreement run contrary to the regulations of the EC/EU and/or laws in the particular country.

**12. Venue**

Stuttgart Regional Court/Federal Republic of Germany has been agreed as the sole local, competent court for any disputes arising from or in connection with this agreement, including its termination and continuation once it expires. Optionally, MBI is entitled to take legal action against the contracting party at his domicile.

If a claim for damages is made against one of the contracting parties or a member of its sales network abroad based on a product defect, this contracting party may also be entitled to enforce claims for indemnity and full or partial regress against the other contracting party at the venue for the main claim. The substantive law of the particular venue for the main claim shall also apply to this claim.

**13. Governing law**

With the exception of the contents described in Clause 12, sentence 3 et seqq., the law of the Federal Republic of Germany governs this agreement and the entire legal relationship between MBI and the contracting party excluding the private international law. The United Nations Convention on Contracts for the International Sale of Goods - CISG - may not be applied to this agreement.

**14. Targets and penalties**

Response times in case of quality defects:

- Immediate measures: < 24 hours
- Corrective measures: < 5 days  
(preliminary/final 8D)

Quality costs:

- Test report costs \*: from €96 – approx. €240
- Repacking/sorting: €48/hr. (by arrangement)
- Rework: €48/hr. (by arrangement)  
€67/hr. when using of machines
- Special journey: based on documented evidence
- Production standstill: €1000/day

\*Costs depend on the location of the error discovery (goods receiving: 96 EUR, production: 144 EUR, customer: 240 EUR). Includes, e.g. preparation of test reports, blocking inventories, initiation and monitoring of corrective measures.

**15. Supply of Spare Parts**

The supplier ensures that spare parts will be provided for the proposed service life of the MBI Industry end products in which the supplier's delivery items are installed. The service life for these products is 30 years (20 years for motorcycles).

**16. Changes to this Warranty Agreement**

After implementation of the supplier portal it is mandatory for the supplier to check min. once per month the internet, if there are new versions of Warranty Agreement. New versions have to be appropriate clearly identified.

If there are no exceptions in written form from the supplier within a period of 8 weeks after the implementation of changes in the Internet supplier portal, the changes are accepted by the supplier without further confirmation/ signature to our purchasing.

Stuttgart, (date)

(Place of contracting party),

MAHLE Behr Industry GmbH & Co. KG

(Contracting party)

\_\_\_\_\_  
(Signature, name, function)

\_\_\_\_\_  
(Signature, name, function)

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(Signature, name, function)

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(Signature, name, function)

**Appendix 1:** “Regulation on Establishing Technical Factors Regarding Field Claims “