

MBSA Supply Agreement (Production Material and Spare Parts)

MERCEDES-BENZ SOUTH AFRICA Registration number 1962/000271/07 (hereinafter referred to as "MBSA")

TABLE OF CONTENTS

0. Definitions	6. Delay	11. Intellectual Property Rights	15. Applicable Law and Jurisdiction
1. Determining Conditions	7. Force Majeure	12. Use of Production Equipment & Confidential Information made Available by DCSA	16. Domicilium and Notices
2. Orders	8. Quality and Documentation	13. Duration and Termination	17. Conflict of Interest / Bribery
3. Payment, Invoices and Deliver	9. Notification of Defects and Warranty	14. Breach and Termination	18. Sub-Contracts and Cession
4. Confidentiality	10. Liability		19. General
5. Delivery Dates and Time Limits			

0. DEFINITIONS	3.4	based on MBSA's OPEN BOOK COSTING methodology.
In this agreement:		
0.1 Unless the context indicates the contrary intention, an expression which denotes:		
0.1.1 any gender includes other genders;	3.4	In the case of premature shipments, payment will be made according to the dates specified in the MBSA DELIVERY SCHEDULE PER PART.
0.1.2 a natural person includes a body corporate and vice versa;	3.5	In the case of defective deliveries, MBSA shall be entitled to withhold payment pro rata to the value until the defective COMPONENTS have been replaced. If there is any money due to MBSA by the SUPPLIER, MBSA may set-off such amount against any payment for COMPONENTS and/or other amounts due to the SUPPLIER by MBSA.
0.1.3 the singular includes the plural and vice versa.		
0.2 Headnotes are for convenience only and shall not be used in the interpretation of this agreement.		
0.3 The following terms and expressions shall, unless the contents clearly indicates a contrary intention, have the respective meanings set opposite them:	3.6	A single copy of the invoice is to be sent to MBSA. The invoice must contain the SUPPLIER number, number and date of the order, additional information identifying the party placing the order, VAT registration number, place of unloading, number and date of the delivery note and quantity of goods charged for. A separate invoice must be issued for each delivery note. Standard delivery notes are to be used for all deliveries.
"ACCEPTANCE OF QUOTATION" means MBSA's document entitled ACCEPTANCE OF QUOTATION;		
"COMPONENTS" means the components and/or accessories, identified by the relevant DAG or MBSA part number, manufactured and produced in accordance with the specifications as stipulated in an RFQ or other ORDER DOCUMENTS;	3.7	After discontinuation of series production the price for the replacement COMPONENTS will be the last valid series production price (ie the price reflected in the last ORDER DOCUMENTS) plus the costs actually incurred by the SUPPLIER for special packaging. This price is fixed for a period of 3 years after series production is discontinued. After the 3-year period, claims by the SUPPLIER with regard to adjusting prices are to be comprehensively documented in an open book calculation. This calculation will form the basis of the price negotiations. Additional claims by the SUPPLIER are to be documented accordingly.
"DAG" means DAIMLER AG, MBSA's German parent company;		
"MBSA SCHEDULING AGREEMENT" means the document entitled SCHEDULING AGREEMENT as completed and submitted to the SUPPLIER by MBSA, the contents of which contain the price of each COMPONENT quoted therein and which forms part of this agreement;	4.	CONFIDENTIALITY
"MBSA PRODUCT" means any COMPONENT manufactured using or including, whether in whole or in part, any PROPRIETARY DESIGN and/or using PRODUCTION EQUIPMENT and includes any sample or other asset of, or supplied to the SUPPLIER by, MBSA without full compensation being paid therefor by the SUPPLIER to MBSA;	4.1	The parties undertake to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship, irrespective of whether application has been made for intellectual property rights in respect thereof, provided that the information is not public knowledge.
"MBSA DELIVERY SCHEDULE PER PART" means the document entitled MBSA DELIVERY SCHEDULE PER PART as completed and made available to or submitted to the SUPPLIER, the contents of which form part of this agreement, which specifies the quantity of COMPONENTS required from time to time and the date for due delivery thereof from time to time, indicating MBSA's liability for manufactured COMPONENTS and/or raw material respectively. It also contains the forecast figures of COMPONENTS possibly required by MBSA which are only provided for the SUPPLIER'S production planning;	4.2	Drawings, models, patterns, samples and similar objects shall not be made available or otherwise made accessible to unauthorized third parties. Reproduction of such objects is permitted only in accordance with business requirements or in compliance with the laws relating to intellectual property.
