

## GENERAL TERMS AND CONDITIONS OF PURCHASE OF EBERSPÄCHER FOR PRODUCTION MATERIAL AND SPARE PARTS FOR VEHICLES - South Africa

### 1. Applicability of these Terms and Conditions

- 1.1. These Terms and Conditions (“these Terms”) shall apply for South African related business to the supply of production material and spare parts for vehicles. They shall regulate the rights and obligations of the parties vis-à-vis each other and govern their contracting relationship and shall over-ride and prevail over any terms and conditions which the Supplier may subscribe to in respect of their supply of goods and delivery of services from time to time which condition the Supplier accepts unconditionally.
- 1.2. Eberspächer shall be entitled to unilaterally amend these terms and conditions from time to time provided it has given the Supplier at least 30 days notice of any such amendments hereto. The Supplier acknowledges that it is aware of the import of this clause 1.2 and accepts and subscribes unconditionally to its import and consequences.

### 2. Interpretation

#### 2.1. In these Terms:

- 2.1.1 “Contract” means the contract for the sale and purchase of production material and spare parts for motorvehicles (“Products”) and the delivery of services from time to time to Eberspächer which will interchangeably also include “these Terms” by a Supplier to which these Terms apply;
- 2.1.2 “Delivery Address” means the address stated on the Order;
- 2.1.3 “Eberspächer” means any Eberspächer Group company placing the Order (in the event of such Eberspächer Group company being domiciled outside the Republic of South Africa these terms and conditions shall apply where such Order is placed with a South African Supplier) ;
- 2.1.4 “Order” means Eberspächer’s purchase order and/or release order (whichever may be applicable or both) to which these Terms are annexed;
- 2.1.5 “Price” means the price of the Products;
- 2.1.6 “Products” means the goods (including any instalment of the goods or any part of them) described in the Order;
- 2.1.7 “Supplier” means the person so described in the Order;
- 2.1.8 “Specification” includes any plans, drawings, data or other information relating to the Goods or Services;
- 2.1.9 “Terms” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Eberspächer and the Supplier;
- 2.1.10 “Writing”, and any similar expression, includes facsimile transmission and electronic mail, but not text and/or instant messages.

2.2 If Eberspächer accepts delivery/performance without explicit objection this may not be construed an acceptance of the Supplier’s terms and conditions.

2.3 These Terms shall also apply to all future business transactions with the Supplier.

2.4 Any reference in These Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.5 The headings in these Terms are for convenience only and shall not affect their interpretation.

### 3. Basis of Purchase

- 3.1. The Order constitutes an offer by Eberspächer to purchase the Products subject to these Terms.
- 3.2. These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to Eberspächer or subject to which the Order is accepted or purported to be accepted by the Supplier.
- 3.3. The Order will lapse unless unconditionally accepted by the Supplier in Writing within 10 (ten) days of its date.
- 3.4. No variation to the Order or these Terms (subject however to clause 1.2 above) shall be binding unless agreed in Writing between the authorised representatives of Eberspächer and the Supplier.
- 3.5. If, on the basis of a regular business relationship with the Supplier, purchases are made by release order, the following shall apply in addition to these Terms: In the case of just-in-time deliveries a release order takes effect at the latest if the Supplier does not object in Writing within 3 (three) working days and in the case of all other deliveries within 10 (ten) working days from date of Order. The Supplier shall reserve the necessary capacities to be able to deliver the required quantities including any foreseeable quantities for a maximum period of 6 (six) months from the date of transmission or delivery of the release order. Unless otherwise agreed in Writing release orders shall be linked to a production release for a period of 4 (four) weeks as from the date of transmission or delivery of the release order as well as a material release for another period of 4 (four) weeks. Beyond these periods a call order shall only represent a non-binding forecast.
- 3.6. Only Written Orders shall be binding. The same shall apply to additional verbal agreements and any amendments to the Contract. Orders, release orders as well as their modifications, amendments and supplements shall be issued in Writing.
- 3.7. No expenses incurred by the Supplier for visits, the preparation of offers, project work or similar activities shall be refunded unless explicitly agreed in Writing.
- 3.8. Eberspächer may request design and construction changes of the Product at any time. The Supplier shall be obliged to accept same. If, as a result of any such change the costs or delivery deadlines have to be adjusted, the parties shall agree thereto in a reasonable manner.

