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**MAHLE NORTH AMERICA NON-PRODUCTION PURCHASING**  
**GENERAL TERMS AND CONDITIONS**  
**EFFECTIVE DATE: FEBRUARY 2022**

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## **NON-PRODUCTION PURCHASING GENERAL TERMS AND CONDITIONS**

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**NON-PRODUCTION PURCHASING  
GENERAL TERMS AND CONDITIONS**

**1 The Parties and Goods and Services Covered by the Contract**

- 1.1 Parties. MAHLE, as used in these Non-Production Purchasing General Terms and Conditions ("Terms"), means the buyer 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 Goods and Services. These Terms apply to the purchase of the goods and/or services ("Goods and Services") 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) Purchase Order; (ii) these Terms; (iii) any documents referenced in the 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 as follows: first, the Purchase Order; second, any documents referenced in the Purchase Order; third, Exhibits and other documents attached to the Contract; and fourth, these Terms.
- 2.2 Seller Acceptance. The Contract is an offer by MAHLE to purchase the Goods and Services 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.

### **3 Prices and Payment Terms**

- 3.1 Price. The purchase price for the Goods and Services 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 raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes from those estimated or expected; (ii) is inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Goods and Services; 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.
- 3.2 Invoices. Seller shall promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information that MAHLE reasonably requires after Seller delivers the Goods and/or Services. MAHLE may withhold payment until MAHLE has received and verified a correct and complete invoice or other required information. Payment terms shall be at least ninety (90) days following MAHLE's receipt of the Goods and/or Services at MAHLE's designated facility unless otherwise agreed. Unless otherwise agreed, Seller shall accept payment by check or other cash equivalent, including electronic funds transfer.
- 3.3 Currency. MAHLE shall pay Seller in United States dollars unless MAHLE specifies another currency in the Purchase Order.
- 3.4 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.

### **4 Changes**

MAHLE reserves the right, by written notice, to make changes to the Contract at any time. Seller shall not make price increases based on modifications to the Goods or Services unless MAHLE approves the price increases in writing before Seller makes the modification. Seller shall notify MAHLE immediately if Seller makes any material changes to its Goods or Services, suppliers, or the methods used to supply its Goods or Services.

### **5 Delivery**

- 5.1 Time and quantities are of the essence. Seller must make delivery of the Goods and/or provide Services at the location and within the time that MAHLE specifies in the Contract. If MAHLE does not specify any terms in the Purchase Order, then Seller must deliver the Goods Free Carrier (FCA), MAHLE's selected location. If Seller fails to make deliveries of the Goods or perform Services at the agreed time, Seller will pay all costs that the Parties incur to meet the specified delivery

schedule, including all of MAHLE's damages. Seller must inform MAHLE immediately if Seller experiences difficulties procuring materials, or manufacturing Goods in a way that could prevent Seller from supplying the Goods or performing the Services within the stipulated period. If MAHLE does not state a delivery date in the Contract, MAHLE may request a delivery date at any time. Seller agrees to 100% on-time delivery of the Goods and/or complete performance of the Services and at the times specified by MAHLE, as stated in the Contract. MAHLE may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments and/or Services, neither of which entitles Seller to modify the price for Goods or Services. MAHLE is not obligated and may refuse to accept early deliveries, late deliveries, partial deliveries, or excess deliveries.

5.2 Returnable Containers. 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.

## **6 Packing, Marking and Shipment**

6.1 Shipping Specifications. When applicable, Seller shall properly pack, mark and ship Goods, with proper related documentation, in accordance with MAHLE's instructions provided in the Contract and the country of destination, including use of specified carrier or method of transportation, point of destination, and shipping on Saturdays and holidays. Seller shall also secure the lowest transportation rates, meet carrier requirements and assure delivery free of damage and deterioration. Seller is

responsible for the Goods until delivery according to the delivery terms on the Purchase Order. The prices MAHLE states on the Purchase Order include all charges and expenses for containers, packing and crating, and transportation. All containers, packing and crating materials will become the property of MAHLE on delivery. MAHLE may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipment of the Goods according to the delivery terms on the Purchase Order. A packing slip must accompany each such shipment. If a shipment is to a consignee or agent of MAHLE, Seller must forward a copy of the packing slip concurrently to MAHLE. If Seller does not send the packing slip, the Parties agree that the count or weight by MAHLE or its agent or consignee is final and binding on Seller with respect to such shipment. Unless MAHLE otherwise designates on the Purchase Order, then-current Incoterms shall apply to all shipments. If Seller has not made Goods ready for delivery in time to meet MAHLE's delivery schedules, Seller shall be responsible for additional costs of any resulting expedited or other special transportation. Shipping documents shall not state or display pricing information or any of MAHLE's confidential or proprietary information. If MAHLE provides no packing requirements, Seller shall pack the goods in accordance with the applicable industry standards and requirements.