"EFFECTIVE DATE" Means the date of acceptance of the RFQ by MBSA;	4.3	The SUPPLIER must ensure that its sub-SUPPLIERS commit themselves accordingly to the terms of sub-clauses 4.1 and 4.2 above.
"OPEN BOOK COSTING" Means an analysis of all relevant contributing costs in respect of the COMPONENT;	4.4	Each contracting party may use the established business relationship for advertising purposes only after having obtained the previous written consent of the other party.
"ORDER DOCUMENTS" means the RFQ, the ACCEPTANCE OF QUOTATION, the MBSA SCHEDULING AGREEMENT and the MBSA DELIVERY SCHEDULE PER PART, collectively;	5.	DELIVERY DATES AND TIME LIMITS
"PARTIES" means MBSA and the SUPPLIER collectively;		Agreed delivery dates and time limits set out in the ORDER DOCUMENTS are binding. Compliance with such dates or time limits shall be determined by the day of arrival of the COMPONENTS to be supplied at MBSA. Unless it has been agreed that delivery will be "ex works", the SUPPLIER shall make the goods available in time taking into consideration the time usually necessary for loading a shipment.
"PRODUCTION EQUIPMENT" means dies, tools, jigs, patterns or drawings or other production or measuring equipment supplied by MBSA to the SUPPLIER, or financed by MBSA or acquired by the SUPPLIER at the cost of MBSA;	6.	DELAY
"PROPRIETARY DESIGNS" means all designs, specifications, drawings, data and, information and know-how originating from and/or supplied by DAG or MBSA in relation to COMPONENTS, MBSA PRODUCTS and PRODUCTION EQUIPMENT;		The SUPPLIER shall be committed to compensate MBSA for all damages caused by delay, which will include, but not be limited to additional freight costs and additional assembly costs or to the additional freight costs resulting from alternative sources in the event of the SUPPLIER failing to meet an extended term or if MBSA's interest in the delivery has become frustrated.
"QUALITY STANDARDS" means those standards set out in clause 8.3 of this agreement;	7.	FORCE MAJEURE
"RFQ" means the document entitled REQUEST FOR QUOTATION as completed and submitted to the SUPPLIER by MBSA, the terms of which and annexes thereto form part of this agreement;	7.1	Neither PARTY shall be liable for any failure to perform its obligations under this agreement where such performance has been delayed, hindered or prevented by any circumstance beyond the control of that party including but not limited to acts of God, industrial actions, lock-outs, trade disputes, Government directions and/or war.
"ROUTINE PRODUCTION LEAD TIME" means the time period between the date of the MBSA DELIVERY SCHEDULE PER PART and the date on which the COMPONENTS are built into the final assembly;	7.2	Where such circumstances beyond the control of any PARTY prevent performance, the obligations of the PARTIES in terms of this agreement shall be suspended until the termination of such circumstances, whereupon the obligations of the PARTIES, in particular the delivery of COMPONENTS and the performance of services by the SUPPLIER, shall be resumed within a reasonable time.
"ROUTINE RAW MATERIAL LEAD TIME" means the lead time to procure raw materials to meet the MBSA delivery dates ie ROUTINE RAW MATERIAL LEAD TIME + ROUTINE PRODUCTION LEAD TIME;	7.3	A PARTY who wishes to invoke this clause shall notify the other PARTY of the circumstances it relies upon within 5 (FIVE) days of the commencement of such circumstances. Such PARTY shall take all reasonable steps to minimize losses arising from such circumstances. Should either PARTY fail to notify the other timeously of such circumstances, such PARTY shall become liable to make good all damages and losses suffered by the other PARTY arising therefrom.
"RECALL CAMPAIGN" means a systematic effort by MBSA to locate and recall, MBSA PRODUCTS, COMPONENTS or parts installed in vehicles and believed by MBSA to be non-compliant with MBSA specifications, in breach of the SUPPLIER warranty, or non-compliant with any law, regulation, order or other governmental requirement, and to replace or correct such MBSA PRODUCTS, COMPONENTS or parts;	7.4	Should the circumstances last for more than 30 (THIRTY) days, either PARTY shall be entitled to cancel this agreement on 7 (SEVEN) days notice without incurring any liability whatsoever to the other.
