



## 1. Definitions

The addressee set forth below is herein referred to as the "Vendor" and ZF GROUP NAO 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; and (c) all of the foregoing as the same may be amended by Purchaser 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 Order(s) 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 the foregoing 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 or a Purchase Order.

## 4. Delivery

Deliveries are to be made both in quantities and at times specified in the Purchase Order or Scheduling Agreement/Release. 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 meet 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 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 and 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 or EDI.

#### **5. Warranties**

Vendor represents and warrants to Purchaser that all goods and 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 date of delivery (b) Any warranty period that has been agreed to by Purchaser, documented in writing and signed by Purchaser; or (c) As provided by applicable law. Vendor shall timely repair or replace, at its own cost, all non-conforming goods or services and perform any necessary work in connection with any warranty claim. If goods or services are not repairable, Vendor shall replace the non-conforming goods or services 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 goods or services.

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 goods 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 commercially reasonable, 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 or services, 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 Purchaser 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 any 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 or supply 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. 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.

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. Indemnity & 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 further agrees to maintain adequate public liability, property damage and compensation insurance during the period Vendor supplies goods or services to Purchaser, including all applicable warranty periods thereafter.

### **9. 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.

### **10. Intellectual Property Rights and Warranties**

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 or services 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.

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.

### **11. 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.

### **12. Quality Assurance & Miscellaneous Requirements**

Vendor shall be and remain ZF QR-83B compliant, and as directed by Purchaser, ISO 9001 and ISO-14001 registered and compliant for any period of time Vendor supplies goods or services to Purchaser. In the event that such registration/certification is/are discontinued, terminated, cancelled or expire, Vendor must obtain and maintain a Purchaser approved equivalent (or greater)

registration/certification within sixty (60) days from loss of such prior registration/certification. Vendor shall, in the manufacture of goods, performance of work or services under a Purchase 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.

### **13. Delivery and shipping instructions**

In the event that the delivery of Services includes the delivery of goods, the delivery and shipping instructions as well as the material specifications for packaging of the Purchaser shall be complied with. The quantity of packaging for the protection of the goods shall be limited to a necessary extent, and shall be restricted to the use of environmentally compatible and recyclable materials. Packaging must be removed by Vendor, unless otherwise agreed.

Any costs which are incurred by the Purchaser as a result of noncompliance with the delivery and shipping instructions shall be borne by the Vendor.

### **14. 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 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.

### **15. 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.

#### **16. 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. Any claim for damages arising out of a Purchase Order or otherwise shall be made within sixty days (60) days after receipt of a notice cancelling such Purchase Order or such claim shall have been waived by Vendor. 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.**

#### **17. 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 a Purchase Order, 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 with regard to the premises and any Environmental and Safety requirements of Purchaser. 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 Purchaser's premises or any other 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 Purchaser's premises or any premises as directed by Purchaser. Vendor will provide Purchaser a certificate of sufficient insurance naming Purchaser as an additional insured.

#### **18. Credits**

Any credits or benefits resulting or arising from any Purchase Orders shall belong to and be transferred to Purchaser.

#### **19. 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.

#### **20. 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. If Vendor fails to maintain its competitive status, Purchaser may terminate a Purchase Order by giving one-hundred-twenty (120) calendar days prior written notice of termination to Vendor, the "Termination Period". The Termination Period shall not be construed as a cure period. Purchaser shall have no liability, obligations or commitments to Vendor of any type or nature whatsoever after the end of the Termination Period.

#### **21. 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.

#### **22. 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. 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.

**23. 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.

**24. Advertising**

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

## **Addendum for Machinery and Machinery Related Services.**

### **1. Scope**

The additional provisions set forth hereinafter, together with the General Terms and Conditions for Indirect Materials shall apply to the purchase of equipment, machines, machine systems and all peripheral equipment related thereto (collectively referred to as "Machinery"), including additional services required including but not limited to delivery, set up and assembly work for the Machinery such services referred to as the "Services." Purchaser shall issue a Purchase Order(s) for all Machinery and Services to be provided by Vendor. Any proposed Vendor terms and conditions are deemed material and are rejected and shall not apply to any Purchase Order.

