

# General Conditions of Purchase

## BEHR France Rouffach / Hambach,

designated thereafter “BEHR”

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## **ARTICLE 1 – Basic Conditions**

The relationship between BEHR and its Supplier shall be governed by these general conditions of purchase.

These general conditions of purchase shall prevail over all of the Supplier's general conditions of sale and over any other document issued by the Supplier, except if said conditions of sale have been signed by a legal representative of BEHR.

## **ARTICLE 2 - Orders**

### *(1) Open orders*

Within the scope of an ongoing business relationship, on the basis of the information provided by BEHR, the Supplier shall make an offer to BEHR by fax, e-mail or letter, setting out a description and the price of the product, and the term of supply.

BEHR shall have the possibility to accept or reject this offer. Acceptance of the offer by BEHR shall be evidenced by the drawing up and provision of a framework agreement entitled "open order". This document shall be drawn up in duplicate. An open order shall be countersigned by the Supplier and returned to BEHR by fax, e-mail or letter within 15 days of receipt thereof.

An open order shall include the reference details of the item concerned, its price, and the term during which the parties are bound by such document. An open order shall thus oblige the Supplier to supply the quantities ordered in due time within the scope of delivery requests.

*(2) Delivery requests*

In accordance with the open order, BEHR shall make delivery requests. These requests shall be made by EDI or WebEDI.

BEHR shall regularly specify the estimated quantities that will be the subject of delivery requests. However, these estimated quantities shall be specified for information purposes only. BEHR may change the quantities ordered from day to day, in accordance with its requirements.

The Supplier shall have a term of 3 business days, as from receipt of the delivery requests, in which to notify BEHR in writing of its refusal. After expiry of this term, the delivery requests shall be deemed to have been accepted.

*(3) Samples*

Prior to commencing mass production, BEHR may ask the Supplier to provide samples of the products. Samples shall be provided by the Supplier free of charge. The Supplier shall provide BEHR with a written report presenting said initial samples on the basis of a form drawn up by BEHR. This report shall comply with the standards in force in the automobile industry.

The Supplier shall provide BEHR with all information concerning the data relating to the raw materials in the International Material Data System (IMDS).

**ARTICLE 3 – Modification of the Creation or Manufacture**

BEHR may ask for modifications to be made to the creation or manufacture of the product by fax, e-mail or letter. The Supplier shall inform BEHR of the consequences of such modifications in terms of cost and delivery times within eight days from receipt of said request. Where applicable, BEHR shall send a new open order to the Supplier, which shall be countersigned and returned to the company by the Supplier.

#### **ARTICLE 4 – Price and Modification of the Price**

The prices applicable shall be those set out in the open order or in any supplemental agreement to such document. The prices shall automatically continue to apply for the same term as the initial open order, unless the Supplier informs the Purchasing Management of BEHR of its wish to modify the price 3 months before the expiry date. In the event that the parties fail to agree on the anniversary date of the open order, the initial price shall remain applicable. In the event that a revised price is negotiated between the parties at a later date, the Supplier shall draw up a credit note to take into account the new price with retroactive effect as of the anniversary date of the open order.

Any difference in the amount of the invoice as compared to the open order shall be the subject of a debit note.

The Supplier shall endeavour to rebuild its productivity gains. The rate of this rebuilding shall be agreed upon annually by mutual agreement between BEHR and the Supplier.

The Supplier shall promote the products by presenting suggested technical ratios. These measures shall guarantee the technical development of the products and their overall competitive strength on the market.

#### **ARTICLE 5 – Dispatching**

The terms and conditions for dispatching and unloading the products are set out in the logistics specifications; the Supplier represents that it is familiar with the terms of these specifications.

The goods shall be transported at the Supplier's risk, except in the event of a specific agreement between the parties, which provides for an exception to this provision.

The goods shall be delivered to the address specified on the delivery request.

A single copy of the delivery order must be attached to the delivery.

All dispatch documents, as well as any related correspondence, must specify, in particular, the order number and the part number.

## **ARTICLE 6 – Delivery**

### *(1) Late delivery*

Any delivery made after the date and time specified in the order shall automatically implicate the Supplier's liability .

