

## Payment Terms No. 4 w/o VAT - between Customer and the Supplier not registered for VAT purposes in Poland

effective as well as for

**Mercedes - Benz Manufacturing Poland sp. z o.o. (MBMPL)**

and

**Mercedes - Benz Vans Manufacturing Poland sp. z o.o. (MBVMPL)**

**hereinafter referred to as Customer**

*(applicable for that company, which is the Party of the particular agreement)*

### 1. Payment

The payments of the Customer shall become due as follows:

#### 1.1. First advance payment

First advance payment invoice covers [30%] of the net order value. The Customer is liable for settling the value added tax under reverse charge mechanism.

First advance payment shall become due on receipt of the Supplier's unreserved confirmation of order by the Customer, provided that the Supplier furnishes a directly enforceable unlimited-term guaranty from a credit institution or credit insurer authorized in the European Community with place of general jurisdiction in Poland or in Germany, in accordance with our sample endorsement (see attachment) and covering all claims arising from the contract, including all claims for contract fulfillment and warranty claims, in the amount of the advance payment excluding sales tax. A guarantor suggested by the Supplier may be rejected by the Customer for good cause. A guarantor shall be liable as a joint and several co-debtor. Surety shall be unconditional and shall not be dependent on any disputes between the Customer and the Supplier nor the conduct of enforcement proceedings toward the Supplier. The guarantor shall waive the right to make a deposit. The guaranty shall be governed by Polish law and shall stipulate that disputes in connection with the guaranty shall be brought at the Customer's place of business. The issued guaranty shall further stipulate that the guaranty claim against the guarantor will not become time-barred before the secured claim against the Supplier becomes time-barred. The guaranty for warranty claims shall cover the Customer's claims irrespective of whether there was a formal or implied acceptance. The guaranty shall be issued in one document covering the total amount of the security. The costs of the bank guaranty shall be borne by the Supplier.

Invoices may be issued only on receipt of unreserved order acceptance, and at the earliest six months prior to delivery.

Payment becomes due 30 days after invoice issue date, provided the invoice is delivered to Customer within 14 calendar days from the invoice issue date. If the invoice is received by Customer later, the invoice will be paid within 30 days from its receipt by Customer.

#### 1.2. Second advance payment

Second advance payment covers [30%] of the net order value. The Customer is liable for settling the value added tax under reverse charge mechanism.

Payment shall become due 30 days after invoice issue date, provided the invoice is delivered to Customer within 14 calendar days from the invoice issue date. If the invoice is received by Customer later, the invoice will be paid within 30 days from its receipt by Customer.

The precondition for the payment of Second advance payment is the complete delivery of the goods to Customer, however the economic ownership of goods and all benefits, burdens and risks connected therewith are not transferred to the Customer until Acceptance defined in point 1.3. below. No payment will be made until this condition is met.

The second advance payment invoice shall include and information that it is 2nd Advance Payment Invoice as per Payment Terms No.4 without VAT.

#### 1.3. Subsequent payments

The parties agree that subsequent payments will be made after operational assembly and/or operational installation of the machine/plant at the Customer's location, documented with the relevant acceptance protocol issued (further: the Acceptance), is completed.

The parties accordingly agree that operational assembly and/or operational installation is not understood as complete delivery / performance. The confirmation of complete delivery / performance will take place upon Final Acceptance described in point 1.3.2. below.

Nevertheless, Acceptance is the moment when the economic ownership of the installed machine / plant is transferred to the Customer. Acceptance means that all benefits, burdens and risks connected with possession of the machine / plant lie on the side of the Customer. Until Acceptance by the Customer, there will be no transfer of risks to the Customer, in particular risks related to the damage, break or destroy of the machine. Those risks will be transferred to the Customer only when Acceptance is completed.

Once Acceptance is completed, the Supplier may issue an invoice for the remaining [40%] of the net order value (further: Final invoice). The Customer is liable for settling the value added tax under reverse charge mechanism This invoice will be paid in two installments:

##### 1.3.1. Third payment

Payment of the amount corresponding to [30%] of the total net order value shall become due 30 days after receipt of Final invoice by Customer  
The precondition for making Third payment is Acceptance. No payment will be made until this condition is met.

##### 1.3.2. Final payment

Payment of the amount corresponding to remaining [10%] of the total net order value shall become due 30 days after Final Acceptance.

Final Acceptance shall be understood as confirmation of the complete delivery / performance and verification of production readiness, acceptance testing. Minor defects shall not impede Final Acceptance. They shall however give grounds for longer payment deadline for the amount of three times the cost of remedying the defects.

The precondition for making Final payment by Customer is the Final Acceptance. No payment will be made until this condition is met.

