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**MAHLE NORTH AMERICA CAPITAL EQUIPMENT AND PRODUCTION TOOLING**

**GENERAL TERMS AND CONDITIONS**

**EFFECTIVE DATE: FEBRUARY 2022**

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GENERAL TERMS AND CONDITIONS INDEX**

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# **CAPITAL EQUIPMENT AND PRODUCTION TOOLING GENERAL TERMS AND CONDITIONS**

## **1 The Parties and Equipment Covered by the Contract**

- 1.1 Parties. MAHLE, as used in these MAHLE North America Capital Equipment and Production Tooling General Terms and Conditions (the “Terms”), means the MAHLE entity identified on the face of MAHLE’s Purchase Order, which may be any of the MAHLE North American entities. Seller is identified on the face of the Purchase Order.
- 1.2 Equipment. These Terms, which may be revised from time to time at MAHLE’s discretion, apply to the purchase of capital equipment and production tooling, such as production machines, prototype and production tools, fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, and accessories (collectively, the “Equipment”) identified in a Purchase Order issued by MAHLE to Seller.

## **2 The Contract**

- 2.1 Terms of the Contract. The following documents collectively constitute the “Contract”: (i) these Terms; (ii) MAHLE’s Request for Proposal/Quote; (iii) Purchase Order; (iv) Exhibits and other documents attached to the Contract; and (v) Supplier Code of Conduct (“MAHLE’s Policy”), as revised by MAHLE from time to time. MAHLE’s Policy is available in the download center found by clicking the Supplier portal link at [www.mahle.com](http://www.mahle.com). Seller is responsible for keeping current regarding the terms of MAHLE’s Policy. The parties will interpret each term of the Contract so that all of the provisions are given as full effect as possible. In the event of any ambiguities, express conflicts or discrepancies in the other documents which are part of the Contract, Seller shall immediately submit the matter to MAHLE for its determination and the parties shall attempt to resolve the matter in mutual agreement. In the event of a conflict between the documents constituting the Contract, the order of precedence shall be: first, the Purchase Order; second, any documents referenced in the Purchase Order, third, Exhibits and other documents attached to the Contract; fourth, applicable Customer Requirements; and fifth, these Terms. Customer means any entity to which MAHLE, directly or indirectly, sells Equipment or uses Equipment in the manufacture/fabrication, testing, or servicing of other goods (“Customer”).
- 2.2 Seller Acceptance. The Contract is an offer by MAHLE to purchase the Equipment from the Seller pursuant to the terms of the Contract. A binding agreement is formed when the Seller accepts the offer from MAHLE. This occurs upon the earlier of: (i) the Seller beginning work or performance; (ii) the Seller notifying MAHLE of its acceptance of the offer; or (iii) any other conduct that recognizes the existence of a binding agreement with respect to the subject matter of the Contract. Written acceptance is not necessary for acceptance and contract formation. The Contract does not constitute an acceptance of any offer or proposal made by Seller. Seller acknowledges that: (i) a request for quotation or similar document issued by MAHLE is not an offer by MAHLE; and (ii) any response by Seller to a request for quotation or similar document issued by MAHLE is not an offer by Seller.
- 2.3 Seller’s Terms Rejected. MAHLE expressly rejects any additional or different terms that Seller proposes, whether in Seller’s quotation, acknowledgement, invoice, or otherwise, and such additional or different terms are expressly rejected by MAHLE and are not part of the Contract. The Contract is limited to and conditional upon Seller’s acceptance of these Terms exclusively. If Seller proposes any additional or different terms, such proposal shall not operate as a rejection of the Contract if Seller commences work or otherwise accepts MAHLE’s offer, in which case the Contract shall be deemed accepted by Seller without any additional or different terms.
- 2.4 Entire Agreement. The Contract is the entire agreement between the parties regarding the Equipment and supersedes any prior agreements, prior orders, quotations, proposals, negotiations or understandings of the parties regarding the Equipment, whether written or oral. No modification shall be effective unless in writing and signed by MAHLE’s authorized purchasing representative.

### 3 Shipping and Delivery

- 3.1 Delivery Terms. Delivery terms are specified on the face of the Contract. If MAHLE does not specify any terms in the Contract, then Seller must deliver the Equipment Free Carrier (FCA), MAHLE-selected location. If the Seller delivers the Equipment Free Carrier (FCA), Seller is responsible for loading the Equipment on the specified carrier at Seller's dock and assumes the cost and risk of loss for loading at Seller's dock.
- 3.2 MAHLE Requirements.
- 3.2.1 Seller shall properly pack, mark, and ship Equipment, with proper related documentation including papers with any specific Contract, amendment, or release number, according to MAHLE's requirements provided in the Contract including use of specified carrier or method of transportation, point of destination, and shipping on Saturdays and holidays. In addition to the requirements contained in the Contract, any invoice or packing slip must contain the following information: (i) MAHLE-assigned supplier code; (ii) purchase order number; (iii) the "Ship-to" address; (iv) MAHLE-assigned plant location code; (v) invoice-to address; and (vi) whether containers used are "returnable" or "non-returnable."
- 3.2.2 All shipments of goods to MAHLE must include two (2) packing slips. For Equipment shipped via truck, Seller shall enclose one (1) packing slip (or packing slips sets in the case of multiple item shipments) in an envelope and attach one (1) packing slip to the bill of lading and deliver it to MAHLE's receiving department upon delivery of the Equipment.
- 3.2.3 Seller shall comply with the requirements of the involved carriers and the country of destination. Seller shall assure delivery free of damage and deterioration. All labeling, marking, and packaging shall be at Seller's expense, unless expressly agreed otherwise in the Contract. Any expenses MAHLE incurs as a result of Seller's improper labeling, marking, and/or packaging shall be reimbursed by Seller.
- 3.2.4 Seller certifies that it will ship or make available the Equipment, as pertinent to the shipping terms, from the location stated in the Contract. MAHLE must approve in advance and in writing any proposed change in the location by Seller. MAHLE shall review any proposed change for its effect on transit time, freight costs, packaging methods, and other significant impacts on MAHLE. Seller shall be responsible for all increased transportation and other costs unless otherwise agreed by MAHLE in writing.
- 3.2.5 MAHLE has no obligation to pay any invoices if Seller fails to meet the requirements stated above.
- 3.3 Time is of the essence pursuant to the Contract. Unless specified differently in the Contract, Seller shall deliver the Equipment in strict conformance with the dates, times, quantities and delivery locations identified by MAHLE. Seller can only receive an extension or modification in the delivery date(s) by MAHLE's signed and written consent. MAHLE may change the date of delivery or direct temporary suspension of delivery, neither of which entitles Seller to modify the price of the Equipment.
- 3.4 Delay in Delivery. If Seller, for any reason, does not comply with MAHLE's delivery schedule or any other requirement of a Material Release or Contract, MAHLE may, in its sole discretion: (i) approve a revised delivery schedule; or (ii) require expedited or premium shipment of the Equipment. Seller shall be liable for all excess costs and for all other direct, consequential, and incidental damages MAHLE incurs as a result of Seller's non-compliance including: (i) additional transportation costs; (ii) the cost of any production disruption; and (iii) the cost of obtaining the Equipment from an alternate source. MAHLE's rights pursuant to this Section are at Seller's sole expense, at MAHLE's sole discretion and in addition to and without prejudice to any other right or remedy available to MAHLE.

