

## General Conditions of Purchase of the PRC-based Companies of the MAHLE Group

### 1. Determining Conditions

- a) The following General Conditions of Purchase (hereinafter referred to as "these General Conditions") shall apply exclusively to all purchases of the PRC-based companies of the MAHLE Group (hereinafter referred to as "MAHLE") from a PRC or foreign Supplier (hereinafter referred to as the "Supplier"). They shall apply in the same degree to the purchase of production material (for the purpose of MAHLE's own series production, including in particular raw materials, materials, components, parts) as to the purchase of spare parts, tools or machinery as well as other products of any kind (collectively referred to as the "Products"), in so far as the applicability of one of the following provisions of these General Conditions is not restricted exclusively to individual or specified types of purchased items. By delivering its Products to MAHLE the Supplier accepts the present General Conditions. MAHLE and the Supplier are hereinafter jointly referred to as "the Parties" and each individually as a "Party".
- b) The general terms and conditions of business or other different conditions of the Supplier shall not apply unless they have been expressly approved by MAHLE in writing. These General Conditions shall also apply in all cases wherein MAHLE accepts deliveries from the Supplier without objecting to conditions of the Supplier that deviate from these General Conditions (whether MAHLE is aware of such conditions or not). All references or indications by the Supplier to the validity of its general terms and conditions of business are hereby expressly rejected.
- c) These General Conditions shall apply in their current version and shall also apply to all future transactions with the Supplier.
- d) A valid and binding contract shall be concluded between MAHLE and the Supplier, including these General Conditions, when
  - (i) a written order is transmitted from MAHLE to the Supplier, and
  - (ii) the Supplier expressly accepts the order (order confirmation) in writing and the confirmation is received by MAHLE within seven days from the date of the order, or
  - (iii) the Supplier commences delivery of the ordered Products.
 Any order confirmation from the Supplier that differs from the order placed by MAHLE represents a new offer and must be accepted by MAHLE in writing.
- e) Even after the order has been confirmed by the Supplier, MAHLE shall be entitled to withdraw from or amend the order at any time and in any respect, including but not limited to require at any time that the Supplier shall make changes to the Products (in particular in terms of the Products' design and performance). In this case, the Supplier shall inform MAHLE immediately of the impact of this request for change or cancellation, in particular with regard to additional or lower costs as well as the delivery date, and the Parties shall agree a reasonable adaptation of the contract if required.
- f) If the contract or order stipulates that the Products are determined by call-off, then these call-offs shall be binding two days after the instruction is given to the Supplier, unless the Supplier has expressed an objection by then in writing.
- g) In the event that, during the term of a contract concerning the delivery of Products, the Supplier supplies Products that are the subject of the contract or similar in comparable quantities to a third party under more favourable conditions, in particular with regard to price, discounts, technology, quality, terms of payment, delivery periods or other conditions (hereafter the "Conditions"), then the Supplier shall inform MAHLE of this fact immediately and automatically grant MAHLE these more favourable Conditions. The new Conditions shall apply with retrospective effect from the time at which the Supplier has granted these favourable Conditions to the third party.
- d) The invoice shall be sent in triplicate by separate post to the postal address of MAHLE as soon as the Products have been delivered. The invoice must contain the date, order number and Supplier number. If these conditions are not fulfilled, then MAHLE shall not be responsible for any ensuing delays in processing and settling the invoice.
- e) In principle the invoice shall be paid with 3 % cash discount within 30 days after delivery and receipt of the invoice, but at the latest without discount within 90 days after delivery and receipt of the invoice. In case of conflict between GCP (General Conditions of Purchase) and Sourcing Agreement (W-4460CGP-500007-en sourcing agreement), Sourcing Agreement shall prevail.
- f) Payment shall be effected by MAHLE by means of a bank transfer. MAHLE shall be entitled to set off the Supplier's claims for the purchase price against claims of MAHLE or affiliates of MAHLE.
- g) The Supplier shall not be entitled without written consent from MAHLE to assign claims accruing to him from the delivery relations with MAHLE or to have such claims collected by third parties. [Foreign Supplier] Section 354a of the HGB (German Commercial Code) remains unaffected.
- h) The acceptance of the supplied Products and/or their payment by MAHLE shall not constitute the waiving of any later assertion of claims based on defects, damages or any other claims against the Supplier.