- 6.2 Shipping Documentation. Seller will: (i) provide MAHLE a shipping document with each shipment showing the Purchase Order number, number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (ii) promptly forward the original bill of lading or other shipment receipt for each shipment according to MAHLE's instructions and carrier requirements.
- 6.3 Hazardous Material. Seller must immediately notify MAHLE in writing when Seller becomes aware of any hazardous or restricted material that is an ingredient or part of the Goods, as well as any component, design, or defect in the Goods that is or may become harmful to persons or property. If possible, Seller will include appropriate labels on all products, containers, and packing notifying MAHLE of any hazardous material, including without limitation disposal and recycling instructions, Material Safety Data Sheets ("MSDS") or the local equivalent, and certificates of analysis. Seller must advise carriers and MAHLE regarding how to take appropriate measures while handling, transporting, processing, using, or disposing of the Goods, containers, and packing. The Location Environmental Management Representative designee must receive all MSDS for review and record retention. Furthermore, Seller agrees to comply with all applicable national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including without limitation the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC.
- 6.4 Noncompliance. Seller shall reimburse MAHLE for any liabilities, expenses and costs that MAHLE incurs as a result of improper packing, marking, routing, or shipping or any other noncompliance with the requirements of this Section.

## **7 Inspections and Rejections**

- 7.1 Goods. In order for MAHLE to verify Seller's compliance with the Contract, MAHLE may inspect and evaluate all Goods (including all tooling and material used in their manufacture), at times and places designated by MAHLE. Seller will perform its inspections as designated by MAHLE and Seller will make inspections systems, procedures and records available to MAHLE upon request. Notwithstanding payment or any prior inspection, MAHLE may reject, require Seller to correct, or return to the Seller (all at Seller's expense and risk of loss) any shipments that do not conform to the agreed requirements.
- 7.2 Services. If the Services do not meet MAHLE's requested specifications, MAHLE shall have the right, in addition to any other right or remedy that it may have, to demand that Seller correct the Services that MAHLE determined were unsatisfactory or that MAHLE rejected. MAHLE reserves the right, even after having paid for the Services, to file a claim against Seller regarding any of the Services that MAHLE considers unsatisfactory or defective or failing to meet any of the specifications set forth in the Contract.
- 7.3 Remedies. Without limiting its remedies, after notice to Seller, MAHLE may either: (i) replace or correct any nonconforming Goods or Services and charge Seller the cost of such replacement or correction, (ii) terminate, cancel or rescind the Contract for default pursuant to Section 17.2.2, (iii) require Seller, at MAHLE's option and at Seller's expense (including applicable shipping, administrative and labor costs), to either repair or replace the non-conforming Goods, or (iv) require Seller to re-perform the Services, without charge, until Seller's Services meet the agreed specifications.
- 7.4 Recall or Repair Campaign. In the event it is determined that a Good or Service of Seller purchased hereunder creates or contributes to a safety recall due to a product defect, or non-compliance with applicable law, Seller shall be liable for costs and damages resulting from a recall, including but not limited to the payment of the cost to repair or recall and correction, including labor and administrative costs, based upon Seller's proportionate responsibility for the defect or non-compliance. This Section shall not limit Seller's responsibility under other provisions hereof.
- 7.5 Payments. MAHLE may withhold any payments related to Goods or Services subject to a dispute until resolution of such dispute.