Interest for late delivery, amounting to 1% of the value of the goods excluding tax, shall be deducted from the price payable by BEHR, for each day's delay. This shall commence as from the day following the delivery date specified in the order, without the need to provide any prior formal notice.

BEHR may, at its own discretion, without prejudice to any other request, ask for the agreement to be terminated or the price to be reduced. Moreover, BEHR may also request payment of damages in respect of the Supplier's failure to perform its obligations. These damages shall take into account additional transport costs and costs relating to the sorting, returning and dismantling of products, returning the products to their original condition, and costs for any stoppage in the production chain, resulting as well for BEHR as for his client.

In the event that a formal notice remains without effect 8 days after receipt thereof by the Supplier, BEHR shall be authorized to obtain replacement supplies from third parties at the expense of the Supplier that has failed to deliver such supplies.

In any event, the Supplier shall be obliged to notify BEHR immediately of any known circumstances, such as a lack of raw materials, a threat of strikes or similar events, which would be liable to make it impossible for the Supplier to comply with the time limits agreed upon.

In the event of a delay in delivery, the goods shall be deemed to have been delivered in accordance with the first unfulfilled delivery request.

*(2) Delivery before the scheduled date; unrequested delivery*

In the event that deliveries are made without a delivery request or before the scheduled delivery date, BEHR reserves the possibility to refuse the goods, to return them to the Supplier at the Supplier's cost, or to accept the goods as advance stock; the additional costs that result from such deliveries shall be borne by the Supplier.

In the event of a delivery before the scheduled date, the goods shall be deemed to have been delivered in accordance with the next delivery request.

## **ARTICLE 7 - Billing**

For each delivery of goods intended for mass production, one copy of an invoice shall be sent to BEHR's postal address, but shall not be attached to the delivery order. With respect to other goods, the invoice shall be sent in duplicate.

BEHR's order number and the part number must mandatorily be specified on the invoice.

In the event of the absence of information mandatorily required by law, or of the above mentioned information, BEHR shall send the invoice back to the Supplier.

**ARTICLE 8 - Payment**

BEHR shall make all payments exclusively by wire transfer, within 14 days of receipt of the invoice subject to a 3% discount, or within 30 days of receipt of the invoice subject to a 2% discount, or within 60 days of receipt of the invoice subject to a 1% discount. For purchases made on French territory with French suppliers the LME law dated August 4, 2008 applies. For purchases made outside of this definition the special agreement of the order applies.

Payment shall only be made subject to a control of each invoice.

In the event that an invoice is rejected due to the absence or inaccuracy of mandatory information (required by law or pursuant to these general conditions of purchase), the date taken into account shall be the date of receipt of the invoice duly completed by the Supplier.

Payment shall be deemed to have been delayed if it is made 90 days or more after receipt of the invoice.

In the event that deliveries are received before the scheduled date, the time limit for payment of the invoice shall only begin to run on either the agreed delivery date or the date of receipt of the invoice, whichever occurs last.

Late-payment interest shall amount to 1.5 times the interest rate provided for by French law.

**ARTICLE 9 – Receipt of Goods**

Goods may be provisionally received by the Supplier. It has been agreed that this provisional receipt has no legal validity. Only the definitive receipt of the goods in the premises of BEHR shall have any legal consequence.

**ARTICLE 10 - Information**

The Supplier shall ask BEHR for any transfer of manufacturing, the use of any new equipment, new procedures or new material. A written confirmation from BEHR before application is required.

The Supplier shall inform BEHR of any possibility for improving the quality or reducing the price of the products to be supplied.

**ARTICLE 11 – Supplier’s Warranties**

Each product delivered to BEHR must comply in every way with the specifications agreed upon between the parties. Moreover, the Supplier represents that it is aware of and complies with the Supplier Management Agreement (*Accord de Management Fournisseur*). No change may be made to the product by the Supplier without the written consent of BEHR.

The Supplier warrants that each product it delivers shall be of impeccable quality and the presentation of the products shall be true to the original design; it shall be adapted to the purpose for which it is sold, shall have no defect and shall fully comply with French and EC regulations and standards in force. Each product shall offer the security that may be legitimately expected.

