

**ZF GROUP NORTH AMERICA OPERATIONS INC.  
GENERAL TERMS AND CONDITIONS  
OF PURCHASING**



1) **DEFINITIONS** - The addressee set forth below is herein referred to as the “Vendor” and ZF North American Operations Inc. on behalf of itself and its affiliates and subsidiaries is herein referred to as the “Purchaser”. In addition, Purchaser and Vendor are to be herein collectively referred to as the “Parties” or individually as a “Party”. The term “Purchase Order” as used herein shall mean any and all purchase orders and/or scheduling agreements/releases issued to Vendor by Purchaser. The term “Terms” shall mean these Terms and Conditions as the same may be amended from time to time by Purchaser.

2) **ACCEPTANCE** - Vendor’s acceptance of a Purchase Order and these Terms is expressly limited to the terms and conditions contained herein. Vendor acknowledges and agrees to be bound by, and comply with, all (a) terms and conditions contained herein; (b) Purchaser’s Supplier Requirements and Supplier Quality Assurance Manual LR 10 and QR83; (c) terms and conditions of Purchaser’s end customer, to the extent that such OEM terms are not inconsistent with these Terms (the Original Equipment Manufacturer or OEM); and (d) all of the foregoing as the same may be amended by Purchaser or Purchaser’s customer from time to time. Vendor shall have accepted each and every one of these terms and conditions when it does any of the following: (a) Executes and returns the acknowledgement copy of these Terms and Conditions; or (b) When it delivers to Purchaser any goods ordered pursuant to a Purchase Order issued by Purchaser herein; or (c) Renders for Purchaser any of the services ordered pursuant to a Purchase Order issued by Purchaser, whichever shall first occur. Any terms set forth by Vendor are rejected in whole, unless specifically accepted in a writing specifically accepting such terms and signed by Purchaser.

3) **PRICE** - Vendor agrees that all orders will be billed and shipped in strict accordance with the applicable Purchase Orders issued by Purchaser, and if a Purchase Order is un-priced, at a price no higher than that last charged or quoted to, and accepted by, Purchaser for such goods or services. Vendor agrees that any price reduction made in goods or services described in an order, prior to the delivery of such goods or the furnishing of such services to Purchaser, will be applicable to the latest order. Vendor represents that the price charged for the goods or services covered by these Terms and Conditions and any Purchase Order of Purchaser is the lowest price charged by the Vendor to purchasers of a class similar to Purchaser, under conditions similar to those of Purchaser, and that the prices and production of such goods complies with all applicable laws and regulations. Subject to Paragraphs 24 and 26 below, the foregoing, and any requirements from Purchaser’s customer, any pricing set forth in a Purchase Order is firm and shall only be modified in writing by Purchaser, at Purchaser’s sole and exclusive discretion. Unless otherwise stated in a Purchase Order or agreed to by the parties in writing, Vendor shall be responsible for shipping costs. No additional charges of any kind, including but not limited to charges for packing, boxing, cartage or other extras, will be allowed unless agreed to in a writing signed by an authorized agent of Purchaser. The price shall include all duties, federal, state and local taxes and other governmental charges applicable to the order, and same shall be paid by Vendor. In the event of prices “ex works” or “ex-warehouse” being agreed, Purchaser shall only bear the lowest possible freight costs. Vendor is responsible for all costs up to the point of delivery to the carrier including loading, but excluding transportation costs. INCOTERMS as of the date of the Purchase Order shall apply to the interpretation of trade terms used in these Terms.

4) **DELIVERY** - Deliveries are to be made both in quantities and at times specified in the Purchase Order or Scheduling Agreement. Upon the Vendor determining that it will not be able to meet an agreed delivery date (for whatever reason), it shall timely inform Purchaser of this fact. This notice is without prejudice to Vendor’s obligation to required delivery dates. If Vendor’s deliveries fail to meet the Purchaser’s schedule, Purchaser, without limiting its other rights or

remedies, may direct expedited routing, and any excess costs incurred thereby shall be debited to Vendor's account. Goods which are delivered in advance of schedule may, at Purchaser's option, either (a) Be returned at Vendor's expense for improper delivery, (b) Have payment withheld by Purchaser until the date that goods are actually scheduled for delivery, or (c) Place goods in storage for Vendor's account, at Vendor's cost, until the delivery date specified in the applicable Purchase Order.

