Terms and Conditions for Capital Equipment and Production Tooling Purchases by the North America Based Companies of the MAHLE Group

These Terms apply when referenced in Buyer’s purchase order or other documentation.

1. Offer; Acceptance; Exclusive Terms; Identity of Buyer; Country Supplement

These Terms and Conditions for Capital Equipment and Production Tooling Purchases (collectively, "Terms") apply to the offer of capital equipment, production tooling, production machines, prototype and production tools, fixtures, gages and accessories, dies, molds, with all related software, and accessories (collectively, the "Equipment"). These Terms (as may be revised from time to time) are an offer for Proposal/Quote, the Business Award Letter/Letter of Intent, Buyer’s purchase order, Buyer’s material releases or similar documents (collectively, the "Order") is an offer to Seller for the purchase of Equipment. The Order supersedes all prior agreements, proposals and other communications regarding the Equipment covered by the Order, except that a signed prior agreement and Buyer’s specifications, prints, drawings, statement of work issued by the Buyer, together with any other document incorporated by reference in or to the Order, will continue to apply to the extent not directly in conflict with the Seller. MAHLE and the Buyer may modify these Terms with a written agreement. The Order does not constitute an acceptance of Seller’s offer or proposal made by Seller in whole or in part in that conflicts with the Buyer’s Terms.

2. Pricing and Payment

Seller warrants that the prices Seller quoted for the material that Seller will use to manufacture the Equipment set forth in the Order are no less favorable than Seller currently offers to any other customer for the same or similar materials. If Seller reduces its prices to any other customer for the same or similar material, Seller will correspondingly reduce the prices for the material it quoted to Buyer.

3. Tax

Invoicing and Pricing; Freight;

4. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions

Seller will: (a) properly pack, mark, and transport the Equipment according to the requirements of Buyer, the carriers and the country of destination; (b) route the shipments according to Buyer’s instructions; (c) label or tag each package according to Buyer’s instructions; (d) provide papers with each shipment showing the Order number, amendment or release number, Buyer’s part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller’s name and number, and the bill of lading number; and (e) promptly forward the original invoice and all freight, insurance, and other bills of lading or other shipment receipt for each shipment according to Buyer’s instructions and carrier requirements.

5. Customs; Related Matters

Credits or benefits resulting from the Order, including trade credits, export credits or the refund of any taxes, may be credited by Seller to Buyer, as considered by the Buyer.

6. Service and Replacement Parts

Seller shall sell to Buyer for repair and replacement purposes tools, parts and accessories to the Equipment at the delivered price after application of any type of discount, credit, allowance, rebate, promotion or other financial consideration

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Buyer shall have no obligation to inspect the Equipment or materials during manufacture, prior to delivery or after delivery, but may do so at its sole discretion. Buyer may enter Seller’s facility to inspect the facility, Equipment, materials, and any of Buyer’s property related to the Order. Buyer’s inspection of the Equipment whether during manufacture, prior to delivery, or within a reasonable time after delivery, without voiding the acceptance of any work-in-process or finished goods. Buyer’s acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Order releases Seller from the obligation of testing, inspection and quality control. Buyer’s refusal or acceptance of the Equipment is subject to inspection, evaluation and testing at the facility designated by Buyer, and notwithstanding any prior approval of the receipt of the Equipment, Buyer has not accepted the Equipment unless (a) such in-facility inspection, evaluation and testing or inspection does not relieve Seller of the requirements of the Order with all applicable terms of the Order, including through the production of a reasonable number of sample parts, and (b) Seller receives a signed writing from Buyer’s authorized representative that acknowledges acceptance of the Equipment with all applicable terms of the Order. If Seller ships/delivers defective Equipment, Buyer may reject the Equipment. Seller shall, at Buyer’s sole discretion: (i) accept return of the defective Equipment, at Seller’s risk and expense at full invoice price, plus transportation charges, and replace the defective Equipment as Buyer deems necessary; (ii) repair the defective Equipment so that it meets the requirements of the Order; (iii) refund all payments by Buyer and pay any expense that Buyer incurred or (iv) pay all Buyer’s expenses, and Buyer may terminate the Order. Seller will document corrective actions within a commercially reasonable period after乙方 testing and repair. Payment for nonconforming Equipment is not an acceptance, does not limit or impair Buyer’s right to assert any legal or equitable remedy, and does not relieve Seller’s responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or Buyer’s direct or indirect customers may conduct a routine audit at Seller’s production facility for the purpose of quality control and delivery verification. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section. Seller grants to Buyer access to all pertinent information of Seller and Seller’s subcontractors for purposes of auditing Seller’s and/or subcontractor’s charges pursuant to this Order.