### 4. Specifications

- 4.1. The quantity, quality and description of the Products shall, always be subject to what is provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by Eberspächer to the Supplier or agreed in Writing by Eberspächer.
- 4.2. Any Specification supplied by Eberspächer to the Supplier, or specifically specified by the Supplier for Eberspächer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of Eberspächer, and the Supplier assigns the title to Eberspächer of all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 4.3. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products.
- 4.4. The Supplier shall not unreasonably refuse any request by Eberspächer to inspect and test the Products during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide Eberspächer with all facilities reasonably required for inspection and testing.
- 4.5. If as a result of inspection or testing Eberspächer is not satisfied that the Products will comply in all respects with the Contract, and Eberspächer so informs the Supplier within 7 (seven) days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

4.6. The Products shall be marked in accordance with Eberspächer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

## 5. Prices, Shipping, Packaging

5.1. The Price of the Products shall be as stated in the Order and, unless otherwise so stated, shall be:

5.1.1 Exclusive of any applicable value added tax (which shall be payable by Eberspächer subject to receipt of a VAT invoice compliant to all applicable laws and regulations); and

5.1.2 Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Products to the Delivery Address and any duties, imposts or levies other than valued added tax. If a Price "ex works", "ex warehouse" or a similar pricing is agreed the Supplier shall use the carrier stipulated by Eberspächer at the expense of the latter. Any and all costs incurred prior to the delivery of the carrier shall be borne by the Supplier. If a separate calculation of the packaging costs is agreed with the Supplier such costs may only include the costs of supply unless explicitly agreed otherwise. The pricing manner shall not affect any agreement regarding the place of performance.

5.2. In respect of his scope of supply the Supplier shall be responsible for the procurement of all documents required in accordance with customs regulations or other applicable government regulations prior to the delivery to Eberspächer, in particular customs documents and certificates of origin as well as any other details relevant in respect of the origin of the Products or its materials. In so far as Eberspächer has communicated the relevant information the above shall also apply to documents required for the delivery of the Products to an Eberspächer customer.

5.3. Delivery notes, bills of lading, invoices and all correspondence shall include the Eberspächer Order number.

5.4. Partial deliveries shall only be permissible if agreed in Writing by Eberspächer. Eberspächer reserves the right to reject any early deliveries.

5.5. Ownership of the Products shall transfer to Eberspächer upon the delivery thereof by the Supplier to Eberspächer, unless otherwise agreed to in Writing.

5.6. The Products shall be packaged and loaded by the Supplier in a manner that avoids damage in transit and minimizes the use of packaging material. Packaging material containing PVC or PU shall not be permissible.

5.7. Eberspächer shall be entitled at any time to review the competitiveness of the Supplier with regard to pricing, quality and reliability. If the Supplier is not competitive Eberspächer shall grant the Supplier a reasonable period of time to become competitive. Should the Supplier fail to do so within the period of time granted, Eberspächer shall be entitled to terminate the Contract without the incurrance of any cost, expense or liability of whatsoever nature other than to pay any outstanding monies due by Eberspächer to the Supplier in respect of Products already delivered.

5.8. No variation in the Price may be made (whether on account of increased costs of material, labour or transport costs, fluctuation in rates of exchange, or variation in volumes or otherwise) without the prior consent of Eberspächer in Writing.

## 6. Invoicing and Payment

6.1. Following delivery, invoices shall be submitted separately in the proper manner together with all pertinent documents and date. In the absence of a proper invoice, in particular, the number of the Order, Eberspächer shall be entitled to withhold performance.

6.2. At the discretion of Eberspächer payment may be made by bank transfer. Unless otherwise agreed in Writing, Eberspächer shall pay the purchase price 40 (forty) calendar days after receipt of invoice. Should Eberspächer

pay within 14 (fourteen) calendar days of receipt of invoice Eberspächer shall be entitled to a discount of 3% (three percent).