## **8 Warranty**

- 8.1 Goods. Seller warrants that the Goods: (i) will be selected, designed (to the extent designed by Seller or any of its affiliate companies, subcontractors, agents or sellers, even if the design has been approved by MAHLE), manufactured and assembled by Seller based upon MAHLE's and/or its customers' stated use and be fit and sufficient for MAHLE's purpose, (ii) will conform to and comply with all specifications, standards, drawings, descriptions or samples and performance requirements that MAHLE furnished to or specified with Seller, (iii) will be merchantable, (iv) will be free from defects in design (even if MAHLE approved the design), material and workmanship, (v) do not infringe or contribute to the infringement of any U.S. and/or any other foreign patent or patent right or other third party proprietary right (including any patent, trademark, copyright, moral, industrial design rights or other proprietary right or trade secret) (collectively, "IP Rights"), and (vi) conform to all other applicable laws, orders, regulations and standards in countries where Seller manufactures or sells the Goods

or where third parties manufacture or sell other products incorporating the Goods. Seller warrants that all personnel allocated to manufacture the Goods shall be duly qualified according to the nature of the Goods and according to the specifications agreed herein. Seller further warrants that on delivery MAHLE will receive good title to the Goods, free and clear of all liens, encumbrances, and rights of third parties.

- 8.2 Services. Seller warrants that it has expertise in the Services it is providing to MAHLE. Seller warrants that it will perform the Services in a professional manner using individuals of legal age who are well qualified to perform such work and agrees to provide MAHLE, on request, with any information affirming these qualifications. Seller warrants that it will provide good working conditions for the individuals performing the Services. Seller warrants that it will perform all Services in a good, timely and workmanlike manner acceptable to MAHLE.
- 8.3 Survival of Warranties. The warranties provided in Sections 8.1 and 8.2 are in addition to any other Seller warranties or any warranties implied by law and will survive MAHLE's acceptance and payment.
- 8.4 Notice of Harmful Material. In accordance with and in addition to Section 6.3 (Hazardous Material), Seller warrants that it shall immediately notify MAHLE in writing of any ingredient, component, design or defect in the Goods that is or may become harmful to persons or property.
- 8.5 Notice of Breach. Seller accepts as notice of warranty breach any communication from MAHLE: (1) specifying a defect, default, claim of defect or other problem or quality issue of the Goods that Seller provided MAHLE; and (2) to Seller stating that the Goods or Services are in breach of any warranty or that Seller is in default.
- 8.6 Defense. To mitigate its damages, MAHLE may fully defend any claim from another party that any Goods supplied and/or Services provided by Seller are defective, in breach of warranty, or otherwise do not meet applicable legal or contractual requirements because such other party may attempt to hold MAHLE responsible for problems caused in whole or in part by Seller. Seller and MAHLE agree that such defense is in the interest of both Seller and MAHLE. Seller waives the right to argue that such defense limits MAHLE's right to assert a claim against Seller for breach of warranty, contribution, indemnification or other claim arising from or related to the subject matter of any of the foregoing.

## **9 Seller's Stock**

- 9.1 Loss or Damage. In the event that Seller has stock in consignment or any other property in MAHLE's facility ("Seller's Stock"), MAHLE shall not be liable for loss or damage of any kind thereto. Seller acknowledges that it has obtained its own insurance coverage sufficient to cover the loss of or damage to any of Seller's Stock, notwithstanding any minimum limits required under any Purchase Order. MAHLE may offset any amounts due to Seller for reasonable storage fees of Seller's Stock.
- 9.2 No Release to Third Parties. MAHLE shall not release custody of the Seller's Stock to any third party without the prior written consent of Seller. MAHLE agrees to return Seller's Stock on reasonable demand to Seller at Seller's expense.



- 9.3 Removal of Seller's Stock. Upon MAHLE's written consent, which shall not be unreasonably withheld, Seller or its agents shall have the right during regular business hours or other time as mutually agreed in writing, to enter upon MAHLE's premises where Seller's Stock is located and remove Seller's Stock at Seller's expense and without disruption of MAHLE's normal business.

The foregoing right of access shall continue for so long as it is reasonably necessary to remove Seller's Stock without disruption to MAHLE's business. Seller is fully liable for any and all loss or damage to MAHLE's property during any removal of Seller's Stock, as well as any and all costs, damages, and fees including but not limited to reimbursement for any and all loss of business to MAHLE's customers, any and all costs of production disruption of MAHLE's customers, quality inspections, and replacement of MAHLE's property or damage repairs due to removal of Seller's Stock.

Seller shall not remove property under joint D-U-N-S Numbers without the prior written consent of MAHLE.