8. Changes
Buyer reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of the Equipment. Buyer also reserves the right in its sole discretion to change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may change the supply of purchased components from itself or from third parties. Seller will promptly make any such requested change. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer of its request in writing within five (5) business days after receiving notice of the change.

Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. Seller will not make any change in the Equipment’s design, specifications, packaging, marking, shipping, price or date or place of delivery except at Buyer’s written instruction or with Buyer’s written approval.

9. Warranties
Seller expressly warrants and guarantees to Buyer, to Buyer’s successors, assigns and ultimate end users, the Equipment delivered to Buyer will: (a) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by Buyer and will be safe for use in conformance with such specifications and shall be sufficiently durable so that a change, repair or replacement of the Equipment is necessary; (b) conform to all applicable laws, orders, regulations; (c) be merchantable and free of defects (as defined by Seller), manufacture, materials and workmanship; (d) be designed, selected, (to the extent identified by Seller), manufactured and assembled by Seller based upon Buyer’s stated use and be fit and sufficient for the purposes intended by Buyer, (e) perform in accordance with the highest prevailing industry standards for the type of Equipment provided; (f) be free and clear of third-party rights, liens or encumbrances; (g) include all applicable manuals; (h) to the extent Seller performs services, be designed, manufactured, delivered, installed, repaired by qualified and licensed personnel; and (i), not incorporate or consist of commercial surplus, reconditioned material, or reconditioned material or components except by Buyer’s written request. Buyer’s approval of any design, drawing, material, process, specifications or Equipment will not relieve Seller of these warranties. The foregoing warranties will survive delivery, inspection and payment. In the event Buyer determines that any of the Equipment is unsatisfactory, defective or inferior in quality or equipment in any way under the terms of the Order, Buyer may, at its own expense, expend reasonable money, and at Buyer’s option, (a) replace the nonconforming Equipment with Equipment conforming to the ratings, specifications or any other requirements set forth in the Order (including, without limitation, Seller’s warranties), Buyer, at its option and in addition to any other rights and remedies to which the Order or applicable law grant Buyer, may (A) require Seller to repair the defective Equipment at Seller’s cost and expense, to promptly repair or replace the Equipment, (B) retain the Equipment at an adjusted price determined by Buyer in its sole discretion, (C) hold the Equipment at Seller’s risk and expense pending Seller’s specific instructions, or (D) return the Equipment to Seller at Seller’s risk and expense for replacement, credit or full or partial refund, as Buyer shall direct. Buyer may also, in its discretion, accept further delivery of Equipment, in whole or in part, pursuant to the Order. Buyer shall reimburse Buyer for all of its costs and expenses relating to the installation, removal, storage, handling, packing and/or transporting of any such unsatisfactory, defective or inferior Equipment, in whole or in part, or otherwise nonconforming Equipment, and Seller shall assume all risk of loss or damage in transit to the Equipment returned by Buyer. Notwithstanding the above, Buyer reserves the right to repair the Equipment without voiding any of Seller’s warranties or other obligations pursuant to the Order. Seller shall reimburse Buyer for all costs and expenses relating to any such repair.

10. Preventative Maintenance
Seller will provide Buyer with a complete and comprehensive preventative maintenance plan for the Equipment at a Buyer designated location and with Buyer’s acceptance. The preventative maintenance plan shall include, without limitation, at least two complete sets of maintenance manuals for all Equipment purchased by Buyer (including at Buyer’s request one in a foreign language that Buyer specifies), as well as a detailed bill of material. Upon Buyer’s request, Seller will provide to Buyer a complete copy of (a) the source codes for any software incorporated in the Equipment along with any additional information reasonably necessary so that a trained programmer of general proficiency may maintain and support any such software and (b) a running object code version of such software.