Prior to shipment, all material is to be packaged in accordance with Purchaser's packaging requirements. Vendor shall mark each individual container with the Purchase Order number, Purchaser's part and drawing numbers (where applicable), description, and quantity, plus all special markings as noted and required.

All shipping papers and packaging for production and non-production goods and services shall comply with all governmental regulations of the Purchaser's Country. All invoices must show Purchaser's Purchase Order and Purchaser's part number (if applicable) for payment.

For each international shipment, Vendor will comply with the customs invoicing and documentation requirements of the destination country. Vendor will include a priced invoice (if required) with the master packing slip, and upon request, will furnish all other documentation required for export from Vendor's country or import into Purchaser's country. Any and all benefits or credits resulting from a Purchase Order with Purchaser, including but not limited to trade credits, export credits, customs drawbacks, rebate of taxes, fees, etc. will belong to Purchaser (unless otherwise stated on the Purchase Order). Vendor, upon request, will furnish all documents required to obtain the foregoing benefits and credits and will identify the country of origin of the materials used in the Supplies including the value added thereto in each country. Additional customs information is available upon request from Purchaser's customs department. Invoices shall be mailed to the Accounting Department of the Purchaser at the address shown on the face of the Applicable Purchase Order within one (1) day following shipment, regardless of whether shipment is in part or in whole. Separate invoices must be rendered for each shipment, whether in part or in whole. Purchaser reserves the right to require Vendor to participate in Purchaser's Evaluated Receipt System.

**5) WARRANTIES** - Vendor represents and warrants to Purchaser that all articles, machines, products, components, materials and/or services are free from defects in material, design and workmanship and (a) Will conform to all specifications, drawings, samples or other description furnished or specified by Purchaser (collectively herein the "Specifications"); (b) Will be fit for the use for which they are intended and for any special uses known by Vendor to be contemplated by Purchaser; (c) Will be merchantable and of good material and workmanship; and (d) Comply with all State and Federal laws relative thereto, including, but not limited to all such laws relative to the manufacture thereof. The above warranties are in addition to (and not in limitation of) all other warranties of Vendor, expressed, implied, and provided at law or in equity.

The warranty period shall be the later of: (a) One (1) year from the later of the date of delivery or final run-off for machines, equipment, spare parts and/or services; (b) Any warranty period that has been agreed to by Purchaser, documented in writing and signed by Purchaser; (c) At least as long as Purchaser's warranty granted to Purchaser's customer (the OEM); or (d) As provided by applicable law.

Vendor shall timely repair or replace, at its own cost, all non-conforming components and perform any necessary work in connection with any warranty claim. If components are not repairable, Vendor shall replace the non-conforming components free of any and all charges to Purchaser and shall reimburse Purchaser for any and all expenses incurred by Purchaser or Purchaser's customer in relation to the non-conforming components.

In urgent cases Purchaser (or a third party directed by Purchaser) shall be entitled, at Vendor's sole expense, to make the necessary repairs/modifications to the non-conforming components or obtain replacement/substitute goods at Vendor's sole cost and expense. Purchaser will use reasonable efforts to inform Vendor before such actions are taken, or when prior notification is not possible, Purchaser shall notify Vendor afterwards. Purchaser may deduct and set-off from any amounts due Vendor, all costs and expenses related to any non-conforming goods, including but not limited to any cost for replacement/substitute goods, repair/modification of the non-conforming goods, expediting, inspection, any charges to Purchaser by its customer and any charges or costs for any interruption of production at any facility of Purchaser or Purchaser's customer(s). In the event that repair is not commercially reasonable under the circumstances, Purchaser shall be entitled to cancel the order either in whole or in part or require a Purchaser determined price reduction.

**6) CHANGES IN ORDER, EXISTING CONTRACT & NON-ASSIGNMENT** – These Terms, any Purchase Orders and Scheduling Agreements/Releases, together with any documents specifically referenced in the foregoing documents issued by Purchaser contain the complete agreement between the Purchaser and Vendor, and no agreement or other understanding purporting to modify these Terms or any Purchase Order shall be binding upon Purchaser unless otherwise agreed to by Purchaser in writing on a subsequent date. If a Purchase Order is placed under an existing written contract between Vendor and Purchaser, any terms of a Purchase Order or these Terms which are inconsistent with that contract shall be governed by the written contract. If Vendor assigns monies due and to become due under a Purchase Order, Purchaser shall be entitled to assert against the assignee thereof all rights, claims, and defenses of every type (including without limitation, rights of setoff, recoupment of counterclaim, etc.) which Purchaser could assert against Vendor, whether acquired prior or subsequent to such assignment. Vendor may not assign any Purchase Order or any part thereof without Purchaser's prior written consent.