## **10 Insurance**

Seller will obtain and maintain in force, at its own expense, workers compensation, comprehensive general liability, and automobile insurance policies in amounts and coverage sufficient to cover all claims related to the Goods or Services provided pursuant to the Contract. Unless MAHLE indicates otherwise by written notice requesting a higher amount, the insured amount must be at least equivalent to \$1,000,000 per occurrence. Such policies will name MAHLE as an additional insured thereunder and 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 a certificate evidencing the foregoing insurance, and MAHLE must receive at least thirty (30) days prior written notice of cancellation or non-renewal of any of Seller's policies or of any material change or modification in terms, conditions, or amounts of Seller's coverage. If Seller does not purchase the required insurance, MAHLE may purchase such insurance and Seller must reimburse MAHLE immediately upon request. In the event Seller does not reimburse MAHLE for such insurance payment, then MAHLE may deduct the insurance payment from the price of the Goods and/or Services.

## **11 Indemnification**

- 11.1 General Indemnification. Seller will defend, indemnify, and hold MAHLE harmless against all claims or demands, liabilities, losses, damages, costs and settlement expenses, including attorney's fees, that MAHLE incurs in connection with Seller's performance of the Contract.

- 11.2 Employees. Seller shall indemnify, defend, and hold MAHLE and its parent company, affiliates, and subsidiaries and their respective officers, directors, shareholders, employees, agents, and legal representatives (collectively, the "Indemnitees") harmless from and against any claims, liabilities, causes of action, proceedings, civil actions, costs, fines, losses, penalties, or expenses (including, but not limited to, attorneys' fees and litigation costs) (each a "Claim," and, collectively, "Claims") arising from or in connection with any acts or omissions of Seller's employees, agents, or subcontractors, or any labor action or other legal matter or claim for which Seller has assumed responsibility pursuant to the Contract as an employer. Seller totally assumes its

position as the employer of the personnel it hires, retains, or assigns to render Services and/or to sell, manufacture, or install Goods.

## **12 Intellectual Property**

- 12.1 The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by MAHLE in connection with the performance of the Contract are the property of MAHLE and may be covered by one or more MAHLE patents, patent applications or copyrights. Seller will handle all of this information in such a manner to ensure that it is not used for any purpose detrimental to the interests of MAHLE. Unless expressly provided in this order or otherwise agreed to in writing by MAHLE, Seller's disclosure rights regarding Goods and/or Services related to this order, and information relating thereto shall be limited to any valid copyright thereon or patent Seller may hold covering the manufacture, use and sale of the Goods and/or Services.
- 12.2 Seller is granted no right over a patent, trade secret, trademark, service mark, copyright, mask work, or other IP Rights of MAHLE in information, documents, or property that MAHLE makes available to Seller under this order, and is only granted the right to use MAHLE's IP Rights to produce and supply Goods and/or Services to MAHLE in terms set forth hereof.
- 12.3 All services, products, tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), and all other deliverables, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture and other intellectual property and information created, developed, conceived or first reduced to practice by or on behalf of Seller (including without limitation by any person or entity employed by or working under the direction of Seller) or acquired by Seller under any Purchase Order, and for which MAHLE has agreed to reimburse Seller, along with all related intellectual property rights, are the sole and exclusive property of MAHLE.