### 2. Offer, Offer Documents

- a) Inquiries from MAHLE to the Supplier concerning the Supplier's Products and delivery conditions, or invitations from MAHLE to make an offer shall in no way be binding upon MAHLE.
- b) Orders from MAHLE shall only be valid and binding if placed in writing. It shall not be necessary for MAHLE to sign orders. The written form shall be deemed to have been observed if orders are sent by fax, e-mail or another electronic data transmission system.
- c) Unless otherwise expressly agreed, cost estimates submitted by the Supplier shall be binding and non-remunerable.
- 3. Prices, Most-favoured Treatment, Conditions of Payment
  - a) The price shown in an order shall be binding. [Foreign Supplier] In the absence of a differing agreement, the price shall include packaging and shall be "DDP" (Delivered Duty Paid) in accordance with Incoterms 2000. [PRC Supplier] In the absence of a differing agreement, the price shall include packaging and the Supplier shall deliver the Products to the place designated by MAHLE at the Supplier's own costs.
  - b) [Foreign Supplier] If terms of delivery are agreed in accordance with Incoterms 2000, whereby MAHLE pays for the transportation, the Products shall be transported by a forwarding agent approved by MAHLE. Unless otherwise agreed, however, the Supplier shall assume responsibility for notification of the consignment with the forwarding agent. The Supplier shall inform MAHLE immediately if the forwarding agent does not collect the Products as confirmed in the notification.
- 4. Delivery Dates, Delay in Delivery
  - a) The delivery dates agreed with the Supplier shall be binding. Compliance with the delivery period shall be determined by the date of receipt of the Products at the destination specified by MAHLE.
  - b) If the Supplier is in delay of delivery by other reason than force majeure, then the Supplier shall incur a contractual penalty of 1% of the purchase price of the delayed Products for each commenced

week of the delay in delivery, extending to a maximum, however, of 10% of the said purchase price. This shall not affect the right to assert claims for compensation. The Supplier must also reimburse inter alia the following costs: special travel costs (both from suppliers to MAHLE and from MAHLE to its customers), additional preproduction costs, additional costs caused by special shifts, loss of production costs, replacement/conversion costs, additional test costs and lost profit. Any contractual penalty due shall, however, be credited against any asserted claim for compensation.

c) MAHLE shall only accept premature deliveries after they have been agreed in writing. If the Supplier delivers the Products earlier than the agreed delivery date, MAHLE reserves the right to return the Products at the Supplier's cost and risk. If MAHLE does not return Products that are delivered early, then the Products shall be stored until the agreed delivery date at the Supplier's cost and risk. In the case of a premature delivery, MAHLE shall be entitled to use the agreed delivery date as the basis for calculating the date of payment.

d) Notwithstanding lit. a) – b), if the Supplier realises that it is not possible to comply with a delivery date or quantity agreed with MAHLE, it must inform MAHLE immediately, stating the reasons, the anticipated duration of the delay and the effects it will have, together with suitable measures for averting them.

e) All special journeys the Supplier decides to make must be recorded, specifying the order details/information, the reason for the special journey and measures for correcting these reasons and sent to MAHLE's Logistics Department at the beginning of a calendar month for the preceding month. The Supplier shall initiate the corrective measures immediately.

- f) For each case of  
- deviation from delivery and packaging specifications,  
- premature delivery or  
- overdelivery

MAHLE shall be entitled to assert a claim for its additional expenses for logistics in the form of lump sum compensation amounting to 5000 RMB (notwithstanding the right to demonstrate greater damages in individual cases). The Supplier shall in each case be entitled to demonstrate that MAHLE has incurred no damages or fewer damages than this lump sum.

## 5. Force majeure

a) If either Party cannot perform its obligations stipulated in the contract due to reasons which are directly and exclusively attributable to force majeure, it shall notify the other Party in writing without undue delay of the occurrence of such an event and shall within 14 days thereafter provide a certificate of the existence of the circumstances constituting force majeure.

b) Force majeure shall mean any of the following events: earthquake, storm, flood, fire or other acts of nature, epidemic, war, riot, public disturbance, governmental actions or any other event beyond the control of the Parties, where its occurrence is not preventable and unavoidable. However, strikes shall not be deemed to be force majeure.

c) If an event of force majeure occurs, neither Party shall be responsible for any damage, increased costs or losses which the other Party may sustain by reason of such failure or delay of performance. The Party claiming force majeure shall adopt measures to minimise or remove the effects of force majeure and within the shortest time possible attempt to resume the performance of obligations affected by the event of force majeure. If the consequences of such an event cannot be remedied within 3 months from the occurrence, the Party shall through consultations decide whether to modify or terminate the contract according to the effect of the event of force majeure on the performance of the contract.