- 6.3. The agreed certificates in respect of the testing of materials as requested by Eberspächer as issued by the Supplier shall constitute an integral part of the supply and delivery.
- 6.4. Payment of an invoice shall not be construed as a waiver of any claim. In the case of a defective delivery Eberspächer reserves the right to retain an appropriate percentage of the price until proper performance has been rendered by the Supplier.
- 6.5. If prepayments are made to the Supplier the latter shall provide adequate security comparable to a customary directly enforceable bank guarantee of a major South African commercial bank.
- 6.6. Should Eberspächer be in default of payment (without legitimate reason) the Supplier may not cancel the Contract unless he has specified an additional period for performance of 10 (ten) calendar days which is not complied with.
- 6.7. The Supplier has no right of set-off. The same shall apply to the exercise of any right of retention. Eberspächer may set-off against the Price any sums owed to it by the Supplier.

## **7 Delivery Deadlines, Default in Delivery,**

- 7.1. The Products shall be delivered to the Delivery Address on the date or within the period stated in the Order, in either case during Eberspächer's business hours.
- 7.2. Where the date of delivery of the Products is specified after the placing of the Order, the Supplier shall give Eberspächer reasonable notice of the specified date.
- 7.3. The time of delivery of the Products is of the essence of the Contract.
- 7.4. A packing note quoting the number of the Order must accompany each delivery or consignment of the Products and must be displayed prominently.
- 7.5. If the Products are to be delivered by instalments, the Contract will be treated as a single Contract and not severable.
- 7.6. Eberspächer may reject any Products delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Products until Eberspächer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Products has become been discovered.
- 7.7. The Supplier shall supply Eberspächer in good time with any instructions or other information required to enable Eberspächer to accept delivery.
- 7.8. Eberspächer shall not be obliged to return to the Supplier any packaging or packing materials whether or not any Products are accepted by Eberspächer.
- 7.9. If the Products are not delivered on the due date then, without limiting any other remedy (including a claim for damages), Eberspächer shall be entitled to deduct from the Price or (if Eberspächer has paid the Price) to claim from the Supplier by way of liquidated damages for delay 0.3% (zero point three percent) of the Order value for each calendar day, subject to a maximum of 5% (five percent).
- 7.10. The Supplier shall immediately notify Eberspächer in Writing if a delivery deadline will not be met.
- 7.11. The Supplier may only rely on Eberspächer's failure to supply necessary documents if he has requested the relevant documents from Eberspächer in Writing and has not received the documents within a reasonable period of time.

- 7.12. If delivery takes place earlier than agreed Eberspächer reserves the right to return the Products at the cost of the Supplier. If, in case of an early delivery, the Products are not returned they shall be stored by Eberspächer at the cost and risk of the Supplier until the agreed date of delivery. In case of an early delivery Eberspächer shall reserve the right not to make the necessary payment prior to the agreed due date based on the originally agreed date of delivery.
- 7.13. Eberspächer shall only accept partial deliveries, if this has been explicitly agreed upon in Writing. In the case of partial deliveries the remaining quantity is to be indicated by the Supplier as well as when such remained will be delivered.
- 7.14. In the event of the Supplier failing to deliver timeously after the expiry of a final demand by Eberspächer the he is obliged to hand over to Eberspächer or a third party nominated for production purposes all items and information required for such purposes to the extent that they are not owned by third parties or required for the supply to third parties (emergency production). If at fault, the Supplier shall pay the costs thus incurred. Any claims for damages against Eberspächer shall be excluded. After remedy of the default and a reasonable period of re-commencement the items and information shall be returned to the Supplier.

## **8. Risk**

Risk of damage to or loss of the Products shall pass to Eberspächer on delivery to Eberspächer in accordance with the Contract.

## **9. Inspection of incoming Shipments / Quality Assurance**

- 9.1. The Supplier shall implement, maintain and upon request furnish proof of a state of the art quality assurance system. Should Eberspächer deem this necessary the Supplier shall enter into a quality assurance agreement with Eberspächer. The minimum requirement shall be a certified QM system in accordance with DIN ISO 9001. Having given reasonable notice Eberspächer or authorised third parties shall be entitled to perform audits at the Supplier's site during normal business hours.
- 9.2. If the parties have entered into a quality assurance agreement Eberspächer's duty of examination shall be restricted to an examination of the quantity and identity of the delivered items as well as an examination in respect of externally visible damage. Eberspächer shall notify the Supplier of any defects identified during such an examination. Such a notification shall be deemed timely if received by the Supplier within a period of two weeks of delivery of the Products or, in the case of latent defects, upon their discovery.  
If the parties have not entered into a quality assurance agreement Eberspächer shall undertake to examine the Products in respect of defects within a reasonable period of delivery (other than in the event of latent defects). Any defects found shall be notified to the Supplier. Such a notification shall be deemed timely if received by the Supplier within a period of two weeks of delivery of the Products or, in the case of latent defects, upon their discovery.
- 9.3. The Supplier shall keep all documents, particularly quality data/records, test results, analyses, process data and all details required for retroactive process tracing for at least 15 (fifteen) years after the last delivery of the relevant delivered Products to Eberspächer and shall provide Eberspächer with access to the above, if so requested.