11. Training
Seller will provide any and all necessary training and training materials to Buyer for the Equipment at the initial stage of installation or any defect or additional instruction to Buyer. Seller will provide such training at Buyer’s request at the times and locations that Buyer specifies. Seller shall provide the training materials in a computerized format in English and, at Buyer’s request, one additional language. Where Seller obtains the Equipment from a third party for resale to Buyer, Seller shall cause such third party to provide Buyer with the training as described in this Section at no expense to Buyer and as a condition of Seller’s purchase from the third party.

12. Supplier Quality and Development Required Programs
Seller will conform to the quality control standards and inspection system, as well as related standards and systems (including without limitation, quality control policies, and the most current ISO 9001 and ISO/TS 16949 standards that Buyer establishes or directs. Seller will also participate in supplier quality and development programs of Buyer as directed by Buyer. As a condition to buy the supplier performance evaluations, and (c) minority business expectations, as described and accessible on Buyer’s website at http://www.mahle.com.

13. Remedies
The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other legal or equitable remedies. Buyer’s damages shall include reasonable professional fees that Buyer incurs and any incidental and consequential damages that Buyer suffers.

14. Compliance with Laws; Ethics
Seller and any Equipment supplied by Seller, shall comply with all applicable laws, including but not limited to all international, national, federal, state, and local laws, regulations, and conventions, Buyer reserves the right to request the provision of their compliance with the applicable laws, regulations, and conventions that relate to the manufacture, labeling, import, export, licensing, approval or certification of Equipment, including laws relating to transportation of hazardous materials, communications with the United States and other countries regarding hazardous substances (MSDS sheets), environmental matters, child labor,
forced labor, freedom of association, harassment, discrimination, health, safety, wages, benefits, hours, working conditions, subcontractor selection and motor vehicle safety. All materials that Seller uses in the Equipment or otherwise manufactured for the Equipment will satisfy current governmental and safety constraints on restricted, toxic or hazardous materials as well as environmental, electrical, and electromagnetic considerations that apply to the countries of manufacture, sale, transportation and destination.

15. Indemnification

To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer’s customers (both direct and indirect, including manufacturers of vehicle parts that Buyer produced, manufactured or designed using the Equipment), directors, officers, employees, agents, insurers, and dealers and users of the products sold by Buyer (or the vehicles in which the products are incorporated) and all of their respective agents, successors and assigns (the “Indemnified Parties”), against all damages, losses, claims, liabilities and costs (including reasonable attorneys and other professional fees, settlements and judgments) arising out of or resulting from: (a) any defective Equipment, (b) any actual or alleged breach of or failure by Seller to comply with any representation, warranty, covenant or other term and condition in any Order (including any part of these Terms), (c) any negligent or wrongful act or omissions of Seller’s agents, employees or subcontractors or any services performed by Seller, its agents, employees or subcontractors.

If Seller performs any work on Buyer’s or Buyer’s customer’s premises or utilizes the property of Buyer’s or Buyer’s customer, whether on or off Buyer’s or Buyer’s customer’s premises: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe, (ii) Seller will not possess, use, sell, transfer or be under the influence of controlled drugs or substances on the Equipment or in the premises. To the fullest extent permitted by law, Seller will indemnify and hold the Indemnified Parties harmless from and against any liability, loss, damages, costs and expenses (including attorneys’ fees), claims, suits, and demands for any loss, property damage, bodily injury, including death, or personal injury sustained by Buyer, its employees, agents or customers or by Seller, its employees or agents, or by any other party arising out of Seller’s possession or use of the Equipment or otherwise arising out of this Order. In the event that a claim is made by an employee of Seller against Buyer, Seller shall indemnify Buyer against any resulting loss or liability to the same extent as if the claim was made by a non-employee of Seller and Seller waives without reservation any defense or immunity it may have pursuant to any applicable workers compensation law or other statute, judicial decision or constitution in any jurisdiction disallowing or limiting such indemnification.

