



ZF TRADING UK LIMITED CONDITIONS OF SALE

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out below apply to these Conditions.

“Account” a trading account for the Buyer administered by the Seller to facilitate the Buyer’s purchase of Goods.

“Buyer” the person whose order for the Goods is accepted by the Seller or who accepts a quotation of the Seller for the sale of Goods.

“Conditions” these standard terms and conditions of sale.

“Contract” a contract for the purchase and sale of the Goods, incorporating these Conditions.

“Goods” any goods agreed in the Contract to be supplied by the Seller to the Buyer

“Facility” the CV clutch core bank facility for Buyers which is subject to additional terms and conditions.

“Seller” ZF Trading UK Limited.

“Working Day” a day other than a Saturday, Sunday or public holiday.

“Writing” and any similar expression includes faxes but not electronic mail.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

1.4 Words in the singular include the plural and vice versa.

2 BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with:

2.1.1 any written order of the Buyer which is accepted by the Seller; or

2.1.2 any written quotation of the Seller which is accepted by the Buyer; or

- 2.1.3 any telephone order of the Buyer via a telephone ordering process approved by the Seller from time to time
- 2.1.4 any order via an electronic ordering process approved by the seller from time to time
- subject in each case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such written or telephone order is made or purported to be made, or any such quotation is accepted or purported to be accepted by the Buyer.
- 2.2 The Seller reserves the right to vary these Conditions from time to time provided that the Seller shall give the Buyer not less than 30 days notice of any changes. The Buyer may not vary these Conditions.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDER SPECIFICATIONS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of the Goods and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller) or the Seller's quotation (if accepted by the Buyer).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement, of any claim for

infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or EU requirements, or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except at the Seller's discretion and with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 Notwithstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample, and subject to the normal variation between the bulk and sample accepted by the trade.
- 3.7 Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by the Seller's authorised representative. The Buyer hereby acknowledges that any purpose stated in such schedule shall be deemed to have been specified by the Buyer.

4 DELIVERY

- 4.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer or, if some other place for delivery is agreed by the Seller, by the Seller delivering the goods to that address.
- 4.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.

- 4.3 Provided an order for the Goods is a bulk purchase with an aggregate value equal to or in excess of an amount set by the Seller from time to time, the Seller shall deliver the Goods to the Buyer free of charge if orders are placed in accordance with the Seller's standard delivery deadline times which are published on the Seller's website at www.Zf-trading.co.uk, or will otherwise be notified by the Seller to the Buyer.
- 4.4 For the avoidance of doubt guaranteed next day delivery (where applicable) means that the Goods can be delivered on the next Working Day but not that they can be delivered by a particular time on that day. The Seller can arrange for guaranteed delivery on the morning of the next Working Day on payment of an additional fee by the Buyer.
- 4.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 4.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions or access to its premises so that the Seller is prevented from making delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 4.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and of any unsuccessful attempt to deliver the Goods; or
- 4.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, attempted delivery, insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

5 PRICE OF THE GOODS

- 5.1 The price of the Goods shall be the price listed in the Seller's published price list current at the date of acceptance of the order unless the Seller has quoted a special price for the Goods. All prices specially quoted are valid for 30 days only or until earlier acceptance by the Buyer, except in the case of the Seller's special promotions of such Goods when prices specially quoted therein

shall be valid for the time stated therein, after which time they may be altered by the Seller without giving notice to the Buyer.

- 5.2 The Seller reserves the right, by giving 30 days written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.3 The price of the Goods is exclusive of any value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 5.4 Subject to the Buyer satisfying such credit checks as the Seller deems appropriate, the Seller will establish an Account for the Buyer. If the Seller has not opened an Account for the Buyer or if the Buyer defaults on its Account, the Seller reserves the right to only enter into a Contract with the Buyer on the condition that the Buyer pays in advance for the Goods.
- 5.5 The Buyer agrees to return those Goods to which a surcharge was applied when they are no longer used. When the Seller receives the Goods it will pay to [credit to] an amount equal to the core surcharge for the Goods in question at the time of the original sale.
- 5.6 The Seller may offer or make the Facility available to the Buyer on request.

6 TERMS OF PAYMENT

- 6.1 The Seller will generate and issue an Account statement on a monthly basis where there has been at least one transaction since the date of the last preceding Account statement.
- 6.2 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, or in accordance with Condition 5.4. If the Buyer wrongfully fails to take delivery of the Goods the Seller shall be entitled to invoice the Buyer at any time after the seller has notified the Buyer the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.3 The Buyer shall pay the price of the Goods in full in advance where Condition 5.4 applies and otherwise by direct debit or bank transfer within 30 days of the end of the month in which the Seller's invoice is raised or such other number of days as may be agreed in Writing between the Buyer and the Seller, in each case notwithstanding that delivery may not have taken place and

that title in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

6.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.4.1 reserve the right to cancel the Contract and suspend further trading and/or deliveries to the Buyer;

6.4.2 demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;

6.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

6.4.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four (4) per cent per annum above Lloyds TSB base rate from time to time, until payment in full is made;

6.4.5 instruct a third party to obtain payment from the Buyer on behalf of the Seller.

6.5.1

The buyer must forward any trading account query to the seller, be it invoice, delivery or general terms related, not more than seven (7) working days after the receipt of the goods or data relevant to the query being raised.

If the buyer fails to notify the seller of any trading account query within seven (7) working days after receipt of the goods or data relevant to the query being raised, the buyer must pay the relevant invoice in full and on the due date.