**7) TERMINATION** - Purchaser reserves the right to terminate any Purchase Order, either in whole or in part, if Vendor delivery is not made as specified in such Purchase Order or other written document, or if Vendor fails to deliver goods, articles, machines, products, components, materials and/or services which conform in all respects to the Specifications, or if Vendor otherwise fails in the due performance of each and every of the within Terms, any Purchase Order or other written document governing the production of such goods or services.

Purchaser's production schedules are based upon the requirement that the goods will be delivered to Purchaser by the dates specified on the face of the Purchase Order or the most recent release. Time is therefore of the essence and if goods are not delivered within the time specified on a Purchase Order, Purchaser may reject such late goods and terminate a Purchase Order, either in whole or in part. The acceptance of late or defective deliveries shall not be deemed a waiver by Purchaser of its right to terminate a Purchase Order either in whole or in part. Without prejudice to the foregoing, Vendor shall report to the Purchasing Department of the Purchaser, at the address shown on the Purchase Order, with as much advance notice as possible, any potential or actual delays in the shipment or furnishing of articles, machines, products, components, materials and services provided by Vendor to Purchaser or Purchaser's customer.

Purchaser reserves the right to terminate, in whole or part, a Purchase Order due to Vendor's insolvency or the commencement of either voluntary or involuntary bankruptcy proceedings by or against Vendor. Termination shall not affect the obligations of Vendor arising prior to the effective date of such termination by Purchaser.

Purchaser reserves the right to terminate any Purchase Order, either in whole or in part, without liability to Vendor, if Vendor: (a) repudiates or breaches any of the terms of these Terms or any Purchase Order, including Vendor's warranties under these Terms or any Purchase Order; (b) fails to make progress so as to endanger timely and proper completion of services or delivery of goods and does not correct such failure or breach immediately after receipt of written notice from Purchaser specifying such failure or breach. In addition, Purchaser may terminate any Purchase

Order upon giving at least thirty (30) calendar days notice to Vendor, without liability to Vendor, if Vendor (a) sells, or offers to sell, a material portion of its assets, or (b) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the control of Vendor.

Upon Purchaser's termination of a Purchase Order for cause, Purchaser's sole obligation to Vendor shall be to pay Vendor for the conforming merchandise already supplied and accepted, according to the terms and conditions of the relevant Purchase Order. Any and all payments due Vendor by Purchaser shall be subject to Purchaser's right of set off against any such amounts.

For a Vendor located in Mexico- Purchaser shall be entitled to immediately terminate a Purchase Order, either in whole or in part, without liability from Purchaser to Vendor, upon one-hundred-twenty (120) calendar days advance written notice to Vendor.

In the event that Purchaser exercises any right of termination it may have, Purchaser reserves all rights and remedies it may have through these Terms or any other corresponding agreements (including Purchase Orders), at law or in equity.

Purchaser shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Vendor. In addition, Vendor agrees to fully cooperate with Purchaser in the event of any such investigation/examination.

**8) INSPECTION – REJECTION** – All goods delivered to and work done for Purchaser shall be exactly as specified by Purchaser, and shall be subject to inspection, approval or rejection by Purchaser, either in whole or in part, at all reasonable times and places, occurring before, during, and after manufacture or delivery. Vendor shall advise Purchaser, upon request by Purchaser, when goods are ready for inspection. Any goods not conforming to the Specifications may be returned to Vendor at Vendor's sole and complete risk and expense, may be made conforming by Purchaser (or a third party directed by Purchaser) at Vendor's sole and complete expense, or may be held by Purchaser at Vendor's sole and complete risk and expense for disposition after notice to Vendor. All costs or damages incurred by Purchaser from Vendor's non-conforming goods or services, including but not limited to reparation costs from Purchaser (or a third party directed by Purchaser), will be charged to Vendor in such amounts as fully compensates Purchaser for all such damages or costs related to Vendor's non-conformance.