16. Insurance

Seller will maintain the insurance coverage listed below or in additional amounts as may be reasonably requested by Buyer, in each case naming Buyer and its affiliates and customers as “additional insured.” Such policies shall be written by an insurance company reasonably satisfactory to Buyer and having an insurance company rating of A- or above. Such policies shall be written as primary policies not contributing with any other insurance policy in respect of coverage that Buyer may carry. Seller will furnish to Buyer a certificate showing compliance with this requirement of certified copies of all insurance policies that are 10 days prior written notice of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities pursuant to the Order. Minimum coverage shall be as follows:

<table>
<thead>
<tr>
<th>COVERAGE</th>
<th>LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employer’s liability</td>
<td>US$100,000 / each accident, disease, or death, limit each employee</td>
</tr>
<tr>
<td>General liability insurance, including Contractual liability coverage</td>
<td>US$2,000,000 / each occurrence general aggregate, products and completed operations aggregate (including endorsement for coverage for recall costs)</td>
</tr>
<tr>
<td>Umbrella or Excess Liability insurance, which shall include Commercial General Liability</td>
<td>US$5,000,000 / each occurrence and annual aggregate</td>
</tr>
<tr>
<td>Comprehensive auto liability insurance</td>
<td>US$100,000 / each occurrence, combined single limit</td>
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17. Insolvency

Seller grants Buyer a security interest in the Equipment and Seller agrees to sign any UCC-1 forms or other documents reasonably required by Buyer to perfect Buyer’s rights. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to (a) execute and record on Buyer any notice financing statements with respect to the Equipment that Buyer determines are reasonably necessary to protect Buyer’s interest in the Equipment. Buyer, at its option, may take immediate possession of the Equipment immediately to terminate the Order, without liability to Seller. If any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer 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; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a bankruptcy court appoints a receiver or trustee for Seller; (e) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations pursuant to the Order; or (f) Seller executes an assignment for the benefit of creditors. Buyer, or a third party designated by Buyer, will at any time review the financial health of the Seller and its affiliates to determine if Seller is paying its lower tier suppliers. Seller will fully cooperate with Buyer and will promptly provide copies of or access to the requested documents including, without limitation, financial statements, forecasts, business plans, banking contacts and loan documents. Buyer will use the financial information provided pursuant to this Section to determine Seller’s ability to perform pursuant to the Order.

18. Termination for Breach or Nonperformance

Without limiting any other provision of the Order or Buyer’s rights pursuant to applicable labor laws, at Buyer’s option, immediately take title to the Equipment or terminate all or any part of the Order. Without liability to Seller, if Seller: (a) reorganizes or breaches any of the terms of the Order; (b) fails or threatens not to deliver the Equipment or perform services in a timely manner or (c) enters or offers to enter into a transaction that includes a sale of a substantial portion of the Equipment or the production of the Equipment for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller, then the meaning of Section 409A of the Internal Revenue Code and regulations issued thereunder may result in the payment by Buyer to any non-discretionary agreement related to information disclosed to Buyer in relation to such transaction.

19. Termination

In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may, at its option, immediately terminate all or any part of the Order for any reason by giving written notice to Seller. Buyer may also terminate the Order, without notice, upon the institution by or against either party of a bankruptcy, receivership, or other proceedings that could lead to the situation specified in subsection (c) above, provided that upon Seller’s request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.
raw materials that Seller fabricates or procures, or general administrative burden charges from the performance of the Order, except as otherwise expressly agreed in a separate Order issued by Buyer. Buyer’s obligations under paragraphs (i), (ii), (iii), and (iv) of this Section will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of termination (or such shorter period as may be required by Buyer’s customer), its termination claim, which will consist exclusively of the items of Buyer’s obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller’s records before or after payment to verify amounts requested in Seller’s termination claim. Buyer will have no obligations for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller.

