

## Warranty Agreement

Between

MAHLE Behr Industry America LP  
5858 Safety Drive, N.E,  
Belmont, MI 49306  
USA

- 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 scope of this agreement shall be the warranty and liability for all parts supplied by the contracting party, present and future, unless separate written agreements have been concluded for individual parts.
- 1.2 The contracting party warrants that all parts supplied by the contracting party shall be free from defects. For purpose of this agreement, a part shall be free from defects if the contracting party proves that it is merchantable and has the properties, complies with the specifications and is fit for the particular purpose specified and expected by MBI and its customers. MBI's acceptance of a part shall not be construed to mean that the part is free from defects, and MBI reserves the right to bring a claim, including a claim for breach of warranty, notwithstanding its acceptance of a part.
- 1.3 The contracting party shall test its parts for defects regularly and when claimed by MBI to be defective and in compliance with Sections 4.1 and 4.2. The extent and depth of all tests shall be agreed to with MBI, so that the tests can take account of any specific demands made by MBI's customers. The contracting party shall document the tests and test results in a form suitable to MBI and shall immediately present those results to MBI, together with the contracting party's proposed corrective action and implementation dates which MBI may accept or modify in its discretion.

The contracting party shall perform regular tests regarding the effectiveness of each corrective action and shall inform MBI accordingly. If the contracting party is unable to perform its own tests, MBI may perform such tests itself or arrange for them to be performed by a third party. The costs of all 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 affected customer and the contracting party. The payment terms for warranty claims shall be net thirty (30) days.
- 1.5 Subject to the provisions in Section 3.3, parts forming the subject of complaints shall be replaced in the vehicle by new parts at the contracting party's expense.
- 1.6 The warranty shall not cover any damage that is caused through improper handling, delivery or transportation by MBI; provided that the risk of loss with respect to each part shall otherwise be borne by the contracting party until the part is delivered to MBI's designated destination.
- 1.7 The latest versions of MBI's Conditions of Purchase, Quality Regulations, Dispatch Regulations, Packing Regulations and Tool Conditions and/or the latest versions of the Conditions of Purchase and other regulations of MBI's particular customer shall apply to all agreements between the parties to the extent that they are more far-reaching as regards obligations within the scope of this agreement, provided that this agreement shall otherwise apply in concert with such terms. Such terms and this agreement shall also apply to all agreements between the parties notwithstanding that the contracting party claims that its agreement with MBI is based on its own terms of delivery and/or standard terms and conditions.

**2. Warranty period**

- 2.1 Except as provided in Section 2.2 the term of the warranty described herein for installed parts shall, with respect to each part, commence on the date of the delivery of a part to MBI and end:

- For vehicles that are first registered in jurisdictions other than the U.S.A., Canada, or Puerto Rico or on which the part was installed in Germany or in any other jurisdiction other than the U.S.A., Canada, or Puerto Rico, thirty-six (36) months after the date on which the vehicle was first registered or the date on which the part was installed; or

- For vehicles that are first registered in the U.S.A., Canada, or Puerto Rico or on which the part was installed in the U.S.A., Canada, or Puerto Rico, sixty (60) months after the date which the vehicle was first registered or on which the part was installed.

Notwithstanding the foregoing, the warranty term shall be shortened or extended to be commensurate with the warranty term (including a term that runs for a specific time or until a specific mileage is reached) of the warranty that MBI grants to its customer covering the product that includes the warranted part. MBI will attempt to restrict its warranty term to the shortest term acceptable to its customers.

If, pursuant to this Section 2.1, more than one warranty term could apply, the longest warranty term shall apply.

2.2 In the case of parts relating to exhaust emissions or safety, the warranty term 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 set forth in Section 2.1.

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

3.1 Zero mileage defects are defects in parts that are discovered:

- with respect to incoming parts;
- during further processing of semi-finished parts;
- 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 and
- up until the delivery of the vehicle in question to the end customer.

