

## **SALE PROCEDURES**

These Sales Procedures set forth the process by which Collins & Aikman Corporation and its affiliated debtor entities (collectively, the “Seller”) are authorized to conduct certain asset sales contemplated by that certain Customer Agreement approved by the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) on a final basis on January 17, 2007 [Docket No. 3918]. These Sales Procedures were approved by the Bankruptcy Court on \_\_\_\_\_, 2007, pursuant to the Order Approving Standard Procedures to Be Utilized in Connection with Certain Asset Sales [Docket No. \_\_\_\_].

### **General Sale Process**

Set forth below is the general process to be employed by the Seller with respect to the prospective sale (the “Sale”) of the following item(s) of real or personal property of the Seller: \_\_\_\_\_ (collectively, the “Assets”).

- (a) The Seller shall market the Assets to those parties reasonably known by the Seller to have a potential interest in purchasing the Assets.
- (b) Only Qualified Bids (as defined below) shall be considered by the Seller.
- (c) After reviewing the Qualified Bids received, the Seller, after consulting with the agent for the Seller’s senior, secured prepetition lenders (the “Prepetition Agent”) and the official committee of unsecured creditors (the “Committee”), shall designate the Qualified Bidder submitting the highest or otherwise best Qualified Bid as the “stalking horse” bidder (the “Stalking Horse”).
- (d) The Seller shall then file a notice with the Bankruptcy Court, the contents of which shall include: (i) the identity of the proposed Stalking Horse; (ii) the proposed terms of the bid submitted by the Stalking Horse (in the form of a binding term sheet or executed asset purchase agreement); (iii) any proposed Break-Up Fee (as defined below) and/or Overbid Protection (as defined below); (iv) the Seller’s rationale establishing why the Break-Up Fee is an appropriate administrative expense of the Seller’s estates; and (v) the date and location of any auction to be conducted by the Seller (the “Sale Notice”).
- (e) The Seller shall serve a copy of the Sale Notice upon (i) the Primary Service List<sup>1</sup> and (ii) all parties reasonably known by the Seller to have a potential interest in purchasing the Assets (collectively, the “Notice Parties”).
- (f) If no written objections are filed by the Notice Parties within ten days of the date of the Sale Notice, the Stalking Horse and any proposed Break-Up Fee and/or Overbid Protection, as applicable, shall be approved and the Seller shall file a certificate of no objection with a proposed order reflecting the same. The

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<sup>1</sup> “Primary Service List” shall have the meaning set forth in the First Amended Notice, Case Management and Administrative Procedures filed on June 9, 2005 [Docket No. 294].

Break-Up Fee, if any, shall constitute an allowed administrative expense pursuant to section 503(b)(1) of the Bankruptcy Code and shall be paid by the Seller in accordance with the terms of the proposed Stalking Horse bid set forth in the Sale Notice.

- (g) If a written objection is received from a Notice Party within such ten-day period that cannot be resolved, the Stalking Horse, the Break-Up Fee and/or Overbid Protection, as applicable, shall only be approved upon withdrawal of such written objection or further order of the Bankruptcy Court.
- (h) If the Seller receives more than one Qualified Bid, the Seller will conduct an auction (the “Auction”).
- (i) At the conclusion of the Auction or promptly following the Bid Deadline if only one Qualified Bid is received by the Seller, the Seller shall determine, after consulting with the Prepetition Agent and the Committee, the party (the “Successful Bidder”) submitting the highest or otherwise best bid (the “Successful Bid”).
- (j) In determining the Successful Bid, the Seller shall consider, among other things, the total consideration to be received by its estates as well as other financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale.
- (k) The Seller shall then file a motion with the Bankruptcy Court seeking approval of the Successful Bid to be heard at the omnibus hearing that is at least five days after the filing of such motion (the “Sale Hearing”).
- (l) Upon failure to consummate the Sale because of a breach or failure on the part of the Successful Bidder after an order entered at the Sale Hearing, the Seller shall be permitted to select, after consulting with the Prepetition Agent and the Committee, the next highest or otherwise best bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court.

### **Participation Requirements**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the sale process, each person (a “Potential Bidder”) must deliver (unless previously delivered) to the Seller:

- (a) an executed confidentiality agreement in form and substance satisfactory to the Seller;
- (b) current audited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited financial statements or other financial information of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to the Seller, demonstrating such

Potential Bidder's ability to close the proposed transaction and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed and assigned; and

- (c) a preliminary (non-binding) proposal stating (i) the Assets sought to be acquired, (ii) the purchase price range, (iii) the structure and financing of the transaction (including the amount of equity to be committed and sources of financing), (iv) any additional conditions to closing that it may wish to impose and (v) the nature and extent of additional due diligence it may wish to conduct.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (a), (b) and (c) above and that the Seller determines, after consulting with the Prepetition Agent and the Committee, is reasonably likely (based on the availability of financing, experience and other considerations) to submit a bona fide offer and to be able to consummate the Sale if selected as the Successful Bidder.

