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**MAHLE NORTH AMERICA RAW MATERIAL SELLERS**  
**PRODUCTION PURCHASING**  
**GENERAL TERMS AND CONDITIONS**  
**EFFECTIVE DATE: SEPTEMBER 2021**

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- 1 The Parties and Materials Covered by the Contract
- 2 The Contract
- 3 Quantity; Blanket Orders; Material Releases
- 4 Shipping and Delivery
- 5 Price and Payment
- 6 Competitiveness
- 7 Inspection; Non-Conforming Materials
- 8 Standards and Policies
- 9 Changes
- 10 Warranties
- 11 Indemnification
- 12 Inspection and Audit
- 13 Customer Requirements
- 14 Duration and Termination of the Contract
- 15 Intellectual Property
- 16 Proprietary Information
- 17 Insurance; Waiver of Liens
- 18 Excusable Delay
- 19 MAHLE 's Liability
- 20 Limitation on Assignment and Subcontracting
- 21 Compliance with Laws
- 22 Remedies
- 23 Notices
- 24 Diversity Initiative
- 25 Miscellaneous

## MAHLE NORTH AMERICA RAW MATERIAL SELLERS

### PRODUCTION PURCHASING GENERAL TERMS AND CONDITIONS

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

- 1.1 Parties. MAHLE, as used in these MAHLE North America Raw Material Purchasing General Terms and Conditions (“Terms”), means the buyer identified on the face of MAHLE’s Master Business Award Letter or Purchase Order, which may be any of the MAHLE North American entities. Seller is identified on the face of the Master Business Award Letter or Purchase Order.
- 1.2 Materials. These Terms apply to the purchase of the raw materials (any materials to be used in the manufacture of MAHLE’s products, including, but not limited to, chemicals, reinforcement and other fillers, polymers, fabrics, textiles, or metals, hereinafter referred to as "Materials") identified in the Master Business Award Letter or Purchase Order issued by MAHLE to Seller.

#### **2 The Contract**

- 2.1 Terms of the Contract. The following documents collectively constitute the “Contract”: (i) Master Business Award Letter; (ii) these Terms; (iii) Purchase Order; (iv) Material Releases to Seller pursuant to MAHLE’s Purchase Order; (v) Exhibits and other documents attached to the Contract; and (vi) 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 as follows: first, the Master Business Award Letter; second, the Purchase Order; third, any documents referenced in the Purchase Order signed by both parties; fourth, Exhibits and other documents attached to the Contract; fifth, applicable Customer Requirements; and sixth, these Terms. Customer means any entity to which MAHLE, directly or indirectly, sells Materials, or sells any goods or services into which MAHLE incorporates the Materials, including any original equipment manufacturer and any upper tier supplier to an original equipment manufacturer (“Customer”).
- 2.2 Seller Acceptance. The Contract is an offer by MAHLE to purchase the Materials from the Seller pursuant to the terms of the Contract. The Contract is formed when the Seller accepts the offer from MAHLE. This occurs upon the earlier of: (a) the Seller beginning work or performance with respect to any part of the Contract; (b) the Seller notifying MAHLE of its acceptance of the offer; or (c) 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 and such additional or different terms 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 Materials and supersedes any prior agreements, prior orders, quotations, proposals, negotiations or understandings of the parties regarding the Materials, whether written or oral. No modification shall be effective unless in writing and signed by MAHLE's authorized purchasing representative.

### **3 Quantity; Blanket Orders; Material Releases**

- 3.1 Material Releases. Unless specified differently in the Contract, Seller shall deliver Materials in strict conformance with the dates, times, quantities and delivery locations identified by MAHLE as firm orders in releases, manifests, broadcasts or similar releases ("Material Releases"). Time, quantities and location are of the essence pursuant to the Contract and Seller agrees to 100% on-time delivery of the quantities and at the times specified by MAHLE. Section 3.4 shall govern any information that is not identified in a Material Release.
- 3.2 Capacity. By accepting the Contract, Seller warrants that it can manufacture or produce up to 120% of any production capacity requirements specified in the request for quotation or otherwise, as agreed by MAHLE in writing, without the imposition of overtime charges or other surcharges. If MAHLE's requirements exceed 120% of such capacity requirements, then Seller shall promptly propose a plan for satisfying such increased requirements, which Seller shall implement upon MAHLE's written approval as a "change" in accordance with §9.
- 3.3 Resources. Seller is responsible for obtaining and maintaining all inventories, and other resources needed to manufacture the Materials necessary to meet MAHLE's delivery requirements. MAHLE shall have no obligation to purchase raw materials, inventory or Materials manufactured beyond those identified as firm orders in Material Releases.
- 3.4 Blanket Orders. If the Contract does not specify a fixed quantity or states zero, "blanket," or "per release," then MAHLE is placing a Blanket Order ("Blanket Order"). If the Contract is a Blanket Order, then MAHLE shall purchase the percentage of MAHLE's requirements for the Materials specified in the Contract. If a Blanket Order does not state a specific percentage, then the percentage requirement is 100% and Seller will provide MAHLE with 100% of MAHLE's requirements for Materials. In instances where MAHLE commits in the Contract to purchase its Materials exclusively from Seller or where the Blanket Order is for 100% of MAHLE's requirement for Materials, then MAHLE will purchase its Materials exclusively from Seller. In any instance, MAHLE may purchase and use parts from other suppliers for purposes of: (i) trial production testing or similar purposes; and/or (ii) protecting against actual or potential shortages or disruptions in supply from Seller, as expressly permitted in the Contract.
- 3.5 Forecasts. Seller acknowledges that any estimates or forecasts of production volumes or