"SPECIAL TERMS" means the Mercedes-Benz Special Terms which are made available to the SUPPLIER and which are applicable to all suppliers to MBSA irrespective of whether or not they supply COMPONENTS for Mercedes-Benz products. The SUPPLIER acknowledges that a need exists for MBSA/DAG to update the SPECIAL TERMS from time to time in accordance with their operational requirements. The SUPPLIER confirms that it will not unreasonably refuse to comply with the updated SPECIAL TERMS.	8.	QUALITY AND DOCUMENTATION
1. DETERMINING CONDITIONS	8.1	The SUPPLIER shall comply with the acknowledged standards of engineering, the safety regulations and the agreed technical data in respect of the COMPONENTS it supplies. Any changes to the COMPONENTS may only be made with the previous written consent of MBSA.
1.1 The legal relationship between the SUPPLIER and MBSA shall be governed by the terms of this agreement and any addendums hereto as read with the ORDER DOCUMENTS and the MERCEDES-BENZ SPECIAL TERMS. Any alterations and amendments must be in writing.	8.2	In respect of the first sample inspection, the sample submission process will follow the process contained in MERCEDES-BENZ SPECIAL TERMS. The SUPPLIER shall be obligated to permanently control the quality of the COMPONENTS supplied. The contracting parties shall be obliged to inform each other of any possibilities of improving the quality of COMPONENTS to be delivered.
1.2 Should any term of this agreement be in conflict with any existing or future law, such law will be binding in respect of that term only and all other terms of this agreement shall remain valid and binding upon the parties.	8.3	The SUPPLIER must set up and furnish proof of an appropriate system of quality management as regulated by the following documentation :
2. ORDERS	8.3.1	DIN EN ISO 9001; 2000 series;
2.1 Orders, acceptance, delivery and releases as well as any changes and amendments thereto must be made in writing. The following procedure shall be adopted before work is authorized by MBSA :	8.3.2	ISO (TS) 16949;
2.1.1 MBSA shall issue an RFQ;	8.3.3	ISO 14001.
2.1.2 the SUPPLIER shall react by completing the RFQ;	8.4	If no firm agreement has been made between the SUPPLIER and MBSA with regard to the nature and extent of the tests, the testing equipment and the testing method, MBSA shall, at the SUPPLIER'S request, agree, within the scope of MBSA'S know-how and experience, as far as it is able, to discuss the testing with the SUPPLIER in order to determine the required standard of testing techniques in the particular case being considered. MBSA shall, upon request from the SUPPLIER, inform them about the relevant safety regulations.
2.1.3 MBSA may then in its discretion issue an ACCEPTANCE OF QUOTATION;	8.5	The SUPPLIER must state in its quality records for all COMPONENTS when, how and by whom checks were carried out to ensure the defect-free manufacture of the COMPONENTS. These records must be kept for fifteen (15) years and presented to MBSA upon request. The SUPPLIER is entitled to reduce the holding period for documentation to a minimum of five (5) years if it is able to exclude the possibility of risk to life and health in the use of the COMPONENT. The SUPPLIER is required to obligate its sub-SUPPLIERS to the same extent as is set out above. The SUPPLIER shall ensure that safety critical COMPONENTS as defined in the RFQ are traceable. The SUPPLIER shall impose the same obligations as contained above and its SUB-SUPPLIERS to ensure compliance with the terms of this agreement. The parties acknowledge that they are aware of the guidelines and procedures for documentation and archiving for quality requirements and records which have been set out in the ISO(TS) 16949 documentation, and undertake to comply therewith.
2.1.4 MBSA may in its discretion thereafter issue a MBSA SCHEDULING AGREEMENT and, thereafter, a MBSA DELIVERY SCHEDULE PER PART.		
2.2 In the event of the SUPPLIER not accepting the terms of the MBSA DELIVERY SCHEDULE PER PART within three (3) weeks of receipt thereof, MBSA will have the right to revoke the order. Any MBSA DELIVERY SCHEDULE PER PART shall become binding if the SUPPLIER does not reject same within two (2) days of its receipt.	8.6	In the event of any authorities being responsible for vehicle safety, emission standards or the like, demanding inspection of the manufacturing process and disclosure of the test records of MBSA, the SUPPLIER shall, when requested by MBSA, concede to such authorities the rights which they might have with regard to MBSA and provide them with the support which may reasonably be expected.