**9) PATENTS** -Vendor warrants that (a) No article, machine, product, component, material or services provided or used by Vendor shall be a misuse or misappropriation of any trade secret or infringe any patent, copyright, trademark, industrial design right or other proprietary right not owned or controlled by Vendor, and that neither the normally anticipated uses thereof by Purchaser, nor any specified methods of using same known by Vendor to be contemplated by Purchaser, will infringe any patent, copyright, trademark, industrial design right or other proprietary right; (b) Vendor shall defend and indemnify Purchaser, its subsidiaries, associated entities and customers against (and hold it and them free and harmless from) any claim, judgment, decree, cost or expense it or they may suffer or incur (including attorney's fees and other expenses) resulting from, incident to, or arising from any misuse or misappropriation of any trade secret or infringement or claim of infringement of any patent, copyright, trademark, industrial design right or other proprietary right relating to any articles, machines, products, components, materials or services provided or used by Vendor in the design, manufacture or sale of Purchaser's products or services, including any and all claims in which Vendor has provided only a part of the goods or services. Vendor expressly waives any claim against Purchaser or Purchaser's customer that any such infringement arose out of compliance with Purchaser's or Purchaser's customer's specifications or requirements.

To the extent that any Purchase Order is issued for the creation of copyrightable, patentable or trademarkable works, the works shall be considered "works made for hire." To the extent that the

works do not qualify as "works made for hire," Vendor hereby assigns to Purchaser any and all rights, title and interest in all copyrights, patents, trademarks and other rights arising from such work performed pursuant to any Purchase Order issued by Purchaser.

**10) INDEMNITY, RECALL & INSURANCE** - Vendor will defend, indemnify and hold harmless, Purchaser, its subsidiaries, associated entities, employees, agents and customers against (and hold it and them free and harmless from) any and all claims, demands, judgments, losses, damages or expenses it or they may suffer or incur (including attorney's fees and other expenses) resulting from, incident to, or arising out of goods or services provided to Purchaser in any manner whatsoever, including but not limited to any acts or omissions of Vendor or Vendor's servants, agents, employees or sub-contractors. Vendor shall maintain and carry adequate insurance, on a commercially reasonable basis, on Vendor's plant and equipment and Purchaser's or Purchaser's customer tooling located at Vendor's plant, for the full insurable value thereof, as well as comprehensive general liability insurance, including public liability, property damage liability, product liability, recall and contractual liability coverage, and workers' compensation and employees' liability insurance covering all employees engaged in the performance of any Purchase Order, all in amounts and with companies satisfactory to Purchaser. Upon request from Buyer, Vendor shall have Purchaser named as an additional insured on its insurance policies. Vendor shall, on Purchaser's request, furnish certificates or other acceptable forms of proof of insurance confirming the foregoing coverages. The receipt or review of such certificates or other forms of proof of coverage by Purchaser shall not relieve Vendor from Vendor's insurance obligations hereunder or reduce or modify such insurance obligations. Vendor's failure to comply with these provisions shall not reduce or relieve Vendor from its obligations or liabilities hereunder.

The term "Recall" shall mean (i) in the absence of an order issued by the United States Secretary of Transportation (the "Secretary") or any other applicable governmental agency or authority of the United States or any other country, notification by Purchaser's customer to the Secretary, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under section 151 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the "Act") [ 15 USCS § 1411] or comparable federal or provincial law of a foreign country, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by the Secretary pursuant to section 152(b) of the Act [15 USCS §1412(b)] with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable United States or foreign governmental agency or authority requiring notification and remedial action on the part of Purchaser's customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of Purchaser, which shall be in its sole discretion, to contest in a legal proceeding any determination by the Secretary, or any other United States or foreign governmental agency or authority, with respect to a Recall order shall not waive or diminish in any manner any rights of Purchaser under the provisions of this Section. Purchaser's rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law or in equity. Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in Purchaser's reasonable judgment to be attributable to Supplier, Supplier will indemnify and hold Purchaser harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. Purchaser's remedies under this Section shall include, but not be limited to, a claim for actual, consequential and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from or related to any such Recall.

**11) SERVICES** - If Vendor performs any work or services for Purchaser, Vendor covenants and agrees that it will (a) Perform such work or services as an independent contractor and not as an employee or agent of Purchaser, (b) Have sole liability for all salaries, payroll taxes, injuries (including dismemberment and death), workers' compensation premiums, social security taxes, unemployment taxes, other applicable taxes, contributions, insurance and insurance premiums, and indemnify Purchaser and Purchaser's customer against any loss that may result from Vendor's failure to comply with such laws, commitments and obligations.

**12) MOLDS, TOOLS, ETC.** – Any and all molds, tools, tooling, dies, jigs, fixtures and other equipment either ordered by or in relation to any work, services, or production to be performed for Purchaser shall be used exclusively in the manufacture of goods or delivery of services for Purchaser.