length of program, whether issued before or during the term of the Contract and whether from MAHLE or its Customer: (i) are for informational purposes only, (ii) are subject to change from time to time, (iii) do not bind MAHLE or its Customer, and (iv) do not modify the duration of the Contract as set forth in §14.1. Seller's reliance upon any estimates or forecasts of production volumes or length of program is at its own risk and Seller bears all costs associated with any changes or discrepancies between such estimates or forecasts and the actual production volumes or length of program. Seller cannot use any changes or discrepancies between the estimates or forecasts and the actual production volumes or length of the program as a basis to terminate its contractual obligations to provide Materials to MAHLE or as a basis to request a higher price for the Materials.

- 3.6 EDI. MAHLE may require Seller to participate in electronic data interchange ("EDI") or a similar inventory management program, at Seller's expense, for notification of Material Releases, shipping confirmation and other information. MAHLE may require Seller to utilize any other MAHLE designated electronic communication system for payment, logistics, quality or other purpose. Seller agrees that any MAHLE designated communication system satisfies any legal requirement for a writing or signature.

## 4 Shipping and Delivery

- 4.1 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 Materials CPT, Seller's dock.
- 4.2 MAHLE Requirements.
- 4.2.1 Seller shall properly pack, mark, and ship Materials, with proper related documentation, 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.
- 4.2.2 Seller shall comply with the requirements of the involved carriers, the country of manufacture 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.
- 4.2.3 Seller shall promptly provide MAHLE with a certificate of analysis exhibiting the following set of properties within the requisite specification for the shipped products:

- a. General Information: (i) Seller's name; (ii) factory; (iii) commercial name of Materials; (iv) MAHLE destination factory; (v) MAHLE Purchase Order number; (vi) technical specification code issued by MAHLE, with issue date and number; (vii) Materials production date; (viii) production batch number/code, with bale identification numbers; and (ix) total net weight of batch(es) supplied.
- b. Average analytical data for production batch: analytical data about characteristics classified as "C" and "M" in technical documents, with details of target values, tolerances (or acceptance intervals) and analytical methods used, which must comply with the aforementioned documents.

The certificate of analysis shall be delivered in original together with the delivery of the Materials. The Seller shall be required to send an advance copy of such certificates by facsimile machine or e-mail to the factory at least three (3) days before the Materials are due to arrive.

Delivery of the certificate of analysis shall not bind MAHLE, who shall have the right to refuse the delivery of any Materials to which these certificates apply, until MAHLE has finished acceptance tests or the Seller has solved any doubts or reserves which MAHLE may have. It is hereby agreed that any tests and checks carried out by MAHLE shall be without prejudice to the full and exclusive guarantee and liability of the Seller to provide the Materials, and for this to be in compliance with the Contract.

- 4.2.4 All shipment of goods to MAHLE must include two (2) packing slips. For Materials 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 Materials.
- 4.2.5 MAHLE has no obligation to pay any invoices if Seller fails to meet the requirements stated above and if Seller fails to provide the following information on invoices and packing slips: (i) MAHLE-assigned supplier code; (ii) purchase order number; (iii) part number and quantity of each part number; (iv) the release number on Blanket Orders; (v) the "Ship-to" address; (vi) MAHLE-assigned plant location code; (vii) invoice-to address; and (viii) whether containers used are "returnable" or "non-returnable", in addition to all other invoice requirements of this Contract.
- 4.2.6 Seller certifies that it will ship or make available the Materials, 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.
- 4.2.7 Seller must ship the Materials in accordance with the delivery schedules in the Material Releases. Premium shipping expenses and/or other related expenses incurred to meet the delivery schedules set forth in Material Releases are Seller's responsibility.