- 3.5 Early Delivery. Seller must receive MAHLE's advance written approval to make an early delivery of the Equipment. If Seller makes Equipment available earlier than the agreed delivery date, MAHLE reserves the right to charge Seller for all additional costs incurred for picking up and/or storing the Equipment. In the case of an early delivery, MAHLE will use the agreed delivery date as the basis for calculating the date of payment. If MAHLE elects in its sole and absolute discretion to accept one or more early deliveries, such acceptance shall not constitute a waiver of MAHLE's right to reject any other shipment which does not conform with the Contract.
- 3.6 Partial and Surplus Deliveries. Seller shall deliver the agreed delivery quantities in one shipment to MAHLE. MAHLE shall accept partial deliveries only if MAHLE has agreed to each partial shipment delivery in advance and in writing. In case of agreed partial deliveries, Seller shall indicate the quantities it did not deliver on the packing slip. MAHLE may postpone payment for the Equipment until Seller makes the remaining quantity available for pick-up. Seller shall not make any surplus deliveries without MAHLE's advance written approval. If Seller makes any surplus deliveries without MAHLE's advance written approval, then MAHLE may, at Seller's expense, either return the surplus Equipment to Seller or warehouse the surplus Equipment at Seller's expense.
- 3.7 Title.
- 3.7.1 Unless otherwise specified, MAHLE shall take title to all Equipment upon the earlier of: (i) delivery and acceptance of the Equipment at MAHLE's selected location; or (ii) payment by MAHLE for all or part of the purchase price of identified Equipment. MAHLE and Seller agree that Equipment is identified upon fabrication/manufacture unless the Equipment is part of Seller's standard stock and sold to other buyers in addition to MAHLE, in which case the Equipment is identified when Seller marks or otherwise designates the Equipment as relating to the Order.
- 3.7.2 Seller shall comply with MAHLE's Proprietary Rights (as defined in §16) with respect to any Equipment to which MAHLE has title but which are in the custody or control of Seller or Seller's suppliers, contractors or agents.
- 3.8 Country of Origin. Upon MAHLE's request, Seller shall promptly furnish to MAHLE all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Equipment to comply fully with all customs, tariffs and other applicable laws. Seller warrants that any such information that it provides to MAHLE is true and that all prices pursuant to the Contract are not less than fair value pursuant to the Anti-Dumping Laws of the countries to which and from which the Seller exports the Equipment.
- 3.9 Hazardous Materials. Seller agrees to comply with all laws relating to any hazardous or restricted material that is an ingredient or part of the Equipment. Seller will give MAHLE sufficient warning in writing, including appropriate labels, containers, packing, handling, disposal and recycling instructions, material safety data sheets and certificates of analysis for any materials.

#### **4 Price and Payment**

- 4.1 Price. The purchase price for the Equipment is stated in the Purchase Order. Unless otherwise stated in the Contract, the purchase price: (i) is a firm fixed price for the duration of the Contract and not subject to increase for any reason, including increased components costs, increased labor or other fabrication/manufacturing costs, increased development costs, or changes in volumes from those estimated or expected; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Equipment; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller recognizes that it assumes all risks with respect to cost changes and variances in volumes.

- 4.2 Sales Tax. If the Equipment may be exempt from sales taxes, the Contract must include all information necessary for the parties to claim the exemption.
- 4.3 Payment Notice. Unless otherwise stated in the Contract, payment notices, whether electronic or paper copy, shall be issued on or after delivery of the Equipment to MAHLE and payment shall be deemed to occur when MAHLE issues payment to Seller. MAHLE shall pay Seller in United States dollars unless otherwise agreed by MAHLE in writing. Seller shall, at its expense, comply with MAHLE's instructions and policies with respect to the form, content and method for submission of invoices.
- 4.4 Payment Terms. MAHLE shall pay invoices for Equipment that are not subject to dispute and properly presented in accordance with the requirements of the Contract. Unless otherwise agreed, Seller shall accept payment by check or other cash equivalent, including electronic funds transfer. If no terms are stated in the Contract, MAHLE shall pay net sixty (60) days, after the later of (i) the Equipment being received and accepted at MAHLE's facility; or (ii) MAHLE's receipt of Seller's invoice. If the payment date is not a business day, payment shall be due the next business day. In the event MAHLE disputes a payment, the applicable payment period shall begin when the invoice is properly presented or the dispute is resolved. In the event of dispute, the parties will work together to resolve the disputed claim. MAHLE may recover any amount due by Seller to MAHLE by setoff in accordance with §4.7. Seller shall pay any amounts owed to MAHLE net thirty (30) days from the date of invoice or demand.
- 4.5 Directed Supplier. If the Customer directed, recommended, or requested that Seller be the source from whom MAHLE is to obtain the Equipment: (i) MAHLE will pay Seller for the Equipment only after and to the extent of, and in proportion to, MAHLE 's actual receipt of payment from the Customer for those goods into which MAHLE incorporates the Equipment and/or the services; (ii) any lengthening of the Customer's payment terms to MAHLE for those goods into which MAHLE incorporates the Equipment and/or services will automatically lengthen the payment terms as between MAHLE and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller shall notify MAHLE in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on MAHLE without MAHLE 's written approval.
- 4.6 Best Price. The Seller warrants that the prices for the Equipment sold to MAHLE are no less favorable than those that the Seller currently extends to any other of its customers for the same or similar Equipment in similar quantities. If the Seller reduces its prices to third parties during the term of the Purchase Order for the same or similar Equipment in similar quantities, the Seller will correspondingly reduce the prices charged to MAHLE.
- 4.7 Set Off. In addition to any right of setoff or recoupment provided to MAHLE by law, MAHLE shall be entitled at any time to set off or recoup against sums payable by MAHLE to Seller or any of its affiliates any amounts for which MAHLE determines in good faith the Seller or any of its affiliates is liable for pursuant to any Contract or other agreement. MAHLE may do so without notice to the Seller.
- 4.8 Payment Not Acceptance. MAHLE's payment for the Equipment shall not constitute acceptance of the Equipment, nor will it limit or affect any of MAHLE's rights or remedies.
- 4.9 Credits. Credits or benefits resulting from the Contract, including trade credits, export credits or the refund of duties, taxes, or fees, belong to MAHLE. Seller will provide all information and certificates, including Certificates of Origin, necessary to permit MAHLE, or MAHLE's Customers, to receive these benefits or credits.

## 5 Competitiveness

- 5.1 Seller agrees to be competitive in price, quality, capacity, delivery, and timeliness (collectively defined as “Competitiveness”). Seller agrees that MAHLE can audit Seller, as described in §13, so as to verify Seller’s Competitiveness. In the event MAHLE makes a good faith determination that Seller is not compliant with this Competitiveness requirement, Seller shall provide a remediation plan acceptable to MAHLE in its reasonable discretion within fifteen (15) business days. If Seller fails to provide or comply with an acceptable remediation plan, MAHLE may at its option terminate all or part of the Contract for Cause as defined in §14.1.2.

## 6 Service and Replacement Parts

- 6.1 Unless otherwise stated in a written document signed by both MAHLE’s and Seller’s authorized representatives, Seller shall sell to MAHLE, for repair and replacement, parts and service tools fabricated/manufactured by Seller for each component of the Equipment for fifteen (15) years after MAHLE accepts the Equipment, or such longer period as MAHLE sets forth in the Contract. The price payable by MAHLE pursuant to this Section for any such part or tool shall not exceed the lesser of the lowest delivered price for that part or tool offered or charged by Seller to any customer at any time during the six-month period immediately preceding the calculation of the price hereunder or the price as defined in MAHLE’s specifications. MAHLE and Seller shall determine such lowest delivered price after application of any type of price discount, credit, allowance, rebate, promotion, or other financial consideration that Seller offers.