Any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment either paid for, in whole or part, or purchased by Purchaser shall at all times be and remain the sole and exclusive property of Purchaser, free from any liens or claims of any type or nature whatsoever by Vendor or parties claiming through Vendor.

Purchaser shall have the option at any time to purchase any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment used in the manufacture of goods or delivery of services for Purchaser not already owned by Purchaser, at the then current book value, less any costs for repair or refurbishment.

Each tool, tooling, mold, die, jig, fixture or piece of equipment is to be clearly stamped or stenciled with:

- a) Vendor's Tool (or Equipment) Identification Number;
- b) Purchaser's Product Number; and
- c) Labeled "Property of ZF" or Purchaser's customer as directed by Purchaser in writing.

Tooling will be approved for payment only after the successful completion and approval of the Production Part Approval Process (PPAP) sample submission. Purchaser shall have the right to deduct 5% from a tooling payment in the event Vendor's PPAP sample submission is more than fifteen (15) calendar days late from its scheduled due date. For PPAP sample submissions submitted forty-five (45) or more calendar days after their scheduled due date, Purchaser shall have the exclusive option to cancel any Purchase Order in whole or part, without any liability or obligation to Vendor from Purchaser. Approved tooling invoices will be paid by Purchaser after payment for such approved tooling from Purchaser's OEM customer. Approved tooling invoices shall mean those invoices approved by Purchaser after an audit of Vendor's records by Purchaser. Vendor acknowledges and agrees that a tooling Purchase Order and the compensation to be paid thereunder is subject to a successful audit by Purchaser.

Prior to Vendor's first production shipment, Vendor must submit to Purchaser in writing a listing of the Identification Numbers for all molds, tools, tooling, dies, jigs, fixtures, and other capital equipment, detailed descriptions and locations for each item with an Identification Number, and confirmation that each is properly marked as detailed above.

The following statement must appear on Vendor's final tooling invoice:

Tools included in this invoice are:

- a) Completed and have produced parts accepted by Purchaser (approved Part Submission Warrant (PSW) documentation attached); and
- b) Stamped or stenciled with Tool Identification and Product Numbers (as specified above); and
- c) Clearly labeled "Property of ZF" or Purchaser's customer as directed in writing by Purchaser.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall not be scrapped or made available to third parties (for any purpose including but not limited to production purposes) without the prior written consent of Purchaser.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall be secured, fully insured and maintained production ready at all times by Vendor on behalf of Purchaser, at Vendor's sole expense.

Upon Purchaser's request, all or any portion of Purchaser's property in the possession of Vendor, Vendor's agents or Vendor's sub-contractors, shall be immediately released to Purchaser or delivered to Purchaser by Vendor, either (a) F.O.B. at Vendor's plant, properly packed and marked in accordance with the requirements of the carrier selected by Purchaser to transport such property, or (b) to any location designated by Purchaser, in which event Purchaser shall pay to Vendor the reasonable and documented costs of delivering such property to such location. **When permitted by law, Vendor waives any possession rights, lien rights, requirements for the posting of bond or other surety, or other rights that Vendor might otherwise have in any of such molds, tools, tooling, dies, jigs, fixtures, and other equipment or other of Purchaser's property for work performed on such property, goods manufactured with such property or otherwise.**

**13) DESIGN RIGHTS** – Purchaser retains all rights including but not limited to any patent, trademark, intellectual property or copyright rights in any designs, drawings, or models (including prototype) furnished by Purchaser to Vendor in connection with goods supplied to Purchaser, except designs, drawings or models on Vendor's stock parts, subassemblies, assemblies or packaging not originated by Vendor especially for Purchaser at Purchaser's direct or indirect expense. No such drawing or model, in which rights are retained by Purchaser shall, without Purchaser's prior written permission, be disclosed to any third party or incorporated in, duplicated or otherwise used in connection with goods or services furnished to others by Vendor.

Upon Vendor's acceptance of Purchaser's Purchase Order, Vendor shall grant and does grant, to Purchaser a permanent non-exclusive license and right to use any and all designs, patents, trademarks, intellectual property or copyright rights utilized in any way by Vendor in the creation, production, repair, rebuild, modification or delivery of the items or services contracted for by Purchaser in any Purchase Order.