## **10. Liability**

The Supplier indemnifies Eberspächer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Eberspächer as a result of or in connection with:

- 10.1. breach of any warranty given by the Supplier;
- 10.2. any claim (actual or threatened) that the Products infringe, or their importation, use or resale, infringes, the patent, copyright, design, right, trade mark or other intellectual property rights of any third person, except to the extent that the claim arises from compliance with any Specification supplied by Eberspächer; and

- 10.3. any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Products.
- 10.4. the performance or non-performance by the Supplier of any of its obligations in terms of the Contract and Terms.

## 11. Warranty

11.1. The Supplier warrants to Eberspächer that the Products:

- 11.1.1. will be of acceptable quality and fit for the intended purpose held out by the Supplier or made known to the Supplier in Writing at the time the Order is placed;
- 11.1.2. will be free from defects in design, material and workmanship;
- 11.1.3. will correspond with any relevant Specification or sample; and
- 11.1.4. will comply with the current state of the art and all Applicable Laws; and
- 11.1.5. will comply with all statutory requirements and regulations relating to the sale of the Products.

11.2. Without limiting any other remedy (including a claim for damages), if any Products are not supplied or performed in accordance with the Contract, then Eberspächer shall be entitled:

- 11.2.1. to require the Supplier to repair the Products or to supply replacement Products in accordance with the Contract within 7 (seven) calendar days; or
- 11.2.2. at Eberspächer's sole option, and whether or not Eberspächer has previously required the Supplier to repair the Products or to supply any replacement Products, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.

11.3. Claims arising from liability for defects shall become prescribed on the expiry of a 24 (twenty four) month period from either the first registration of a motor vehicle or the date of retrofitting or installation of spare parts in motor vehicles that were already registered, however, at the latest 36 (thirty six) months after delivery (expiration term). In cases of retrofitting and the installation of spare parts the expiration terms shall be extended to 42 (forty two) months.

11.4. In case of a defect in title the Supplier indemnifies Eberspächer against any third party claims that may exist.

11.5. Neither the Supplier nor Eberspächer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Products, if the delay or failure is beyond that party's reasonable control. The following shall be regarded as causes beyond either party's reasonable control:

- 11.5.1. Act of God, explosion, flood, tempest, fire or accident;
- 11.5.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 11.5.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 11.5.4. import or export regulations or embargoes.

11.6. Eberspächer shall be entitled to revoke the unperformed part of the contract should the delay exceed a period of 2 weeks.

## **12. Product Liability and Recall**

- 12.1.If claims are lodged against Eberspächer in respect of violations of official safety regulations or on the basis of domestic or foreign product liability provisions or laws in relation to a product defect then Eberspächer shall be entitled to claim damages (as well as legal costs on an attorney and own client scale including the cost of counsel(if applicable)) from the Supplier to the extent that the damage was caused by the Supplier.
- 12.2.The Supplier shall be liable for measures taken by Eberspächer, its customers or other third parties to avoid danger and damage (e.g. recall actions, customer service actions or other field actions) to the extent that these measures were necessitated as a consequence of defective Products.
- 12.3.The Supplier shall be obliged to participate in any voluntary customer service actions or other actions initiated by Eberspächer or Eberspächer's customer at the Supplier's cost.

## **13. Industrial Property Rights**

- 13.1.The Supplier warrants that the supply and use of the Products will not violate any patents or other industrial property rights of third parties.  
The Supplier indemnifies Eberspächer and its customers against any third party claims arising from any such violations and shall hold Eberspächer and its customers harmless in respect of any damages and litigation costs on the attorney/ own client scale.
- 13.2.Any Specification supplied by Eberspächer to the Supplier, or specifically produced by the Supplier for Eberspächer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of Eberspächer, and the Supplier assigns with full title guarantee to Eberspächer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 13.3.If the scope of supply includes development work at the cost of Eberspächer, possibly by inclusion in the prices of parts, Eberspächer shall receive a non-exclusive, royalty-free, transferable and unlimited right to the development results, e.g. in inventions and results protected by copyright.