- 12.4 Seller shall promptly disclose in an acceptable form and assign to MAHLE all such deliverables, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture and other intellectual property and information. Seller shall cause its employees to sign any papers necessary to enable MAHLE to file applications for patents throughout the world and to record rights in and to such intellectual property. To the extent that such intellectual property includes any works of authorship (including, without limitation, software) created by or on behalf of Seller, such works shall be considered “works made for hire”, and to the extent that such works do not qualify as “works made for hire,” Seller hereby assigns to MAHLE all right, title, and interest in all copyrights and moral rights therein.
- 12.5 When Seller fails to render or provide or repair any defective Goods, or reperform any deficient or defective Services under the warranties set forth in this order, Seller acknowledges and agrees that MAHLE, and/or MAHLE’s subcontractor(s) and its customers (including their affiliates and subcontractors) shall have the worldwide, irrevocable right to repair/ Goods delivered, and/or reperform/have reperfomed Services provided under the Contract without payment of any royalty or other compensation to Seller.
- 12.6 Seller hereby grants to MAHLE, its subsidiaries and affiliates, and their respective successors and assigns, and MAHLE hereby accepts, a non-exclusive, irrevocable, worldwide, license, including the right to sublicense others in connection with providing the Goods and/or Services to MAHLE or its customers, under: (i) patents, industrial designs, technical information, know-how, processes of manufacture and other intellectual property, owned or controlled by Seller or its affiliates, and relating to the Goods and/or Services, to make, have made, repair, rework, reconstruct, rebuild, relocate, use, sell, offer to sell and import the Goods and/or Services, and (ii) any works of authorship fixed in any tangible medium of expression (including without limitation drawings, prints, manuals and specifications) furnished by Seller in the course of Seller’s activity under 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”).
- 12.7 Seller acknowledges and understands that this License shall be effective from the first date of delivery of the Goods and/or provision of the Services (or such earlier date as specified below) and extend for so long as MAHLE, or MAHLE’s subsidiaries and affiliates, have contractual obligations to its customers relating to the Goods and/or Services. Any and all royalties are included in the purchase price as agreed upon in accordance with the terms herein.
- 12.8 Seller agrees: (i) to defend, hold harmless and indemnify MAHLE, its affiliates and successors against any and all suits, actions, or proceedings that a third party may bring against MAHLE or any of its associated companies for actual or alleged direct or contributory infringement or inducement to infringe any IP Right and against any resulting damages or expenses (including attorney’s and other professional fees, settlements and judgments) arising in any way in relation to the Services and/or Goods provided by the Contract (including, without limitation, their manufacture, purchase, use and/or sale), including such claims in which Seller provided only part of the Goods and/or Services, and Seller expressly waives any claim against MAHLE that such infringement arose out of compliance with MAHLE’s requested

specifications, (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 MAHLE for infringement of any IP Right, including claims arising out of specifications furnished by MAHLE, and (iii) that if the sale or use of the Services and/or Goods is enjoined or, in MAHLE's sole judgment, is likely to be enjoined, Seller shall, at MAHLE's election and Seller's sole expense, (1) secure a license of the IP Right that permits Seller to continue supplying the Goods and/or Services to MAHLE, or (2) modify the services and/or goods so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Goods and/or Services, or (3) replace the Goods and/or Services with non-infringing but equivalent Goods and/or Services.

### **13 Proprietary Information**

13.1 "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 (iii) 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 Goods and/or Services.

13.2 The restrictions and obligations of Section 13.1 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 this Section 13.2, the terms of that agreement will control.

13.3 All documents containing Proprietary Information relating to the Goods and/or Services 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 Section 13.1 above.

## **14 Competitiveness**

Seller shall be competitive in price, quality, capacity, delivery and timeliness. MAHLE may audit Seller to verify Seller's competitiveness. In the event that MAHLE determines in good faith that Seller fails to be competitive, Seller agrees to provide an action plan and timetable within ten (10) days of such determination to cure the deficiency. If Seller fails to provide a plan in a timely manner or the plan fails to cure the deficiency within the agreed upon timetable, MAHLE may terminate all or part of the Contract.

## **15 Price Warranty**

Seller warrants that the prices for the Goods or Services sold to MAHLE hereunder are no less favorable than Seller currently extends to any other customer for the same or similar Goods or Services in similar quantities. If Seller reduces its prices to others for such Goods or Services during the term of the Contract, Seller will reduce the price to MAHLE for such Goods or Services correspondingly. Seller warrants that prices shown on the Contract are complete, and that no additional charges of any type will be added without MAHLE's express written consent.

## **16 Excusable Delay**

16.1 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.

16.2 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.

- 16.3 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 Goods and/or Services to a level sufficient to sustain deliveries during such delay; and (iii) modifying the Goods and/or Services, suppliers, production processes or other resources to allow the continuation or resumption of production.
- 16.4 During any Excusable Delay or failure to perform by Seller, MAHLE may at its option and at Seller's expense: (i) purchase Goods and/or Services from other sources and reduce its schedules to Seller by such quantities and/or Services, 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 Goods and/or Services pursuant to the Contract; (iii) have Seller provide Goods and/or Services 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 Section 17.2.2.

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 Goods 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 Goods warehoused at least ten (10) working days prior to the expiration of any such contract or anticipated dispute.

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

- 17.1 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, the Contract shall expire on the date specified in the Contract.
- 17.2 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:
- 17.2.1 For Convenience. Effective three (3) days following delivery of the Termination Notice or upon such other date specified by MAHLE in writing.
- 17.2.2 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, Goods and/or Services 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.

