

# Maybach Oil and Gas Standard Terms and Conditions of sale.

Acceptance of any order and sale of any Product are expressly conditioned upon the Standard Terms and Conditions ("STC's") as listed herein. Any order or statement of intent to purchase any such Products, or any direction to proceed with manufacturing or shipment shall constitute assent to said STC's.

## 1. PURPOSE

The purpose of these STC's is to facilitate trade, avoid misunderstandings and to render more definite the terms for the purchase and sale of Products between Maybach Oil and Gas and the Applicant (also referred to hereinafter individually as "Party" or collectively as "Parties"). Maybach Oil and Gas shall be the Party offering the Products for sale and the "Applicant" shall be the Party accepting the offer to buy the Products from Maybach Oil and Gas and thereafter submitting a Sales Order to Maybach Oil and Gas. Maybach Oil and Gas is a producer of a range of petroleum products and in this context the Products shall include chemical products.

## 2. CREDIT LIMIT AND INCREASES

- 2.1 The Applicant's account shall be subject to a credit limit as determined by Maybach Oil and Gas and the Applicant shall be advised of this limit.
- 2.2 The Applicant understands that Maybach Oil and Gas may at its discretion increase this limit temporarily in response to a request from it, in order to accommodate specific purchases that would result in the Applicant exceeding this limit.
- 2.3 The Applicant understands that the credit limit applicable before such temporary increase shall again apply when the balance owing on the account is less than such limit.
- 2.4 Maybach Oil and Gas may increase the credit limit applicable to the account, either with the Applicant's consent or at its request.

## 3. QUOTATIONS, SALES ORDERS AND DELIVERY

- 3.1 Applicant's sales orders shall be executed at the agreed prices as per confirmation of orders subject to agreed escalation and or price variances. The specifications of the Products shall be as outlined in the order confirmation document. The Applicant acknowledges that Maybach Oil and Gas executes all sales orders in accordance with the prevailing INCOTERMS 2000.
- 3.2 Any terms and conditions on an Applicant's sales order which are at variance or in contradiction with the STC's stated herein, shall be binding on Maybach Oil and Gas only on Maybach Oil and Gas prior written acceptance.
- 3.3 Any cancellation of an order after acceptance, which results in any losses or damages incurred by Maybach Oil and Gas shall be charged to the Applicant.
- 3.4 Written notices for any discrepancies shall be supported by the relevant documents produced by an independent surveyor and such notices must be made and submitted to Maybach Oil and Gas within fourteen (14) days from the date of discharge of the Products.
- 3.5 Every reasonable endeavour shall be made to dispatch the Products from the designated facility promptly or within the time indicated by Maybach Oil and Gas, but under no circumstances shall Maybach Oil and Gas be liable for any loss or damage caused by non-delivery or late delivery. The Applicant further accepts that all costs or claims relating to demurrage shall be for the account of the Applicant.
- 3.6 When Products are delivered in returnable containers (drums, crates, etc.), any deposits or charges raised and invoiced in respect of such returnable containers shall be due and payable at the same time as payment is due for the Products. Upon receipt of such containers in good condition, Maybach Oil and Gas shall credit the Applicant (or refund the Applicant, on request) with the full amount deposited or paid by the Applicant thereon. Any damage to the returnable containers shall be charged to the Applicant.
- 3.7 In the event of non-delivery of any order, the Applicant shall promptly notify Maybach Oil and Gas upon ascertainment, where after Clause 3.6 above shall be applicable.
- 3.8 The Parties acknowledge that the specifications and price lists, issued by Maybach Oil and Gas from time to time, are for information only and do not constitute offers to sell.
- 3.9 The Parties further acknowledge and accept that all quotations are subject to confirmation by Maybach Oil and Gas after acceptance by the Applicant, and that such quotations shall be valid only for seven (7) business days from the date on which they were issued, unless Maybach Oil and Gas specifies otherwise in writing.
- 3.10 The Applicant warrants that it has complied with all statutory requirements and is in possession of all the necessary permits, authorisations or any other official document required for the purchase of the Products. The Applicant indemnifies and holds Maybach Oil and Gas harmless for any loss or damage, direct or consequential, caused by or arising from a breach of the warranty contained in this clause.