## 7 Inspection and Non-Conforming Equipment

- 7.1 Inspection. MAHLE shall have no obligation to inspect the Equipment or materials during fabrication/manufacture, prior to delivery, or after delivery, but may do so at its sole discretion. MAHLE may enter Seller’s facility to inspect the facility, Equipment, materials, and any of MAHLE’s property related to the Contract. MAHLE’s inspection of the Equipment, whether during fabrication/manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. MAHLE’s acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Contract releases Seller from the obligation of testing, inspection, and quality control. Notwithstanding prior inspections, the Equipment is subject to inspection, evaluation and testing at the facility designated by MAHLE, and, notwithstanding any payment that may be made, MAHLE has not accepted the Equipment until (i) such in-facility inspection, evaluation and testing demonstrate to MAHLE’s satisfaction that the Equipment conforms to all applicable terms of the Contract, including through the production of a reasonable number of sample parts, and (ii) Seller receives a signed writing from MAHLE’s authorized representative that acknowledges compliance of the Equipment with all applicable terms of the Contract.
- 7.2 Rejection. If Seller ships/delivers defective and/or non-conforming Equipment and MAHLE rejects this defective and/or non-conforming Equipment, Seller shall, at MAHLE’s sole discretion: (i) accept return of the defective and/or non-conforming Equipment, at Seller’s risk and expense at full invoice price, plus transportation charges, and replace the defective and/or non-conforming Equipment as MAHLE deems necessary; (ii) repair the defective Equipment such that it meets the requirements of the Contract; (iii) refund all payments by MAHLE and pay any expense that MAHLE incurred; and/or (iv) pay all MAHLE’s expenses. Additionally, MAHLE may terminate the Contract if Seller ships/delivers defective and/or non-conforming Equipment. Seller will document corrective actions within a commercially reasonable period after receipt of the defective and/or non-conforming Equipment. Payment for nonconforming Equipment is not an acceptance, does not limit or impair MAHLE’s right to assert any legal or equitable remedy, and does not relieve Seller’s responsibility for latent defects.
- 7.3 Corrective Action. Promptly upon learning of defective and/or non-conforming Equipment, Seller will develop, document, and implement corrective actions in accordance with all applicable quality control policies and standards of MAHLE and its Customers, subject to MAHLE’s approval. Seller shall provide the corrective action plan to MAHLE and promptly notify MAHLE of test results, plan

progress and any other material events pertinent to the corrective action plan. If MAHLE determines that Seller is unable to satisfy its responsibilities with respect to a corrective action plan, then MAHLE (or its designee) may perform all or part of these responsibilities at Seller's expense and without tests or contract with a third party to perform the tests. The costs of these tests shall be borne by the Seller and shall not relieve Seller of any obligation pursuant to the Contract. Seller will also immediately notify MAHLE in writing when it becomes aware of any ingredient, component, design or defect in the Equipment that is or may become harmful to persons or property.

- 7.4 MAHLE Losses. Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by MAHLE at any time resulting from Seller's failure to deliver conforming and non-defective Equipment or to comply with the shipping and delivery or other requirements of MAHLE, even if the Seller has cured the failure. This also includes all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which MAHLE or its Customer participates in connection with the Equipment or related services sold by Seller.

## **8 Standards, Policies, and Customer Requirements**

- 8.1 Seller will conform to the quality control standards and inspection system, as well as related standards and systems (including without limitation, quality control policies or the most current IATF 16949 or ISO 9001 standards that MAHLE establishes or directs). Seller will also participate in MAHLE's supplier quality and development programs as directed by MAHLE. As requested by MAHLE at any time, Seller will participate in and comply with the following MAHLE programs and standards: (a) Supplier Standards Manuals (including all subsections and forms), (b) supplier performance evaluations, and (c) minority business expectations, as described and accessible on MAHLE's website at <http://www.mahle.com>. To the extent MAHLE or its Customer establish or direct any modifications, supplements or replacements for any of the standards, policies or systems stated above, Seller's obligations pursuant to this Contract shall automatically be amended and Seller will comply with such changes.
- 8.2 As directed by MAHLE in writing, Seller agrees to comply with the applicable terms of any agreements between MAHLE and its Customer(s) ("Customer Terms"). If there is any conflict between the provisions of the Customer Terms and any provisions of the Contract, MAHLE shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict. Seller represents that it is familiar with all applicable Customer Terms.

## **9 Changes**

- 9.1 MAHLE Changes. MAHLE reserves the right at any time, by written notice, to change the Contract or the Equipment, including the design, specifications, engineering level, materials, packaging, testing requirements, shipping date, or time or place of delivery. Subject to §9.2, Seller will make any such change within the time specified by MAHLE or, if not specified, promptly.
- 9.2 Prices and Costs. Seller may request a price adjustment, limited to the actual and reasonable costs incurred or to be incurred as a result of the change. Seller shall use its best efforts to minimize such costs. Seller shall submit any request for price modification within ten (10) days of the change notification (or earlier, if reasonably requested by MAHLE) and shall support the request with all pertinent documentation and analyses. MAHLE shall have the right to verify any request. Seller shall promptly provide all documents and information necessary or requested to verify the request. If MAHLE and Seller are unable to agree on a price adjustment, then MAHLE shall determine the price adjustment, if any, in its reasonable discretion. Unless directed otherwise by MAHLE in writing, if Seller requests a price modification, it shall not implement the change until the request is resolved in accordance with this Section. If Seller does not provide timely notice to MAHLE that a requested change may result in a difference in price or time for performance, MAHLE's requested change shall not affect the price or time for performance.



- 9.3 Engineering Changes. Seller will process all engineering changes, whether MAHLE or Seller initiates the changes, pursuant to MAHLE's practices in effect at the time of the change. Seller will promptly implement all MAHLE approved engineering changes to the Equipment specification as MAHLE directs. MAHLE and Seller will base price changes or cost reimbursements, if any, for MAHLE approved engineering changes solely on the design cost variance from the superseded design, and Seller must substantiate the price changes with appropriate documentation satisfactory to MAHLE. If MAHLE and Seller are unable to agree on a price adjustment or reimbursement amount, then MAHLE shall determine the price adjustment or reimbursement amount, if any, in its reasonable discretion.
- 9.4 Seller Changes. Seller will not make any change to the Equipment without MAHLE's written approval. Seller shall use its best efforts to identify possible changes to the Equipment that may increase safety, improve quality, reduce costs, or otherwise be beneficial to MAHLE, and shall inform MAHLE of the possible change with sufficient detail for MAHLE to assess the advisability of the change.

## 10 Warranties

- 10.1 Seller expressly warrants and guarantees to MAHLE, to MAHLE's successors, assigns and Customers, that all Equipment delivered to MAHLE will: (a) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by MAHLE; (b) will be safe for use in conformance with such specifications and shall be sufficiently durable to support the fabrication/manufacture of all production and service requirements for the longer of: (i) three years from the date that MAHLE installs or accepts Equipment or (ii) the warranty period stated in the Contract; (c) conform to all applicable laws, orders, and regulations; (d) be merchantable and free of defects in design (to the extent designed by Seller), fabrication/manufacture, materials and workmanship; (e) be selected, designed (to the extent designed by Seller), fabricated/manufactured and assembled by Seller based upon MAHLE's stated use and be fit and sufficient for the purposes intended by MAHLE; (f) perform in accordance with the highest prevailing industry standards for the type of Equipment provided; (g) be free and clear of any third-party liens or encumbrances; (h) include all applicable manuals; (i) be designed, fabricated/manufactured, delivered, installed and/or repaired by qualified and licensed personnel; (j) not incorporate or consist of commercial surplus or used, refabricated/remanufactured or reconditioned material or components except by MAHLE's written request; and (k) conform to all applicable laws. MAHLE's approval of any design, drawing, material, process, specifications or Equipment will not relieve Seller of these warranties. The foregoing warranties will survive delivery, inspection and payment. For all services Seller performs, Seller further warrants that it will perform its work in a professional workmanlike manner, consistent with all standards and specifications agreed on with MAHLE and otherwise consistent with the highest industry standards.
- 10.2 Seller also warrants that title to all of the Equipment will vest in MAHLE free and clear of any and all liens and encumbrances of any nature and free from any actual or claimed patent, copyright or trademark infringement. MAHLE may withhold payment pending Seller providing proof, in the form that MAHLE requests, that there are no such liens, encumbrances, or any actual or claimed patent, copyright, or trademark infringement.
- 10.3 In the event MAHLE determines that any of the Equipment is unsatisfactory, defective or inferior in quality, or does not conform to MAHLE's specifications or any other requirements set forth in the Contract (including, without limitation, Seller's warranties), MAHLE, at its option, and in addition to any other rights and remedies to which the Contract or applicable law grant MAHLE, may (a) require Seller, at Seller's sole cost and expense, to promptly repair or replace the Equipment; (b) retain the Equipment at an adjusted price determined by MAHLE in its sole discretion; (c) hold the Equipment at Seller's risk and expense pending Seller's specific instructions; or (d) return the Equipment to Seller at Seller's risk and expense for replacement, credit or full or partial refund, as MAHLE shall direct.