17.2.3 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 Section 17.2.2 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.

17.2.4 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.

17.2.5 Maintenance of Liabilities. Termination by MAHLE shall not relieve Seller of any liability pursuant to the Contract.

17.2.6 MAHLE's Election Not to Terminate. 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, relationship, performance and delivery requirements under the Contract as MAHLE deems appropriate to address changes in Seller's circumstances.

17.3 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.

## **18 Remedies**

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 Goods and/or Services, 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 the Contract unless Seller is the prevailing party.

## **19 MAHLE's Premises**

In addition to its indemnification obligations described in Section 11 (Indemnification), if the Seller performs any work on MAHLE's premises or utilizes the property of MAHLE, whether on or off MAHLE's premises, (i) the 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) the Seller's employees, contractors and agents will comply with all regulations and MAHLE's policies 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.

## **20 Compliance with Laws**



- 20.1 Compliance. In providing the Goods or Services pursuant to the Contract, Seller will comply with all applicable Federal, State, and Local Laws, and regulations. Seller will defend, indemnify and hold MAHLE harmless from and against any and all claims, losses, damages, costs and expenses resulting from or arising out of any failure of Seller or Seller's employees, agents and subcontractors to comply with any applicable governmental regulations and/or statutes.
- 20.2 Material Safety Data Sheets. If Seller provides or brings potentially hazardous materials on site at a MAHLE facility, in accordance with ISO 14001 requirements, Seller shall provide Material Safety Data Sheets ("MSDS") as applicable. All materials brought on a MAHLE site are to be labeled in accordance with a Hazardous Communication Requirement. MSDS shall be directed to the MAHLE designated Environmental Management Representative at the location for review and record retention.
- 20.3 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.
- 20.4 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
- 20.5 Improper Gifts. 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.
- 20.6 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 Customs**

- 21.1 Seller will promptly notify MAHLE in writing of material or components used by Seller in filling the Contract, which Seller purchases in a country other than the country in which the Goods are delivered to MAHLE. Seller will furnish MAHLE with any

documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise MAHLE of any material or components imported into the country of origin and any duty included in the purchase price of the Goods.

- 21.2 The rights to and benefits of any duty drawback, including rights developed by substitution and rights which may be acquired from Seller's suppliers and export credits, to the extent transferable to MAHLE unless prohibited by applicable law, are the property of MAHLE, including transferable credits or benefits resulting from the Contract, trade credits, export credits or rights to the refund of taxes, or fees. Seller will provide all certificates (including USMCA Certificate of Origin), documentation and information and take any necessary steps to claim preferential duty treatment under applicable trade preference regimes or to participate in any duty deferral or free trade zone programs of the country of import, drawback any duty, taxes or fees paid to, and to receive export credits from, the government of the country of origin upon exportation of the goods from such country.
- 21.3 Seller agrees to fulfill any customs or USMCA related obligations, origin marking or labeling requirements, and local content origin requirements. Seller shall obtain all export licenses and authorizations and pay all export taxes, duties and fees unless otherwise stated in this Agreement, in which case Seller shall provide all information and records necessary to enable MAHLE to obtain those export licenses or authorizations.
- 21.4 The responsibility for customs duties will be determined in accordance with the INCOTERM stated in the Contract. If MAHLE is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including, but not limited to, marking, anti-dumping and countervailing duties, to the extent permitted under the law of the country of importation. Seller will provide to MAHLE or the appropriate governmental authority all documentation and information required by law or regulation or otherwise necessary to determine the proper minimum duty to be paid upon the importation of the goods into any country or to obtain any refunds or drawbacks of duties paid.
- 21.5 Seller shall promptly notify MAHLE in writing of any material or components used by Seller in filling a Contract that Seller purchases in a country other than the country in which the Goods are delivered. Seller shall furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements.
- 21.6 Seller will advise MAHLE if the importation or exportation of the Goods requires an import or export license. Seller will assist MAHLE in obtaining any such license.
- 21.7 Seller shall ensure a customs declaration to the lowest legal tariff classification. Seller will provide to MAHLE and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Goods into the country in which the Goods are delivered to MAHLE. Seller warrants that the information regarding the import or export of the Goods supplied to MAHLE is true and correct in every respect and that all sales covered by the Contract will be made at no less than fair value under the anti-dumping laws of the

countries to which the Goods are exported. To the extent any Goods are to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism initiative.