### **2. Prices**

2.1 The pricing set forth in a Purchase Order shall be firm and net of any applicable taxes and duties.

2.2 The pricing shall be inclusive of all costs and measures required for protection from frost, snow, heat and water damage, as well as remedying any such damage.

2.3 The Purchase Order shall be inclusive of all costs and all costs for transport, insurance, packaging, assembly, commissioning and reimbursement for same shall be listed separately in the pricing for such Machinery. For such cost disclosures in addition to the total cost, the hourly or daily rates, as well as the travel and overnight costs shall be itemized, unless a different method has been agreed on (e.g., a flat rate).

### **3. Scope and execution**

3.1 Unless otherwise agreed in writing signed by Purchaser, Vendor shall deliver a complete machine and fully functional machine that includes all parts required for proper operation for Purchaser's intended use and in compliance with the agreed-on, tacitly implied or usual qualities, even if the components required for this purpose are not listed individually including any requirements set forth in the Negotiation Report or on any Purchase Order or and other written agreement signed by the Parties. Vendor shall be responsible for verifying the sufficiency and adequacy of information provided by Purchaser. Machinery elements and component parts shall be designed and arranged in such a way that they can be serviced, inspected and exchanged easily and expeditiously. Wear parts shall be designed so as to maximize usable life for such components.

3.2 At the set-up location, Purchaser shall provide electrical power within the then available capacity, as well as water, at a distance not exceeding 100 m and free of charge. Site accommodation may be heated with electrical power within the given available capacity; except as set forth herein electrical power may not be used for heating purposes. Vendor shall install, maintain and later remove the required supply lines and connections at its expense in accordance and compliance with all regulations for the delivery site of the Machinery.

3.3 The Vendor shall be responsible for providing any and all machinery, equipment, scaffolding, lifting devices, site accommodation (including any work for footers, floor mountings, electrical, air or similar connections), etc. required for fulfilling delivery under a Purchase Order. If Purchaser provides such items in individual cases, Vendor shall be liable for the item and their use.

3.4 Any request for a change to a Purchase Order for additional hourly work becoming necessary (added hourly wages) may only be performed upon the advance written approval of Purchaser and in accordance with any terms approved by Purchaser.

3.5 If Vendor intends to utilize sub-contractors for fulfilling its obligations, Vendor must obtain Purchaser's advance written approval.

3.6 For all Machinery, Vendor shall for a period of not less than 15 years after acceptance, provide spare parts for such Machinery. The pricing for all spare parts shall be in all respects reasonable.

### **4. Delivery and shipping rules, packaging**

4.1 Delivery and shipping requirements specified by Purchaser, as well as Purchaser's packaging material specifications shall be complied with. Packaging must be limited to an amount necessary for protecting the goods, and it may only consist of environmentally compatible and recyclable materials. Unless otherwise agreed in writing, all ZF group standards including but not limited to "ZFN 9004" shall be complied with. Unless otherwise agreed in writing, packaging must be removed by Vendor.

4.2 Costs arising for Purchaser from Vendor's failure to follow delivery, shipping, and packaging rules shall be at Vendor's expense and shall be paid to Purchaser upon demand.

4.3 Except where the terms of delivery or conditions of transport are stated differently on any Purchase Order the delivery point for all shipments of Machinery shall be DDP Purchaser's facility (INCOTERMS 2010) and all transportation, freight and delivery charges shall be at Vendor's expense. No charge shall be made for insurance, storage, parking or detention except as provided on any Purchase Order.

### **5. Proof of performance and acceptance**

5.1 If joint acceptance has been agreed on in a Purchase Order, it shall take place at a location specified by Purchaser. Vendor shall request a date for the acceptance in writing. The acceptance shall take place without delay and for Machinery requiring prior trial operation, during a period requested by Vendor of no less than 4 weeks with approval and acceptance occurring no later than 3 months after the start of trial operation. If possible, the machinery may also be used for manufacturing during trial operation. The costs of the acceptance, including but not limited to all components and materials for testing, shall be borne by Vendor. Vendor and Purchaser shall each bear their own labor-related acceptance costs.