- 10.4 MAHLE may also, in its discretion, refuse to accept further delivery of Equipment, in whole or in part, pursuant to the Contract. Seller shall reimburse MAHLE for all of its costs and expenses relating to the installation, removal, storage, handling, packing and/or transporting of any such unsatisfactory, defective, inferior or otherwise nonconforming Equipment, and Seller shall assume all risk of loss or damage in transit to the Equipment returned by MAHLE. Notwithstanding the foregoing, MAHLE reserves the right to repair the Equipment without voiding any of Seller's warranties or other obligations pursuant to the Contract. Seller shall reimburse MAHLE for all costs and expenses relating to any such repair.
- 10.5 All warranties of Seller extend to future performance of the Equipment and will not be modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. MAHLE's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach.
- 10.6 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section. As directed by MAHLE in writing, Seller agrees to comply with the applicable terms of any agreements between MAHLE and its Customer(s) ("Customer Terms"). If there is any conflict between the provisions of the Customer Terms and any provisions of the Contract, MAHLE shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict. Seller represents that it is familiar with all applicable Customer Terms.

## **11 Preventative Maintenance and Training**

- 11.1 Seller will provide MAHLE with a complete and comprehensive preventative maintenance plan for the Equipment at a MAHLE designated facility as a condition to MAHLE's acceptance. The preventative maintenance plan shall include, without limitation, at least two complete sets of maintenance and operating manuals for all Equipment purchased by MAHLE (including, at MAHLE's request, one in a foreign language that MAHLE specifies), as well as a detailed bill of material. Upon MAHLE's request, Seller will provide to MAHLE a complete copy of (a) the source codes for any software incorporated in the Equipment along with any additional information reasonably necessary so that a trained programmer of general proficiency may maintain and support any such software; and (b) a running object code version of such software.
- 11.2 Seller will provide any and all necessary training and training materials to MAHLE for the Equipment at the initial stage of installation or delivery, at no additional cost to MAHLE. Seller will provide such training at MAHLE's request at the times and locations that MAHLE specifies. Seller will provide the training materials in a computerized format in English and, at MAHLE's request, one additional language. Where Seller obtains the Equipment or a portion of the Equipment from a third party for resale to MAHLE, Seller shall cause such third party to provide MAHLE with the training as described in this Section at no expense to MAHLE and as a condition of Seller's purchase from the third party.

## **12 Indemnification**

- 12.1 Seller agrees to indemnify, defend and hold harmless MAHLE, its affiliates, Customers (both direct and indirect, including manufacturers of vehicle parts that MAHLE produced, fabricated/manufactured or designed using the Equipment), dealers and users of the products sold by MAHLE, or the products in which they are incorporated, and all of their respective agents, successors and assigns, and each of their shareholders, directors, officers, employers and agents, on demand, (collectively "Indemnified Parties") from and against any and all costs, fees, penalties, damages, consequential and otherwise, including settlement costs and expenses, attorneys' fees and all other liabilities and obligations whatsoever ("Losses"), arising out of any third party claim or action which, in whole or in part, arises from or relates to any actual or alleged:

- 12.1.1 Defect or non-conformity in the Equipment;
  - 12.1.2 Noncompliance by Seller with any of its representations, warranties or obligations pursuant to the Contract;
  - 12.1.3 Negligence or fault of the Seller, its agents, employees, or subcontractors in connection with the design or fabrication/manufacture of the Equipment;
  - 12.1.4 Any repair or recall campaign, corrective service action, or other voluntary or involuntary action in which MAHLE or any Customer participates with respect to the Equipment or products into which the Equipment are incorporated, including labor and administrative costs;
  - 12.1.5 Any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Equipment;
  - 12.1.6 Infringement, including claims of direct or contributory infringement or inducement to infringe, of any Proprietary Information (as defined in §16.1) relating to Equipment provided by Seller, even if they are made to MAHLE's specifications;
  - 12.1.7 Damage to the property of or personal injury to MAHLE, its Customer, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of MAHLE's or Customer's property; and
  - 12.1.8 Challenge to MAHLE's sole right, title and interest in the Equipment, or right to possession of the Equipment, brought by any third party, including toolmakers, subcontractors, and lending institutions.
- 12.2 In the event Seller must indemnify the Indemnified Parties pursuant to this Section, then MAHLE may participate, at its option, in the defense of any claim with its own counsel, at Seller's expense.
- 12.3 To the maximum extent permitted by applicable law, Seller's obligation pursuant to this Section will apply even as to Losses caused in whole or in part by an Indemnified Party's negligence, but Seller's indemnification shall not apply to the extent that Losses resulted solely and directly from the gross negligence or willful misconduct of such Indemnified Party. Seller's obligation to defend and indemnify pursuant to this Section will also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. The indemnification obligation pursuant to this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller pursuant to Workers' Compensation Acts, Occupational Disease Acts, Disability Benefits Acts or other employee benefits acts.

### **13 Inspection and Audit**

- 13.1 Inspection of Facility. MAHLE may enter Seller's facility at any time to inspect the facility, Equipment, materials, and any of MAHLE's property related to the Contract. Seller shall provide, without additional charge, access to all facilities and other assistance. MAHLE's inspection does not constitute acceptance of any work-in-process or finished goods and does not relieve Seller of any of its responsibilities or warranties.
- 13.2 Audit. Upon reasonable notice to Seller, either MAHLE, its Customers, or a third party designee, may audit Seller's production facility, Equipment and any other MAHLE property, including all pertinent documents, data, data storage and protection, and other information, related to the Contract for the purpose of verifying Seller's costs and its compliance with its obligations pursuant to the Contract. Seller shall provide, without additional charge, all reasonable facilities and assistance during normal business hours.

- 13.3 Financial Review. Upon reasonable notice to Seller, and in MAHLE's sole discretion, MAHLE or a third party designated by MAHLE may review the financial condition of Seller and its affiliates. Seller will fully cooperate in such review and will promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contracts and loan documents. Seller will arrange meetings at MAHLE's request, during normal business hours, with a MAHLE representative and Seller's financial representatives who have knowledge about the audit information. MAHLE and any designated third party will keep confidential any nonpublic information about Seller obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Contract.