The query notification can be in the form of writing, electronic mail or by telephone.

The seller may issue a credit to the buyer, after investigation into any query forwarded to the seller, from the buyer after the seven (7) day notice period. The seller is under no obligation to issue a credit to the buyer, where a query has been forwarded to the seller, from the buyer after the seven (7) day notice period.

6.5.2

The seller may agree from time to time, an extended query notification period. Any query notification extension must be agreed in writing between the seller and the buyer. Where there is no query extension agreed, 6.5.1 will be in force.

- 6.6 The buyer must forward any trading account query to the seller, be it invoice, delivery or general terms related, not more than seven (7) working days after the receipt of the goods or data relevant to the query being raised.

If the buyer fails to notify the seller of any trading account query within seven (7) working days after receipt of the goods or data relevant to the query being raised, the buyer must pay the relevant invoice in full and on the due date.

The query notification can be in the form of writing, electronic mail or by telephone.

The seller may issue a credit to the buyer, after investigation into any query forwarded to the seller, from the buyer after the seven (7) day notice period. The seller is under no obligation to issue a credit to the buyer, where a query has been forwarded to the seller, from the buyer after the seven (7) day notice period.

- 6.5.1 The seller may agree from time to time, an extended query notification period. Any query notification extension must be agreed in writing between the seller and the buyer. Where there is no query extension agreed, 6.5.1 will be in force.

- 6.6 The Buyer agrees that the Seller may exchange information about the Buyer and the Account including details of the Goods purchased with members of the Seller's group of companies and other companies (who may include competitors) selected by the Seller for the purpose of assessing credit and financial risk and to assist in the purpose of recovering debt.

7 **INSOLVENCY OF BUYER**

7.1 This Condition applies if:

7.1.1 the Buyer makes a composition or any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

7.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

7.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

7.1.4 the Buyer has any judgement entered against it; or

7.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

7.2 If Condition 7.1 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and if any of the Goods have not been delivered the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

8 **RISK AND PROPERTY**

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;

8.1.2 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

9 **TITLE RETENTION**

- 9.1 Until the purchase price of the Goods comprised in any Contract between the Seller and the Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to the Seller shall have been paid or satisfied in cleared funds in full:
- 9.1.1 the title in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein);
- 9.1.2 the Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property and shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at the Buyer's expense within seven days of the Seller's request with a written schedule of the said locations and the Buyer shall notify the Seller without delay of any attachment of the Goods or actions by third parties which might infringe the Seller's title to the Goods;
- 9.1.3 the Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable;
- 9.1.4 upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.
- 9.2 Nothing in this Condition 9 shall entitle the Buyer to return the Goods or to delay payment thereof or constitute or be deemed to have constituted the Buyer as the Seller's agent or render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods or prevent the Seller from maintaining an action for the price notwithstanding that the title in the Goods may not have passed to the Buyer.

10 **LIEN**

The Seller retains a general lien on any of the Buyer's Goods in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such Goods in the event that payment is not made in full within 28 days of notice given to the Buyer by the Seller or its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the

expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus.

11 WARRANTIES AND LIABILITIES

11.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period as defined in individual invoices and such warranty will start from the date of fitting of the Goods (the **“Warranty Period”**).

11.2 The above warranty is given by the Seller subject to the Seller having no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the vehicle manufacturers guidelines, misuse or alteration or repair of the Goods without the Seller’s approval. The Seller reserves the right to make a handling charge if the Goods are found not to be in breach of warranty.

11.3 The above warranty is given by the Seller subject to the following conditions:

11.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

11.3.2 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

11.3.3 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

11.4 If the Goods are sold by the Seller to the Buyer as a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

11.5 Any warranty claim by the Buyer must be notified to the Seller in Writing (including a description of the fault), the Seller must be allowed to inspect the Product and any part thereof and (should the Seller request) the Goods must be returned to the Seller’s service department (carriage paid) within the Warranty Period.

11.6 Where any valid warranty claim is made in accordance with these Conditions, the Seller at the Seller’s sole discretion shall either replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods and postage and packing (or a proportionate part of the price in respect of the part in question), but the Seller shall have no further liability to the Buyer.

- 11.7 Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 11.8 Unless stated explicitly in Writing the Seller has priced this Contract on the basis that the Seller's liability for consequential loss has been excluded and its liability for other loss has been excluded or limited by these terms. If the Buyer wishes the Seller to bear liability for additional loss the Seller may consider doing so but on the basis that the Contract price will have to be increased to cover the increased risk.
- 11.9 Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 11.9.1 Act of God, explosion, flood, tempest, fire or accident;
 - 11.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 11.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 11.9.4 import or export regulations or embargoes;
 - 11.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 11.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 11.9.7 power failure or breakdown in machinery.

12 INTELLECTUAL PROPERTY

- 12.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.

12.2 The Seller accepts no responsibility for the accuracy of drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions, express or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim. The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.

12.3 Should the Buyer requests the Seller to provide it with drawings for the Goods, the drawings may be provided at the Seller's discretion.

13 INDEMNITY

13.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

13.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

13.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of such proceedings or negotiations;

13.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonable withheld);

13.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

13.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any third party in respect of any such claim; and

13.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce

any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

14 **GENERAL**

14.1 The Buyer shall not assign any of its rights under these Conditions.

14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the advice.

14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same of any other provision.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

14.5 The Contract shall be governed by the laws of England and the parties shall submit to the sole jurisdiction of the English courts.