In the event that a product is of poor quality, is non-compliant from a safety standpoint or fails to comply with the specifications that may have been agreed upon by the parties, or with the regulations and standards in force, the Supplier shall take back all of the products at its own cost, even after receipt thereof. The Supplier shall bear all the direct and indirect costs related to taking back the products.

The Supplier undertakes to indemnify BEHR for any direct or indirect harm that BEHR may suffer as a result of the Supplier’s failure to comply with any one of its obligations, in

particular in the event of the poor quality of the products. Indirect harm shall include, in particular, a loss in revenues, a loss of margin, harm to the brand image and/or the reputation of BEHR, stoppages in the production chain, logistics costs, costs for sorting, returning products or returning them to their original condition, and any costs for dismantling the products.

The Supplier shall continually control the quality of the products that are to be delivered and organize its quality assurance system such that said system is always in line with the most recent technical standards applicable in the automobile industry.

The Supplier and its sub-contractors shall keep the documents relating to tests and trials for a period of 15 years and shall present said documents to BEHR at its request.

The Supplier authorizes BEHR, or any person empowered by BEHR, to carry out any inspection at the Supplier's premises and to consult any document relating to production. The Supplier agrees to act as guarantor with respect to the possibility to carry out any inspection in the premises of its own suppliers.

Any objections that the Supplier may have in respect of the specifications provided by BEHR must be brought to BEHR's attention prior to the commencement of mass production, and if this is not the case such objections cannot be raised at a later date for any reason whatsoever.

With respect to the raw materials, which, pursuant to the law, requirements and other regulations, or due to their composition or impact on the environment, require special treatment in terms of packaging, transport, storage and waste disposal, the Supplier shall provide a safety record with its offer, which has been duly completed with a view to the possibility of the materials being sold abroad, as well as the corresponding accident (transport) report.

In the event of a change in materials used or in the law, the Supplier shall provide the related records and reports.

The Supplier agrees to act as guarantor in respect of the compliance of its suppliers with all of these warranties.

## **ARTICLE 12 – Implementation of the Supplier’s Warranties**

### *(1) Implementation of the warranties*

BEHR shall send a written claim to the Supplier, which shall not use any forfeiture of rights or time bar against BEHR with respect to the quality, quantity or compliance of the goods supplied as compared to the order.

The Supplier shall not use against BEHR the fact that BEHR has paid the purchase price, or transformed or integrated the products provided before making its claim.

In the event that goods are rejected, BEHR reserves the right to:

- perform or cause the performance of corrective measures and the return of the products, and charge the costs relating to such measures to the Supplier in the event that the Supplier is formally notified that such action must be taken but is unable to perform such action within the required time limits in accordance with BEHR’s requirements;
- cancel the remainder of the order that has been partially rejected;
- call for the replacement of rejected supplies;

without prejudice to any other damages.

### *(2) Warranty period*

With respect to personal vehicles or transport vehicles weighing up to 6 tons, the Supplier’s liability may be implicated by BEHR within 36 months as from the date on which authorization is first given for the vehicles to be put into circulation or the date on which the products are integrated, with the exception of its liability with respect to faulty goods.

With respect to products that are integrated into personal vehicles or transport vehicles sold in North America (USA, Canada, Puerto Rico), the warranty period is increased to 60 months.

With respect to trucks, the warranty period is 60 months.

### **ARTICLE 13 – Action in the Event of a Problem with Production**

#### *(1) Declaration of non-compliance*

BEHR shall inform the Supplier, even verbally, of any situation of non-compliance, in particular in the event that:

1. A vehicle is recalled by a manufacturer,
2. The quality or quantity of the products does not comply with the objectives fixed by BEHR,
3. An incident occurs that affects the customer or BEHR,
4. There is a supply outage.

A notification of non-compliance shall result in the Supplier being obliged to implement an action plan in order to resolve the incidents as quickly as possible, by means of a specific procedure decided upon jointly with the quality assurance department of BEHR.

In all cases, the Supplier shall implement all means in order to avoid a break in manufacturing for BEHR or its customer. The Supplier undertakes to confirm the situation of non-compliance in writing to BEHR, on the day that it occurs, as well as the measures taken to resolve such non-compliance.