**14) EEO CLAUSE FROM EXECUTIVE ORDER 11246 EQUAL EMPLOYMENT OPPORTUNITY** - The Equal Employment Opportunity Clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, relative to equal employment opportunity and the implementing Rules and Regulations of the Office of Federal Contract Compliance are incorporated herein by specific reference. (Not applicable for Mexico)

**15) NOT A REQUIREMENTS CONTRACT** - Purchase Orders issued to Vendor shall not be considered a requirements contract for Purchaser unless so noted on the face of such Purchase Order. Any Purchase Order issued to Vendor may be terminated by Purchaser, without any liability of any kind or nature whatsoever from Purchaser to Vendor, at the convenience of Purchaser.

**16) QUALITY ASSURANCE & MISCELLANEOUS REQUIREMENTS** – Vendor shall be and remain, as directed by Purchaser LR 10, QR-83, compliant for any period of time Vendor supplies goods or services to Purchaser. Vendor shall, in the manufacture of goods, performance of work or services under this order, fully comply with all applicable Federal, State, or local Laws, Rules, Regulations, or Ordinances and shall defend, indemnify and hold Purchaser and Purchaser's customer harmless from any liability resulting from failure of such compliance.

Vendor agrees to participate in any vendor/supplier quality and development program(s) by either Purchaser or Purchaser's customer(s) and to comply with all quality requirements and procedures specified by Purchaser and Purchaser's customer(s), as revised from time to time by Purchaser and Purchaser's customer(s). In addition, Purchaser and Purchaser's customer(s) shall have the right to enter Vendor's facility at all reasonable times to inspect the facility, goods, materials and any property of Purchaser and Purchaser's customer(s) covered by a Purchase Order. Purchaser's and Purchaser's customers' inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods.

**17) REMEDIES JURISDICTION & VENUE** - The remedies provided Purchaser herein shall be cumulative and in addition to any other remedies provided at law or in equity. Any waiver by Purchaser of any Vendor breach of any provision hereof shall not constitute a waiver by Purchaser of any other provision or breach by Vendor. The provision of goods and services together with these Terms and any Purchase Order shall be governed by the laws of Purchaser's Country, which laws are incorporated herein by reference. Vendor agrees and consents to exclusive jurisdiction and venue in the state and federal courts where Purchaser is located. Purchaser may, in its sole discretion, commence legal action in the jurisdiction of the Vendor.

In the event that Vendor takes action or fails to act in a manner that disrupts or threatens to disrupt Purchaser's ability to produce, Purchaser shall have the right to seek specific performance of a Purchase Order in a court of Purchaser's choosing without application of principles of conflicts of law.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by Purchaser or Vendor, so long as during the Transition Period, as defined hereinafter, Purchaser timely pays the pricing set forth on the Purchase Order for such goods or services the Vendor shall have the absolute obligation to continue to provide the services or produce goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit Purchaser the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production or services and so as to avoid any interruption of production at Purchaser's facilities or the facilities of Purchaser's customer. Such period shall only be of such a length so as to reasonably provide Purchaser the opportunity to transition, under commercially reasonable terms and conditions, the supply of goods or services without an interruption of production at Purchaser's facility or at the facilities of Purchaser's customer, the "Transition Period". This Transition Period shall not be a cure period and shall terminate by Purchaser giving not less than five days notice its intention to terminate the Transition Period. Vendor shall not have the right to terminate the Transition Period except in the event that Purchaser fails to pay for conforming goods or services delivered or provided by Vendor during the Transition Period. Vendor further acknowledges that the goods or services provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any state law including but not limited to §2-716 of the UCC as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at Purchaser or Purchaser's customer would result in irreparable harm to the Purchaser and that money damages would not be a sufficient remedy for any such breach. The Parties agree that in such events that the Purchaser shall be entitled to equitable relief, including injunction and specific performance, requiring further production of goods or the provision of services, as a remedy for any such breach or claimed breach. During the term of any Purchase Order, Vendor consents to the entry of an order for specific performance for the production of goods in accordance with UCC §2-716 or similar statute. Vendor further waives any requirement finding that a Purchase Order constitutes a requirements contracts or the securing or posting of any bond in connection with any such remedy. Vendor further acknowledges and consents to the entry of injunctive or similar relief in order to enforce the obligations of the Parties under these Terms any Purchase Order or other document governing the

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purchase of goods from Vendor by Purchaser whether at law or in equity. The remedies of Purchaser shall not be deemed to be the exclusive remedies for a breach by Purchaser but shall be in addition to all other remedies available at law or equity.