## 4. STATEMENTS, PAYMENTS AND DEFAULTS

- 4.1 Maybach Oil and Gas shall send the Applicant at the postal address specified in either the Quotation or the Application, or to such changed address as the Applicant may subsequently have notified Maybach Oil and Gas, a monthly statement of account which amongst other information shall set out the balance owing as at the statement date, the monthly instalment, the amount of interest payable, the payment due and the payment due date.
- 4.2 **The Applicant agrees to pay Maybach Oil and Gas no less than the payment due each month as stipulated in the invoice, without set-off or deduction, on or before the payment due date. The Applicant shall not be entitled, for any reason whatsoever, to withhold or delay any payment due to Maybach Oil and Gas..**
- 4.3 The Parties agree that the Applicant's failure to make payment due in full by the payment due date, or failure to comply with these STC's or if the Applicant's estate is sequestrated or liquidated, or if the Applicant is in default of its obligations to Maybach Oil and Gas then:
  - 4.3.1 All amounts owing to Maybach Oil and Gas may become immediately due and payable; and
  - 4.3.2 Maybach Oil and Gas may suspend the Applicant's credit limit without notice; and
  - 4.3.3 Maybach Oil and Gas may reduce the Applicant's credit limit without notice.
- 4.4 Maybach Oil and Gas may after twenty one (21) days of non payment institute legal proceedings against the Applicant for the recovery of any balance owing on the Applicant's account.
- 4.5 Maybach Oil and Gas shall be entitled to charge the Applicant:
  - 4.5.1 interest, at the prevailing prime rate charged by The Standard Bank of South Africa **plus 2% (two percent)** for each day that the payment of any invoiced purchase price is delayed beyond due date **(compounded monthly in arrears)**, except to the extent that such delays result from errors or omissions by Maybach Oil and Gas;
  - 4.5.2 an amount equal to any interest and penalties charged by the South African Revenue Services to Maybach Oil and Gas as a result of any delay by the Applicant in paying Duty At Source or any other applicable tax, duty or levy.
  - 4.5.3 For the purposes of invoicing the loading commencement date shall determine in which specific Month the sale falls.
- 4.6 The Applicant agrees that a certificate signed by Maybach Oil and Gas or any representative of Maybach Oil and Gas (whose appointment, qualification or authority need not be proved) reflecting the amount of the Applicant's indebtedness to Maybach Oil and Gas and the fact that same is due and payable:
  - 4.6.1 will be *prima facie* proof of the amount of the Applicant's said indebtedness and the fact that same is due and payable; and
  - 4.6.2 will in the absence of evidence to the contrary be sufficient proof for the purposes of Maybach Oil and Gas obtaining a judgment against the Applicant.

## 5. DUTIES, TAXES AND PERMITS

All duties, taxes or imposts of whatsoever nature levied on the Products shall be for the Applicant's account unless the applicable INCOTERM 2000 stipulates otherwise. In the case where goods are transported in-bond the buyer takes full responsibility of said procedures as set out in the Act.

## 6. INDEMNITY

Maybach Oil and Gas accepts no liability for any loss or damages direct or consequential resulting from the use of or caused by the Products. The applicant indemnifies and holds Maybach Oil and Gas harmless for any direct or consequential loss or damage caused by or arising from the use of the Products.

## 7. DISPUTES ABOUT MEASURED QUANTITIES

In the event of a difference in the measurement of the Products dispatched and the Products received, the Parties shall endeavour to resolve the issue before the relevant payment is due.

## 8. TITLE AND RISK

- 8.1 Title and risk in and to the Products shall pass once the Products pass the inlet flange of the Applicant's nominated vehicle at the designated facility, which for the purposes hereof shall include but not be limited to Matola depots Mozambique.
- 8.2 Actual and physical delivery of the Products shall either be made by way of deliveries into or vehicles and/or by cross-pumps to the

designated facility and these deliveries shall be made in accordance with these STC's.

## 9. SECURITY

- 9.1 As soon as the sales order is in the process of being executed, Maybach Oil and Gas shall have a discretion to demand that the Applicant provides sufficient security or proof of credit-worthiness, the nature and value of which shall be forwarded by Maybach Oil and Gas to the Applicant, at any point, as soon as Maybach Oil and Gas deems it necessary to do so. Refusal by the Applicant to provide such security or proof of credit-worthiness, shall give Maybach Oil and Gas the right to regard these STC's as cancelled, without prejudice to its right to compensation.
- 9.2 The Applicant shall periodically provide to Maybach Oil and Gas such financial information or security deemed necessary by Maybach Oil and Gas in its sole discretion to support any credit extension and/or increase and/or reduction.

## 10. CONFIDENTIALITY

- 10.1 The Applicant undertakes to maintain and hold secret and confidential all information within its knowledge or in its possession regarding the business of Maybach Oil and Gas and the Products, irrespective of how such information was obtained, and shall not use the same other than for the purposes of the Applicant's association with Maybach Oil and Gas, nor disclose to or discuss the same with any third party without the express prior written consent of Maybach Oil and Gas.
- 10.2 The contents of this clause shall remain valid and effective and shall survive the termination for any reason whatsoever of any existing or future Agreement entered into by the Parties.

## 11. NOTICES

- 11.1 Any notice given in terms of these STC's shall be in writing and may be via facsimile transmission, electronic mail, pre-paid registered post and hand delivery.
- 11.2 Written notice of communication actually received by one Party from the other Party including by way of facsimile transmission shall be adequate written notice of communication to such Party.

## 12. INTELLECTUAL PROPERTY

- 12.1 The Applicant undertakes to observe, respect and protect all intellectual property rights of Maybach Oil and Gas.
- 12.2 The Applicant warrants that it has conducted the necessary intellectual property due diligence in any and all jurisdictions where the Applicant intends to use or deal with the Products and in this respect, the Applicant indemnifies and holds Maybach Oil and Gas harmless from any infringement claim or lawsuit that may arise regarding any enforceable intellectual property rights as result of the activities of the Applicant with respect to the Products.