3.2 For zero mileage defects, the contracting party shall be liable to MBI for all expenses, including incidental or consequential damages and any other liabilities, that MBI or its customers may incur with respect to such defects. MBI will prepare a test report and a list of all expenses that MBI incurred with respect to each such defect, return the defective part to the contracting party, and invoice all expenses to the contracting party. The expenses to be reimbursed shall include, without limitation, any expenses invoiced to MBI by MBI's customer for removal and installation, as well as any other incidental or consequential damages and other liabilities that MBI or its customer may incur (for example shipping, customs duties, handling charges, packing costs, etc).

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

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

Failures in service are defects in parts that are discovered after the vehicles containing such parts have been delivered to end customers of the vehicle manufacturer, as well as the damage caused to such vehicles by such parts.

##### **4.1 Testing procedure for construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles, and solar/wind energy units:**

The testing procedure described in this Section 4.1 shall be followed for the following product groups: construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles and solar/wind energy units.

MBI will provide the contracting party with representative samples of parts that failed in service for testing purposes, but only if MBI has received such parts for testing from its customer.

The contracting party acknowledges that MBI's customer may not return all parts to MBI. MBI will deliver the representative samples of parts that failed in service to the location specified by MBI or its customer or send the parts to the contracting party directly, at its option. The contracting party shall test the sample of the parts at this location at regular intervals and shall inform MBI in writing about the test results. If necessary, MBI may perform independent tests. The contracting party shall bear all expenses for shipping, handling, and labor that MBI or its customers may incur with respect to returning a part, and shall also bear all testing costs.

These samples and test results shall serve as the basis for determining the parties' relative fault for the defect. The parties' relative fault for the defect shall serve as the basis for apportioning the costs of remedying the defect, including all expenses, incidental or consequential damages and other liabilities that MBI or its customers may incur, between the contracting party, MBI and any other party that is determined to be at fault. The proportion of fault of the contracting party shall be 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 that shall be used and the calculation of the Technical Factor.

##### **4.2 Testing procedure for product groups not listed in section 4.1:**

The testing procedure described in this Section 4.2 shall be followed for all product groups other than the product groups that are listed in Section 4.1, which may include, without limitation, railway vehicles, aviation vehicles, special vehicles, and large motors. The parties acknowledge that the following special testing procedures are appropriate for these product groups because of the generally small numbers of units and high value of components.

MBI shall provide the contracting party with the parts that failed in service, but only if MBI has received such parts for testing from the customer. The contracting party acknowledges that MBI's customers may not return any parts to MBI. MBI will deliver the parts that failed in service to the location specified by MBI or its customer or send the parts to the contracting party directly, at its option. The contracting party shall test the parts at this location at regular intervals and shall inform MBI in writing about the

test results and, upon request, provide MBI with actual copies of the test results. If necessary, MBI may perform independent tests. The contracting party shall bear all expenses for shipping, handling, and labor that MBI or its customer may incur with respect to returning a part, and shall also bear all testing costs.

- 4.3 Parts that 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 and is returned, the original warranty for that 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 because of cost concerns), MBI's customer shall perform the defect test and 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 Section 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 Recurrent claims for construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles and solar/wind energy units:

Recurrent claims are defined in this Section 5.1 for the following product groups: construction/agricultural machinery, busses, commercial vehicles, automobiles, motorcycles and solar/wind energy units.

For the product groups that are subject to this Section 5.1, recurrent claims are accumulations of warranty claims that have the same defect cause and are incurred over a vehicle/unit production period of at least four weeks to the order of more than 5,000 ppm of the vehicle/unit production amount supplied during the same period. Recurrent claims shall also include consistently occurring quality defects.

5.2 Recurrent claims for product groups not listed in Section 5.1:

Recurrent claims are defined in this Section 5.2 for all product groups other than the product groups that are listed in section 5.1, which may include, without limitation, railway vehicles, aviation vehicles, special vehicles, and large motors. The parties acknowledge that the following special definition of recurrent claims is appropriate for these product groups because of the generally small number of units and high value of components.

For the product groups that are subject to this Section 5.2, recurrent claims are accumulations of warranty claims that have the same defect cause and 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.

5.3 The regulations specified in Section 4 on warranty for failures in service shall also apply to recurrent claims. In addition the following provisions shall apply:

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)

The contracting party shall be obliged to provide defect-free parts for series production and for the field as quickly as possible.

