**Webasto Warranty and Cost Agreement**

**(status: March 2018)**

between

1. **Webasto** XX (company),

XX (address),

–“**Webasto**” –,

and

2. **XX** (supplier),

XX (address),

– “**Supplier**” –,

– Webasto and Supplier each individually also a “**Party**” and jointly the “**Parties**” –.

**Preamble**

By this warranty and cost agreement (“**Webasto** **WC** **Agreement**”), the Parties intend to agree on specific principles and processes, which are customary in the automobile industry, regarding the liability for costs and damages caused by and in connection with Defects of products or parts thereof the Supplier or any affiliate according to §§ 15 et. seq. of the German Stock Corporation Act (together “**Affiliates**”) of the Supplier delivers or has delivered to Webasto or to any of Webasto’s Affiliates (“**Products**”). “**Defect**” shall have the meaning defined in clause 1.1 of this Webasto WC Agreement.

**Therefore**, the Parties agree on the following:

1. **Liability in the case of defective Products**
	1. A Product has a Defect if it does not have the agreed quality, or, in case the quality has not been agreed, if it is not suitable for the use intended or for the customary use of such Products. Quality includes characteristics which can be expected from the public statements on specific characteristics of the Product that are made by the Supplier or manufacturer of the Product, including without limitation in advertising or in identification. A Product also has a Defect if an agreed assembly by the Supplier has been carried out improperly, or, if a Product is intended for assembly, if the assembly instructions are defective, unless the Product has been assembled without any error. The supply of a different Product or of a lesser amount of the ordered quantity is equivalent to a Defect.
	2. The Products must be fully in accordance with the drawings and specifications. They must be free of Defects, especially in their design, manufacture and the materials used. Unless the design or a specification states anything to the contrary, the Products must be of a quality customary in the market and suited to use for the particular purpose intended. Products that fail to fulfil one of the requirements stated before are deemed to be defective.
	3. With the exception of Products for the North American market to which a warranty period of 48 months applies, warranty periods are governed by the periods of 36 months from the date of the initial registration of the vehicle, or – in the case of a Product for the aftermarket – of installation in the vehicle as set out in the Webasto GT&C Production. Unless any longer warranty periods, specific to particular Products, have been agreed between Webasto and the Supplier, the maximum warranty period is however 60 months from the time the Products are delivered.
	4. Should a Product be defective, Webasto may demand the delivery of a defect-free Product as subsequent fulfilment and the reimbursement of costs incurred including the costs of dismantling and assembly (especially labour costs) as well as material and other additional costs (such as, for example, the costs of transportation, logistics, examination and sorting).
2. **Analysis of defects, elimination, re-qualification and Product observation**

 The Supplier is required to provide a Defect-free Product. The Supplier shall determine the cause of the Defect immediately and shall mutually agree the scope and depth of the examination as well as all measures to remedy defective Products with Webasto. Irrespective of such obligation, the Supplier shall ensure that the Product is monitored in the market with respect to possible Defects. The provisions of IATF 16949 (ISO/TS 16949) shall apply.

1. **0-km Incidents**

3.1 In case defective Products are detected on the premises of Webasto’s or of its Affiliate’s or on any premises of the customers of Webasto or Webasto’s Affiliates (“**0-km Incidents**”), Webasto shall grant the Supplier the right to cure the Defect or replace the defective Products on the Supplier’s cost, except such granting cannot be reasonably expected from Webasto, e.g. such Supplier action shall not be executed in case they could potentially harm any production process at the respective premises.

3.2 In case the curation of the Defect or the replacement of the Product by the Supplier should be unreasonable or impossible, Webasto or its Affiliates shall have the right to remedy the Defect or to replace the Product by itself/themselves or to have it remedied by third parties at the Supplier’s expense.