## 14 Termination of the Contract

- 14.1 Termination by MAHLE. In addition to any other rights of MAHLE to terminate the Contract, MAHLE may terminate the Contract in whole or in part by written notice (a "Termination Notice"), as follows:
- 14.1.1 For convenience, effective three (3) days following delivery of the Termination Notice or upon such other date specified by MAHLE in writing.
- 14.1.2 For Cause, as defined in this Section and any provision of the Contract providing for termination for Cause, effective upon delivery of the Termination Notice or upon such other date specified by MAHLE in writing. MAHLE shall have Cause to terminate the Contract if Seller (i) breaches any warranty or other terms of the Contract; (ii) repudiates, breaches or threatens to breach any of the terms of the Contract; (iii) fails to deliver, or threatens not to deliver, Equipment in connection with the Contract; or (iv) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Contract. If for any reason a termination for Cause is found to be wrongful, then MAHLE and Seller agree that the termination shall be a termination for convenience.
- 14.1.3 In the event of a Change of Control of Seller. For the purposes of this Contract, a "Change of Control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations pursuant to this Contract; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller or of any affiliate that controls Seller. Seller shall notify MAHLE in writing within ten (10) days of any Change of Control of Seller, and MAHLE may terminate this Contract for Cause in accordance with §14.1.2 by giving written notice to Seller at any time up to sixty (60) days after MAHLE's receipt of Seller's notice of Change of Control. In the event that MAHLE elects not to terminate this Contract due to a Change in Control of Seller, the obligations and liabilities set forth in this Contract previously borne by Seller shall become the obligations and liabilities of any successor in interest.
- 14.1.4 In the event of Seller's insolvency. Seller shall provide MAHLE with prompt notice of any potential bankruptcy proceedings of Seller and/or Seller's affiliate companies or if its financial condition creates a material risk regarding Seller's ability to perform its obligations pursuant to the Contract. The Contract may be terminated immediately by MAHLE without liability to Seller if any of the following or comparable events occur, and Seller will reimburse MAHLE for all costs incurred by MAHLE in connection with any of the following, including without limitation, attorneys' and other professional fees: (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy or insolvency; (c) proceedings in bankruptcy or insolvency are instituted against Seller; (d) a receiver or trustee is appointed for Seller; (e) Seller needs accommodations from MAHLE, financial or otherwise, to meet its obligations pursuant to the Contract; (f) Seller executes an assignment for the benefit of creditors; or (g) at any time in MAHLE's sole judgment

Seller's financial or other condition or progress on this Contract endangers timely performance. MAHLE, or a third party designated by MAHLE, may at any time review the financial health of the Seller and its affiliates and to determine if Seller is paying its lower tier suppliers. Seller will fully cooperate with such review and will promptly provide copies of or access to the requested documents including, without limitation, financial records, forecasts, business plans, banking contacts and loan documents. MAHLE will use the financial information provided pursuant to this Section only to determine Seller's ability to perform pursuant to the Contract.

Additionally, to the extent that MAHLE has not yet taken title to the Equipment at the time of Seller's insolvency, Seller grants MAHLE a security interest in the Equipment and Seller agrees to sign any UCC-1 forms or other documents reasonably required by MAHLE to perfect MAHLE's rights in the event of Seller's insolvency. Seller grants to MAHLE a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to the Equipment that MAHLE determines are reasonably necessary to reflect its interest in the Equipment.

14.1.5 Termination by MAHLE shall not relieve Seller of any liability pursuant to the Contract.

14.1.6 In the event that MAHLE elects not to terminate the Contract in connection with an event that would constitute Cause for termination, MAHLE may make such equitable adjustments in the price, payment terms, sole supply relationship and delivery requirements under the Contract as MAHLE deems appropriate to address changes in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, non-conforming Equipment or other requirements under the Contract, provided that MAHLE must provide Seller with notice and details regarding the adjustments.

14.2 Termination by Seller. Seller may terminate the Contract only for MAHLE's material breach of the Contract and then only if: (i) Seller first provides MAHLE written notice specifying the material breach and Seller's intent to terminate the Contract if the material breach is not cured; and (ii) MAHLE, within thirty (30) days of such notice, does not either: (x) cure the breach or (y) notify Seller that MAHLE is disputing the reasons for the material breach. Seller shall terminate pursuant to this Section by delivering a Termination Notice to MAHLE. Seller may not terminate the Contract for any reason except as permitted pursuant to this Section. Seller may not suspend performance of the Contract for any reason.

14.3 Seller's Obligations Following Termination.

Following delivery of a Termination Notice, Seller shall, unless otherwise directed by MAHLE and subject to its obligation to provide Transition Support (as defined in §14.7):

14.3.1 Terminate promptly all work pursuant to this Contract and transfer title (to the extent that title for the Equipment has not already passed to MAHLE) and deliver to MAHLE all finished work completed prior to receipt of the Termination Notice;

14.3.2 Transfer title (to the extent that title for the Equipment has not already passed to MAHLE) and deliver to MAHLE all conforming work in process, parts and materials that Seller produced or acquired in accordance with the Contract and that Seller cannot use in producing goods for itself or for others, provided that MAHLE shall have the right, but not the obligation, to purchase work in process, parts and materials in excess of the amounts authorized pursuant to §3.2;

- 14.3.3 Verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession;
  - 14.3.4 Take actions reasonably necessary to protect property in Seller's possession in which MAHLE has an interest until Seller receives disposal instructions from MAHLE; and
  - 14.3.5 Be liable for all costs related to the delivery or replacement of the Equipment, unless stated otherwise in these Terms, necessitated by the termination of the Contract.
- 14.4 MAHLE's Obligations Following Termination. Subject to §14.6.2, MAHLE shall pay to Seller in connection with termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to this Contract:
- 14.4.1 The purchase price for all conforming Equipment received by MAHLE prior to Termination Notice or delivered following Termination Notice pursuant to §14.3, §14.7 or at the written direction of MAHLE;
  - 14.4.2 Any amounts owed for Transition Support pursuant to §14.7.3;
  - 14.4.3 In the event MAHLE terminated the Contract for reasons other than Cause, Seller's reasonable actual cost of: (i) merchantable and useable work-in-process and the parts and materials transferred to MAHLE pursuant to §14.3, but not to exceed the purchase price of the Equipment had Seller completed the Equipment, and not to exceed the amounts necessary to satisfy Seller's obligations pursuant to any lead times agreed upon in writing by MAHLE and Seller; and (ii) carrying out Seller's obligation pursuant to §14.3.3.
- 14.5 MAHLE's Obligations Following Expiration. If the Contract expires, MAHLE shall pay to Seller, in complete and final satisfaction of any liabilities relating to the Contract, only the purchase price for all conforming Equipment received by MAHLE prior to expiration and, if applicable, any amounts owed for Transition Support pursuant to §14.7.3.
- 14.6 Limitations on MAHLE's Obligations Following Termination or Expiration.
- 14.6.1 MAHLE's obligations pursuant to §14.5 are conditioned upon Seller furnishing to MAHLE, within thirty (30) days after the date of termination (or such shorter period as may be required by MAHLE's Customer), a termination claim, which will consist exclusively of the items of MAHLE's obligation to Seller that are expressly permitted by this Section. MAHLE may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. If the parties fail to agree upon the amount due Seller for its termination claim, MAHLE shall determine the amount in its sole discretion.
  - 14.6.2 MAHLE has no obligation to pay for Equipment, work-in-process, parts or raw materials inventory: (i) in excess of those for which MAHLE was obligated to pay pursuant to §3.2; (ii) that are damaged or destroyed or that are not merchantable or useable; (iii) that are in Seller's standard stock or that are readily marketable; or (iv) that can be returned to Seller's suppliers or subcontractors for credit.
  - 14.6.3 In the event of a termination of this Contract by MAHLE as a result of MAHLE ceasing to be a supplier to the Customer for the product in respect of which MAHLE issued this Contract, MAHLE shall only be obligated to compensate Seller for any costs pursuant to §14.4.3 to the extent that the Customer reimburses MAHLE for such costs.