#### *(2) Regularization of the situation of non-compliance*

The situation of non-compliance shall cease to exist as soon as the objectives set for the Supplier have been reached and validated during a trial period.

## **ARTICLE 14 – Liability Due to Faulty Products**

### *(1) Use of the products*

The products delivered to BEHR are intended to be used for the construction of vehicles, unless otherwise stated. These products are sold throughout the world.

### *(2) Controls*

The Supplier shall provide for all controls of the products it manufactures and/or delivers and shall be liable for faults in any products delivered. Receipt of the products by BEHR shall by no means release the Supplier from its liability with respect to faulty products.

### *(3) Scope of the Suppliers' liability*

As a professional manufacturer, the Supplier shall alone be liable for any direct or indirect harm that may be caused by its products, regardless of the nature and cause of such harm (material, physical or pecuniary).

Accordingly, the Supplier shall be obliged to indemnify BEHR for the direct or indirect consequences of any claims and legal actions, of any nature whatsoever, whether pursuant to civil or criminal law, which may be brought against it or lodged by a third party with respect to the quality, safety or non-compliance of its products.

The Supplier's liability in terms of faulty products shall be time-barred 10 years after the date that the product that actually caused the harm was put into circulation.

### *(4) Components*

In the event that BEHR is called into question in its capacity as manufacturer of a component or is jointly and severally liable in its capacity as Supplier of a component, even if it is acknowledged that the Supplier is not responsible for the faulty products, the Supplier shall substitute BEHR for itself and bear the costs for the harm suffered by BEHR, in particular

procedural costs and costs related to the recall of vehicles, insofar as the Supplier has already delivered part of the faulty product.

*(5) Insurance*

The Supplier undertakes to take out civil liability insurance to cover cases where its liability may be implicated due to faulty products, including payment of the costs for recalling vehicles.

At the request of BEHR, the Supplier shall immediately provide proof that it has taken out such insurance cover.

**ARTICLE 15 – Termination of the Manufacture of a Product**

*(1) Termination by the supplier*

The Supplier may terminate an open order subject to a 6-month notice period. The quantities that must be delivered during the notice period shall be determined by BEHR, at the latest 30 days after the date of receipt of the notice of termination.

All costs relating to the termination shall be borne in their entirety by the Supplier.

In any case, the Supplier shall remain obliged, even after the termination of an order, to deliver products that are no longer the subject of mass production, for a period of 20 years as from the date on which it terminates the order. The price of these products shall be calculated in accordance with the last open order or by mutual agreement between the parties.

*(2) Termination by BEHR*

BEHR may terminate an open order immediately in the event that the vehicle manufacturer in turn terminates its agreement with BEHR or amends such agreement such that the product is no longer suitable for its original use.

In this case, BEHR accepts to take responsibility for the Supplier's stock within the limit of one month's deliveries, as well as the costs relating to the purchase of materials corresponding to one month of manufacturing.

Moreover, in the event that the Supplier fails to perform any one of its obligations whatsoever, BEHR may terminate an open order subject to a 3-month notice period.

In all other cases of termination, BEHR may terminate an open order subject to 6-month notice period.

In all cases of termination, in order to facilitate the transfer of manufacturing, the Supplier shall make the manufacturing process, tools and accessories available to BEHR, and shall authorize BEHR to visit its production site in the company of the supplier that takes over the deal.

In the event that deliveries are divided, BEHR is only obliged to accept the firm and final quantities set out pursuant to this arrangement.

## **ARTICLE 16 – Production Means**

### *(1) Means provided by BEHR*

BEHR may provide the Supplier with the materials, tools, molds, models, designs, documents, plans, parts and samples intended to be used by the Supplier within the scope of the manufacture performed for BEHR.

All of BEHR's production means shall remain the property of BEHR and must bear the words "BEHR". They may only be used for BEHR and within the scope of the use agreed upon with BEHR.

The Supplier shall provide BEHR, at regular intervals and at any time that BEHR may so request, with a list of the production means owned exclusively or jointly by BEHR.