b) If the Supplier delivers production material to MAHLE, the following provisions shall also apply unless MAHLE has made a different written request in an individual case or has made a different agreement with the Supplier.

c) The Supplier shall maintain or develop a quality management system based on the latest valid version of ISO/TS 16949: 2002. Certificates from an accredited body or second-party certification and equivalent QM systems such as VDA Volume 6 Part 1, QS 9000 and ISO 9001 geared specifically towards the automobile industry may be recognised by MAHLE after prior inspection by MAHLE. The Supplier shall provide MAHLE with a copy of the latest certificate and shall send MAHLE a new certificate without being asked upon the expiry of the certificate's validity date. MAHLE shall be informed immediately if the certificate is revoked.

d) For each case of negligent non-compliance with a valid quality management system requirement in accordance with lit. c) the Supplier shall incur a contractual penalty of 5000 RMB.

e) Any initial sample shall be produced in compliance with the latest version of VDA Volume 2 "Quality Assurance of Deliveries" or PPAP (QS 9000). In addition to the initial sample inspection record, the Supplier shall enter all material data in the IMDS material database (International Material Data System, www.mdsystem.com); the approved and accepted IMDS entry for all relevant material data is a component and precondition of each successful initial sample approval.

f) Irrespective of successful initial sampling in accordance with lit. e), the Supplier shall continually check the quality of the delivery items. Moreover, the Parties to the contract shall each keep the other informed about the options for further quality improvement.

g) If the Supplier and MAHLE have not reached a firm agreement as to the nature and extent of the tests as well as the test equipment and methods, MAHLE shall be prepared, at the Supplier's request, to discuss the tests with the Supplier within the limits of its knowledge, experience and possibilities in order to establish the required state of the testing technology.

h) In the case of Products specifically identified in the technical documents or by means of a separate agreement, the Supplier shall regularly carry out quality tests of the Products and record in special drawings the date, method and entrusted person as well as the outcome of the required quality tests. The test documents shall be retained for 15 years and submitted to MAHLE as required. The Supplier shall impose the same obligations on third party suppliers to the extent as legally possible. By way of instruction, reference is made to the latest version of VDA Volume 1 "Production of Evidence".

i) In so far as any authorities or customers of MAHLE ask to inspect the production processes

and test documents of MAHLE in order to verify certain requirements, the Supplier shall be ready to grant them the same rights in its company and give all reasonable assistance, unless such assistance violates the Supplier's existing obligations on confidentiality towards a third party. The Supplier shall impose the same obligations on third party suppliers to the extent as legally possible.

j) Following a reasonable period of notice and during normal business hours, and at intervals MAHLE deems necessary, MAHLE shall be entitled at any time to carry out reasonable inspections and quality audits of the premises in which the Supplier manufactures the Products. MAHLE shall have the right to terminate the present contract with immediate effect by written notice to the Supplier if the Supplier fails to comply with the agreed quality standards for a period of three months.

k) The Supplier shall impose on its subcontractors the obligations contained in the above provisions of this Article 7.

#### **8. Hazardous Substances and Preparations**

a) The Supplier shall fulfil the legal regulations of the countries on manufacture and distribution relating to goods, materials and procedures that are subject to special treatment, inter alia regarding their transportation, packaging, labelling, storage, handling, manufacture and disposal on account of laws, ordinances and other regulations or on account of their composition and their impact on the environment.

b) In this case, the Supplier shall provide MAHLE with the necessary papers and documents before the order is confirmed. In particular, all hazardous substances and water-endangering materials may be delivered only after presentation of an EC safety data sheet and after approval has been given by MAHLE. Should the requirements in accordance with lit. a) change during the delivery relations, the Supplier shall immediately forward to MAHLE the papers and documents relating to the changed requirements.

c) MAHLE shall be entitled to return hazardous substances and water-endangering materials that were supplied for test purposes to the Supplier free of charge.

d) The Supplier shall be liable to MAHLE for any damage arising as a result of negligent non-compliance with the existing legal regulations.

e) Solely for information purposes, and excluding any responsibility for their accuracy and completeness, MAHLE provides a "Prescription List/ List of Substances Subject to Declaration" on the MAHLE homepage ([www.MAHLE.com](http://www.MAHLE.com)).