1. **Field Incidents**

In case defective Products are detected after they have left the Webasto’s customer’s production facilities or the production facilities of a third party appointed by Webasto’s customer (“**Field Incidents**”), the following provisions shall apply:

a) The determination of a Defect shall be established in the sales organisation of the Webasto customer concerned according to automotive standards and be subject to the procedures for handling defects and warranty claims in accordance with the system of the Webasto customer concerned. Webasto shall provide copies of the respective documents which document the detected Defects, provided they are at hand and Webasto is legally allowed to disclose them to the Supplier.

b) In case the respective Webasto customer’s warranty system provides for the return of the defect Product, Webasto shall inform the Supplier when defect Products are ready to be picked up and the Supplier shall organise and carry out the picking up and transportation of the defective Products without delay and at its own cost.

c) In case of Field Incidents, the replacement of a defective Product by a defect-free Product shall be carried out according to automotive standards by third parties, i.e. in particular by dealers and workshops at the Supplier’s cost.

1. **Analysis and calculation of the acknowledgement quota of Defects**
	1. The Supplier shall analyse the defective Products and acknowledge a certain quota of defective Products (“**AQ**”) according to the below provisions as well as set out in the QW1 (see: http://startsuppliers.webasto.com) and shall provide Webasto with a report of its analysis of the defective Product no later than 10 working days subsequent to the receipt of the defective Product. If and to the extent, the Supplier does not meet the aforesaid deadline, the Defect shall be deemed to be acknowledged by the Supplier.
	2. If no Defect is detected according to the provisions of this Webasto WC Agreement and the QW1, Webasto and the Supplier shall execute an additional analysis, actively supported by both Parties including, e.g. extended analysis methods, the introduction of additional regular communication, special measures during the development phase and on-site support of Webasto in case problems arise. No-trouble-found parts (“**NTF Parts**”) may, however, be subject to a re-testing by Webasto or a third party appointed by Webasto. Should the test results not coincide, the Supplier shall pay the costs of re-testing and the Supplier is required to acknowledge the results.
	3. Webasto and the Supplier agree to calculate the AQ based on the received samples of defective parts of te Products according to the following formula:

*AQ = ∑ defective Products acknowledged by the Supplier*

*∑ analysed Products*

Except as otherwise agreed by the Parties, AQ shall apply for one year since the first testing of the respective defective Product by the Supplier.

* 1. In case of changes of the Product and/or the production processes by the Supplier and/or a transfer of the production to another Supplier’s site without having priory notified to and not been approved by Webasto, the AQ shall by 100%, i.e. all defective Products are acknowledged by the Supplier. In the event of an assembly of the Product by several different products or multi-product deliveries, sec. 5.4 sentence 1 shall also apply to parts the Supplier has sourced from its sub-suppliers.
	2. The Supplier shall pay all costs incurred in connection with the analysis of the defective Products, including, but not limited to, the costs of returning and providing of the defective Products. If and to the extent required by the relevant guidelines of a Webasto customer, the Supplier undertakes to mark and to store the analysed defective Products appropriately and on its own cost. The Supplier shall ask Webasto to inform on the relevant period of time of storage. In case Webasto requires the returning of the defective Products, the costs resulting therefrom shall be borne by the Supplier. The Supplier acknowledges that the defective Products, in general, are the property of the Webasto customer.
1. **Determination of costs**
	1. The “**Costs of Defects**” are particularly material costs, transport costs and the costs of dismantling and assembly as well as other costs. The costs of dismantling and assembly are the actual labour and other costs incurred in the repair workshops for the relevant damaging events during the accounting period. The material costs are the costs for material that Webasto is required to reimburse to the respective Webasto customer. The Costs of Defects also include other costs, i.e. particularly costs in connection with settling the Defect incurred by Webasto’s customer or reimbursed to the end customer due to a legal obligation (e.g. cost of handling, costs of overnight accommodation, cost of returns, replacement vehicle). The Costs of Defects are therefore calculated as follows:

*Costs of Defects = cost of material + of transport + of dismantling and assembly + other costs*

