



## **MECHANICAL TECHNOLOGY INCORPORATED**

### **AUDIT COMMITTEE CHARTER**

#### **I. Purpose**

The Audit Committee shall provide assistance to the Board of Directors (the “Board”) of Mechanical Technology Incorporated (the “Company”) in fulfilling its responsibilities relating to corporate accounting matters, the financial reporting practices of the Company, and the quality and integrity of the financial reports of the Company. The Audit Committee’s purpose is to assist the Board in its oversight of:

- The reliability and integrity of the Company’s accounting policies, financial statements and financial reporting and disclosure practices, including its system of internal controls;
- The establishment and maintenance of processes to assure compliance with all relevant laws, regulations, and Company policy;
- The independent auditor’s qualifications, independence and performance; and
- The performance of the Company’s internal audit function, if instituted, and independent auditor.

The Audit Committee’s job is one of oversight as set forth in this Charter. It is not the Audit Committee’s duty to prepare the Company’s financial statements, to plan or conduct audits, or to determine that the Company’s financial statements are complete and accurate and are in accordance with generally accepted accounting principles (“GAAP”). These are the responsibilities of management and the independent auditor.

#### **II. Structure and Operations**

##### *Composition and Qualifications*

The Audit Committee shall be comprised of three or more directors as determined by the Board, each of whom shall be an “independent” director for purposes of Audit Committee membership in accordance with the rules of the NASDAQ Stock Market and any other applicable legal or regulatory requirement.

All members of the Audit Committee shall, in the judgment of the Board, be financially literate, which at a minimum means possessing a working familiarity with basic finance and accounting practices, and at least one member of the Audit Committee shall, in the judgment of the Board, have accounting or related financial management expertise. The Audit Committee shall also determine, in accordance with applicable regulatory requirements, whether any member of the Audit Committee is a “financial expert,” as defined by the Securities and Exchange Commission. The existence of such financial expert, including his or her name and whether or not he or she is independent, shall be disclosed in periodic filings as required by the Securities and Exchange Commission.

### *Appointment and Removal*

The members of the Audit Committee shall be designated by the Board annually and shall serve until such member's successor is duly designated or until such member's earlier resignation or removal. Any member of the Audit Committee may be removed, with or without cause, by a majority vote of the Board. Unless a Chair is designated by the full Board, the members of the Audit Committee shall designate a Chair by majority vote of the full Audit Committee and set the agenda for Audit Committee meetings.

### *Delegation to Subcommittees*

In fulfilling its responsibilities, the Audit Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Audit Committee and, to the extent not expressly reserved to the Audit Committee by the Board or by applicable law, rule or regulation, to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Audit Committee.

## **III. Meetings**

The Audit Committee shall ordinarily meet at least four times annually, or more frequently as circumstances dictate. Any member of the Audit Committee may call meetings of the Audit Committee. The Audit Committee shall meet periodically with each of management and the independent auditor, separately, to discuss any matters that the Audit Committee believes should be discussed privately. In addition, the Audit Committee should receive quarterly communications from the independent auditor and management regarding financial results, consistent with Section IV.1 below.

Any director of the Company who is not a member of the Audit Committee may attend meetings of the Audit Committee; provided, however, that any director who is not a member of the Audit Committee may not vote on any matter coming before the Audit Committee for a vote. The Audit Committee also may invite to its meetings any member of management of the Company and such other persons as it deems appropriate in order to carry out its responsibilities. The Audit Committee may meet in executive session, as the Audit Committee deems necessary or appropriate.

## **IV. Responsibilities and Duties**

The following functions shall be common recurring activities of the Audit Committee in carrying out its purpose set forth in Section I of this Charter. These functions should serve as a guide with the understanding that the Audit Committee may carry out additional functions and adopt additional policies and procedures as may be appropriate in light of changing business, legislative, regulatory, legal or other conditions.

The Audit Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern within the purpose of the Audit Committee that the Audit Committee deems appropriate or necessary. The Audit Committee shall have the sole authority to retain and terminate or obtain advice from outside legal, accounting or other advisers as it deems appropriate to perform its duties and responsibilities, including the authority to approve the fees payable to such advisers and any other terms of retention. The Company shall provide appropriate funding, as determined by the Audit Committee, to compensate the independent auditor and any advisers that the Audit Committee engages.

To fulfill its responsibilities and duties, the Audit Committee shall:

### *Documents/Reports Review*

- (1) Review and discuss with management and the independent auditor the annual and quarterly financial statements prior to their filing, including the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and discuss with the independent auditor of the matters required to be communicated by applicable auditing standards.
- (2) Recommend to the Board whether the annual financial statements should be included in the Company's Annual Report on Form 10-K.
- (3) Discuss with management and the independent auditor generally the Company's philosophy and processes associated with earnings press releases and financial information and earnings guidance provided to analysts and rating agencies, and review earnings press releases with management.
- (4) Review with the independent auditor all critical accounting policies and practices to be used, all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, ramification of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditor, and other material written communications between the independent auditor and management, such as any management letter or schedule of unadjusted differences.
- (5) Review the Company's financial reporting and accounting standards and principles, significant changes in such standards or principles or in their application, and the key accounting decisions affecting the Company's financial statements including alternatives to, and the rationale for, the decisions made.

