

Tool Use Agreement

between

Schwäbische Hüttenwerke Automotive GmbH,
Wilhelmstrasse 67
73433 Aalen (Germany)

- hereinafter referred to as “**SHW**” -

and

[Hirer's name and address]

- hereinafter referred to as the “**Hirer**” -

Subject matter of the Agreement and contractual products

SHW shall provide the Hirer with the tools specified below. The Hirer shall use the tools exclusively to manufacture components for SHW. The Hirer is not authorised to use the tools to manufacture components for other companies. If and insofar as the Hirer – contrary to the common contractual understanding of the Parties and/or the contractual provisions set out below – is (initially) the owner or co-owner of a tool, then the sentences above shall apply accordingly, unless the Hirer manufactures for and supplies the spare parts and repairs market.

1. List of tools/special equipment/machinery/casting moulds, other goods, data and drawings required to manufacture the contractual products, as well as special equipment such as clamping devices, assembly and/or measuring stations, special tools (hereinafter referred to as “**Tools**”):

Project number				
Project name				
Quantity	Item no.	Item	Year of construction	Value in € thou.

No fee shall be owed for the borrowed Tools, subject to section 1b) (1) sentence 1 below. This means that the Hirer shall not charge SHW any depreciation costs for the Tools.

- a) Where the Tools are provided by SHW, the following applies:

SHW shall make the Tools available to the Hirer in a condition that is safe and ready for operation. SHW shall remain the owner of the Tools.

The Hirer shall mark the Tools in a suitable and unalterable manner by labelling them as SHW's property using labels that state "Property of SHW", including the "type designation/part or drawing number" and the inventory number provided by SHW (e.g. inventory plate)

The Hirer is also obliged, following the manufacture of the Tool, to take clear photos of the Tool (electronically) and send them to SHW. In cases involving production equipment, the clamping and contact points are to be marked on the photos by hand. In cases involving casting moulds, photos are to be taken of the open and closed mould.

In order to make them easier to identify, the part/drawing number, the inventory number of the tool and the "property of SHW notice", as well as the date on which the photo was taken, are to be added to the photos by hand.

- b) Where the Tools are manufactured by the Hirer, the following applies:

Insofar as the Hirer manufactures the Tools or arranges for them to be manufactured, then the ownership of the Tools shall be transferred to SHW when an upfront payment is made by SHW in full. Insofar as the manufacturer manufactures Tools, then SHW's acquisition of ownership shall be based on the following provisions in the event of payment of a tool charge to the Hirer: The Hirer shall manufacture the contractual objects for and on behalf of SHW. In this respect, any expertise or industrial property rights used in the manufacture of the Tool by the Hirer shall be deemed settled in full with the assumption of the production costs, and SHW shall be subject to no limitations regarding all known types of use of the Tools manufactured. The processing of materials by the Hirer in order to manufacture a contractual object shall be deemed performed for, and in the interests of, SHW. This means that the manufacturer, within the meaning of Section 950 of the German Civil Code (BGB), is SHW and not the Hirer. The Hirer is obliged to ensure, vis-à-vis material suppliers required for the manufacture of a contractual object, that these suppliers do not supply their materials under an extended reservation of title and do not otherwise acquire any other co-ownership of the contractual object in question. The above notwithstanding, SHW is in any case entitled to pay the suppliers of the Hirer to the account of the Hirer in order to extinguish the supplier's right of retention and effect the transfer of title to SHW. Where the Hirer holds a present or future right to obtain release of goods to which a supplier has retained title as security for payment ("Eigentumsvorbehalt"), the Hirer hereby assigns these rights to SHW. In the event that the prerequisites for transfer of title from a supplier of the Hirer to SHW are not fulfilled, for whatever reason, the Hirer hereby agrees to assign all associated rights it holds against the supplier arising from this circumstance to SHW, including, but not limited to the right to repayment of any payments already rendered.