5.2 If it becomes apparent during the acceptance testing that the Machinery has not been built according to contract, Vendor shall timely correct any non-conformity within the time periods set forth in the agreed delivery

schedule or Purchase Order. All costs arising from the additional testing and acceptance shall be at Vendor's expense.

5.3 The successful acceptance will be confirmed to Vendor in writing.

#### **6. Notification of defects**

Purchaser shall promptly notify Vendor of defects in writing in the ordinary course of business. Notwithstanding the foregoing, Vendor waives any right or defense due to untimely notification of defects or expiration of the statutory limitation period.

#### **7. Liability for defects and general liability**

7.1 Vendor warrants that the Machinery shall comply with the agreed quality, function, and performance as set forth in the Purchase Order or other writings executed by both parties, as well as with the applicable laws, regulations, directives, standards and all applicable rules for workers' health and safety, protection of the environment, and fire protection. Unless specifically set forth in a Purchase Order or other writing, generally accepted engineering practices and industry standards shall be met and complied with by Vendor in its provision of the Machinery and any related services.

7.2 The warranty period for Machinery and any related services shall be 24 months, starting with the date of acceptance, which acceptance date shall be recorded by Purchaser. The warranty period with regard to defects in individual parts shall be 24 months after their successful installation and acceptance. The warranty for individual goods or services on Machinery provided as service parts or post acceptance services shall be the earlier of 24 months after successful installation or 36 months after the service has been performed or delivery of such individual parts were delivered as stock service parts.

7.3 In addition to all other remedies, in the event of a non-conforming delivery the Vendor shall timely cure such non-conformity free of charge. If repair of the Machinery is not possible, or if Purchaser reasonably rejects repair of the non-conforming Machinery, Vendor shall replace the defective Machinery free of charge.

7.4 In urgent cases, or if Vendor is in default with regard to curing a defect, Purchaser may perform the required repairs, or have them performed by a third party, or replace the Machinery at Vendor's expense. Purchaser shall notify Vendor before performing the measures. If that is not possible, measures required to mitigate Purchaser's damages may be performed without prior notification; in which case Purchaser shall promptly provide notification after the fact. Vendor's obligations from liability for defects shall remain unaffected except for of defects resulting from measures performed by Purchaser or a third party.

7.5 For replacement goods or warranty services performed by Vendor, a new warranty period according to 7.2 shall commence upon the written acceptance of these goods or services.

7.6 For all Machinery or Machinery parts that cannot be used for their contractually intended purpose due to an interruption in operations caused by warranty repairs,

the warranty period shall be extended for a period equal to the duration of such interruption.

7.7 In the event of a non-conforming delivery Purchaser's rights and remedies shall be cumulative and the repair or replacement by Vendor shall not be deemed an election of remedies.

7.8 The rights and remedies set forth herein are in addition to all rights and remedies provided by statute or common law.

#### **8. Intellectual and industrial property rights**

8.1 Upon Purchaser's request, Vendor shall reveal the use of published or unpublished proprietary and licensed intellectual and industrial property rights and applications for such in the Machinery.

8.2 If the Machinery or related services utilize any software or include the provision of any software for the operation of the Machinery, whether or not specifically delineated or necessary for the operation of the Machinery, Purchaser shall have a non-exclusive, transferrable and fully paid non-cancellable license in and to such software.

#### **9. General**

9.1 For new inquiries and bids, the specifications of ASME shall be complied with, unless otherwise agreed.

9.2 Unless otherwise agreed, new bids shall be sent to Purchaser in duplicate and marked in such a manner that they can be associated with the related inquiry without effort on Purchaser's part, preferably by using the Purchaser's project number.

## **Addendum for Services**

### **1. Subject and definitions**

1.1 The additional provisions set forth hereinafter, together with the General Terms and Conditions for Indirect Materials shall apply to the purchase of services, by any third party the "Vendor".

1.2 Services within the meaning of this Addendum include, services of any type including but not limited to:

- Cleaning work of any kind
- Transportation services
- Repair and maintenance work
- Assembly work
- Repair work
- Surface processing/finishing
- Services in the field of engineering
- Quality control, sorting and inspection

### **2. Implementation of Agreement**

2.1 The scope of a Purchase Order and Services to be provided by Vendor under a Purchase Order shall include the supply of all machines, equipment, scaffolding, hoisting gear, accommodations, etc., required to deliver the Services. To the extent that the Purchaser supplies such items the Vendor shall be liable for any damage to such items other than that caused by normal wear and tear.