- 4.2.8 Seller must receive MAHLE's advance written approval to make each early delivery. If Seller makes Materials available earlier than the agreed delivery date, MAHLE reserves the right to charge Seller for all additional costs incurred for picking up the Materials. If MAHLE does not return the Materials that Seller makes available early, then MAHLE shall store the Materials until the agreed delivery date at Seller's expense. 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.
- 4.2.9 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 Materials until Seller makes the remaining quantity available for pick-up.
- 4.2.10 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 Materials to Seller or warehouse the surplus Materials.
- 4.2.11 To the extent Seller uses MAHLE-owned returnable containers ("Containers"):
- a. Seller shall use MAHLE's required system for monitoring the location of the Containers;
  - b. Seller agrees to properly maintain and service the Containers at its own cost and expense and ensure that the Containers are in proper working condition;
  - c. Seller shall properly store, secure, clean and protect the Containers. Additionally, Seller shall restrict the use of the Containers to competent personnel and assure that the Containers are operated using all safety equipment and/or devices required for operation of the Containers and/or required by law. Seller shall prohibit anyone other than duly authorized personnel of MAHLE from performing any repairs, maintenance or adjustments to the Containers (unless otherwise previously authorized, in writing, by MAHLE) and notify MAHLE immediately of any accident affecting the Containers, setting forth all relevant facts, and thereafter promptly furnishing MAHLE, in writing, all information required by MAHLE in connection therewith. Seller shall be liable for any and all loss or damage to the Containers due to its failure to observe any of the foregoing;
  - d. Seller agrees to pay all costs and expenses necessary to repair any damage to the Containers caused by Seller's overloading, abuse or other improper usage; and

- e. upon the expiration or termination of the Contract, Seller will return all Containers to MAHLE.

4.3 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 Purchase Order, MAHLE may, in its sole discretion: (a) approve a revised delivery schedule; (b) require expedited or premium shipment of any of the Materials; or (c) cover, and adjust any quantity requirement pursuant to the Contract accordingly. Seller shall be liable for all 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 Materials 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.

#### 4.4 Title and Risk of Loss.

4.4.1 Unless otherwise specified, MAHLE shall take title to all Materials upon the earlier of: (i) delivery and acceptance of the Materials at MAHLE's plant; or (ii) payment by MAHLE for all or part of the purchase price of identified Materials.

4.4.2 Seller shall comply with MAHLE's requirements with respect to any Materials to which MAHLE has title but which are in the custody or control of Seller or Seller's suppliers, contractors or agents.

4.5 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 Materials to comply fully with all customs, tariffs and other applicable Laws (as defined in §21). Seller warrants that any such information that it supplies 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 where the Seller exports the Materials.

4.6 Hazardous Materials. Seller agrees to comply with all Laws (as defined in §21) relating to any hazardous or restricted material that is an ingredient or part of the Materials. 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.

## 5 Price and Payment

5.1 Price. The purchase price for the Materials is stated in the Master Business Award Letter or Purchase Order. Unless otherwise stated in the Contract, the purchase price: (i) is a formula price for the duration of the Contract; (ii) is inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Materials; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Unless otherwise agreed by the Parties in writing, Seller recognizes that it assumes all risks with respect to cost changes and variances in volumes and program length. The Price, once determined, is not subject to increase for any reason, including, but not limited to, any increase based upon changes in raw material pricing or labor, unless agreed to in a Master Business Award Letter or a Purchase Order signed by a MAHLE



Authorized Representative. MAHLE and Seller may enter into a price agreement in which case the price agreement will take precedence over this section.

- 5.2 Sales Tax. If the Materials may be exempt from sales taxes, the Contract must include all information necessary for the parties to claim the exemption.
- 5.3 Payment Notice. Unless otherwise stated in the Contract, payment notices, whether electronic or paper copy, shall be issued on or after delivery of the Materials 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.
- 5.4 Payment Terms. MAHLE shall pay invoices for Materials that are not subject to dispute and properly presented in accordance with the requirements of the Contract, including §§4.1 and §5.3. 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 ninety (90) days, after the later of (i) the Materials 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 §5.6. Seller shall pay any amounts owed to MAHLE net thirty (30) days from the date of invoice or demand.
- 5.5 Best Price. The Seller warrants that the prices for the Materials 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 Materials in similar quantities. If the Seller reduces its prices to third parties during the term of the Master Business Award Letter or Purchase Order for the same or similar Materials in similar quantities, the Seller will correspondingly reduce the prices charged to MAHLE.
- 5.6 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 agreements. MAHLE may do so providing prior notice to the Seller.
- 5.7 Payment Not Acceptance. MAHLE's payment for the Materials shall not constitute acceptance of Materials, nor will it limit or affect any of MAHLE's rights or remedies.
- 5.8 Credits. All credits or benefits resulting from the Contract, including trade credits, export credits or the refund of duties, taxes, or fees, belong solely to MAHLE. Seller will promptly provide all information and certificates, including Certificates of Origin, necessary to permit MAHLE, or its Customers, to receive the full amount of such benefits or credits. Seller agrees to fulfill all customs or related obligations, origin marking or labeling requirements, and local content origin requirements.
- 5.9 Direct Dealing. Seller shall not sell (or otherwise supply) the Materials, goods substantially similar to the Materials or any goods substantially similar to the goods sold by MAHLE to

any MAHLE Customer and/or competitor unless Seller has obtained MAHLE's express written approval. This provision does not apply to Materials that are part of Seller's standard stock.