**18) FORCE MAJEURE** – Any delay or failure of either party to perform its obligations shall be excused if Vendor is unable to produce, sell or deliver, or Purchaser is unable to accept delivery, buy or use, the goods or services covered by a Purchase Order, as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, inability to obtain power, material or transportation, or court injunction or order, but excluding labor problems including lockouts, strikes and slowdowns; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). During the period of such delay or failure to perform by Vendor, Purchaser, at its option, may purchase goods and services from other sources and reduce its schedules to Vendor by such quantities, without liability to Vendor, or have Vendor provide the goods and services from other sources in quantities and at times requested by Purchaser, and at the price set forth in the Purchase Order relevant to such goods. In addition, Vendor at its expense shall take such actions as are necessary to ensure the supply of goods and services to Purchaser for a period of at least ninety (90) days during any anticipated labor disruption or resulting from the expiration of Vendor's labor contract(s). If requested by Purchaser, Vendor shall, within ten (10) days, provide adequate assurances that a delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Vendor does not provide adequate assurance that the delay will cease within thirty (30) days, Purchaser may terminate in whole or part, any Purchase Order without liability to Vendor.

**19) LIMITATION ON REMEDIES, LIABILITIES AND DAMAGES** - Purchaser's entire liability to Vendor for any loss, liability or damage, including attorney's fees, for any claim arising out of or related to goods or services provided to Purchaser, regardless of the form of action, will be limited to Vendor's actual direct out-of-pocket expenses which are reasonably incurred by Vendor, and only to the extent that sufficient and acceptable documentary evidence is presented to Purchaser. Vendor's recovery will not in any event exceed the total amount of purchases by Purchaser during the three (3) month period immediately preceding such claim.

**IN NO EVENT WILL PURCHASER BE LIABLE TO VENDOR OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO GOODS OR SERVICES PROVIDED TO PURCHASER, REGARDLESS OF THE BASIS OF SUCH CLAIM.**

**20) WORK ON PREMISES** - If the scope of work to be performed by Vendor includes work on premises specified by Purchaser, Vendor represents that it has or will examine the premises and any Specifications or other documents furnished in connection with the items, and satisfy itself as to the safe and acceptable condition of the premises and site. Vendor agrees that no allowance shall be made in respect of any error as to any of the foregoing on the part of Vendor. Vendor shall abide by all rules, policies, procedures and requirements of Purchaser's Environmental and Safety Statement. Vendor shall at all times keep the premises free from accumulations of waste material, hazards or rubbish. Upon completion of the work by Vendor, Vendor will leave the premises and the items broom clean. Risk of loss or damage to Vendor's materials or equipment, or risk of personal injury, dismemberment or death to Vendors' employees, agents or sub-contractors while on premises specified by Purchaser, shall remain with Vendor. Purchaser shall have no responsibility or liability to Vendor and Vendor shall defend, indemnify and hold harmless, Purchaser against anyone claiming through or related to Vendor, with respect to any loss, damage, injury, dismemberment or death, notwithstanding the fact that facilities or storage

space on such premises is provided by Purchaser. Vendor will provide Purchaser a certificate of sufficient insurance naming Purchaser as an additional insured.

**21) SERVICE AND REPLACEMENT PARTS** – During series production, Vendor will sell to Purchaser goods necessary for it to fulfill its current model service and replacement parts requirements at the price(s) set forth in the corresponding Purchase Orders. If the goods are systems or modules, Vendor will sell the components or parts that comprise the system or module at a price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the fifteen (15) year period after the end of series production, Vendor will sell goods to Purchaser, and only to Purchaser, to fulfill Purchaser’s past model service and replacement parts requirements. Unless otherwise agreed to by Purchaser, the price(s) during the first three (3) years of this period shall be those in effect at the conclusion of series production. For the remainder of this period, the price(s) for goods shall in all respects be reasonable and be as reasonably and mutually agreed to by the Parties. When requested by Purchaser, Vendor shall make service literature and other materials available at no additional charge to support Purchaser’s and Purchaser’s customer’s service part sales activities.

**22) CREDITS** - Any credits or benefits resulting or arising from any Purchase Orders shall belong to and be transferred to Purchaser.

**23) SET-OFF/RECOUPMENT** - In addition to any right of set-off or recoupment provided by law, all amounts due to Vendor shall be considered net of indebtedness of Vendor and its parent(s), affiliates or subsidiaries to Purchaser and its parent(s), affiliates or subsidiaries. Purchaser and its parent(s), affiliates or subsidiaries shall have the full and complete right to set-off against, or to recoup from, any amounts due to Vendor and its parent(s), affiliates or subsidiaries from Purchaser and its parent(s), affiliates or subsidiaries.