f) The Supplier shall ensure that the requirements of the EU chemical legislation REACH (Regulation (EC) No. 1907/2006, Official Journal of the European Union dated 30.12.2006) – hereafter referred to as "REACH" – are complied with within the specified time, in particular pre-registration and registration. MAHLE shall not be obliged in any way to carry out the pre-registration or the registration. The Supplier is aware that the Products cannot be used if the requirements of REACH are not completely and properly complied with.

g) The Supplier must enter components (heavy metals) relevant to the EU directive on end-of-life vehicles (ELV - End of Life Vehicles) in the IMDS database at its own expense; they shall then be deemed declared.

h) On the basis of the EU directive on end-of-life vehicles, the Supplier shall undertake to ensure the following:

- Production and furnishing of a component-related concept for draining and unloading harmful substances;
- Compliance with the labelling standards of VDA 260 for materials and components;
- Provision of a utilisation concept for selected supplied parts after agreement with MAHLE;
- Highest possible recycling rate and use of renewable raw materials after agreement with MAHLE.

i) In fulfilling its contractual obligations, the Supplier shall also comply with all legal and official regulations with regard to environmental protection.

j) The Supplier shall indemnify MAHLE in full against all consequences, in particular damages suffered by MAHLE and any claims of third parties against MAHLE, that result from the Supplier's failure to comply with the above provisions in lit. f) - i.).

#### **9. Packaging**

a) The Supplier shall comply with the requirements of the latest valid The Products are to be packed by the Supplier at its own costs in new strong wooden cases/cartons suitable for long distance transportation and well protected against dampness, moisture, shock, rust and rough handling. The Supplier shall be liable for any damage to the Products on account of improper packing and for any rust damage attributable to inadequate or improper protective measure taken by the Supplier and in such case any and all losses and/or expenses incurred in consequence thereof shall be borne by the Supplier.

b) The Supplier shall take back used, empty packaging free of charge. If this is not possible, the Supplier shall pay the corresponding, reasonable disposal costs incurred by MAHLE.

#### **10. Material Defects and Recourse**

a) Unless otherwise stated in the following provisions, the legal regulations shall apply to deliveries of defective Products (in particular to production material).

b) MAHLE shall not be obliged to inspect incoming Products Upon discovery of defects during processing of the Products, MAHLE shall inform the Supplier of the occurrence of the defects without undue delay. The Supplier shall waive the defence of delayed complaint.

c) If defective Products are delivered, the Supplier shall first be given the opportunity to carry out remedial work, i.e. at MAHLE's discretion either to remedy the defect or supply a new item (replacement parts). In both cases the Supplier shall bear all costs resulting to the Supplier or MAHLE, e.g. transportation costs, travelling expenses, labour and material costs or costs for an incoming Products inspection over and beyond the normal scope. The same shall apply to any costs that may be incurred for removal and fitting. If the case of a subsequent delivery, the Supplier shall bear the cost of taking back the defective Products.

d) If the remedial measures fail, or if such remedial measures would lead to an unreasonable burden on MAHLE, or if the Supplier does not immediately commences the remedial measures, then MAHLE shall be entitled to withdraw from the contract / order without setting any further time limit and to return the Products at the Supplier's risk and expense. In these and other, urgent cases, in particular to avert acute dangers or avoid more serious damage, if it is no longer possible to inform the Supplier of defects and give the Supplier even a short period in which to remedy them, MAHLE shall be entitled to remedy the defect itself or have them remedied by a third party at the Supplier's expense.

e) Unless otherwise specified below, claims based on defects shall be subject to a limitation period of 30 months from the date the Products are delivered to MAHLE. The legal regulations shall apply to material defects in delivered items that are used according to their intended purpose for a construction or to defects of title. If replacement parts are supplied according to lit. c), the limitation period shall initially commence upon their delivery to MAHLE.

f) Any further claims, in particular for damages or in connection with warranties of the Supplier, shall not be affected.

g) For each case wherein MAHLE settles a warranty claim, the Supplier, if responsible for the defect, shall undertake to pay fixed lump-sum compensation of 50000 RMB (notwithstanding MAHLE's right to assert greater damages in individual cases). The Supplier shall in each case be entitled to demonstrate that MAHLE has incurred no damages or fewer damages.

h) If in its capacity as an automotive component Supplier MAHLE is obliged to offer one of its customers a longer or more extensive warranty for defects, if the Supplier delivers production material, the Supplier shall then also undertake to accept this regulation in future after first receiving written notification thereof.

i) If customers of MAHLE – usually automobile manufacturers – apply a reference market procedure or a similar procedure that is usual in the automobile industry for determining and settling warranty claims and assert claims against MAHLE for defects in products manufactured by MAHLE that result from defects in the Supplier's Products, this procedure shall also be applied to the delivery relations between the Supplier and MAHLE.