20. Excusable Delay

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, priorities, or allocations imposed, court injunctions or orders, or other government causes; embargoes; fires; floods; earthquakes; explosions; storms; tornadoes; 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 purchase materials, parts, or services, or inability to be excused by an event or occurrence that would itself be an Excusable Delay; (ii) contract disputes; (iii) a Seller’s financial distress; (iv) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (v) Seller’s failure to comply with applicable law or to take actions reasonably necessary to schedule performance or performance of any custom, export-import and/or Government requirement for which there is public notice.

Seller shall immediately give written notice to Buyer of any event or occurrence that threatens, or actually delays Seller’s performance pursuant to this Order. Such notice shall include all relevant information with respect to such threat, including the possible duration and impact of a delay.

Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential delays under any Excusable Delay or failure to perform by Seller. Buyer may at its option and at Seller’s expense: (i) purchase the Equipment from another source without liability to Seller; (ii) require Seller to deliver to Buyer, at Buyer’s expense, all Equipment in its current condition, or an alternative Equipment maker to complete the manufacturer of the Equipment. (iii) have Seller subcontract in order provide Equipment; and/or (iv) if requested by Buyer in writing, Seller will, within five (5) days of Buyer’s request, provide an adequate assurance that the delay in Seller’s performance resulting from any Excusable Delay will not exceed 30 days. If Seller provides Buyer with adequate assurance within five (5) days of Buyer’s request or the Excusable Delay results in a failure or delay to perform that has lasted for more than thirty (30) days, termining Buyer or any party in part, in accordance with Section 18.

Seller shall timely notify Buyer of any actual or potential labor dispute.

21. Proprietary Rights

Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors and assigns, and any third party that is contributory infringement or inducement to infringe any proprietary right (including any patent, copyright, trademark, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorney and other professional fees, settlements and judgments, arising in any way in relation to Equipment procured by Seller (including, without limitation, their manufacture, purchase, use and/or sale), and Seller expressly waives any claim against Buyer that a patent infringement or contributory infringement was unknowingly or without negligence or similar claim, in any way related to a third-party claim asserted against Seller or Buyer for infringement of any proprietary right (including patent, copyright, moral, industrial design right or misuse or misappropriation of trade secret), (b) that Buyer, its subcontractors and/or direct or indirect customers have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, rebuilt, and Equipment delivered under the Order without payment of any royalty or other compensation to Seller, (c) to the extent Seller’s design, engineering, operation, use and/or maintenance of any manufactured Equipment based on Buyer’s designs, drawings or specifications may not be used for Buyer’s own use or sold to third parties without Buyer’s express written consent, (e) to assign to Buyer each invention, discovery or improvement (whether or not patentable or patent application is filed) that is conceived or first reduced to practice by Seller, or by any person employed or working on behalf of Seller, in the performance of the Order, (f) to promptly disclose in an acceptable form to Buyer all such inventions, discoveries or improvements, including all relevant information and other materials and items to perform the Order or for which Buyer has agreed to reimburse Seller (collectively, “Buyer’s Property”), will become Buyer’s property (including package of title) as it is fabricated or acquired and will remain Buyer’s property regardless of payment. Buyer’s Property will be held by Seller as a bailee-at-will.

22. Buyer’s Property

To the extent Buyer furnishes to Seller, either directly or indirectly, any tooling (including but not limited to fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessories, and accessories), packaging and all documents, standards or specifications, manuals, technical or other information and other materials and items to perform the Order or for which Buyer has agreed to reimburse Seller (collectively, “Buyer’s Property”), will become Buyer’s property (including package of title) as it is fabricated or acquired and will remain Buyer’s property regardless of payment. Buyer’s Property will be held by Seller as a bailee-at-will.

23. Set-Off; Recoupment

In addition to any right of setoff or recoupment provided by law, all amounts due Seller will be considered net of indebtedness and other obligations of any third party to Buyer or any of its subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will have the right to
set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, including any disputed, contingent or unliquidated claims, any amounts due or to become due to Buyer or its subsidiaries or affiliates from Seller or its affiliates or subsidiaries. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

24. Confidentiality

Seller acknowledges that Buyer will provide it with or Buyer will develop proprietary and confidential information in connection with or under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information of Buyer in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use or allow others in the purpose of the Order, any proprietary and confidential information of Buyer. Following the expiration or termination of the Order, upon Buyer's request Buyer will promptly deliver to Buyer any and all documents and other media, including all copies thereof and in any form that contain or relate to Buyer's proprietary or confidential information. Seller's obligations under this Section will continue for a period of five years from the date of disclosure of information covered by this Section, unless a longer period is specified in writing by Buyer. The restrictions and obligations contained in this Section will not apply to information that: (a) is already publicly known at the time of disclosure to Buyer; (b) after disclosure by Buyer 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 Buyer or was independently developed by Seller without use or reference to Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of such modified agreement and this Section, the Terms will control.