* 1. The amount of recourse is calculated by multiplying the AQ with the total Costs of Defect incurred worldwide:

*Amount of recourse = AQ x total worldwide cost of Defect*

* 1. Webasto shall provide the Supplier with a case-related invoice for the accumulated recourse amount of the damaging events attributable to the Supplier during the relevant warranty period.
1. **Handling incidents without a replacement of a defective Product**

In the case of Defects which elimination does not require the replacement of the defective Product (e.g. adjustment work), the Supplier shall bear the costs required to eliminate the Defect and to procure a subsequent fulfilment. The AQ shall be jointly fixed. In general, Webasto will provide the Supplier with an invoice case by case.

1. **Handling incidents with defective software**

In the event of Defects of software caused by the Supplier, the costs of delivering a defect-free software and the labour costs incurred in the repair workshops to replace the defective software shall be borne by the Supplier and reimbursed to Webasto. The labour costs will be roughly calculated for all affected vehicles and singly invoiced.

1. **Special recourse**

9.1 A special right of recourse of Webasto shall apply in case defective Products have caused a Recall, Damages to other Parts and/or Serial Damages according to the following provisions:

a) “**Recall**” shall mean any actions ordered by the responsible authorities or executed voluntarily by Webasto or a Webasto customer due to a defective Product and/or the infringement of legal or official provisions, in particular with respect to safety and environmental requirements, to remedy a Defect, including in particular all actions to avoid any risk to life and limb. The Supplier shall be liable to Webasto for all costs and damages in connection with and/or resulting from a Recall to the extent the Recall is caused by a defective Product.

b) “**Damages to other Parts**” shall mean damages to parts or products of Webasto and/or parts or products of third parties including Webasto customers other than the defective Product due to the Defect of the Supplier’s defective delivery or service or should other parts of a Webasto product have to be exchanged or renewed as a consequence of repairing the defective Product delivered. The Supplier shall be liable to Webasto for all such Damages to other Parts in connection with and/or resulting from a defective Product.

c) “**Serial Damage**” shall mean the accumulation of damages due to Defects of Products the cause of which is the same. In the case of Serial Damage, Webasto and the Supplier will determine the actions that are suited and required to eliminate the Serial Damage, e.g. also preventive customer service actions including but not limited to a Recall.

9.2 The Supplier is obliged to conclude and to maintain a product liability insurance cover, including insurance of the costs of a Recall, with an appropriate amount insured of at least EURO 5 million per claim that must also include and cover the North American market.

1. **Miscellaneous**
	1. Any amendment of this Agreement shall be done in writing only.
	2. Webasto reserves the right to prove that it has incurred higher damages.
	3. Unless explicitly agreed otherwise, this Webasto WC Agreement is subject to the laws of the state (or country) in which the ordering Webasto entity has its place of business. The regulations of the United Nations Convention on Contracts for the International Sale of Goods (UN sales law) and the principles of conflict of laws of the International Private Law are expressly excluded. For all disputes in connection with this Webasto WC Agreement, Webasto and the Supplier submit to the exclusive place of jurisdiction at the place of business of the ordering Webasto entity. The Webasto entity also has the right to file a suit against the Supplier with the competent courts at the Supplier´s place of business
	4. Except as otherwise agreed in this Webasto WC Agreement, the liability of either Party for Defects is subject to the Webasto framework agreement (“**Webasto Framework Agreement**”), the Webasto general terms and conditions of purchase for production material, including any national addendums, if any (“**Webasto GT&C**”), Webasto general terms and conditions of purchase for tools (“**Webasto GT&C Tools**”) and the supplier quality guideline of the Webasto group (“**QW1**”) (see: <https://www.webasto-group.com/en/the-company/supplier-portal/>). In case of any discrepancies the provisions of this Webasto WC Agreement shall prevail.

Place, date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Place, date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Webasto Supplier**

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Signature Signature

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