## **14. Supply of Spare Parts**

- 14.1.The Supplier undertakes to supply spare parts to Eberspächer during the serial production of the Eberspächer product as well as for another 15 (fifteen) years after the termination of the serial production. After the termination of the serial production the serial price shall apply for the supply of spare parts, unless otherwise agreed by the Parties in Writing.
- 14.2.Prior to the expiry of the 15 (fifteen) year period the Supplier shall contact Eberspächer and at it's request shall make available a comprehensive selection of spare parts.
- 14.3.If the spare parts production is discontinued after the period mentioned in clause 13.1 the Supplier undertakes to supply the construction documents/drawings to Eberspächer subject to a reasonable consideration only in the event of such construction documents/ drawings not being the property of Eberspächer.

## **15. Laws, Rules and Regulations**

- 15.1.The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products. The Supplier shall provide the required information for systems designed to achieve compliance with the above regulations. The Supplier shall warrant the environmental compatibility of the Products supplied and the packaging materials used as well as compliance with his

legal waste disposal obligations. The Supplier shall promote the application of proactive, environmentally compatible practices.

- 15.2. If activities are performed on the Eberspächer factory site the guidelines for the third party enterprises as well as other relevant Eberspächer regulations shall also constitute an integral part of the Order. These guidelines/regulations shall be separately communicated to the Supplier.
- 15.3. The Supplier warrants to provide all supplies/performances by it in terms of this agreement in accordance with the current state of the art and in conformity with all Applicable Laws which is for purposes of this clause defined to include all national, provincial, local and municipal legislation, regulations, statutes, by-laws, consents and/or other laws of relevant governmental authority and any other instrument having the force of law as may be issued and enforced from time to time relating to or in connection with the supplies/performances contemplated under this agreement including such applicable laws and regulations issued by employers liability insurance associations and professional associations. Should it be necessary to deviate from these Applicable Laws, rules and regulations in individual cases (and only to the extent that such deviation may be permitted in law) the Supplier shall first obtain the written approval of Eberspächer. The Supplier's aforesaid warranty shall not be restricted or limited in any way by any such approval granted by Eberspächer.
- 15.4. Should the Supplier have reservations as to the execution required by Eberspächer in respect of any of its obligations under this agreement he shall notify Eberspächer to this effect in writing without undue delay.
- 15.5. The Supplier further undertakes to comply with all Applicable Laws applicable to the products and their production and, in particular, with provisions regarding chemicals/substances and applicable environmental legislation which means all laws (constitutional, statutory or common) including, but not limited to, the National Water Act, 1998; the National Environmental Management Act, 1998; the Environment Conservation Act, 1989; the Atmospheric Pollution Prevention Act, 1965 (to be replaced by the National Environmental Air Quality Act, 2004); the Water Services Act, 1998; the Hazardous Substances Act, 1973; the Minerals and Petroleum Resources Development Act, 2002, all as amended from time to time; all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decision, regulations, orders, demands and criteria, injunctions or judgments or any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibilities for the protection of the environment (including, but not limited to, the health and safety of the public, employees, plants and animals) and further shall not use any material, the use of which is prohibited in the European Union. Eberspächer however reserves the right, to the extent that any of its customers may require compliance by the Supplier to additional laws than those listed hereinabove applicable to the products and their production, including but not limited to all applicable environmental regulations in Germany, the EU and other relevant states, inter alia RoHS (2001/95/EC, Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment), ELV (2000/95/EC, "Regulations in respect of old vehicles") and REACH VO (1907/2006/EC, Registration, Evaluation, Authorisation and Restriction of Chemicals) to notify the Supplier in writing of such additional compliance on reasonable notice which the Supplier hereby irrevocably and unconditionally agrees to comply with upon receipt of such notification. The foregoing shall apply not only to products delivered by the Supplier to Eberspächer, but also to individual substances included in the products, manufacturing and operating supplies as well as coatings.
- 15.6. The Supplier shall further provide the required information to Eberspächer for systems assistance designed to achieve compliance with the above regulations and Applicable Laws such as the International Materials Data System (IMDS).
- 15.7. The Supplier shall at all times during the currency of this agreement promote the application of pro-active, environmentally compatible competitive compatible practices."
- 15.8. The Supplier shall comply with the Eberspächer Code of Conduct (including any amendmended version thereof from time to time), available at (<http://go.eberspaecher.com/codeofconducten>).