1.4. *Partial invoices, other than mentioned above, are not permissible.*

## **2. Invoicing**

- 2.1 The net amounts of advance payments shall be rounded down to full thousands of Euro.
- 2.2 Invoices shall be submitted in a single copy to the address stated in this order for each purchase order number separately. Order number and order date should be stated on invoices.
- 2.3 For each purchase order number a separate Final invoice shall be drawn up and submitted, in a single copy, to the Customer.
- 2.4 Final invoice shall state the total net invoice amount and contain all the information required for standard invoices as well as reference to received advance payments (amounts to be listed) and advance payment invoices. Final invoice should refer to the numbers, issuance dates and amounts of all of the issued advance payment invoices. The outstanding net amount shall be clearly
- 2.5 indicated.
- 2.6 Invoices can only be checked if invoicing is in conformance with the order and is verifiable. Only a verifiable invoice shall entail payment obligation of the Customer.
- 2.7 Payments shall be made only on the provision that security of such transfer is provided and the delivery dates agreed on the order are fulfilled to schedule.
- 2.8 The Supplier gives assurance that it holds legal title to all items supplied, and that the said items are unencumbered by the rights of third parties. All payments shall be made only to the Supplier. The possibility of assigning payments to third parties is hereby excluded.
- 2.9 Guaranties may be reclaimed by the Supplier only on completion of the contract, including Final Acceptance and fulfillment of all warranty claims, under separate cover addressed to the Customer.
- 2.10 Final invoice shall be subjected to a review by the Customer following payment. If the said review reveals an overpayment by the Customer across all individual invoices, the Supplier shall be obliged to repay the said overpayment. Final payment by the Customer shall thus be made with the express reservation of the right to reclaim unjustified overpayments.
- 2.11 I hereby declare that the Supplier is not registered and is not required to register for VAT purposes in Poland. I also confirm that the information on VAT id numbers is being kept up to date in the suppliers' register of the Customer, which is my sole responsibility. In the event that the above numbers change, I undertake to immediately notify the Customer and update all necessary information in the suppliers' register of the Customer.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(name, address of the Guarantor)

\_\_\_\_\_  
(date, place)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(name, address of the Beneficiary)

**Bank Guarantee**

We, \_\_\_\_\_, with its registered office in \_\_\_\_\_, address: \_\_\_\_\_ entered into \_\_\_\_\_ under No. \_\_\_\_\_, have been informed that

*please choose the right Customer as Beneficiary*

Mercedes-Benz Manufacturing Poland sp. z o.o. with its registered office in Jawor, Poland, address: ul. Gottlieba Daimlera 5, 59-400 Jawor, Poland, entered into register of entrepreneurs of the National Court Register kept by the District Court for Wrocław - Fabryczna in Wrocław, IX Commercial Department of the National Court Register under number KRS 0000629149, REGON (statistical number) 365025684, NIP (tax ID) 5223067707 (hereinafter referred to as 'the Beneficiary'),

or

Mercedes-Benz Vans Manufacturing Poland sp. z o.o. with its registered office in Jawor, Poland, address: ul. Gottlieba Daimlera 5, 59-400 Jawor, Poland, entered into register of entrepreneurs of the National Court Register kept by the District Court for Wrocław - Fabryczna in Wrocław, IX Commercial Department of the National Court Register under number KRS 1008542, REGON (statistical number) 523943722, NIP (tax ID) 6951536571 (hereinafter referred to as 'the Beneficiary'),

concluded on \_\_\_\_\_ with \_\_\_\_\_ with its registered office in \_\_\_\_\_, address: \_\_\_\_\_ entered into \_\_\_\_\_ under No. \_\_\_\_\_ (hereinafter referred to as 'the Supplier') contract (order) No. \_\_\_\_\_ for the supply / provision of \_\_\_\_\_ (hereinafter referred to as 'the Contract').

In consideration of the above, we, acting by order of the Supplier, hereby unconditionally and irrevocably undertake to pay the Beneficiary upon the Beneficiary's first, written demand for payment any amount up to \_\_\_\_\_ (say: \_\_\_\_\_), being the maximum guaranteed amount of this suretyship.

The Beneficiary's demand for payment shall contain the statement that the Supplier has not fulfilled a contractual obligation / obligations arising from the Contract and shall be delivered to the following address: \_\_\_\_\_.

This suretyship covers all claims arising from the Contract, including but not limited to all claims for Contract fulfillment. This suretyship is unconditional, unrelated to any disputes between the Beneficiary and the Supplier or to conduct of enforcement proceedings towards the Supplier. We hereby waive the right to make a deposit, payments shall be made directly to the Beneficiary.

Claims can only be made against us as a result of this suretyship for the payment of cash. The suretyship is of unlimited duration.

Restitution shall take place after all claims arising from the above Contract have been dealt with (whereupon the obligation arising from this suretyship shall also expire).

Polish law shall apply. The place of jurisdiction is the seat of the Beneficiary.

Signatures:

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.....  
.....

**Notice**

Guarantee documents, chattel mortgage and the invoice for payment on account are to be sent by registered post to the following address:

**When Mercedes Benz Manufacturing Poland sp. z o.o. as Customer:**

Mercedes Benz Manufacturing Poland sp. z o.o.

ul. Gottlieba Daimlera 5,

59-400 Jawor

Poland

**When Mercedes Benz Vans Manufacturing Poland sp. z o.o. as Customer:**

Mercedes Benz Vans Manufacturing Poland sp. z o.o. as Customer:

ul. Gottlieba Daimlera 5,

59-400 Jawor

Poland