**24) COMPETITIVENESS** - Purchaser requires improvements in productivity and efficiency by Vendor. Vendor must remain competitive in all respects, including but not limited to price, quality, delivery and reliability. It is agreed that if new technology becomes available which would provide a different and more economical method of manufacture for the goods provided by Vendor, that Vendor shall have an obligation to undertake the implementation of such technology and processes at its own expense. The savings achieved in connection with such required improvements shall be divided equitably between the Parties, at Purchaser’s sole determination and discretion, with consideration given to the source of such savings and the capital or other expenditures required to achieve such savings. Purchaser shall give Vendor written notice that Purchaser believes Vendor is no longer competitive. Vendor shall have sixty (60) days to become competitive and cure the default. If Vendor fails become competitive within said sixty (60) day period Purchaser may thereafter terminate all or a portion of the relevant Purchase Order by giving not less than sixty (60) calendar days prior written notice of termination to Vendor, the “Termination Period”. The Termination Period shall not be construed as a cure period. If Vendor is non-competitive only as to price, Vendor shall not be considered in default if within such initial sixty (60) day period Vendor matches the competitive pricing available to Purchaser. If Vendor is unable to become competitive and all or a portion of any Purchase Order is terminated in accordance with this provision, Purchaser shall have no liability or obligations to Vendor of any type or nature whatsoever, including but not limited to costs for capital investments, as to such terminated production.

**25) PAYMENT** - Invoices are payable in accordance with the terms of the applicable Purchase Order(s). Payment will normally issue on the payment day of the week after the date due. If Purchaser accepts early delivery, payments will be made as if the goods had been delivered on the agreed delivery date. Payment does not constitute the Purchaser’s acceptance of the goods or services. For shipments to Mexico: payment will be payable only upon receipt of a hard copy of the invoice and in accord with the Purchase Order terms and conditions on the face of the Purchase Order.

**26) MODIFICATIONS** - Purchaser reserves the exclusive right to make any changes or request Vendor to make any changes related to (a) Drawings, designs and/or Specifications; (b) Shipping mode and/or packaging; and (c) Inspection location, inspection period, delivery and/or materials/services acceptance. Any and all modifications performed must have Purchaser's written authorization prior to implementation. Upon request by Purchaser, Vendor shall timely commence work on any changes to the Goods so as to meet any Purchaser modified changes to the Specifications. Vendor shall not modify any Specifications or processes for the manufacture of any goods (including the processes of suppliers to Vendor), nor change suppliers to Vendor without the express written permission of Purchaser. In the event of a material change to the Specifications to the goods supplied by Vendor, Vendor will within five (5) business days (or as otherwise specified in the change request from Purchaser) notify the Purchaser in writing if the change proposed by the Purchaser will affect cost or timing. If Vendor does not timely give such written notice to Purchaser, then in such events Vendor shall continue to supply the affected goods without adjustment. If Purchaser receives a timely written notice from Vendor asserting the right to a price adjustment, then the Purchaser and the Vendor will negotiate in good faith an equitable price adjustment (increase or decrease) or a change in shipping or delivery terms. In all events, any price adjustment shall relate solely to the change in costs occasioned by the change in Specifications and Vendor shall continue to supply the goods during any negotiation or arbitration of such adjustment.

**27) AUDIT RIGHT** - Purchaser shall have the right to inspect and audit Vendor's facilities, books and records, and check all molds, tools, tooling, dies, jigs, fixtures, other capital equipment, processes, parts, documentation, costs and all other items related to any Purchase Order in such detail or manner as Purchaser in its sole discretion shall determine. Vendor shall retain all appropriate records for inspection or audit for a period of not less than two (2) years after the termination or expiration of a Purchase Order. This same right is available to Purchaser's customers. Purchaser shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination or other type of claim by Vendor. In addition, Vendor agrees to fully cooperate with Purchaser in the event of any such investigation/examination.

**28) ADVERTISING** - Vendor shall not advertise or publicize its commercial relationship with Purchaser for any reason or purpose without the prior written consent of Purchaser.

Accepted in full without any modification or exception:

\_\_\_\_\_  
VENDOR

ZF Group North American Operations Inc.  
PURCHASER

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_