2.2 If Vendor intends to involve any third-party in order to fulfill its contractual obligations, the Vendor shall obtain the prior written consent by the Purchaser before the Vendor enters into any agreements with such sub-contractors. The Vendor shall assure with the sub-contractor that any sub-contract agreement complies with the contractual provisions between the Purchaser and the Vendor.

2.3 Services to be performed at the facilities of the Purchaser shall not interfere with the operations of the Purchaser or third parties more than absolutely necessary.

2.4 The Vendor shall responsible for all waste removal and disposal costs.

2.5 The Vendor shall assume responsibility and risk for the location at which the Services are to be provided, including inspection and verification of foundations, connections, site markings, etc. Vendor shall perform any desired inspections of the work premises and any unknown defects or circumstances existing as of the date of any Purchase Order shall be at the risk of the Vendor unless the Vendor gave timely written notice of such deficiencies to the Purchaser prior to the issuance of a Purchase Order.

2.6 Incoming power and water feed lines up to the point of use shall be supplied by the Vendor as agreed to with the Purchaser and according to the applicable technical specifications at the Vendor's expense. Such feed lines shall be removed immediately after the work is completed, unless otherwise agreed.

2.7 If the Vendor determines that the Purchaser's specification of Services, i.e., a concept, other assignments or specifications, cannot be objectively executed, or if this specification is incorrect or unclear, then the Vendor shall give timely written notice to the

Purchaser, substantiated with the appropriate technical background.

### **3. Prices**

3.1 All prices and compensation rates agreed to are firm and shall include all taxes (excluding sales taxes but inclusive of all employment taxes), other costs and expenses including but not limited to the usual auxiliary costs, such as material, protection of sensitive objects against damage, cost of travel, and travel time, unless agreed otherwise in writing with the Purchaser. Sales tax as mandated by law is not included.

3.2 Any additional Services, other than those specified in any Purchase Order shall require the prior written approval of the Purchaser. Any additional Services which are performed without prior written approval will only be reimbursed if the additional service was in the opinion of Purchaser necessary and it was not possible to obtain prior approval.

### **4. Deadlines, delays**

4.1 All deadlines set forth in a Purchaser Order or other written document from Purchaser for completion of Services shall be met by Vendor and Vendor acknowledges and agrees that time is of the essence for all matters.

4.2 If the Vendor realizes that the agreed upon deadlines cannot be adhered to, it shall notify the Purchaser immediately. Notice to the Purchaser shall not relieve Vendor of its obligation to adhere to the agreed upon deadlines.

4.3 In the event of a delay by the Vendor, in addition to all other rights or remedies under these Terms, at law or in equity, the Purchaser shall be entitled to a lump-sum default penalty for each full week of delay in the amount of 1% of the price of the specific Service with which the Vendor is behind schedule, not to exceed a maximum of 5% of the total value of the Order. The Vendor shall have the opportunity to prove that no damage whatsoever or significantly less damage was incurred as a consequence of the delay and accordingly reduce the amount due Purchaser.

4.4 In the event of a delay or default by the Vendor, the Purchaser may perform the unfinished Services at the expense of the Vendor, or have this work done by third parties, after a reasonable opportunity for cure. Any documentation held by or prepared by Vendor with respect to a Purchase Order or the Services shall be provided to the Purchaser without undue delay or cost.

### **5. Invoicing upon cancellation due to contract violation**

If the Purchaser exercises its right to terminate the Agreement because of a default by the Vendor, the Services rendered up to that point shall be invoiced at the agreed prices only to the extent that the Purchaser can make use of such services. Any amount due Vendor shall be reduced and subject to offset by Purchaser for any and all amounts due Purchaser by reason of the Vendor's breach.

### **6. Acceptance of Services subject to written acceptance by Purchaser**

6.1 The Vendor shall request final acceptance from the Purchaser in writing. The date of acceptance shall be reasonably scheduled as agreed upon between the

Purchaser and the Vendor, following the written request of the Vendor.