## 6 Competitiveness

Seller agrees to be competitive in price, quality, capacity, delivery and timeliness (collectively defined as "Competitiveness"). Seller agrees that MAHLE may audit Seller, as described in §12, to verify Seller's Competitiveness. In the event MAHLE makes a good faith determination that Seller is not compliant with the 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 §14.2.2.

## 7 Inspection; Non-Conforming Materials

7.1 MAHLE may inspect and evaluate all Materials, and all services at times and places designated by MAHLE, upon reasonable notice to the Seller.

7.2 Rejection. Notwithstanding payment or any prior inspection, MAHLE may revoke acceptance, reject or require correction and/or return to Seller, at Seller's expense and risk of loss, any Materials that are defective and/or non-conforming. If MAHLE rejects defective and/or non-conforming Materials, the Contract quantity will be reduced unless MAHLE otherwise notifies Seller. Seller will not replace reduced quantities without a new Purchase Order or Material Release from MAHLE directing it to do so.

7.3 Corrective Action. Promptly upon learning of defective and/or non-conforming Materials, Seller will develop, document, and implement corrective actions designed to ensure that all Materials are produced in accordance with all applicable quality control policies and standards of MAHLE and its Customers and 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 Materials that is or may become harmful to persons or property. Payment for defective and/or non-conforming Materials 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.

7.4 Return and Replacement. If MAHLE rejects the Materials, subject to corrective action or otherwise defective and/or non-conforming, Seller shall, without prejudice to any other right or remedy of MAHLE, at MAHLE's sole and absolute discretion:

7.4.1 Accept the return, at Seller's sole expense, of the Materials and refund MAHLE the full invoice price, plus all transportation charges and other charges associated with defective and/or non-conforming Materials;

- 7.4.2 Replace the defective and/or non-conforming Materials with conforming Materials, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller;
- 7.4.3 At Seller's sole expense, correct at any time prior to shipment from MAHLE's plant Materials that fail to meet the requirements of the Contract; and/or
- 7.4.4 Reimburse MAHLE for all reasonable expenses that result from any rejection or correction of defective Materials.
- 7.5 Customer Warranty and Liability Claims. Seller understands that MAHLE may be subject to: (i) warranty, liability and other claims from its Customer; (ii) participation in Customer quality and warranty programs, including cost-sharing programs and related obligations (collectively "Customer Warranty Programs"). This Section addresses procedures and obligations that apply when the Customer Warranty Programs are related in whole or in part to the Materials. This Section supplements, not supersedes, Seller's obligations pursuant to other Terms and does not limit MAHLE's rights pursuant to those other Terms.
- 7.5.1 If the Materials contain defects that result in warranty and/or liability claims, the Seller shall carry out tests to establish the cause of these defects and shall document them in a suitable form. MAHLE shall agree to the test extent and depth taking into account its Customer's demands. The Seller shall immediately notify MAHLE about the test results. MAHLE and Seller shall agree to a corrective plan and implementation dates.
- a. The Seller shall carry out regular reviews/audits regarding the effectiveness of the corrective action and shall inform MAHLE accordingly.
- b. If the Seller is unable to carry out its own tests, MAHLE, at Seller's expense, shall perform these tests or arrange for contract with a third party to perform the tests.
- 7.5.2 If MAHLE incurs liability pursuant to a Customer Warranty Program related in whole or in part to the Materials, the Customer's determination of liability shall be conclusive with respect to Seller's liability to MAHLE. If the liability relates in part to the Materials and in part to other causes, the MAHLE liability to the Customer shall be equitably allocated. For purposes of §7.5, "liability" shall include, in addition to a payment to Customer, the replacement of parts, participation in other remediation activities, and all other costs related to such liability.
- 7.5.3 MAHLE and the Seller, or the appropriate representative, shall settle, invoice and remunerate the warranty and/or liability claims. MAHLE may debit Seller's account with the invoiced amount. In the event that a debit is not possible, the payment terms for warranty claims are as follows: (a) net thirty (30) days on claims with no parts to return; and (b) net forty-five (45) days from part ship date on claims requiring inspection.
- 7.5.4 The warranty term for Materials installed in automobiles, trucks, and commercial vehicles shall be the greater of: (i) five (5) years for cars, three (3) years for trucks, and three (3) years for commercial vehicles; (ii) the warranty period

provided by applicable law, (iii) as stated in the Master Business Award Letter between MAHLE and Seller; or (iv) the warranty period offered by MAHLE or its Customer to end-users for the products MAHLE incorporates into the Materials. It is the Seller's responsibility to understand the Customer(s)' policies and procedures for which MAHLE uses the Materials and the warranty term of those Customers. The warranty term shall commence at the date of initial start-up of the vehicle by the end user.