25. No Publicity

Seller will not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

26. Relationship of Parties

Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party. 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 Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to any benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

27. Conflict of Interest

Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller acknowledges that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order.

28. Non-Assignment

Seller may not assign or delegate its obligations pursuant to the Order without Buyer's prior written consent that Buyer may withhold for any or no reason. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for the Equipment in the event of an assignment or delegation with respect to all representations, warranties and claims, unless otherwise expressly agreed in writing by Buyer.

29. Sales Tax Exemption

The Equipment purchased pursuant to the Order may be subject to state or local sales taxes. In case such taxes are charged to Buyer by Seller, Buyer will state the tax identification number and/or other exemption information in the Order or provide otherwise to Seller.

30. Governing law; Jurisdiction; venue

This Order is to be construed according to the law of the State of Michigan, without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Seller agrees that the forum and venue for any legal action or proceeding concerning this Order will be brought in the United States District court for the Eastern District of Michigan. Buyer may bring any action or proceeding in the United States District court sitting in Oakland County, Michigan, so long as one of such courts will have subject matter jurisdiction such suit, action or proceeding, and Seller irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrecoverably waives to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court shall have been brought in an inconvenient forum.

31. Arbitration

At Buyer's option, exercised by written notice any time within thirty (30) days following the service of process in a legal action, any dispute regarding the Equipment, the Order, the validity of the Order or any of these contents, or any other matter between the parties (other than requests for injunctive or declaratory relief) will be resolved by binding arbitration, conducted in the English language using a single arbitrator selected by the parties. The arbitration will be conducted under the American Arbitration Association (AAA) and under Rules26 through 31 of the Rules of Civil Procedure, in Farmington Hills, Michigan unless the parties agree otherwise. If the parties agree to use an arbitrator within thirty (30) days of the selection of the arbitration location, each party will select a person from the AAA-approved commercial arbitrator list and those two people will jointly select a third person from such list who will conduct the arbitration as the sole arbitrator. The arbitrator will issue written findings of fact and conclusions of law, and may award reasonable attorneys' fees and costs to the substantially prevailing party. In no event will the arbitrator award punitive or exemplary damages. The award of the arbitrator will be enforceable in any court of competent jurisdiction, and the failure of either party to comply with any such action will be entitled to its attorneys' fees and costs. The United States Federal Arbitration Act shall govern the arbitration provisions of this Section.

32. Language; Severability; No Implied Waiver

The parties acknowledge that these Terms and all documents are written in the English language only and the English language version of these Terms shall govern. Any translation of the English language version of these Terms shall have no force or effect. If any term of the Order is invalid or unenforceable under any statute, regulation, treaty or other rule of law, the term will be deemed reformed or deleted, as the case may be, but otherwise the Parties agree to comply with applicable law. The remaining provisions of the Order will remain in full force and effect. The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, nor will the failure of either party of a breach of any provision of the Order constitute a waiver of any later or of each of the same or other provision of the Order.

33. Survival

The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

34. Headings

The headings in these Terms are for convenience only and shall not affect their interpretation.

35. Entire Agreement Modifications

Except as described in Section 1, the Order, together with the attachments, exhibits, supplements or other requirements of Buyer specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order. The Order may be amended by a written amendment executed by authorized representatives of each party or, for changes within the scope of Section 8 of these Terms, by a purchase order amendment issued by Buyer. Buyer may modify these Terms with respect to future Orders at any time by posting revised Terms to its web site at http://www.mahle.com and such revised Terms will apply to all Orders issued thereafter.