21.8 Seller shall promptly advise MAHLE of any material or components imported into the country of origin and any duty included in the products' purchase price. If the products are manufactured in a country other than the country in which Goods are delivered, Seller shall mark products "Made in [country of origin]."

## **22 Confidentiality**

22.1 Definitions. "Confidential Information" means the accounting records, as well as any financial, administrative and business information disclosed by or concerning to MAHLE, including, without limitation, any documentation or information that is directly or indirectly related to finance, legal, tax, reports, databases, business practices, operations, plans or activities, information on the personnel or the business of MAHLE and/or third parties disclosed by MAHLE, as well as data, policies, or notes that may be included in the accounting records or to which Seller be given access by its relation with MAHLE in a physical, verbal, or electronic manner or through any kind of material support, and which may be delivered directly by MAHLE and/or its service providers, agents, employees, or to which information it has access or comes to know indirectly on its own.

22.2 Nondisclosure. Seller will maintain the confidentiality of, and will not disclose or use, and will require its employees to maintain the confidentiality of, and not disclose or use, (a) the terms of the Contract; or (b) any Confidential Information that MAHLE furnishes to Seller or its employees or that Seller or its employees learn during performance of the Contract. Seller will disclose such information only to employees who require such knowledge to use in the ordinary course and scope of their performance of the Contract. MAHLE may require Seller or its employees to sign separate confidentiality and/or intellectual property agreements. Specifically, Seller, and as appropriate, employees of Seller will:

- (a) Keep any and all Confidential Information strictly confidential and not disclose such Confidential Information, whether orally or in writing, electronically or otherwise, to any person and for any reason whatsoever, and not use it for its own benefit or for the benefit of a third party. The termination of the Contract shall not modify or terminate this confidentiality obligation, which shall be in effect as long as the Confidential Information remains as such and has not been held as publicly known by a judicial authority;
- (b) Take all the steps required to keep and protect, at all times, the Confidential Information against thefts, damage, loss, or unauthorized access;
- (c) Make use of the Confidential Information only to the extent necessary to conduct the obligations under the Contract;

- (d) Seller shall notify, promptly and in writing, MAHLE when perceiving any breach or threat of breach of any confidentiality agreement, and shall also provide all the reasonable assistance and cooperation to MAHLE;

22.3 Exceptions. The obligations set forth in this Section will not apply to any Confidential Information that: (a) is or becomes publicly known through no wrongful act or breach of any confidentiality; (b) was already known to Seller before receipt from MAHLE as evidenced by written documents; or (c) is independently developed by Seller without reference to the information.

22.4 Compelled Disclosure – In the event Seller becomes legally compelled to disclose any Confidential Information to a governmental authority or similar entity, Seller agrees that prior to such disclosure it will provide MAHLE with advance written notice and a copy of the documents and information relevant to such legal action so that Seller and/or MAHLE may seek a protective order or other appropriate remedy to protect their interests, and Seller further agrees that in the absence of a protective order or other remedy it shall furnish only that portion of the requested information that it is advised by a written opinion of counsel is legally required to comply with such request.

22.5 Enforcement. Seller understands and agrees that if it breaches any of its confidentiality obligations that MAHLE's remedies at law are inadequate. Accordingly, MAHLE will be entitled to specific enforcement and injunctive relief preventing further breach in addition to any and all other remedies at law or in equity (such remedies being cumulative).

## **23 Notices**

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

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); 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 Goods and/or Services 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 Assignment and Subcontracting. 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 Goods or performance of the Services 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 the Goods and/or Services, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

25.9.1 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.

25.9.2 Any subcontracting, assignment or delegation does not relieve Seller of any responsibility pursuant to the Contract.

25.9.3 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.

25.10 Jurisdiction and Applicable Law; Arbitration.

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

25.10.2 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.

25.10.3 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.

25.10.4 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.

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

25.11 Counterparts/Facsimile Signatures. The parties may sign the Contract in one or more counterparts, each of which the parties shall deem an original, and all of which when taken together shall constitute one and the same instrument. Facsimile signatures or signatures by electronic mail in PDF version on the Contract bind the parties as though they were original signatures.