2.3 MBSA may cancel a MBSA SCHEDULING AGREEMENT or reschedule a MBSA DELIVERY SCHEDULE PER PART provided that any such changes are made outside the appropriate ROUTINE PRODUCTION LEAD TIMES, or ROUTINE RAW MATERIAL LEAD TIME referred to in the RFQ.	9.	NOTIFICATION OF DEFECTS AND WARRANTY
2.4 If a MBSA SCHEDULING AGREEMENT or MBSA DELIVERY SCHEDULE PER PART is cancelled within the appropriate ROUTINE PRODUCTION LEAD TIMES or ROUTINE RAW MATERIAL LEAD TIME and is not rescheduled by MBSA, the SUPPLIER will make every reasonable effort to mitigate its loss and to minimize the liability of MBSA to the SUPPLIER.		
2.5 With regard to the remaining loss, after mitigation, the parties will negotiate an appropriate cancellation charge that shall never exceed the amount that would have been paid by MBSA for the COMPONENTS stipulated in the ORDER DOCUMENTS.		
2.6 MBSA reserves the right at any time to amend PROPRIETARY DESIGNS and/or drawings, specifications or data relating to any material and/or work described in the ORDER DOCUMENTS. The procedure set out in Clause 2.1 shall thereafter apply mutatis mutandis.		
3. PAYMENT, INVOICE AND DELIVERY NOTE		
3.1 Payment is to be made by cheque or by bank transfer.		
3.2 The prices set out in the ORDER DOCUMENTS shall be valid for the period of 1 (ONE) calendar year, calculated from the date the MBSA SCHEDULING AGREEMENT is issued to the anniversary of that date in the following year (hereinafter referred to as the "fixed period"). No price adjustments shall be accepted by MBSA during the fixed period, unless otherwise agreed upon by the parties in writing, based upon fluctuations in external market conditions.		
3.3 Prices negotiated between the SUPPLIER and MBSA shall be in ZAR (South African Rand) and shall be		

- 9.1 In the event of it being found that COMPONENTS supplied are defective before the start of production or prior to fitting, MBSA shall afford the SUPPLIER an opportunity to remedy, rework or replace the defective COMPONENTS, unless MBSA cannot reasonably be expected to grant such an opportunity. Should the SUPPLIER be unable to do so, or does not do so within two (2) days of receiving written notification from MBSA, MBSA shall be entitled to instruct a forwarding agent of its choice to effect the return of such defective COMPONENTS to the SUPPLIER. All costs incurred in so doing shall be for the account of the SUPPLIER.
- 9.2 In urgent cases MBSA may, after consultation with the SUPPLIER, rework the component itself or have it done by a third party. Any costs resulting therefrom shall be borne by the SUPPLIER.
- 9.3 In the case where the same COMPONENTS are repeatedly supplied in a defective condition, MBSA shall be entitled to rescind the contract if, upon written notification, the SUPPLIER again delivers defective COMPONENTS.
- 9.4 If the defect is discovered any time after the start of production and MBSA has duly notified the SUPPLIER in terms of Clause 9 above, MBSA may elect to demand that the defect be remedied or, alternatively that the SUPPLIER supply a COMPONENT that is free from defect. The SUPPLIER may dispute MBSA's election if same would result in unreasonable expenses. Accordingly, regard must be had to the value of the COMPONENT when free from defect, the significance of the defect and the question whether the defect could be remedied without material prejudice to MBSA. The SUPPLIER will bear the costs incidental to remedying the defect, in particular those of carriage, transport, labour and materials. In the event of the SUPPLIER remedying the defect by delivering a new COMPONENT that is free from defect, the SUPPLIER may demand return of the defective COMPONENT, provided that he pays the costs incidental thereto. The SUPPLIER further warrants that such COMPONENTS will not be re-introduced into the market or disposed of to any third party.
- 9.5 The Warranty expires at the end of twenty four (24) months after the first vehicle registration or the installation of the replaced part, at the latest however, thirty (30) months after delivery to MBSA.
- 9.6 A warranty claim does not arise if the defect is attributable to the failure to observe operating, maintenance and installation instructions, inappropriate or unsuitable use, careless or incorrect treatment, normal wear and tear, and as a result of MBSA or a third party making changes to the COMPONENTS supplied.