## 13. FORCE MAJEURE

- 13.1 In the event of any Act of God, government or associated authority order, rule or decision, fire, war, terrorist act or other armed conflict, or a serious threat of the same, any strike or labour dispute, the unavailability of transportation or any other cause or events whatsoever arising beyond the reasonable control of the parties hereto, preventing either party from discharging its obligations under these STC's, neither Party shall be in default hereunder or liable to the other Party to the extent that its performance under this Agreement is prevented, hindered or delayed by any such event. Such events may include, amongst others, any unforeseen interruptions to production facilities due to breakdowns or mechanical failure at Maybach Oil and Gas service providers.
- 13.2 The Party invoking this *force majeure* clause shall promptly inform the other Party of the circumstances surrounding the *force majeure* event and the invocation of this clause and shall thereafter keep the other Party reasonably apprised of the development of the *force majeure* circumstance.
- 13.3 Should the *force majeure* circumstances continue to prevent the servicing of the present agreement for more than three (3) consecutive months, either Party shall have the right to terminate the agreement with immediate effect at any time after the expiry of such three (3) month period.

## 14. DELIVERY

- 14.1 The delivery of the Products shall only take place once an order has been received and the Applicant is within its approved credit limit and terms.
- 14.2 The Products shall be made available at the designated facility, which for the purposes hereof shall include but not limited to, depots, etc.

14.3 In the case of delivery onto or into vehicles, Maybach Oil and Gas and/or its appointed representatives shall be responsible for delivering such Products onto the Applicant's nominated vehicle. At their sole discretion can Maybach Oil and Gas or its appointed representatives reserve the right to allow the vehicle onto the designated facility as previously defined. Any vehicle shall be approved for loading at the differed Depots that provide a loading service to Maybach Oil and Gas and the acceptance of the vehicle.

## 15. LIABILITIES

- 15.1 Maybach Oil and Gas undertakes that the Products shall conform to the specifications outlined in SABS specifications.
- 15.2 Maybach Oil and Gas does not give any warranties in respect of the Products and under no circumstances shall Maybach Oil and Gas liability exceed the liability to replace any defect in the Products. All warranties otherwise implied by common law are expressly excluded.
- 15.3 Maybach Oil and Gas accepts no liability for any loss or damages direct or consequential resulting from the use of or caused by the Products. The Applicant indemnifies and holds Maybach Oil and Gas harmless for any direct or consequential loss or damage caused by or arising from the use of the Products.

## 16. FIT FOR PURPOSE

The Applicant purchases the Products in the form and condition in which they are delivered to the Applicant and the Parties agree that there are no warranties, express or implied, with regard to whether the Products purchased and sold hereunder are suitable or fit for the purpose intended by the Applicant, save and except for those warranties which are specifically provided for herein.

## 17. APPLICABLE LAW AND DISPUTE RESOLUTION

- 17.1 These STC's shall be governed and construed in accordance with the laws of the Republic of South Africa.
- 17.2 In the event of any dispute between the Parties arising out of the contents of these STC's, such dispute shall be resolved by arbitration in accordance with the Rules of the Arbitration Act of South Africa by three arbitrators appointed in accordance with such Rules.
- 17.3 The place of arbitration shall be Pretoria or such other place as the Parties shall agree to in writing.

## 18. DEFAULT

Should the Applicant commit a breach of any of the material terms of these STC's or fail to make any payment on the due date thereof then Maybach Oil and Gas shall have an option (without prejudice to any of its other rights) to:

- 18.1 give the Applicant seven (7) days written notice to remedy the breach and failing that to:
- 18.1.1 cancel the agreement, keep all monies paid as forfeiture and to claim any damages it may have suffered; and/or
- 18.1.2 stop, suspend, postpone or cancel further shipments or delivery under these STC's, and this includes Products which are already in transit and/or
- 18.1.3 to claim specific performance from the Applicant.

## 19. WHOLE AGREEMENT

- 19.1 The Parties agree that these STC's constitutes the whole agreement between the Parties and that no alteration or variation thereof shall be of any force and effect unless recorded in writing and signed by both parties.
- 19.2 These STC's shall extend to and be binding upon the Parties hereto, their successors, and assignees, provided, however, that neither Party shall cede, assign or subcontract these STC's, or any part thereof, without the written consent of the other Party.

## 20. COUNTERPARTS

- 20.1 These STC's may be executed in a number of counterparts, but shall only be deemed to have been concluded when each Party has executed at least one counterpart.
- 20.2 Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document.

## 21. INDULGENCE

No relaxation or indulgence which Maybach Oil and Gas may allow to the Applicant at any time with regard to the carrying out of the Applicant's effective obligations under these STC's, shall prejudice or be regarded as a waiver of any of Maybach Oil and Gas's rights under these STC's in any manner whatsoever, especially the right to insist on specific performance.