If, contrary to the manufacturer clause above, SHW is not to be considered the manufacturer within the meaning of Section 950 BGB, then SHW initially acquires joint title to the contractual object on a pro rata basis determined by the ratio of the payments already made to the total net value of the contract and, upon full payment, acquires sole title to the respective contractual object on the basis of the following terms and conditions.. For this purpose, the Hirer already hereby transfers ownership of the contractual object in question, including all items and documents, to SHW. SHW hereby accepts the transfer of ownership. Upon signing this Tool Use Agreement, the Hirer shall have direct third-party possession of the contractual object in question on behalf of SHW as the indirect proprietary possessor (anticipated *constitutum possessorium* within the meaning of Section 930 BGB). This Hire Agreement shall form the basis for the anticipated *constitutum possessorium* described above. As a precaution, the Hirer also hereby already assigns any existing expectant right, or expectant right arising in the future, relating to the contractual object in question to SHW, which accepts this assignment. Title and the expectant right to title pass to SHW upon the Hirer obtaining direct possession at the latest.

Insofar as the Hirer in turn commissions a supplier to manufacture one or several of the contractual objects for SHW, then the Hirer is obliged

- to reach an agreement on SHW's status as manufacturer, as set out above, within the meaning of Section 950 BGB and also the agreement described and the aforementioned anticipated *constitutum possessorium* within the meaning of Sections 929, 930 BGB, with regard to the transfer of ownership of the contractual object in question to SHW in the agreement between the Hirer and the Supplier, adhering to the principle of legal certainty, in such a way that SHW acquires joint title to the contractual object on a pro rata basis determined by the ratio of the payments already made to the total net value of the contract and, upon full payment, acquires sole title to the respective contractual object – subject to the proviso that the Hirer is the indirect third-party possessor and the Supplier the direct third-party possessor of the contractual object in question until the contractual object in question is transferred to the direct third-party possession of the Hirer; in the event that the Supplier only has an expectant right in relation to the contractual object in question, it shall be agreed that this expectant right shall be assigned to SHW;
- to subject the Supplier to the obligation to contact SHW before the completion of the contractual objects so that SHW can make the declarations to the Supplier required under the indent above;
- to subject the Supplier to the obligation, in order to enable better visual recognition of the contractual object in question, to label the contractual object in question as SHW's property using labels that state "Property of SHW", including the "type designation/part or drawing number" and the inventory number and to make the contractual object available to the Hirer immediately upon its completion. Any right of retention on the part of the Supplier, whatever the legal grounds, is to be excluded insofar as is legally permissible; and

- to subject the Supplier to the obligation to subject its respective suppliers to the obligations set out in the indents above.

With regard to the labelling of the Tools manufactured by the Supplier as SHW's property, section 1a) (2) to (4) shall apply accordingly. SHW is entitled to demand that the obligations set out in the sentence above are fulfilled before the production costs are paid for a Tool.

If – contrary to the common contractual understanding of the Parties and/or the contractual provisions – a Tool is not/does not become the 100% property of SHW, then SHW and the Hirer shall acquire fractional co-ownership in line with their respective ownership interests. The ownership share shall be inventoried at SHW. A right of first refusal in favour of SHW is deemed agreed, under the law of obligations, in respect of the Hirer's ownership share. SHW shall be granted the right to purchase the Hirer's ownership share in respect of the Tools in return for a payment corresponding to the pro rata production and acquisition costs that have not yet been amortised by way of parts deliveries according to the balance sheet. In this respect, it is assumed that parts corresponding to the specifications (OK parts) can be manufactured using the tools and that amortisation shall be applied using the straight-line method. Section 1b) (4) shall apply accordingly.

The operating resources under the Hire Agreement shall be stored by the Hirer subject to no storage costs.

If and insofar as a Tool is located or taken outside of the Federal Republic of Germany, the Hirer shall ensure that, wherever possible, SHW is put in a financial position allowing it to acquire ownership of the Tool to the extent set out in b) above under any foreign property law that applies. For this purpose, the Hirer is obliged – where appropriate in the required form – (i) to make and accept all suitable and required declarations and (ii) to take all suitable and required measures.

2. The Hirer shall be liable for the destruction and loss of, or damage to, the Tools.

The Hirer shall remedy any damage and other faults affecting the Tools at its own expense.

The Hirer shall inform SHW without delay if the Tools are lost or damaged in any way.

The Hirer shall not make any alterations, including modifications, adaptations and/or repairs, to the Tools without the prior written consent of SHW. SHW shall be the sole owner of any objects created as a result of alteration, processing, combination or remodelling. Section 1b) (4) shall apply accordingly.