10. **LIABILITY**
- 10.1 The SUPPLIER shall be liable for damage directly or indirectly caused to MBSA as a result of defective supply, violation of official safety regulations or for any other legal reasons, on the following basis:
- 10.1.1 In principle, an obligation on the part of the SUPPLIER to compensate MBSA for damages will only exist if the SUPPLIER is at fault in causing the damages.
- 10.1.2 In the event of a claim being made against MBSA on the basis of liability to third parties, the SUPPLIER hereby fully indemnifies and holds MBSA and DAG harmless against any claims made against either or both of them, in any country in which they may arise and of whatever nature. MBSA shall attempt to mitigate its loss insofar as it is legally possible.
- 10.1.3 Any claims of MBSA shall be excluded inasmuch as the defect is caused by the non observance, attributable to MBSA, of operating, service and installations instructions, to unsuitable for inappropriate use, to incorrect or careless treatment, normal wear and tear or incorrect repair.
- 10.1.4 As far as is legally bound, the SUPPLIER shall be liable for compensation with regard to actions which MBSA/DAG undertakes to avoid any damage (for instance a RECALL CAMPAIGN).
- 10.1.5 If MBSA/DAG intends to assert a claim against the SUPPLIER in accordance with the abovementioned provisions, they shall be obliged to consult with the SUPPLIER prior to doing so. The SUPPLIER will be given the opportunity to investigate the alleged defect and/or deficiency. The contracting parties shall agree upon the steps to be taken, especially in the case of negotiations for a settlement.
- 10.2 The SUPPLIER shall at all times maintain insurance cover of at least R10 000 000.00 (Ten Million Rand) against all risks arising from the aforesaid warranty, indemnification and otherwise to the satisfaction of MBSA. The SUPPLIER shall make available at MBSA's request its insurance policies for inspection and approval by MBSA. The abovementioned cover can in no way be construed as a limitation of the SUPPLIER's liability.
- 10.3 A "reinstatement of indemnity limit" clause must be included in the insurance policy.
- 10.4 Product liability cover as contemplated by this clause 10 must be maintained for the same period as the SUPPLIER is obliged to provide parts and accessories to MBSA.
- 10.5 The insurance cover stipulated in 10.2 may be revised annually or as the need arises by agreement between the parties.
11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1 The SUPPLIER shall be liable for any claim which, by the use of COMPONENTS according to the terms of the agreement, results in the infringement of intellectual property rights.
- 11.2 The SUPPLIER hereby indemnifies and holds MBSA harmless, as well as its successors, assigns, customers and the users of its products, against any claim resulting from the manufacture, distribution, sale and/or use of COMPONENTS supplied by the SUPPLIER in terms of this agreement in any country and against any claim of whatsoever nature including but not limited to infringement of any patent, trade mark, copyright, design or other intellectual property rights. This indemnity applies only to the extent that the COMPONENTS have been manufactured, in whole or in part, according to designs, drawings and/or specifications not supplied by MBSA and not forming part of or being included in the PROPRIETARY DESIGNS or PRODUCTION EQUIPMENT. The SUPPLIER undertakes to defend or at the sole election of MBSA, to permit MBSA to defend any action brought for any such alleged infringement against MBSA, its assigns, customers and/or users, and the SUPPLIER shall assume responsibility for all the costs related to such legal proceedings and/or claims.
- 11.3 To the extent that the SUPPLIER is not liable pursuant to Clause 11.2 above, MBSA shall hold him free and harmless of all claims brought by third parties.
- 11.4 The contracting parties consent themselves to inform each other, in writing, as soon as practicably possible, on all risks of violations or alleged violations and to give each other the opportunity to jointly oppose such claims.
- 11.5 The SUPPLIER shall upon MBSA's request, inform MBSA about the use of any intellectual property rights (whether registered or not) which are owned by it relating to the COMPONENTS. Nothing contained herein shall be construed as giving the SUPPLIER any right in or to, or any licence in relation to the use of, any trade mark, patent, design, copyright or other intellectual property of MBSA or DAG other than is specifically provided for in this agreement.
12. **USE OF PRODUCTION EQUIPMENT AND CONFIDENTIAL INFORMATION MADE AVAILABLE BY MBSA**
- Models, matrices, patterns, samples, tools and other PRODUCTION EQUIPMENT, as well as confidential information provided to the SUPPLIER by MBSA and/or DAG, or paid for by MBSA and/or DAG in full, may be used for supplies to third parties only after having obtained the previous written consent of MBSA.