14.6.4 MAHLE will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, failure to realize anticipated production volumes, revenues or savings, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, or general administrative burden charges from termination or expiration of the Contract, except as otherwise expressly agreed in a separate Contract issued by MAHLE.

14.7 Transition of Equipment Following Termination or Expiration. Following expiration or termination of the Contract by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by MAHLE, Seller will cooperate in the transition of supply to a successor supplier, including the following, which will collectively be referred to as "Transition Support":

14.7.1 Seller will continue production and delivery of all Equipment at the prices and other terms stated in the Contract, without premium or other condition, during the entire period reasonably needed by MAHLE to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in MAHLE's ability to obtain Equipment as needed;

14.7.2 At no cost to MAHLE, Seller will promptly provide all requested information, documentation and access to Seller's fabrication/manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Equipment and components; and

14.7.3 Subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Equipment, extraordinary packaging and transportation and other special services approved by MAHLE in writing.

14.7.4 If the Transition Support occurs for reasons other than MAHLE's termination for Cause, MAHLE will, at the end of Transition Support, pay the reasonable, actual cost of the Transition Support pursuant to this Section, provided that Seller has advised MAHLE prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, MAHLE will pay the agreed portion to Seller without prejudice to Seller's right to seek to recover any disputed amounts.

## **15 MAHLE's Property**

15.1 To the extent MAHLE furnishes to Seller, either directly or indirectly, any tooling (including but not limited to fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), packaging and all documents, standards or specifications, trade secrets, inventions, proprietary information or other items to perform the Contract, those items are to be designated as MAHLE's Property. If MAHLE has agreed to reimburse Seller for the fabrication/manufacture or acquisition of any such items, such items will become MAHLE's Property (including passage of title) as they are fabricated/manufactured or acquired. MAHLE's Property will be held by Seller as a bailee-at-will. Seller shall use MAHLE's Property only as contemplated under the Contract. Seller, at its own expense, shall keep MAHLE's Property: (i) in good working condition and house, maintain, repair and replace it as necessary so that MAHLE's Property shall remain in the same condition as it was received and free from damages except normal wear and tear; (ii) fully insured for the benefit of MAHLE at all times while in Seller's possession; and (iii) segregated from all other assets and labeled as being the property of MAHLE or its Customer. Seller may not release, relocate, or dispose of MAHLE's Property to any third party without MAHLE's written approval. Seller has the duty regarding MAHLE's Property to use MAHLE's Property in compliance with MAHLE's or the manufacturer's instructions and in compliance with all federal law. Seller assumes all risk of death or injury to persons or damage to

property arising from its or Seller's suppliers, contractors or agents' use of MAHLE's Property. To the extent permitted by law, MAHLE shall have no liability to Seller or anyone claiming by or through Seller for any incidental or consequential or other damages of any kind whatsoever relating to MAHLE's Property supplied by MAHLE. MAHLE disclaims all warranties, express or implied, with respect to MAHLE's Property, including warranties of merchantability and fitness for a particular purpose, and Seller waives, for itself and its successors and assigns, all claims of negligence and strict liability.

## 16 Proprietary Information and Proprietary Rights

- 16.1 "Proprietary Information" means all information: (i) provided to Seller by MAHLE or its representatives or subcontractors in connection with the Contract (including but not limited to the terms of the Contract), the business, programs, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code); (ii) related in any way to the installation, operation or maintenance of MAHLE's Property, including specifications, drawings, processes and operating instructions. Proprietary Information also includes any materials or information that contain, or are based on, any of MAHLE's information, whether prepared by MAHLE, Seller or any other person; or (ii) any and all services to be rendered and/or work to be performed pursuant to the Contract. Seller shall not, without authorization in writing from MAHLE, use (except as necessary to the performance of the Contract), communicate or disclose the confidential and Proprietary Information of MAHLE or use such information for any purpose other than to perform its obligations pursuant to the Contract. Seller agrees to safeguard the confidential and Proprietary Information of MAHLE by using reasonable efforts, consistent with those used in the protection of its own Proprietary Information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and Proprietary Information. Seller further agrees not to assert any claims with respect to any technical information that Seller shall have disclosed or may hereafter disclose to MAHLE in connection with the Equipment.
- 16.2 The restrictions and obligations of §16.1 will not apply to information that: (i) is already publicly known at the time of its disclosure by MAHLE; (ii) after disclosure by MAHLE becomes publicly known through no fault of Seller; or (iii) Seller can establish by written documentation was properly in its possession prior to disclosure by MAHLE or was independently developed by Seller without use of or reference to MAHLE's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Contract will remain in effect except as expressly modified by the Contract, and to the extent of a conflict between the express terms of such an agreement and this §16.2, the terms of that agreement will control.
- 16.3 All documents containing Proprietary Information relating to the Equipment produced or acquired by Seller pursuant to the Contract will belong to MAHLE. All drawings, know-how, and confidential information supplied to Seller by MAHLE and all rights therein will remain the property of MAHLE and will be kept confidential by Seller in accordance with §16.1 above.
- 16.4 Seller shall, within five (5) business days of MAHLE's request or the expiration or termination of the Contract, return all confidential and Proprietary Information (including all copies, notes and/or extracts thereof).
- 16.5 Seller agrees: (i) to defend, hold harmless and indemnify MAHLE, its successors and customers against claims of direct or contributory infringement or inducement to infringe any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to



Equipment procured or provided by Seller (including, without limitation, their fabrication/manufacture, purchase, use and/or sale), and Seller expressly waives any claim against MAHLE that such infringement arose out of compliance with MAHLE's specification, except to the extent such infringement is actually embodied in designs created by MAHLE and provided in writing to Seller, (ii) to waive any claim against MAHLE, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against Seller or MAHLE for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret), (iii) that MAHLE and its subcontractors and direct or indirect customers have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Equipment delivered under the Contract without payment of any royalty or other compensation to Seller; (iv) that fabricated/manufactured Equipment based on MAHLE's designs, drawings or specifications may not be used for Seller's own use or sold to third parties without MAHLE's express written consent, (v) to assign to MAHLE each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of the Contract, (vi) to promptly disclose in an acceptable form to MAHLE all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable MAHLE to obtain title to and to file applications for patents throughout the world; and (vii) to the extent that the Contract is issued for the creation of copyrightable works, that the works will be considered "works made for hire," and to the extent that the works do not qualify as such, to assign to MAHLE upon delivery thereof all right, title and interest in all copyrights and moral rights therein (including any source code).