7.6 Warranty for Zero Mileage Defects. This Section describes certain procedures and obligations that will typically apply to zero mileage defects, as defined below. This Section supplements, not supersedes, Seller's obligations pursuant to other provisions of these Terms and does not limit MAHLE's right to modify the procedures or apply different procedures in a particular circumstance

7.6.1 Zero mileage defects are defects that become known:

- a. with respect to incoming Materials;
- b. during further processing of semi-finished products;
- c. on the assembly line or during function tests after assembly at MAHLE;
- d. on the assembly line or during function tests after assembly at MAHLE's Customer; and
- e. up until the delivery of the vehicle in question by MAHLE's Customer to the end user.

7.6.2 MAHLE shall prepare a list of costs incurred to manage these defects. MAHLE shall return the defective Materials to the Seller and shall debit the costs incurred to manage these defects. These costs shall also include the flat-rate charges invoiced by MAHLE's Customer for removal and installation, as well as any other incidental costs (for example transportation, customs, duties, handling charges, packing costs, etc.). If MAHLE and its Customer approve the Seller's remedy for the defect through replacement, the Seller will adhere to MAHLE and/or MAHLE's Customer's time requirements for completion set by MAHLE or MAHLE's Customer. The Seller shall pay any additional costs incurred by MAHLE or MAHLE's Customer due to the delay in replacement, including 'line down' charges.

7.7 MAHLE Losses. The 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 Materials or to comply with the shipping and delivery or other requirements of MAHLE, even if the Seller has cured the failure. This includes but is not limited to compensating MAHLE for:

7.7.1 any amounts charged by Customer(s) to MAHLE including flat-rate charges;

7.7.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by MAHLE, determined in such manner and in such amount as reasonably determined by MAHLE; and

- 7.7.3 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 inclusion of Materials sold by Seller.

## 8 Standards and Policies

- 8.1 Seller will conform to all quality control and other standards and inspection systems as established or directed by MAHLE and its Customer for goods and services similar to the Materials. These include without limitation quality control policies, ISO 9001:2000 or ISO/TS 16949:2002 quality certification, OHSAS 18001 health and safety certification, and ISO 14001 environmental certification including registration. All Materials shall comply with the government regulations in respect of safety relating to restricted, toxic, radioactive and hazardous materials, as well as of environmental, electrical and electromagnetic considerations applicable in the country of manufacture and sale. All Materials and scrap material provided by Seller shall be free from radioactivity. Seller will also participate in MAHLE's supplier quality and development programs as directed by MAHLE. For Materials used in motor vehicle manufacturing, Seller agrees to meet the full requirements of industry Production Part Approval Processes ("PPAP") as specified by MAHLE and its Customer(s) and agrees to present this information to MAHLE upon request, at the level requested. If there is conflict between any provision of the above programs or standards and an express provision of these Terms, these Terms will control.
- 8.2 MAHLE requires that Seller use products from socially responsible sources, originating from non-conflict regions or from certified non-conflict sources. Seller represents and warrants that the Materials supplied or to be supplied to MAHLE under the Contract do not and will not contain throughout the duration of the Contract, any sources not certified as "non-conflict sources." Seller undertakes to know and to require MAHLE suppliers to disclose to the Seller, the sources of products used in its Materials and to eliminate procurement, as soon as commercially practicable, of any products not procured from certified "non-conflict sources." Seller and Seller's suppliers are expected to assist MAHLE in complying with the disclosure requirements of applicable laws.
- 8.3 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.

## 9 Changes

- 9.1 MAHLE Changes. MAHLE reserves the right at any time, by written notice, to change the Contract, or the Materials, including the specifications, composition, sub-suppliers, samples, description of Materials, 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 Price 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 in writing 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 Seller Changes. Seller will not make any change to the specifications except at MAHLE's written instruction or with MAHLE's written approval. Seller shall use its best efforts to identify possible changes to the Materials that may reduce costs, improve quality, or otherwise be beneficial to MAHLE and shall inform MAHLE of the possible changes which may affect the specification, with sufficient detail for MAHLE to assess the advisability of the change.

## 10 Warranties

- 10.1 Seller warrants to MAHLE its Customer(s) and their respective successors and assigns that the Materials will (i) be free from defect, meet industry standards, and conform to the specifications as agreed to by the parties; (ii) be fit and sufficient for the purpose for which MAHLE intends to use the Materials as expressly identified by MAHLE; (iii) be properly stored and packaged prior to and upon delivery to MAHLE to prevent deterioration and corrosion; and (iv) have its title vested in the MAHLE free and clear of any and all liens and encumbrances of any nature and free from any actual or claimed issues regardless of ownership. All Materials must additionally conform to any inspection result or certificate of testing/analysis, including, but not limited to, Mill Sheets, as provided by Seller.
- 10.2 Service Warranties. To the extent Seller provides services related to the Materials, Seller warrants that it will perform all services in a professional and workmanlike manner, consistent with all standards and specifications agreed to with MAHLE and otherwise consistent with industry standards.
- 10.3 Defective Materials or Materials that do not meet the agreed upon specifications, or the specifications of any supplied inspection results, must be replaced with new Materials at Seller's expense in an immediate manner.