#### **11. Product Liability and Recall**

a) If the Supplier has caused a product fault and/or (depending upon the basis upon which the claim is made) is responsible for the fault, the Supplier shall undertake to pay MAHLE compensation at first request or to indemnify MAHLE against any third parties' claims, providing the cause of the claim lies within the Supplier's control and organisation and the Supplier would itself be liable to a third party. Should such failure be attributable to the fault of both Parties, each Party shall be liable according to its respective degree of fault.

b) The obligations of the Supplier in accordance with lit. a) shall also include the payment of costs incurred by MAHLE for attorney's fees or otherwise incurred in connection with the defence of product liability claims. If MAHLE is subject to special regulations regarding the burden of proof in relations with the injured Party, these regulations shall also apply in relations between MAHLE and the Supplier providing the circumstances requiring proof do not fall within MAHLE's responsibility.

c) In product liability cases in accordance with lit. a), the Supplier shall provide MAHLE with all necessary information and every support which is reasonably necessary to defend claims.

d) In so far as a recall action or programme to give notice of ownership is necessary to comply with a law, ordinance, order or any other state requirement or as a safety measure to avoid personal injuries or death or in the case of other field or service actions, the costs, including labour, transportation and verifiability costs, etc., shall be shared on the basis of the respective degree of fault attributable to MAHLE and the Supplier.

MAHLE shall inform the Supplier - in so far as this is possible and reasonable - of the content and extent of the recall action or other field or service actions that are to be carried out and shall give the Supplier the opportunity to express its opinion. This shall not affect any other legal claims.

e) The Supplier shall undertake to take out and maintain sufficient business risk and product liability insurance to cover the risks of its business and of product liability, including the risk of recall.

At the request of MAHLE the Supplier shall immediately provide documentary evidence of the conclusion of such an insurance contract. If the Supplier is not in a position to furnish evidence of the insurance policies within two weeks, MAHLE shall be entitled to conclude such insurance at the Supplier's expense.

#### **12. Industrial Property Rights**

a) Unless otherwise stipulated herein, without prior approval by the other Party, neither Party is allowed to use or utilize the other Party's patent right of invention, utility model, trademark right, patent right of design or industrial design, (including the relevant industrial property right applications), copyright, know-how and other intellectual property rights (hereinafter referred to as "Intellectual Property Rights").

b) With respect to the Intellectual Property Rights owned by MAHLE or licensed to MAHLE by third parties, MAHLE grants to the Supplier a non-exclusive and non-transferable, royalty-free license, without right to grant sub-licenses, to manufacture and deliver the Products to MAHLE within the scope of the contract. Any other use of the Intellectual Property Rights of MAHLE, including but not limited to the use for the delivery of Products or similar products to third parties, shall be excluded.

c) With respect to the Intellectual Property Rights owned by the Supplier or licensed to the Supplier by third parties at the time of conclusion of the Contract, the Supplier grants to MAHLE a non-exclusive and transferable, irrevocable, royalty-free license, including the right to grant sub-licenses, as it deemed necessary by MAHLE for the use of the Products.

d) The Supplier shall guarantee that through the purchase, ownership, offering, use, processing or further transfer of the Products neither MAHLE nor customers of MAHLE shall infringe any Industrial Property Rights in the Supplier's country of origin, as well as within the German Federal Republic, the European Union, the USA, Canada, Brazil, Argentina, Australia, the PRC, Korea, Thailand, Japan and India. If the Supplier infringes this obligation, then the Supplier shall indemnify MAHLE and its customers at MAHLE's first request against any third-party claims arising from such actual or alleged infringements of property rights and shall bear all costs and expenses incurred by MAHLE in this respect, in particular the cost of filing an action and of defence and the costs resulting from observance of a possible order to refrain.

e) Lit. d) shall not apply if the delivery item was produced on the basis of drawings, models or other detailed information from MAHLE and the Supplier neither was nor needed to be aware that Industrial Property Rights of third parties were thereby infringed.

f) The Parties shall undertake to inform one another immediately of any infringement risks that become known and any cases of alleged infringe-

ment and to take reasonable action by common consent against infringement claims.

g) The period of limitation for claims set out in lit. d) - f) shall be 3 years from the conclusion of the relevant contract.