6.2 The Vendor shall bear all costs incurred in the course of final acceptance including but not limited to all costs for test components and materials.

6.3 Services shall only be considered accepted upon the written confirmation of acceptance by the Purchaser. The Vendor shall confirm the acceptance by countersigning the acceptance certificate. The passing of risk and title, or the commencement of the Vendor's warranties shall not be affected by partial acceptance and shall not commence until final acceptance.

#### **7. Warranty, Warranty Period and Warranty of Title**

7.1 In addition to all applicable warranties set forth in Section 5 of the General Terms Supplier warrants that all services shall be provided in a manner consistent with the highest industry standards and in accordance with all relevant professional standards covering such Services.

7.2 The warranty period for a breach of warranty as to Services shall be two (2) years after acceptance of the Services.

7.3 For Services that are reworked or replaced, a new warranty period shall start at the time of written acceptance of these Services, and in the case of any Services that are not subject to acceptance, upon their completion. If the Purchaser does not deliver the written certificate of acceptance within 18 business days after written notification of the Vendor regarding the proper completion of the correction of defects, then the new warranty period for the liability for material defects and warranty of title shall begin at the end of the above-mentioned period of 18 business days.

#### **8. Documentation relating to the execution of order**

8.1 Any documentation required for the execution of the Order shall be provided to the Vendor upon request.

8.2 Any documentation which is given to the Vendor shall remain the property of the Purchaser and shall be safely kept on behalf of the Purchaser at the expense of the Vendor for the duration of the Agreement. Documents shall only be used for the purposes specified in a Purchase Order and shall only be disclosed to third parties to the extent necessary to perform under a Purchase Order and in all events Vendor shall obtain a commercially reasonable non-disclosure agreement from such third party.

8.3 The approval or review by the Purchaser of drawings, calculations, and other technical documentation and any proposals or recommendations by the Purchaser shall not affect the obligations of the Vendor for the Services. The Vendor shall be responsible for all matters arising from the implementation of any instructions by the Purchaser unless the Vendor timely objects to such instructions in writing and in detail.

#### **9. Work at hourly rates**

9.1 Any Services to be supplied by Vendor beyond the scope of a Purchase Order shall only be performed in accordance with the prior written approval of the Purchaser.

9.2 Unless otherwise agreed in writing, a daily report of Services rendered including a copy, shall be submitted

to the Purchaser for approval and signature. The Purchaser shall return the report (without the copy) to the Vendor on a timely basis, however, not later than six (6) working days after receiving the reports. The Purchaser may make any objection either on the reports themselves or in a separate letter.

Name of the Purchaser, the dates of order and invoicing, name and qualification of the person performing the Services, the type of Services performed, start and completion of the work, duration of work, materials used.

#### **10. Invoicing and handing over of documents**

10.1 Invoices shall be submitted in single copy, and drawings for invoicing and other documents in duplicate.

10.2 All data, documents, calculations, plans, including plans of revisions or as-built plans whether directly or indirectly related to the Services, (the "Deliverables") shall be prepared in a format as agreed upon with the Purchaser, at no cost, and shall be delivered to Purchaser at the earlier of request by Purchaser or final acceptance. All data, documents, calculations and plans created for the Purchaser or in relation to the delivery of the Services, and all other results of Services, shall be the property of the Purchaser irrevocably and the Purchaser shall have the exclusive right of use, unlimited in terms of use, time and place, including the right to revise, copy, change, expand, and license such materials to third parties, subject only to the intellectual property rights of third parties disclosed by Vendor to Purchaser prior to the issuance of the relevant Purchase Order. If third parties have rights to the Deliverables received as part of the Services or any goods delivered with the Services, which rights contradict the Purchaser's rights set forth herein then Vendor shall notify Purchaser of such rights and the scope of the rights acquired by Purchaser shall be determined by the parties prior to the commencement of Services. The Vendor shall not copy, edit, or make other use of the results of the Services and solutions that have been rendered for the Purchaser, either in part or as a whole. The delivery of Services shall not be complete until such time as all final plans shall be delivered in accordance with these Terms.

10.3 All work performed in relation to the Services shall be deemed works for hire and all materials developed shall be the property of the Purchaser.