## 11 Indemnification

- 11.1 Seller agrees to indemnify, defend and hold harmless MAHLE, its affiliates, Customers, dealers and users of the Materials, or the products in which the Materials 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:

11.1.1 Defect or non-conformity in the Materials;

11.1.2 Noncompliance by Seller with any of its representations, warranties or obligations pursuant to the Contract;

- 11.1.3 Negligence or fault of the Seller in connection with the Materials;
  - 11.1.4 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 Materials or products into which the Materials are incorporated, including labor and administrative costs;
  - 11.1.5 Any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Materials;
  - 11.1.6 Infringement, including claims of direct or contributory infringement or inducement to infringe, of any Intellectual Property Right (as defined in §15.1) relating to Materials provided by Seller, even if they are made to MAHLE's specifications;
  - 11.1.7 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
  - 11.1.8 Challenge to MAHLE's sole right, title and interest in the tooling, or right to possession of the tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.
- 11.2 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.
- 11.3 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 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 under Workers' Compensation Acts, Occupational Disease Acts, Disability Benefits Acts or other employee benefits acts.

## 12 Inspection and Audit

- 12.1 Inspection of Facility. MAHLE may enter Seller's facility at any time to inspect the facility, 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.
- 12.2 Audit. Upon reasonable notice to Seller, either MAHLE, its Customers, or a third party designee, may audit Seller's production facility, Materials and any other MAHLE property, including all pertinent documents, data, data storage and protection, and other information, related to the Contract at facility 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.

- 12.3 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.

### **13 Customer Requirements**

- 13.1 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.
- 13.2 In the event that MAHLE's Customer files or a third party files against MAHLE's Customer a petition in bankruptcy or insolvency and, in the course of such proceeding, MAHLE permits a reduction in the price(s) paid to MAHLE for products incorporating the Materials, MAHLE may proportionally adjust the price paid to Seller for the Materials from and after the date of such reduction by the same percentage as the price paid to MAHLE by its Customer, and the Contract will otherwise remain in effect without modification.

### **14 Duration and Termination of the Contract**

- 14.1 Duration. The Contract is for a definite term. The Contract shall be effective upon the earliest date stated in the Contract, and unless terminated earlier as provided in the Contract:
- 14.1.1 The Contract shall expire on the date specified in the Contract. However, the Contract is extended as prescribed in §14.1.2 if the expiration date is prior to the end of the life of the program for the applicable vehicle production program.
- 14.1.2 Seller agrees to supply the Materials for the life of the program. The program life includes any extensions to the program implemented by MAHLE's Customer. If the Customer extends the life of the program for which the Seller provides MAHLE Materials, then MAHLE and Seller agree that the Contract will extend for that time period.
- 14.1.3 The Contract will automatically renew for successive one-year periods after the end of the program life, including any extensions to the program for the applicable vehicle production program, unless Seller provides written notice of its decision not to renew the Contract at least one-hundred eighty (180) days prior to the end of the program life, including any extensions to the program for



the applicable vehicle production program.

14.1.4 For purpose of this Contract "termination" includes cancellation or any other act or circumstance that ends the Contract, except for expiration.

14.2 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:

14.2.1 For convenience, effective three (3) days following delivery of the Termination Notice or upon such other date specified by MAHLE in writing.

14.2.2 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 without liability to Seller, if Seller (i) breaches any representation, 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, Materials 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.

14.2.3 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.

14.2.4 Change of Control. MAHLE may terminate this Contract, in whole or in part, 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 the 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 the Contract for Cause in accordance with §14.2.2 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.

14.2.5 Insolvency of Seller. 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 the 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.

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

14.2.7 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, defective and/or non-conforming Materials or other requirements under the Contract, provided that MAHLE must provide Seller with notice and details regarding the adjustments.

14.3 Termination by Seller. Seller may only terminate the Contract 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.