#### **13. Reservation of Title, Means of Production**

a) The Products shall become the property of MAHLE upon payment of their full purchase price. Any extended or more expansive reservation of title on the part of the Supplier to delivered Products is excluded.

b) All parts, raw materials, tools, materials or other devices or items provided by MAHLE or purchased by the Supplier at MAHLE's expense (and whose procurement costs have been reimbursed by MAHLE or are included in and paid for in full in the price payable for the Products) and that are associated with the manufacture of the Products or used for that purpose (hereinafter referred to as "Means of Production") shall remain or become the sole property of MAHLE (hereafter "MAHLE Property") as soon as MAHLE has paid the purchase price for the Means of Production. MAHLE shall also retain all rights to drafts, samples, drawings, data, models or other information and documents supplied by MAHLE (hereafter "MAHLE Documents"). The Supplier shall expressly agree that MAHLE Property or MAHLE Documents shall not be used for the manufacture or construction of products for third-party customers without MAHLE's prior consent in writing.

c) The Supplier shall possess MAHLE Property and MAHLE Documents as a borrower and shall store them separately and apart from any property belonging to other persons and clearly labelled as MAHLE Property and MAHLE Documents to indicate that they are the property of MAHLE. MAHLE Property and MAHLE Documents shall not be removed from the Supplier's company premises without written instruction from MAHLE, except for the purpose of fulfilling the contract.

d) The Supplier shall undertake to insure MAHLE Property for its replacement value and at the Supplier's own expense at least against fire, water damage and theft and to maintain such insurance policies. On request, the Supplier shall provide MAHLE with documentary evidence of the existence of appropriate insurance policies. The Supplier shall carry out any necessary maintenance work at the usual intervals and at its own expense and shall notify MAHLE immediately of any damage or faults.

e) If MAHLE provides the Supplier with products, raw materials or other material (hereinafter referred to as "Goods") so that the Supplier can manufacture Products, MAHLE reserves title to such Goods. The treatment and processing, modification or installation or reshaping of such Goods by the Supplier shall be carried out in the name of MAHLE. If the reserved Goods are processed together with other items that are not the property of MAHLE, MAHLE shall acquire joint ownership of the new Product in

## 15. Order Development

proportion to the value of MAHLE's Goods (purchase price plus VAT) to the other processed items at the time of production.

f) If the Goods provided by MAHLE are inseparably combined or mixed with other items that are not the property of MAHLE, MAHLE shall acquire joint ownership to the new Product in proportion to the value of its reserved Goods (purchase price plus VAT) to the other combined or mixed items at the time of combination or mixing.

If the combination or mixing is carried out in such a way that the Supplier's items may be considered the main item, it shall be agreed that the Supplier shall assign proportional joint ownership to MAHLE; the Supplier shall store and hold in safe custody the sole property of MAHLE or the joint ownership of MAHLE in the name of MAHLE.

## 14. Confidentiality

a) The Supplier shall undertake to treat in confidence all confidential information obtained directly or indirectly from the other Party to the contract. Orders and all associated commercial and technical details are also to be treated as confidential information. In particular, all received illustrations, drawings, calculations, quality guidelines, samples and similar items are to be treated as confidential. The copying and forwarding of confidential information is only permissible within the context of operational requirements. Confidential information may only be disclosed to a third party with MAHLE's prior written consent.

b) The above obligations shall not apply to such confidential information as the Supplier can prove was already generally accessible at the time of notification or was generally accessible thereafter through no fault of the Supplier;

- was already in the Supplier's possession prior to the receipt from MAHLE;
- was made accessible to the Supplier by a third party without any obligation as to confidentiality and non-usage, provided that this third party has not obtained the information directly or indirectly from the Supplier;
- was to be furnished to the authorities on the basis of legal regulations.

c) The Supplier shall undertake to impose the same obligations to maintain secrecy on subcontractors. Confidential information made known to the Supplier by MAHLE shall be used exclusively for the intended purpose.

d) The obligation to maintain secrecy shall continue to apply for a period of three years after the delivery relations have ended. At the end of the delivery relations, the Supplier shall undertake to return to MAHLE all received confidential information if it is embodied or stored on electronic storage media. At MAHLE's request, the Supplier shall confirm to MAHLE in writing that it has fulfilled the obligation arising from the preceding two sentences.