- 16.6 Except as expressly agreed by MAHLE in a signed writing, all Equipment or other deliverables provided under the Contract (including without limitation computer programs, technical specifications, documentation and manuals) will be original to Seller and will not incorporate any intellectual property rights (including copyright, patent, trade secret or trademark rights) of any third party. Except as expressly agreed by MAHLE in a signed writing, all Equipment or other deliverables provided under the Contract, and all related intellectual property rights, are owned solely by MAHLE. Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the content of this Section.
- 16.7 At no additional cost, Seller will grant MAHLE a license to use any intellectual property owned by Seller that is necessary or incident to the reasonably intended use or application of the Equipment. If MAHLE's use of any of the Equipment or any of the intellectual property or proprietary rights granted to MAHLE under the Contract (the "granted rights") is enjoined in connection with any claim, action or suit alleging that the Equipment or granted rights infringe or contribute to the infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right in the United States or elsewhere, then Seller shall, at its sole cost and expense, either: (i) procure for MAHLE the perpetual right to continue using the affected Equipment and granted rights without restriction and without any obligation on the part of MAHLE to make any royalty or other payments, (ii) replace the affected Equipment and granted rights with non-infringing Equipment and rights that do not adversely affect MAHLE's right to use the Equipment or granted rights as contemplated by MAHLE on the date of the Contract (including without limitation any adverse effect relating to the functionality of the Equipment or granted rights or the cost of using or maintaining the Equipment or granted rights), or (iii) modify the affected Equipment and granted rights in a manner that does not adversely affect MAHLE's right to use the Equipment or granted rights as contemplated on the date of the Contract (including without limitation any adverse effect relating to the functionality of the Equipment or granted rights or the cost of using or maintaining the Equipment or granted rights) so that the affected Equipment and granted rights become non-infringing. Seller's obligations under this Section shall be in addition to, and shall not limit, restrict or otherwise affect in any way the other obligations of Seller under the Contract, applicable law or otherwise. Seller owns Seller's proprietary rights which include Seller's names, logos, trademarks, patents, service marks, copyrights, and trade secrets. Seller grants to MAHLE and its affiliates, both direct and indirect, an irrevocable, perpetual, worldwide, non-exclusive, royalty-free license to use, and to authorize third parties to use, all inventions, discoveries, improvements, processes,

designs, ideas, software and other intellectual property owned or acquired by Seller that is necessary or incident to the reasonably intended use or application of the Equipment. Nothing in the Contract grants or otherwise provides Seller or any of its affiliates with any rights relating to any patent, copyright, trademark, service mark, trade secret or other proprietary right of MAHLE or any of its affiliates.

## **17 Insurance; Waiver of Liens**

- 17.1 Seller agrees to furnish to MAHLE promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate workers' compensation and comprehensive general liability insurance coverage, including contractual liability insurance applicable to this Contract, product liability, automobile, public liability, and property damage insurance in amounts and coverage sufficient to cover all claims hereunder. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give MAHLE thirty (30) days prior written notice of any lapse or cancellation of any policy. MAHLE shall also be shown as an additional insured on all such insurance policies, including the comprehensive general liability policy, and all such policies shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for MAHLE. MAHLE may require Seller to furnish evidence of any insurance policy, but failure to comply with these requirements will not relieve Seller of its liability and obligation pursuant to this section.
- 17.2 If Seller is self-insured for workers compensation coverage, it will, if requested by MAHLE, provide the applicable state certificate establishing such status to MAHLE. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against MAHLE's premises on account of any Equipment and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in a form satisfactory to MAHLE.
- 17.3 Seller bears the risk of loss of and damage to MAHLE's Property. Seller will insure MAHLE's Property with full fire and extended coverage insurance for its replacement value.

## **18 Excusable Delay**

- 18.1 Any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, court injunction or order, or other government causes; embargoes; fires; floods; earthquakes; explosions; tornados, twisters, windstorms, extreme natural events, unusual or severe weather or other natural disasters; riots or civil disorder; wars; acts of terrorism; sabotage; or epidemics (collectively "Excusable Delay"). However, in no event will the Seller's performance be excused by: (i) the change in cost or availability of materials, components or services based on market conditions; (ii) Seller's failure or inability to perform (unless the failure or inability is caused by an event or occurrence that would itself be an Excusable Delay; (iii) contract disputes; (iv) Seller's financial distress; (v) Seller's bankruptcy or the insolvency of one or more of Seller's suppliers; (vi) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (vii) Seller's failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import and/or Government requirement for which there is public notice.
- 18.2 Seller shall immediately give written notice to MAHLE of any event or occurrence that threatens to delay or actually delays Seller's performance pursuant to this Contract. Such notice shall include all relevant information with respect to such threat or delay, including the possible duration and impact of a delay.

- 18.3 Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to MAHLE due to any actual or potential delay, including: (i) the implementation of a production contingency plan; (ii) upon MAHLE's express written authorization, increasing Seller's inventory of Equipment to a level sufficient to sustain deliveries during such delay; and (iii) modifying the Equipment, suppliers, production processes or other resources to allow the continuation or resumption of production.
- 18.4 During any Excusable Delay or failure to perform by Seller, MAHLE may, at its option and at Seller's expense: (i) purchase Equipment from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (ii) require Seller to deliver to MAHLE at MAHLE's expense all finished goods, work in process and parts and materials produced or acquired for the Equipment pursuant to the Contract; or (iii) have Seller provide Equipment from other sources in quantities and at a time requested by MAHLE and at the price set forth in the Contract. If requested by MAHLE in writing, Seller will, within five (5) days of MAHLE's request, provide adequate assurances that the delay in Seller's performance resulting from any Excusable Delay will not exceed 30 days. If Seller fails to provide MAHLE with adequate assurance within five (5) days of MAHLE's request or the Excusable Delay results in a failure or delay to perform that has lasted for more than thirty (30) days, MAHLE may terminate the Contract, in whole or in part, for Cause, in accordance with §14.1.2.
- 18.5 Seller shall timely notify MAHLE of any actual or potential labor dispute. Seller shall provide MAHLE with six (6) months' notice prior to the expiration of any current labor contract, applicable to Seller or to any of its subcontractors or suppliers. Seller at its expense will take all necessary actions to ensure a forty (40) working day supply of Equipment in a neutral warehouse site to be located in the United States at least fifty (50) miles from Seller's fabrication/manufacturing locations during any anticipated labor disruption or prior to the expiration of any labor contract. Seller shall have this supply of Equipment warehoused at least ten (10) working days prior to the expiration of any such contract or anticipated dispute.

## **19 MAHLE 's Liability**

- 19.1 MAHLE's sole liability pursuant to the Contract (including its termination or expiration) is to pay for the Equipment in accordance with §4.4 and to pay the specific termination related amounts described in §§14.4 and 14.7.
- 19.2 In no event shall MAHLE be liable for anticipated profits, whether direct or indirect, interest, penalties or incidental, consequential, punitive, multiple, or exemplary damages or liabilities in connection with this Contract, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise.

## **20 Compliance with Laws**

- 20.1 Seller agrees to comply with all applicable laws, rules, regulations, ordinances or other requirements of any national, state, provincial, local, multi-national or international body (collectively "Laws") relating to the fabrication/manufacture, labeling, import, export, licensing, sale, delivery and use of the Equipment or otherwise relating to the Contract. Upon request, Seller will submit to MAHLE evidence of such compliance.
- 20.2 Antitrust Compliance. Seller will comply with local antitrust laws and regulations. These laws deal with agreements among competitors, agreements with resellers, price discrimination and other acts or situations that may unfairly reduce competition. If a Seller is under investigation for actions related to the antitrust laws, it must notify MAHLE immediately.
- 20.3 Data Security. As part of its risk management responsibilities for information protection, Seller will implement and maintain an information security management system ("ISMS"). Additionally, understanding the nature and the need for protection of MAHLE's data, Seller guarantees it will

otherwise implement and maintain reasonable security measures in accordance with all applicable data protection regulations and as determined by MAHLE. Upon MAHLE's request, Seller must provide proof that it has implemented an ISMS and other reasonable security measures throughout the Seller's operations. After providing reasonable notice to Seller, MAHLE has the right to inspect and audit Seller's activities to ensure compliance with these requirements. Such audits may be performed by MAHLE independently or by a qualified third party of MAHLE's choosing.