Within two business days after a Potential Bidder delivers all of the materials required by subparagraphs (a), (b) and (c) above, the Seller shall determine, after consulting with the Prepetition Agent and the Committee, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder. At the same time that the Seller notifies the Potential Bidder that it is a Qualified Bidder, the Seller may allow the Qualified Bidder to conduct due diligence with respect to the Assets in accordance with these Sale Procedures.

### **Due Diligence**

The Seller may afford each Qualified Bidder due diligence access to the Assets. The Seller designates \_\_\_\_\_ to coordinate all reasonable requests for additional information and due diligence access from such bidders. The Seller shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined herein). Neither the Seller nor any of its affiliates (or any of their respective representatives) are obligated to furnish any information relating to the Assets to any person except to a Qualified Bidder.

### **Bid Requirements**

All bids must include the following documents (the "Required Bid Documents"):

- (a) a letter stating that the bidder's offer is irrevocable until the earlier of (i) two business days after the Assets have been disposed of pursuant to these Sale Procedures and (ii) 60 days after the Sale Hearing;
- (b) a binding term sheet (the "Term Sheet") or an executed copy of an asset purchase agreement (the "Asset Purchase Agreement") for the purchase of the Assets "as is, where is" (as further described below) acceptable in form to the Seller;
- (c) written evidence satisfactory to the Seller in its sole discretion of a commitment for financing or other evidence of ability to consummate the proposed transaction;

- (d) financial and other information setting forth adequate assurance of future performance under section 365 of the Bankruptcy Code in a form requested by the Seller to allow the Seller to serve such information within one business day after such receipt on counterparties to any executory contracts and unexpired leases being assigned in connection with the proposed transaction that have requested, in writing, such information;
- (e) a good faith cash deposit (the “Good Faith Deposit”) in the form of a bank or certified check (or other form acceptable to the Seller in its sole discretion) payable to the order of \_\_\_\_\_ (or such other party as the Seller may determine to hold such funds in escrow) in an amount equal to at least 5% of the value of such bid; and
- (f) a written statement that the bid is not conditioned on (i) obtaining financing or other financing contingencies or (ii) the outcome of unperformed due diligence by the bidder or any other due diligence contingencies.

A bid received from a Qualified Bidder that includes all of the Required Bid Documents and otherwise meets all of the above requirements is a “Qualified Bid.”

### **“As Is, Where Is”**

The Sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Seller, its agents or its estates except to the extent set forth in the Term Sheet or the Asset Purchase Agreement of the Successful Bidder as accepted by the Seller. Except as otherwise provided in such Term Sheet or Asset Purchase Agreement, all of the Seller’s right, title and interest in and to the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the “Liens”) in accordance with section 363 of the Bankruptcy Code, with such Liens to attach to the net proceeds of the Sale in the same validity, extent and priority as immediately prior to the transaction, subject to any rights, claims and defenses of the Seller and other parties in interest.

Each bidder shall be deemed to acknowledge and represent that: (a) it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence regarding the Assets prior to making its offer; (b) it has relied solely upon its own independent review, investigation or inspection of any documents or assets in making its bid; and (c) it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Sale Procedures or, as to the Successful Bidder, the Term Sheet or the Asset Purchase Agreement.

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver a written copy of its bid to \_\_\_\_\_ on or before \_\_\_\_\_. The Seller may extend such deadline in its sole discretion (such deadline, including such extension, the “Bid Deadline”). The Seller

shall distribute a copy of each bid to counsel for the Prepetition Agent and counsel for the Committee. After the Bid Deadline, the Seller shall determine, after consulting with the Prepetition Agent and the Committee, which of the Qualifying Bids is likely to result in the highest and best value to the Seller.

### **Bid Protections**

The Seller may offer, in its sole discretion, after consulting with the Prepetition Agent and the Committee, a break-up fee, which shall be inclusive of expense reimbursement, (the “Break-Up Fee”) not more than the greater of (a) 2.5% of the cash value of the Qualified Bid designated by the Seller as the Stalking Horse bid and (b) \$125,000; provided, however, that (a) no Break-Up Fee shall be offered to an insider of the Seller and (b) in no event shall more than one Break-Up Fee be paid in connection with the Sale of the Assets. In the event a Break-Up Fee becomes due and payable, the Break-Up Fee shall be an allowed administrative expense pursuant to section 503(b)(1) of the Bankruptcy Code.