13. **DURATION AND TERMINATION**
- 13.1 This agreement shall commence on the EFFECTIVE DATE and shall continue until the anniversary of that date in the following year and, unless written notice of termination is given by one party to the other prior to the latter date, this agreement shall automatically continue for further consecutive periods of 1 (ONE) calendar year each, unless 3 (three) months' notice of termination is given by one party to the other.
- 13.2 MBSA may, however, terminate this agreement on SIXTY DAYS (60 DAYS) notice if the SUPPLIER is no longer competitive in respect of quality, technology, delivery and/or cost. MBSA shall have no obligation to make any payment to the SUPPLIER except for:
- 13.2.1 COMPONENTS delivered prior to such termination; and
- 13.2.2 the SUPPLIER'S costs of production, including labour, raw materials and overheads, incurred up to the date of termination pursuant to the issue of a MBSA DELIVERY SCHEDULE PER PART.
14. **BREACH AND TERMINATION**
- 14.1 Should either of the PARTIES fail punctually to observe or perform any of the terms, conditions and/or obligations of this agreement, and failing rectification of such breach by the defaulting PARTY within 7 (SEVEN) days after having been given notice in writing by the aggrieved PARTY of such breach, then, without prejudice to any other remedies which it may have, the aggrieved PARTY shall be entitled at its discretion either:
- 14.1.1 to cancel this agreement and to claim such damages as it may suffer, or
- 14.1.2 to enforce compliance with the provisions of this agreement and to claim such damages as it may suffer as a result of such breach.
- 14.2 Should the SUPPLIER be placed in provisional or final liquidation or provisional or final judicial management (either voluntarily or compulsorily) or, being an individual, be provisionally or finally sequestered, then
- in such event it or he shall be deemed to have breached this agreement and MBSA shall have the rights referred to in this Clause 14.1 save that it shall not be necessary for MBSA to give the SUPPLIER any written notice as contemplated therein.
15. **APPLICABLE LAW AND JURISDICTION**
- This agreement and the relationship between the PARTIES shall be regulated entirely by the laws of the Republic of South Africa and, in the event of a dispute, the parties hereto consent to the jurisdiction of the High Court of South Africa (Eastern Cape Provincial Division Grahamstown).
16. **DOMICILIUM AND NOTICES**
- 16.1 The PARTIES each choose domicilium citandi et executandi ("domicilium") for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement as follows:
- 16.1.1 MBSA: Physical address: 7 Settlers Way, Gately Industrial, East London, 5201
Postal address: P O Box 671 East London 5200 Fax: 043-7062443
- 16.1.2 the SUPPLIER as per the ORDER DOCUMENTS
- 16.2 Each of the PARTIES shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other physical address within the Republic of South Africa, and its fax number.
17. **CONFLICT OF INTEREST / BRIBERY**
- 17.1 Compliance with Laws
- The SUPPLIER, for itself and on behalf of its Affiliated Persons, represents, warrants and covenants that: SUPPLIER and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and will comply, with Applicable Laws and have to their best knowledge not taken and will not take or fail to take any action, which act or omission would subject MBSA to liability under Applicable Laws; Neither SUPPLIER nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (a) influencing any act or decision of such Government Official in his official capacity, (b) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such Government Official to use his influence with a Government Entity to affect or influence any act or decision of that Government Entity, in each instance to direct business to MBSA; and
- 17.1.1 neither SUPPLIER nor any of its Affiliated Persons is or will become a Government Entity or a Government Official whose official duties include decisions to direct business to MBSA or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to MBSA.
- 17.1.2 SUPPLIER shall assist and cooperate fully with the efforts of MBSA, or any MERCEDES-BENZ SOUTH AFRICA Group Company to comply with Applicable Laws, including entering into further amendments to this Agreement or additional agreements that MBSA may deem necessary.
- 17.1.3 In no event will MBSA be obligated to the SUPPLIER under or in connection with this Agreement to act or refrain from acting if MBSA believes that such act or omission would cause MBSA to be in violation of Applicable Laws. In no event will MBSA be liable to SUPPLIER for any act or omission which MBSA believes is necessary to comply with Applicable Laws.