The production means may only be destroyed with the written consent of BEHR.

*(2) Joint ownership of the manufactured products*

BEHR shall become the joint owner of products manufactured using BEHR materials in proportion to the value of the materials made available as compared to the total value of the product.

The products shall remain in the Supplier's possession until the delivery time agreed upon, and shall be stored specifically to the attention of BEHR.

*(3) Return of the production means*

At BEHR's request, the Supplier shall immediately return the production means made available to it by BEHR, free of charge, at the latest within one day from such request being made.

In the event of the joint ownership of products, the Supplier shall return BEHR's products to it in return for the repayment of its share thereof pursuant to the joint ownership.

In the event of a dispute regarding the value of the products that are jointly owned, BEHR may eliminate the Supplier's right of retention by paying a guarantee for the amount challenged.

The Supplier shall assert any right of retention on the production means provided by BEHR.

The Supplier shall take out, at its own cost, a sufficient amount of insurance to cover the materials and parts made available to it against all risks, in particular the risks of fire and theft. The Supplier shall provide BEHR with proof of such cover at BEHR's first request.

#### **ARTICLE 17 – Compliance with Regulations**

The Supplier undertakes to fully comply with all provisions of the applicable laws and regulations in force, in particular those that relate to the quality, composition, presentation, and labeling of goods, labor and employment law, the provisions of the United Nations International Convention on Children's Rights dated November 20, 1989 that prohibits children under the age of 15 from working, and environmental law.

#### **ARTICLE 18 – Industrial Property**

The Supplier shall hold BEHR harmless from and against any claim that may be made against it in any location whatsoever by third parties, with respect to the parts provided, on the basis of patents, licenses, trademarks and design registrations.

In this respect, the Supplier shall immediately substitute itself for BEHR and shall ensure BEHR's defense in the place and stead of BEHR with respect to all well-founded or ill-founded proceedings that may be initiated: it is agreed that all amounts that may be disbursed by BEHR with respect to fees and costs, or even in respect of damages paid following the application of a penalty, shall be borne in their entirety by the Supplier.

#### **ARTICLE 19 - Confidentiality**

The working methods that fall within the scope of BEHR's company policy shall undoubtedly give rise to an exchange and pooling of know-how held by those who place and those who take orders.

Accordingly, the Supplier is obliged to keep the information provided to it confidential, and undertakes to take all measures to prevent the disclosure of information received with respect to the completion of an order.

No document of any kind whatsoever belonging to BEHR may be disclosed to a third party, except with the prior consent of BEHR.

#### **ARTICLE 20 – Force Majeure**

Natural disasters, riots, legislative or regulatory measures, transport strikes, labor disputes, lock-outs or any other disruption in the operations of BEHR, its sub-contractors or customers, which give rise to the cessation of or a decrease in production, shall release BEHR from its obligation to accept the products for the entire term of such disruption.

#### **ARTICLE 21 – Entire Agreement**

These general conditions of purchase constitute the full agreement between the parties.

The provisions of these conditions cancel and supersede all agreements, commitments and negotiations between the parties that may have been drawn up prior to these general conditions of purchase.

In the event that one of the clauses of these general conditions of purchase were to become null and void or deemed to be inapplicable, in part or in its entirety, or were to become null and void or inapplicable in the future, the validity of the other clauses shall not be affected. The clause that has become null and void or inapplicable shall be replaced, by the parties, by an agreement the terms of which are as close as possible to the objective sought by the cancelled or inapplicable provision.

**ARTICLE 22 – Place of Execution and Jurisdiction**

The place of execution of these general conditions of purchase is respectively Rouffach or Hambach.

In the event of a controversy or dispute with respect to the products, service, price or payment, including in the event of the implementation of a warranty, place of jurisdiction shall be the place of the statutory seat of BEHR.

Acceptance of a settlement or payment outside the scope of this jurisdiction shall not give rise to any novation or exception with respect to this clause.

These general conditions of purchase, as well as the relationship between the parties, shall be subject to French law.

Application of the United Nations Convention on the International Sales of Goods is expressly excluded.

<b>Company</b>	
Name	
Function	
Date	
Signature	
Stamp	