In addition, the Seller may offer, in its sole discretion, after consulting with the Prepetition Agent and the Committee, certain overbid protections. In particular, the Seller may require (a) an initial minimum overbid in the amount of any Break-Up Fee plus an amount up to 10% of the cash value of the Stalking Horse bid and (b) that any additional competing bids submitted thereafter be in minimum additional increments up to 10% of the cash value of the Stalking Horse bid (collectively, the “Overbid Protections”).

### **Auction**

If more than one Qualifying Bid is received by the Seller by the Bid Deadline, the Seller shall conduct an Auction. The Auction shall take place at \_\_\_\_\_ on \_\_\_\_\_, commencing at \_\_\_\_\_ m. Subject to the “Reservation of Rights” set forth below, the Auction shall be governed by the following procedures:

- (a) Only a Qualified Bidder who has submitted a Qualified Bid shall be eligible to participate at the Auction.
- (b) Each bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
- (c) Bidding shall commence at the amount of the highest Qualifying Bid submitted prior to the Auction.
- (d) Each bidder shall then be permitted to increase its bid consistent with the Overbid Protections, if any, or other bid increments established by the Seller.
- (e) The Auction shall be conducted openly and each bidder shall be informed of the terms of the previous bid.
- (f) The Auction shall continue until there is only one offer that the Seller determines, after consulting with the Prepetition Agent and the Committee, is the highest and best offer from among the Stalking Horse, if any, and the Qualifying Bidders

submitted at the Auction. In making this determination, the Seller shall consider, among other things, (i) the amount of the purchase price, (ii) the form of consideration being offered, (iii) the likelihood of the bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Seller's estates. Such bid shall be designated the "Successful Bid." The Seller shall present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing.

- (g) Within one business day after adjournment of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

Based upon the terms of the Qualified Bids received, the level of interest expressed as to a particular Asset and such other information as the Seller determines is relevant, the Seller, in its sole discretion, may conduct the Auction in the manner it determines shall result in the highest or otherwise best offer for the Assets including, but not limited to, (i) offering the Assets for bidding as an entire package, in groups of less than all of the Assets, and/or individually, (ii) offering the Assets for bidding in such successive rounds as the Seller determines to be appropriate and (iii) setting opening bid amounts in each round of bidding as the Seller determines to be appropriate.

#### **Acceptance of Qualified Bid**

The Seller presently intends to sell the Assets to the highest or otherwise best Qualified Bidder. The Seller's presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Seller's acceptance of the bid. The Seller shall be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

#### **Sale Hearing**

The Sale Hearing shall take place in the courtroom of Honorable Steven W. Rhodes in the United States Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan 48226 on \_\_\_\_\_. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or otherwise. At such Sale Hearing, the Seller shall present the Successful Bid to the Bankruptcy Court for approval.

Following the Sale Hearing, if such Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, (a) the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be automatically deemed to be the Successful Bid, (b) such bidder shall be subject to these Sale Procedures as if such bidder were originally determined to be the Successful Bidder and (c) the Seller shall be authorized to consummate such sale without further order of the Bankruptcy Court.

#### **Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Bidders shall be held in escrow until the earlier of (a) three business days after all Assets upon which the bidder is bidding have been disposed of

pursuant to these Sale Procedures or (b) 61 days after the Sale Hearing. If a Successful Bidder fails to close the Sale, such party's Good Faith Deposit shall be forfeited to, and retained irrevocably by, the Seller, and the Seller specifically reserves the right to seek all appropriate additional damages from such bidder.

### **Reservation of Rights**

The Seller may in its sole discretion, after consulting with the Prepetition Agent and the Committee: (a) modify the Sale Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets; (b) extend the deadlines set forth herein, adjourn the Auction at the Auction and/or adjourn the Sale Hearing in open court without further notice; (c) modify bidding increments; (d) withdraw from the Sale any portion or all of the Assets at any time prior to or during the Auction or cancel the Auction; (e) reject at any time before the entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, in the Seller's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with conditions of the Sale or (iii) contrary to the best interests of the Seller, its estate and its creditors; or (f) at or before the Sale Hearing, impose such other terms and conditions as it may determine to be in the best interest of the Seller's estates, its creditors and other parties in interest