#### 14.4 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 §14.8):

14.4.1 terminate promptly all work pursuant to the Contract and transfer title and deliver to MAHLE all finished work completed prior to receipt of the Termination Notice;

14.4.2 transfer title 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 §3.3; and

- 14.4.3 take actions reasonably necessary to protect property in Seller's possession in which MAHLE has an interest until Seller receives disposal instructions from MAHLE.
- 14.4.4 be liable for all costs related to the delivery or replacement, unless stated otherwise in these Terms, of the Materials, including any testing or validation costs necessitated by the Termination of the Contract.
- 14.5 MAHLE's Obligations Following Termination. Subject to §14.7.2, 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:
- 14.5.1 the purchase price for all conforming Materials received by MAHLE prior to Termination Notice or delivered following Termination Notice pursuant to §14.4, §14.8 or at the written direction of MAHLE;
- 14.5.2 any amounts owed for Transition Support pursuant to §14.8.3.
- 14.5.3 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 §14.4, but not to exceed the purchase price of the Materials had Seller completed the Materials, and not to exceed the amounts necessary to satisfy Seller's obligations pursuant to any Material Release, as defined in §3.1, subject to any lead times agreed upon in writing by MAHLE and Seller; (ii) carrying out Seller's obligation pursuant to §14.4.3; and (iii) any other costs or allowances that MAHLE, in its sole discretion, may elect to pay.
- 14.6 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 Materials received by MAHLE prior to expiration and, if applicable, any amounts owed for Transition Support pursuant to §14.8.3.
- 14.7 Limitations on MAHLE's Obligations Following Termination or Expiration.
- 14.7.1 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.
- 14.7.2 MAHLE has no obligation to pay for Materials: (i) in excess of those for which MAHLE was obligated to pay pursuant to §3.3; (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.

- 14.7.3 In the event of a termination of the 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 the Contract, MAHLE shall only be obligated to compensate Seller for any costs pursuant to §14.5.3 to the extent that the Customer reimburses MAHLE for such costs.
- 14.7.4 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 resulting from or related to the termination or expiration of the Contract, except as otherwise expressly agreed in a separate Contract issued by MAHLE.
- 14.8 Transition of Materials 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":
- 14.8.1 Seller will continue procurement and delivery of all Materials 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 Materials as needed;
- 14.8.2 at no cost to MAHLE, Seller will promptly provide all requested information, documentation and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Materials and components; and
- 14.8.3 subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Materials, extraordinary packaging and transportation and other special services approved by MAHLE in writing.
- 14.8.4 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 Intellectual Property

- 15.1 Seller warrants that the Materials and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights. "Intellectual Property Right" means any right arising

pursuant to United States or foreign law relating to patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secrets.

- 15.2 If Seller, or any person employed by or working pursuant to the direction of Seller, in the performance of the Contract conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable; (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted; or (iii) any improvement in the design of the Materials or any alternative or improved method of accomplishing the objectives of this Contract (collectively, "Inventions"), MAHLE shall own such Inventions and the Inventions are MAHLE's confidential and proprietary property, whether or not such Inventions or any portions thereof can be copyrighted or patented or not. Seller shall immediately disclose all Inventions to MAHLE and shall cooperate, and cause its employees to cooperate, in executing any documents and taking any other actions necessary to patent, copyright, assign to MAHLE or otherwise perfect or protect such Inventions for the benefit of MAHLE.
- 15.3 Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions, confidential or Proprietary Information (as defined in §16.1) of MAHLE or Intellectual Property Rights of MAHLE, whether for its own purposes, except to satisfy its obligations pursuant to the Contract, for the Customer or any other third parties, without MAHLE's prior written consent.
- 15.4 Seller hereby grants to MAHLE, its subsidiaries and affiliates, and their respective successors and assigns, and MAHLE hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with providing the Materials to MAHLE or the Customer, pursuant to: (i) any Intellectual Property Rights owned or controlled by Seller or its affiliates, and relating to the Materials, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Materials, and (ii) any works of authorship fixed in any tangible medium of expression, including drawings, prints, manuals and specifications, furnished by Seller in the course of Seller's activity pursuant to the Contract, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Contract (all items in clauses (i) and (ii) above, collectively, "Seller's Intellectual Property", and such License in respect thereof, the "License"). Seller acknowledges and understands that the License shall be effective from the first date of delivery of the Materials pursuant to the Contract and extend for so long as MAHLE has contractual obligations to the Customer. The License is intended to be subject to 11 U.S.C. §365(n), as an executory agreement pursuant to which MAHLE has license rights to Seller's Intellectual Property, and is supplementary to any other rights of MAHLE pursuant to the Contract and any other agreement with Seller.
- 15.5 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

## 16 Proprietary Information

- 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 Materials.

- 16.2 The restrictions and obligations of §16.1 will not apply to information that: (a) is already publicly known at the time of its disclosure by MAHLE; (b) after disclosure by MAHLE becomes publicly known through no fault of Seller; or (c) 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 §16.2, the terms of that agreement will control.
- 16.3 All documents containing Proprietary Information relating to the Materials 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).

## **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, or its subcontractors, carries adequate workers' compensation, and comprehensive general liability insurance coverage, including contractual liability insurance applicable to the 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 and/or loss payee(s) on all such insurance policies,

including the comprehensive general liability policy, and 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 §17.1.

- 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 Materials 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.