#### *The Independent Auditor*

- (6) Have the sole authority and responsibility to select, evaluate, determine the compensation of and, where appropriate, replace the independent auditor periodically and make determinations regarding the appointment or termination of the independent auditor and the approval of all audit and non-audit services by the independent auditor. The independent auditor is ultimately accountable to the Audit Committee for such auditor's review of the financial statements and controls of the Company. On an annual basis, the Audit Committee will review and discuss with the independent auditor all significant relationships the auditor has with the Company to determine the auditor's independence.
- (7) At least annually, obtain and review a report by the independent auditor describing: the independent auditing firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and all relationships between the independent auditor and the Company.
- (8) Oversee the independence of the auditor by:
  - Receiving from the independent auditor, on a periodic basis, a formal written statement delineating all relationships between the independent auditor and the Company consistent with applicable standards and with all applicable laws, rules and regulations.

- Reviewing, and actively discussing with the Board, if necessary, and the independent auditor, on a periodic basis, any disclosed relationships or services that may impact the objectivity and independence of the auditor and to pre-approve any non-audit engagement between the Company and the independent auditor consistent with regulatory requirements and disclose any such engagements in the periodic reports of the Company.
- Developing clear hiring policies for employees or former employees of the independent auditor.
- Recommending, if necessary, that the Board take certain action to satisfy itself of the auditor's independence.
- Ensuring that the lead audit partner, the concurring review partner, the client service partner and other partners directly involved in the performance of the audit, of the independent auditor are rotated at least every five years.

#### *Financial Reporting Process*

- (9) In consultation with the independent auditor, review the integrity of the financial reporting processes, both internal and external.
- (10) Review: (i) the Company's internal control structure, including disclosure controls and procedures; (ii) any significant deficiencies in the design or operation of internal controls of the Company which could adversely affect the Company's ability to record, process, summarize and report financial data; and (iii) any fraud, material or otherwise, that involves management or other employees who have a significant role in the Company's internal controls.
- (11) Consider and approve, if appropriate, major changes to auditing and accounting principles and practices as suggested by the independent auditor or management.
- (12) Review with management major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies.
- (13) Review with management the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company.
- (14) Establish regular systems for review with the Audit Committee and the independent auditor regarding any significant judgments made, or significant disagreements, in management's preparation of the financial statements. As a part thereof, the Audit Committee shall review any problems or difficulties encountered during the course of the review or audit, including any restrictions on the scope of work or access to required information and management's response.
- (15) If appropriate, review and approve the internal corporate audit staff functions, including: (a) purpose, authority and organizational reporting lines; (b) annual audit plan, budget and staffing; and (c) concurrence in the appointment, compensation and rotation of the corporate audit staff

*Ethical and Legal Compliance/General*

- (16) Review, with the Company's counsel, any legal or regulatory matter that could have a significant impact on the financial statements, and review and investigate any matters pertaining to integrity of management, including conflicts of interest, or adherence to standards of business conduct as required in the policies of the Company.
- (17) Establish and maintain procedures for the receipt, retention and treatment of complaints and concerns (including a procedure for submitting such complaints and concerns on a confidential and anonymous basis) received by the Company regarding accounting, internal accounting controls, or auditing or related matters.
- (18) Ensure management has a proper review system in place to ensure that financial statements, reports, and other financial information disseminated to governmental organizations and the public, satisfy legal requirements.
- (19) Discuss and review with management and independent auditor, at least annually, policies with respect to risk assessment and risk management.
- (20) Perform any other activities consistent with this Charter, the By-Laws of the Company, and any applicable law, rules or regulations as the Audit Committee or the Board deems necessary or appropriate.

*Reports*

- (21) Report regularly to the Board (i) following meetings of the Audit Committee, (ii) with respect to such other matters as are relevant to the Audit Committee's discharge of its responsibilities, (iii) with respect to such recommendations as the Audit Committee may deem appropriate, and (iv) the Audit Committee's conclusions with respect to the independent auditor. The report to the Board may take the form of an oral report by the Chair or any other member of the Audit Committee designated by the Audit Committee to make such report.
- (22) Prepare the an annual report of the Audit Committee required by the rules of the Securities and Exchange Commission to be included in the Company's Proxy Statement.
- (23) Maintain minutes and other records of meetings and activities of the Audit Committee, as appropriate under applicable law.

**V. Performance Evaluation**

The Audit Committee shall periodically perform a review and evaluation of the performance of the Audit Committee and its members, including a review of adherence of the Audit Committee to this Charter. In addition, the Audit Committee shall periodically review and reassess the adequacy of this Charter and recommend to the Board of Directors any improvements to this Charter that the Audit Committee considers necessary or appropriate. The Audit Committee shall conduct such evaluation and reviews in such manner as it deems appropriate.