If the Supplier carries out development work for production material or Means of Production (in particular tools) on MAHLE's behalf whose costs are reimbursed by MAHLE either separately and/or by means of the price paid for the Products (order development), the following shall apply:

a) The Supplier shall reach a development conclusion that is free from the Industrial Property Rights of any third party; Article 12 lit. d) - g) shall apply accordingly.

b) The proprietorship of all development results (including all discoveries, know-how, experiment and development reports, suggestions, ideas, drafts, designs, recommendations, samples, models, etc.) achieved by the Supplier in the context of the cooperation (hereafter "Work Results") shall fall to MAHLE as it arises.

c) If the Work Results are protectable, MAHLE shall, in particular, be entitled at its discretion to apply for Industrial Property Rights in any country in its own name, to execute them further and also to abandon them at any time.

d) The Supplier shall make to MAHLE unrestricted use of protectable discoveries made by its employees in executing the contract by means of a declaration against the inventor; the right to the discovery is to be assigned to MAHLE immediately.

e) If the Work Results are protected by copyrights of the Supplier, the Supplier shall grant MAHLE, as well as affiliated companies of MAHLE, the exclusive, non-remunerative, irrevocable, sublicenseable, transferable right, unlimited in terms of time, place and content to use and exploit such Work Results as desired, in any manner and free of charge. If Work Results are in the form of software, the rights of use and utilisation shall not be restricted to the object code. MAHLE shall in particular be entitled to claim the source code and documentation to be handed over. MAHLE may demand the hand-over at any time, even during the implementation of the development project.

f) The Supplier (as well as companies affiliated with it) is and shall remain the owner of discoveries made before the start of the cooperation as well as Industrial Property Rights applied for or granted for them, as well as any copyrights, design rights and know-how existing before the start of the cooperation (hereafter "Existing Property Rights").

g) If Existing Property Rights are necessary for the utilisation or further development of development results, MAHLE shall be granted their non-remunerative, non-exclusive, sublicenseable, transferable and irrevocable right of utilisation unlimited in terms of time and place.

h) If, in the context of the services the Supplier is required to perform, the Supplier commissions subcontractors, the Supplier shall undertake to

ensure by means of suitable contractual agreements that MAHLE is granted the property and utilisation rights accorded by the regulation expressed in this Article 15.

## 16. Provision of Spare Parts

The Supplier shall undertake to guarantee the provision of spare parts for the stipulated lifetime of the end products for which the Products are to be used at serial production price. The minimum period shall be 15 years after the end of the series production of the Products. Within a reasonable time before the expiry of the minimum period, the Supplier shall grant MAHLE the option to place a concluding order for the all-time requirement.

## 17. Termination of Orders/Contracts

a) If one Party to the contract stops payments or an application is made to open insolvency proceedings against the Party's assets, the other Party shall be entitled to withdraw from the contract with regard to the unfulfilled parts of the contract.

b) In the case of long-term contracts concerning the delivery of Products or Goods the provisions in lit. c) – e) shall apply with regard to their validity period and termination.

c) MAHLE shall be entitled to terminate such contracts in writing with a notice period of 6 months and the Supplier with a notice period of 9 months.

d) In cases where the customer of MAHLE cancels or amends its order extraordinarily or without cause, MAHLE shall be entitled, notwithstanding its right to terminate the contract in accordance with Article 16 c), to agree another arrangement with the Supplier that takes account of these circumstances.

Unless otherwise agreed, the following responsibilities shall then apply:

- The quantity determined for the month following the order (month 1) shall be deemed bindingly authorised.

- The quantity ordered for the next month (month 2) shall entitle the Supplier to procure feedstock. If this quantity is later not taken by MAHLE, the Supplier shall be entitled to invoice MAHLE for the feedstock, whereby MAHLE may demand delivery of the feedstock.

Quantities manufactured in excess of this and procured materials shall be exclusively at the Supplier's risk and to the Supplier's account.

e) Each Party shall have the right to terminate a contract for good cause at any time without notice. The following cases in particular represent good cause:

(i) Cessation of payment on the part of one Party, the opening of insolvency proceedings against the assets of one Party or its rejection

on the grounds of the absence of assets, or the liquidation of one of the Parties;

(ii) Infringement of important contractual obligations; in the case of an infringement that can be remedied, however, only after the innocent Party has called upon the other Party in writing to remedy the infringement, has warned the Party of the impending termination for good cause and has granted a reasonable period of grace of at least four weeks that has expired without outcome;

(iii) One Party comes under the dominant control of one of the other Party's competitors on account of a change in its equity holders or shareholders.

f) In the case of the cancellation or other termination of a contract, the Supplier shall return MAHLE Property and MAHLE Documents, including, but not limited to the documents set out in Article 13 b), as well as all other items made available by MAHLE, including all drawings and other documents, devices and tools.