## **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, 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); (ii) contract disputes; (iii) Seller's financial distress; (iv) Seller's bankruptcy or insolvency of one or more of Seller's suppliers (v) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (vi) 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 the Contract. Such notice shall include all relevant information with respect to such threat, 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 Materials to a level sufficient to sustain deliveries during such delay; and (iii) modifying the Materials, 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 Materials 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 Materials pursuant to the Contract; (iii) have Seller provide Materials from other sources in quantities and at a time requested by MAHLE and at the price set

forth in the Contract; and/or (iv) 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 §14.2.2.

- 18.5 Seller shall timely notify MAHLE of any actual or potential labor dispute or other labor disruption as soon as Seller becomes aware of the same. 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 Materials in a neutral warehouse site to be located in the United States at least fifty (50) miles from Seller's manufacturing locations during any anticipated labor disruption or prior to the expiration of any labor contract. Seller shall have this supply of Materials 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 Materials in accordance with §5.4 and to pay the specific termination related amounts described in §§14.5 and 14.8.
- 19.2 In no event shall MAHLE be liable to Seller for any damages of any kind, including but not limited to, for anticipated profits, whether direct or indirect, interest, penalties or incidental, compensatory, consequential, punitive, multiple, or exemplary damages or liabilities in connection with the Contract, whether for breach of contract, tort liability, late payment, property damage, personal injury, illness, or death or otherwise.

## **20 Limitation on Assignment and Subcontracting**

- 20.1 MAHLE issues the Contract to the Seller in reliance upon its personal performance of the duties imposed. Without prior written consent of MAHLE, Seller may not: (i) assign the Contract or delegate the performance of its duties hereunder; (ii) assign any accounts receivable from MAHLE to third parties; or (iii) enter or offer to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Materials for MAHLE or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller. In the event of any approved assignment (including without limitation subcontract), sale or delegation authorized by MAHLE, Seller shall retain all responsibility for Materials, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.
- 20.2 Seller will ensure that the terms of its contracts with its suppliers and contractors provide MAHLE and its Customer with all of the rights specified in the Contract.
- 20.3 Any subcontracting, assignment or delegation does not relieve Seller of any responsibility pursuant to the Contract.



- 20.4 MAHLE shall have the right to assign any benefit or duty under the Contract to any third party upon notice to Seller with or without Seller's consent.

## 21 Compliance with Laws

- 21.1 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 manufacture, sale, delivery and use of the Materials or otherwise relating to the Contract. Upon request, Seller will submit to MAHLE evidence of such compliance.
- 21.2 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.
- 21.3 Conflict of Interest. There is the potential for a conflict of interest if a 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. For that reason, Seller must disclose these types of relationships to MAHLE before entering into negotiations with MAHLE. Additionally, Seller's employees shall not have any business discussions with family members employed by MAHLE that could influence business transactions involving the Seller.
- 21.4 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.
- 21.5 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.

## 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.
- 22.2 In any action brought by MAHLE to enforce Seller's obligations in connection with the production or delivery of Materials 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).

- 22.3 MAHLE shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of the Contract, unless Seller is the prevailing party.

## 23 Notices

- 23.1 All notices pursuant to the Contract shall be in writing and, unless otherwise expressly stated in the Contract:

23.1.1 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 Diversity Initiative

- 24.1 MAHLE encourages its Sellers to use diverse suppliers.

24.2 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); and (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 inform MAHLE annually the percentage, based on dollar value of the content provided by diverse suppliers of the part purchased hereunder, as well as the basis for claiming that such content was provided by diverse suppliers.

## 25 Miscellaneous

25.1 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 the 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.

25.2 Severability. If any provision of the Contract, or portion of any provision, is declared unenforceable, the balance of the Contract or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.

- 25.3 Survival. Except as otherwise provided in the Contract, Seller's obligations to MAHLE survive termination of the Contract.
- 25.4 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.
- 25.5 No Publicity. Seller will not 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 to furnish MAHLE the Materials pursuant to the Contract or any terms of the Contract (including prices), or use any of MAHLE's trademarks or trade names in any press release, advertising or promotional materials, without first obtaining MAHLE's written consent.
- 25.6 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. 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, except as approved by MAHLE in writing. 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.
- 25.7 Third-Party Beneficiaries. MAHLE's subsidiaries and affiliates are express third party beneficiaries of the Contract, and any such subsidiary or affiliate may exercise the rights and remedies of MAHLE hereunder as if such party were a party to the Contract.
- 25.8 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.
- 25.9 Jurisdiction and Applicable Law; Arbitration.
- 25.9.1 MAHLE and Seller shall first attempt to resolve any disputes arising under the Contract through good faith negotiations.
- 25.9.2 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.

25.9.3 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.

25.9.4 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 principal 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.

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

IN WITNESS WHEREOF, we acknowledge receipt of and accept the Contract without exception.

<b>Seller's Name:</b> _____	<b>MAHLE's Name:</b> _____
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____