5.4 Notwithstanding the foregoing, any further claims from MBI, particularly concerning deficiencies in safety, shall remain unaffected.

## **6 . I n s u r a n c e**

The contracting party shall purchase 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 term. The contracting party shall cause its insurer to name MBI as the assignee of payment.

**7. Agreement with Suppliers**

If the contracting party commissions a third party to manufacture parts or purchases parts from a third party, the contracting party shall ensure that a warranty agreement with similar contents is entered with such third party. The contracting party shall assign to MBI any claims that it may have from time to time on such warranty agreements against the third party.

**8 Duration of agreement**

This agreement shall become effective upon execution by both parties. This agreement may be terminated by either party at any time after December 31, 2015 by giving at least six months' notice to the other party, provided that such termination shall not take effect until the first day of the year after such notice is given.

The contracting party's liability for all warranty claims shall survive the termination of this Agreement. The termination of this Agreement does not eliminate the contracting party's contractual obligations that extend past the termination of this contract.

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 any provision of this agreement is held invalid, the validity of the other provisions shall not be affected. The parties shall change any invalid provision in such a way that they are legally valid and come as close as possible to their original economic purpose or intent. This shall also apply if any provision of this agreement contradicts the law in a particular country.

This agreement shall bind the contracting party and any company that controls, is controlled by, or is under common control with the contracting party. This agreement shall bind and inure to the parties' successors and assigns.

**12. Governing law**

This agreement and all transaction between MBI and the contracting party will be governed by and construed in accordance with the laws of Michigan as if entirely performed therein. The 1980 United Nations Convention on contracts for the International sales of goods, to the extent it may be deemed to apply, shall not pursuant to article 6 thereof apply to this agreement or any transaction pursuant hereto.

The Agreement shall be construed and interpreted in accordance with the laws of the state of Michigan without regard to its conflicts of law provisions. The parties hereby expressly consent to the sole and exclusive jurisdiction and venue, to the maximum extent permitted under the law, of the State courts located in Kent County, Michigan and the Federal Courts for the Western District of Michigan, for all actions, suits, claims, counter-claims, third-party claims and legal proceedings brought by either party with respect to this Agreement.

**13. 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 \$115 – approx. \$290
- Repacking/sorting: \$60/hr. (by arrangement)
- Rework: \$60/hr. (by arrangement)  
\$80/hr. when using of machines
- Special journey: based on documented evidence
- Production standstill: \$1,500/day

\*Costs depend on the location of the error discovery (goods receiving: \$115, Production: \$170, customer: \$290). Includes, e.g. preparation of test reports, blocking inventories, initiation and monitoring of corrective measures.

**14. Changes to this Warranty Agreement**

This Agreement may be modified only by the express written consent of both parties by their duly authorized agents, and all oral modification shall be void and without effect.

Notwithstanding the foregoing, MBI may post changes to this Agreement and any additionally applicable process/ or work instructions (pursuant to Sections 3, 4 and 5) to the Internet, which the contracting party may access through the supplier portal at [www.mahle-behr-industry.com](http://www.mahle-behr-industry.com). MBI will notify the contracting party, by e-mail or regular mail, that it has posted changes to this Agreement. If the supplier portal is not available, MBI will deliver such changes to the contracting party directly. Once the supplier portal is established for the contracting party, the contracting party shall be obligated to check the foregoing website at least once each month, to determine whether a new version of the Agreement or any additionally applicable process/ or work instructions have been posted. New versions will be clearly identified as such.

If the contracting party does not object to the changes to this Agreement or any additionally applicable process/ or work instructions within four (4) weeks after MBI emails or mails notice of changes to the contracting party, or within eight (8) weeks after MBI posts the changes to the Internet supplier portal (if MBI does not notify the contracting party of the changes), then the contracting party agrees that it shall be deemed to have accepted and be bound by the changes.

### MAHLE Behr Industry America LP

5858 Safety Drive, N.E.  
Belmont, MI 49306  
USA

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

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

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

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

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

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

### Contracting Party:

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

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

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

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

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

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(Signature)

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(Title)

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(Title)

### Appendix 1: "Regulation on Establishing Technical Factors Regarding Field Claims "