SHW assumes no liability vis-à-vis the Hirer for any defects affecting the Tools or any damage incurred by the Hirer or third parties as a result, whatever the nature

of these defects or damage. In this respect, the Hirer shall indemnify SHW against all third-party claims.

3. The Hirer shall keep the Tools in a due and proper operational condition at its own expense. In particular, it is responsible for professional servicing and maintenance. The operating costs shall be borne by the Hirer. The Hirer is also responsible for ensuring that the Tools are always in a condition that adheres to the applicable statutory provisions and accident prevention regulations. The Hirer shall protect the Tools from excessive use and take out adequate insurance cover for them, covering all risks. The Hirer is obliged to provide SHW with proof of its insurance cover on request at any time.
4. SHW shall assume all costs associated with the replacement of the contractual objects (e.g. subsequent tools) insofar as they have become unsuitable for use in their entirety due to normal wear and tear; within this context, SHW shall decide at its own discretion to what extent it shall bear the production costs for a Tool by way of the assumption of costs or an agreed share of the depreciation relating to the supplied parts. This Hire Agreement shall apply accordingly to the replacements for the contractual objects (in particular with regard to the ownership status pursuant to section 1a) and b) of this Agreement).

The borrowed contractual object is designed for a guaranteed output quantity of **[please enter quantity]**.

The Hirer shall inform SHW in a timely manner (e.g. approx. nine months before the start of production in respect of pressure die-casting), i.e. taking into account the standard delivery period, at what point in time the borrowed contractual objects will need to be replaced due to normal wear and tear.

The Hirer shall bear the costs associated with replacing a contractual object that has been lost or rendered unsuitable for use due to circumstances for which the Hirer is responsible.

5. The Hirer is not authorised to dispose of the Tools in legal or de facto terms without the prior written consent of SHW, i.e. to pledge the Tools, transfer them as security or make them available to third parties for (joint) use.
6. In the event of measures taken by government authorities, confiscation or other compulsory measures, the Hirer shall draw attention to the ownership status without delay and inform SHW immediately. The same shall apply if any such actions are imminent. The Hirer shall bear the costs associated with all measures to resolve such interventions.
7. Upon the termination of the Agreement, the Hirer shall return the tools to SHW in full and in an operational condition – taking into account the wear and tear that is normal for the period of the loan – without delay.

The provision/return of the Tools shall be at the risk and expense of the Hirer ex works SHW.

The delivery of Tools by SHW to the Hirer shall be ex works SHW. In particular, the Hirer shall bear any customs duties associated with the import and export of the Tools.

8. SHW can, at any time – without adhering to a notice period – demand the immediate return of the Tool in question from the Hirer if and insofar as the supply agreement that is in place in parallel (e.g. delivery plan, individual order), the performance of which requires the Tool, ends due to termination or for other reasons; this shall apply irrespective of the domestic or foreign production location in which the Tool is located. In such cases, the Hirer must return the Tool to SHW within three working days; section 7 (2) of this Agreement shall apply accordingly. Any right of retention to the Tools on the part of the Hirer – irrespective of the legal grounds – is excluded, unless the Hirer has undisputed counterclaims, or counterclaims that have been established with *res judicata* effect, against SHW. If and insofar as the return of a Tool is not possible due to the defence of an undisputed counterclaim, or a counterclaim that has been established with *res judicata* effect, in particular relating to the (i) purchase price for the Tool that has not yet been paid in full and/or (ii) the reimbursement of expenses under or in connection with the performance of this Agreement, then – notwithstanding section 1b) (4) sentence 2 – the Tool shall be returned simultaneously with the fulfilment of the counterclaim.
9. The term of this Agreement is independent of the term of a Framework Agreement or individual orders of which this Agreement might be a component. Notwithstanding section 8 of this Agreement, sections 604, 605 BGB and/or the right to termination without notice for cause, SHW is entitled to terminate the Tool Use Agreement with immediate effect if
 - a) the Hirer cannot ensure the deliveries, quality, quantity and deadlines requested by SHW;
 - b) the Hirer breaches the Agreement by failing to perform services under a supply agreement despite being set a grace period;
 - c) liquidation proceedings are initiated in respect of the Hirer;
 - d) there is a significant deterioration in the Hirer's financial situation, irrespective of whether or not there are grounds for insolvency pursuant to sections 17 to 19 of the German Insolvency Code (InsO);
 - e) the Hirer submits a request to SHW for the deferral or reduction of outstanding receivables;
 - f) it is no longer possible to reach the Hirer in a manner that can be deemed reasonable, or the Hirer has discontinued its business operations; or
 - g) a competitor of SHW acquires a majority of the shares, within the meaning of section 16 AktG, in the Hirer or becomes a controlling company within the meaning of section 17 AktG; the Hirer shall inform SHW of any such change without delay.