- 17.1.4 If SUPPLIER or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this Clause, each of which is deemed to be material and continuously made throughout the term of this Agreement, then, in addition to any other rights MBSA may have under this Agreement, MBSA may: declare a forfeit of any unpaid amounts owing to SUPPLIER and will be entitled to repayment of any amounts paid or credited to SUPPLIER, in each case, which are prohibited by Applicable Laws; terminate this Agreement by notice to SUPPLIER with immediate effect for good cause; and
- 17.1.5 claim from SUPPLIER:
- 17.1.6 all claims, penalties, fines, judgments or administrative actions made, imposed, rendered or taken against an Indemnitee with respect to that matter, and all settlements to resolve an Indemnitee's alleged liability for that matter;
- 17.1.7 all reasonable costs and expenses (including the fees and disbursements of counsel or other advisors) incurred by an Indemnitee in assessing and defending against any alleged liability which would, if success fully asserted, be indemnifiable under Clause 17.1 and
- 17.1.8 all losses and direct damages incurred by an Indemnitee by reason of that matter.
- 17.1.9 Payments to SUPPLIER
- 17.1.10 Any payment to SUPPLIER under this Agreement will be made by electronic transfer to SUPPLIER's bank account (confirmed in writing by the relevant bank).
- 17.1.11 In addition, payment will only be made under the condition and to the extent that, in the sole discretion of MBSA:
- 17.2.1 MBSA has received a complete, accurate and comprehensive invoice from the SUPPLIER;
- 17.2.2 SUPPLIER has furnished sufficient proof that all preconditions for payment have been met;
- 17.2.2.1 payment is due and legally and practically possible; and
- 17.2.2.2 SUPPLIER representations and warranties under Clause 17.1 have been fulfilled.
- 17.2.3 Definitions
- For purposes of Clauses 17.1 and 17.2, the following terms have the meanings set forth below:
- 17.3.1 "Applicable Laws" means the U.S. Foreign Corrupt Practices Act and German anti-corruption laws, without regard to their jurisdictional limitations, U.S. and German export control laws to the extent applicable to Contract Goods, and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by SUPPLIER or any of its Affiliated Persons in connection with this Agreement or any other business matters involving MBSA, in each case as the same may be amended from time to time;
- 17.3.2 "Affiliated Persons" means SUPPLIER's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests;
- 17.3.3 MBSA includes MERCEDES-BENZ SOUTH AFRICA and any of MERCEDES-BENZ SOUTH AFRICA's parent companies, affiliates or subsidiaries;
- 17.3.4 "Government Entity" means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organization;
- 17.3.5 "Government Official" means any office holder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office;
- 17.3.6 "Indemnitee" means MBSA, (as defined in 17.3.3 above) and respective legal representatives, directors, officers, employees and agents.
18. **SUB-CONTRACTS AND CESSION**
- 18.1 The SUPPLIER may not engage the services of any subSUPPLIER to execute any of its obligations in terms of this agreement unless specifically authorised to do so in writing by MBSA. In this event, the SUPPLIER accepts full responsibility and liability for all material, work, COMPONENTS and/or services supplied by such subSUPPLIER as if such material, work COMPONENTS or services originated from the SUPPLIER itself, and the SUPPLIER hereby fully indemnifies MBSA and DAG and the provisions of this agreement shall apply mutatis mutandis.
- 18.2 The SUPPLIER shall not cede, assign or transfer any rights or obligations arising from this agreement to any third party without the prior written consent of MBSA.
- 18.3 Should the SUPPLIER be a company, other than a company listed on a stock exchange, it shall immediately notify MBSA of any transfer of its present issued shares, future allocation of un-issued share capital or increase in share capital that results in a change in the effective control of the SUPPLIER.
19. **GENERAL**
- 19.1 This agreement supersedes any previous agreement signed between the parties and constitutes the sole record and the whole of the agreement between the PARTIES in regard to the subject matter thereof.
- 19.2 Neither PARTY shall be bound by any express or implied representation, warranty, promise or the like not recorded herein or reduced to writing and signed by the PARTIES or their representatives.
- 19.3 No addition to, variation or agreed cancellation of this agreement including this paragraph shall be of any force or effect unless in writing and signed by or on behalf of the PARTIES.
- 19.4 No indulgence that either PARTY may grant to the other shall constitute a waiver of any of the rights of the grantor.