## 21 Special Situations

- 21.1 In addition to its indemnity obligations pursuant to §12.1, if Seller performs any work on MAHLE's or Customer's premises or utilizes the property of MAHLE or its Customer, whether on or off MAHLE's or Customer's premises: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise MAHLE promptly of any situation it deems to be unsafe; (ii) Seller's employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from MAHLE's premises at MAHLE's discretion; and (iii) Seller's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises.
- 21.2 If the Contract includes the removal, moving or installation of the Equipment, the following clauses apply:
- 21.2.1 Seller agrees that it has inspected the equipment and the site where the equipment is removed or installed, and that the price includes everything necessary to complete the work, including without limitation the cost of providing access and egress, relocating other equipment, power lines and other utilities, preparing a proper foundation to receive the machinery, and all special permits and equipment required to accomplish the move. If MAHLE furnishes any of the foregoing, such items shall be clearly and specifically identified on the face of the Contract. With respect to items or services that MAHLE furnishes, including, without limitation, foundations or lifting or moving equipment, Seller agrees to inspect same before use thereof and to be fully and completely responsible for the adequacy thereof.
- 21.2.2 Seller or its mover shall provide insurance against any harm to MAHLE or its employees, Sellers or the mover's employees, or the public arising out of its activities hereunder. The minimum combined single limit of such insurance is to be \$5,000,000, written by an insurer reasonably acceptable to MAHLE. In addition, Seller shall maintain broad form property damage liability insurance covering the activities described in this Section. All policies shall name MAHLE as an additional insured.

## 22 Remedies

- 22.1 The rights and remedies reserved to MAHLE in the Contract will be cumulative with and in addition to all other legal or equitable remedies. In any action brought by MAHLE to enforce Seller's obligations in connection with the production or delivery of Equipment or transition support, or for possession of property, the parties agree that MAHLE does not have an adequate remedy at law and MAHLE is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief). MAHLE shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of this Contract, unless Seller is the prevailing party.

## 23 Notices

- 23.1 All notices pursuant to this Contract shall be in writing and, unless otherwise expressly stated in this Contract, are to be transmitted in any of the following ways: (i) mailing by certified mail, return

receipt requested, with first-class postage prepaid, effective five (5) days after posting; (ii) mailing by recognized overnight service utilizing receipts, delivery charges prepaid, effective one (1) business day following deposit; (iii) fax where an electronic proof of transmission generates at the time of sending, effective on the date of transmission; (iv) email, subject to proof of transmission, effective on the date of transmission; or (v) MAHLE's electronic system for communication with its suppliers, effective on the date of transmission. A copy of any notice to MAHLE must be sent attention MAHLE Legal Department.

## 24 Miscellaneous

- 24.1 Waiver. Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in this Contract, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- 24.2 Severability. If any term of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Contract will remain in full force and effect.
- 24.3 Survival. Except as otherwise provided in the Contract, Seller's obligations to MAHLE survive termination of the Contract.
- 24.4 Interpretation. No provision may be construed against MAHLE as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Contract.
- 24.5 Use of MAHLE's Name. Seller will not, without first obtaining MAHLE's written consent, advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller contracted with MAHLE to furnish MAHLE the Equipment pursuant to the Contract or any terms of the Contract (including prices), or use MAHLE's name, the name of its associated companies, its trademarks or trade names, or its products in any press release, advertising or promotional materials. If Seller places on the Equipment a MAHLE trademark and/or identifying mark, as specified by MAHLE, or if Equipment specified in the Contract are peculiar to MAHLE's design, the Equipment will not bear the trademark or other designation of the maker or Seller and Seller will not sell similar goods to anyone other than MAHLE.
- 24.6 Relationship of Parties. Seller and MAHLE are independent contracting parties and nothing in the Contract will make either party the employee, agent or legal representative of the other for any purpose. The Contract does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Except as approved by MAHLE in writing, Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Contract. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of MAHLE, and are not entitled to employee benefits or other rights accorded to MAHLE's employees. MAHLE is not responsible for any obligation with respect to employees or agents of Seller or its contractors.
- 24.7 Third-Party Beneficiaries. MAHLE's subsidiaries and affiliates are express third party beneficiaries of this Contract, and any such subsidiary or affiliate may exercise the rights and remedies of MAHLE hereunder as if such party were a party to this Contract.
- 24.8 Conflict of Interest. Seller represents and warrants that its performance of the Contract will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Contract is in effect, Seller and those of its employees and contractors participating in the performance of the Contract will refrain from any

activities that could present a conflict of interest with respect to Seller's relationship with MAHLE or its performance of the Contract. Additionally, Seller must disclose instances where Seller's employee or the employee's family member has a relationship with a MAHLE employee who can make decisions that will affect the Seller's business before entering into negotiations with MAHLE. Seller's employees shall not have any business discussions with family members employed by MAHLE that could influence business transactions involving the Seller. MAHLE is entitled to terminate the Contract at any time, without any penalty, should MAHLE receive information indicating that Seller has given any agent or employee of MAHLE any compensation, gratuity, gift or remuneration of any value in connection with the solicitation or transaction of business with MAHLE.

24.9 Assignment and Subcontracting. Without prior written consent of MAHLE, Seller may not assign this Contract or subcontract the performance of its duties hereunder to any third party. In the event of a MAHLE-approved assignment or subcontract, Seller retains all responsibility for the Equipment and related services provided pursuant to the Contract, including all related warranties and claims, unless MAHLE otherwise expressly agrees in writing. MAHLE shall have the right to assign any benefit or duty under this Contract to any of its affiliates upon notice to Seller without Seller's consent.

24.10 Jurisdiction and Applicable Law; Arbitration.

24.10.1 MAHLE and Seller shall first attempt to resolve any disputes arising under the Contract through good faith negotiations.

24.10.2 The Contract shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan without regard to its conflicts of law provisions, as if MAHLE and the Seller entirely performed all transactions between them in the State of Michigan and in the United States of America, exclusive of their choice of law rules. The parties expressly consent to the sole and exclusive jurisdiction and venue, to the maximum extent permitted in accordance with the law, of the State courts located in Oakland County, Michigan or the federal courts in the Eastern District of Michigan, Southern Division, for all lawsuits brought by either party arising out of or related to the Contract.

24.10.3 The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract or any agreement or dispute between the parties.

24.10.4 Arbitration. At any time before or within thirty (30) days following the service of process in a legal action, MAHLE may, with written notice to Seller, elect to submit any dispute regarding the Contract, other than requests for injunctive or declaratory relief, to binding arbitration. The arbitration proceedings shall be conducted before a panel of three arbitrators (one appointed by each party and the neutral appointed by the other two arbitrators) in accordance with the Commercial Rules of the American Arbitration Association including application of the Optional Rules for Emergency Measures of Protection and shall be governed by the *United States Arbitration Act*. The arbitration shall be conducted in the city and state, district or province of MAHLE's principle place of business, and the language of the arbitration shall be in English. The arbitrators shall issue a written opinion setting forth findings of fact, conclusions of law and the basis for the arbitrator's decision, which may include an award of legal fees and costs.

24.10.5 Seller shall continue to perform their obligations under the Contract without setoff for any matters being contested.

24.11 Supplier Code of Conduct. Seller expressly agrees to adhere to MAHLE's Supplier Code of Conduct (the "Code of Conduct"), as revised by MAHLE from time to time. The Code of Conduct is

available at [www.mahle.com](http://www.mahle.com). Seller is responsible for keeping current regarding the terms of the Code of Conduct and ensuring its continued adherence to same.

24.12 Diversity Initiative. MAHLE encourages its sellers to use diverse suppliers. A diverse supplier is a business establishment that meets one or more of the following conditions: (i) a small business, as defined in Title 15, §632 of the United States Code and related regulations; (ii) a small business owned and controlled by socially disadvantaged individuals (at least fifty one (51) percent of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); or (iii) a business that is at least fifty one (51) percent owned by a woman or women who also control and operate the business. Upon MAHLE's request, Seller will provide MAHLE with information regarding Seller's diversity or the diversity of Seller's sub-suppliers including the percentage of the Equipment and related services, based on dollar value, provided by diverse suppliers.