#### **18. Liability for Breach of Contract**

a) Any Party which fails to fulfil any or a part of its obligations under the contract shall bear the losses caused by such failure. The defaulting Party's liability for damages shall equal the actual direct and indirect losses suffered by the other Party resulting from such breach but shall not exceed the losses which were foreseeable by the defaulting Party at the time of conclusion of the contract. Should such failure be attributable to the fault of both Parties, each Party shall be liable according to its respective degree of fault.

b) Each Party represents and warrants the truth and accuracy of all information stated in the contract as being made by that Party. A Party shall be in breach of contract if any such representation or warranty is not true and accurate or is misleading.

#### **19. Other Provisions**

a) The contract shall become effective upon signing by the authorized representatives of both Parties.

b) Any modifications and/or amendments to the contract shall be made in writing and signed by both Parties. Any waiver of any term or condition hereof shall be in writing and signed by the Party waiving its rights and shall be deemed to refer only to the specific waiver indicated therein.

c) If one of the above provisions is or becomes invalid or unenforceable, the legal validity of the remaining provisions shall not be affected. In place of the invalid or unenforceable provision, a provision shall be deemed to have been agreed which comes as close as possible in legal terms to that which the Parties to the contract required according to the original meaning and purpose of

the ineffective or unenforceable provision. This shall also apply to any loopholes in the contract.

d) Without the prior written approval of MAHLE the Supplier shall not assign or transfer any order or the contract, either in whole or in part.

e) The Supplier shall not employ one or more subcontractors to fulfil an order or part of an order without the prior written approval of MAHLE.

f) MAHLE shall be entitled to set off claims and liabilities of the SUPPLIER against claims and liabilities of MAHLE or affiliates of MAHLE.

g) [Foreign Supplier] These General Conditions shall be valid in both English and Chinese language versions and the contract shall be signed in both English and Chinese language versions and in two original sets. Each Party shall hold one original set. Both language versions shall be equally authentic and binding. In case of discrepancies between the two language versions, the English language version shall prevail.

[PRC Supplier] These General Conditions shall be valid in both English and Chinese language versions and the contract shall be signed in both English and Chinese language versions and in two original sets. Each Party shall hold one original set. Both language versions shall be equally authentic and binding. In case of discrepancies between the two language versions, the Chinese language version shall prevail.

#### **20. Place of Performance, Governing Law, Arbitration**

a) The place of performance for the Supplier's delivery obligations shall be the place of receipt or utilisation specified by MAHLE. The place of performance for MAHLE's payment obligations shall be the head office of MAHLE.

b) [Foreign Supplier] The contract shall be governed by the law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

[PRC Supplier] The contract shall be governed by the law of the PRC.

c) Any disputes arising out of or in connection with the contract which cannot be resolved amicably by the Parties within 30 days after the dispute has arisen, shall be finally submitted for arbitration to the China International Economic and Trade Arbitration Commission (hereinafter referred to as "CIETAC"), Shanghai Sub-Commission, acting on the basis of its Rules of Arbitration.

[Foreign Supplier] The arbitration shall be held in Shanghai. The arbitration proceedings shall be conducted in English language.

[PRC Supplier] The arbitration shall be held in Shanghai. The arbitration proceedings shall be conducted in Chinese language.

d) The arbitration tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator and the third arbitrator, who shall act as the chairman, shall be appointed by the two first-mentioned arbitrators. If a Party fails to appoint its arbitrator within one month after receipt of the notice of arbitration issued by the arbitration tribunal, or if the two first-mentioned arbitrators cannot come to an agreement on the chairman within one month after they have been appointed, the respective arbitrator or chairman shall be appointed by the President of the CIETAC, Shanghai Sub-Commission.

e) The arbitration award shall be final and binding for the Parties. The arbitration fee shall be borne by the losing Party except as otherwise awarded by the arbitration tribunal. During the arbitration proceedings, the Parties shall continue to perform the contract except for the stipulations which are in dispute.

#### **21. Signature**

**Accepted: Supplier**

Location: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted: MAHLE**

Location: \_\_\_\_\_

Date: \_\_\_\_\_

Status: January 2008