When termination becomes effective, the Hirer is obliged to return the Tool to SHW without delay. Section 8 (1), 2nd half of the sentence, and sentences 2 to 4 shall apply accordingly.

10. Irrespective of sections 7 to 9, SHW shall acquire an emergency production right in the event that the Hirer is unable to deliver and/or one of the scenarios set out in section 9 (2) arises. In such cases, SHW shall acquire the transferable, non-

exclusive and irrevocable right of use, free of charge, to the proprietary rights and expertise belonging to the Hirer that are required for the emergency production. The emergency production right is limited to the duration of the inability to deliver. It shall not apply if the Hirer meets all of its contractual obligations in full. At the request of SHW, the Tools, including accessories, are to be returned with immediate effect (without delay) if the requirements for the emergency production right are met; section 8 sentence 1, 2nd half of the sentence, and sentences 2 to 4 shall apply accordingly.

11. With regard to the models, matrices, templates, designs, tool drawings, Tools, data models, software and other means of production that SHW makes available to the Hirer, the expertise contained herein shall remain the exclusive property of SHW. The drawings may only be used to produce Tools for SHW, but not for the Hirer's own or for third-party purposes. They must be kept confidential, stored securely and may not be made accessible to third parties, in particular competitors of SHW or other suppliers. The confidentiality obligation shall continue to apply in full for a period of five years following the termination of this Tool Use Agreement.
12. SHW, or a party authorised by the it, is entitled, where there are objective grounds for doing so and following corresponding prior notice of three working days, to check that the means of production are being stored and labelled by the Hirer in a due and proper, appropriate and professional manner and/or to confirm the due and proper condition of the means of production and to perform a stock-taking process.
13. The provisions of this Tool Use Agreement shall apply irrespective of the domestic or foreign production location of the Hirer or a sub-contractor commissioned by the Hirer in which the Tool is located. If and insofar as a sub-contractor of the Hirer manufactures or obtains the Tool, then the Hirer shall ensure that it reaches an agreement with the sub-contractor on contractual provisions that correspond in full to the provisions of this Tool Hire Agreement; in particular, care shall be taken to ensure that SHW can exercise its rights under or in connection with sections 7, 8, 9 sentences 3 and 4, and sections 10 and 12 directly, including vis-à-vis a sub-contractor on whose premises the Tool is located.
14. All terms and conditions of this Tool Use Agreement apply to semi-finished goods (work in process) and finished goods accordingly, regardless of the stage of completion of the respective contractual object.
15. In addition, the General Terms and Conditions of Purchase of SHW shall apply to this Tool Hire Agreement as amended at the time this Framework Agreement was concluded, **[currently as at: August 2017]**. These can be found at [www.shw.de/ /cms/de/ueber_shw/standorte/](http://www.shw.de/cms/de/ueber_shw/standorte/). In the event of a contradiction between a provision of the Tool Hire Agreement and a provision of the terms and conditions of purchase of SHW, then the relevant provision of the Tool Hire Agreement shall take precedence.
16. No collateral agreements have been concluded. Any modifications and amendments to this Agreement shall only be valid in writing. The same shall

apply to a waiver of the written form requirement. Section 127 (2) and (3) BGB shall not apply.

17. Should any provision of this Agreement be or become ineffective, this shall not affect the validity of the remainder of the Agreement. The Parties shall endeavour to replace any ineffective provision with another provision that corresponds to the meaning of the ineffective provision and the Tool Hire Agreement.
18. The German Civil Code (BGB) and the German Commercial Code (HGB) shall apply to the exclusion of German international private law and the UN Convention on the International Sale of Goods (CISG).
19. The place of performance and place of jurisdiction for all claims arising from or in connection with this Agreement is Aalen.

Aalen-Wasseraffingen, date.....

Place, date.....

Schwäbische Hüttenwerke
Automotive GmbH

Hirer

Signed

Signed

Signed

Signed