## 16. Tools / Provision of Material

- 16.1. Production and test equipment provided or paid for by Eberspächer including accessories and documents shall remain or become the property of Eberspächer and shall be identified as such or, if applicable, as the property of the relevant Eberspächer customer. These items shall be provided to the Supplier on a loan basis and their



return may be requested at any time.

16.2. The items referred to in clause 16.1 shall only be used for the manufacture of the Products and shall be maintained in good condition at the expense of the Supplier.

16.3. The aforesaid items, if necessary, shall be replaced at the expense of the Supplier, should the agreed output or the output anticipated in good faith not be achieved.

16.4. The Supplier bears the risk as long as these items are in his custody and he shall adequately insure the items for their replacement value. The Supplier herewith assigns any and all benefits from such an insurance policy to Eberspächer. Eberspächer accepts this assignment. The Supplier shall have no right of retention in respect of these items.

## **17. Secrecy / Use of Information**

17.1. The Supplier may only use the business relationship for advertising purposes with the prior written approval of Eberspächer.

17.2. The Supplier is obliged to treat confidentially any and all commercial and technical details not in the public domain, of which he becomes aware as a result of the business relationship and not to disclose such details to third parties without the Written approval of Eberspächer and to use such details only for the purposes for which they have been made available. The same obligation shall be imposed on all sub-contractors.

17.3. Eberspächer reserves any and all property rights and copyrights in samples, drawing, sketches and other corporeal and non-corporeal information of any kind provided by it. These items shall only be used in relation to Orders issued by Eberspächer.

## **18. Insurance**

The Supplier shall be obligated to effect and maintain adequate worldwide insurance cover (including for the USA) in respect of his obligations, including recall actions, and to provide relevant proof of such cover at the request of Eberspächer.

## **19. Termination**

19.1. Eberspächer may cancel the Order in respect of all or part only of the Products by giving Written notice to the Supplier at any time prior to delivery or performance, in which event Eberspächer's sole liability shall be to pay to the Supplier the Price for the Products in respect of which Eberspächer has exercised its right of cancellation, less the Supplier's net saving of costs arising from cancellation.

19.2. Eberspächer may terminate the Contract without liability to the Supplier by giving Written notice to the Supplier at any time if:

19.2.1. the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes insolvent or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or a moratorium comes into force; or

19.2.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

19.2.3. the Supplier ceases, or threatens to cease, to carry on business; or

19.2.4. Eberspächer reasonably suspects that any of the events mentioned above are about to occur in relation to the Supplier and notifies the Supplier accordingly; or

19.2.5. Eberspächer's customer fails to issue a written order in support of its intended purchase or an order is cancelled by the customer or the customer appoints an alternative supplier.

## 20 Final Provisions

- 20.1. The Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its right or sub-Contract any of its obligations under the Contract.
- 20.2. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 20.3. No waiver by Eberspächer of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 20.4. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 20.5. Unless expressly agreed otherwise the place of performance for the Supplier shall be the Delivery Address or the place of use stipulated by Eberspächer.
- 20.6. This Contract shall be governed and be construed in accordance with the laws of the Republic of South Africa.
- 20.7. In the event of any dispute or difference arising between the parties hereto relating to or arising out of this Contract, including the implementation, execution, interpretation, rectification, termination or cancellation the parties will forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) days, the said dispute or difference will be submitted for arbitration in Port Elizabeth under the Arbitration Rules of the Arbitration Foundation of South Africa.
- 20.8. The parties irrevocably agree that the decision of an arbitrator/s –
- 20.8.1. will be binding on them;
  - 20.8.2. will forthwith be carried into effect;
  - 20.8.3. may be made an order of any court of competent jurisdiction.
- 20.9. These provisions will continue to be binding on the parties notwithstanding any termination or cancellation of the Contract.
- 20.10. The parties will not be precluded from applying for or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending a decision of the arbitrator.

Issue 2020, November