



## 1 Definitions, Applicable Terms

**A.** In these terms and conditions of sale, the following words have the following meanings:

- "Contract" - the contract made by the Company's acceptance of an order issued by the Customer, which Contract shall be on and subject to the Contract Terms.
- "Contract Terms" - these terms and conditions of sale and any terms and conditions set out or identified in the Company Documentation.
- "ZF Company" - ZF Friedrichshafen AG or any company under the direct or indirect control of ZF Friedrichshafen AG.
- "Company" - the ZF Company that sells the Products to the Customer.
- "Company Documentation" - any quotation, or response to a request for quotation, or acceptance or acknowledgement of an order, or response to the Customer's order issued by or on behalf of the Company.
- "Customer" - person(s), firm or company who purchases the Products from the Company.
- "Products" - any products or services agreed to be supplied by the Company, unless other ZF terms and conditions for special products and services apply.

**B.** Where the Company supplies the Products under an order received from the Customer, the order (and each scheduled release thereunder, if applicable) shall be subject to the Contract Terms, and the Company's acceptance of such order or release is limited to and expressly conditioned upon the Customer's acceptance of the Contract Terms exclusively in replacement of any Customer terms. Furthermore, the Customer's acceptance of the Products shall be deemed as acceptance of the Contract Terms exclusively in replacement of any Customer terms. Any terms and conditions deviating from the Contract Terms, and any other reservations stipulated by the Customer, shall not come into effect, unless the Company has expressly accepted the same in writing for a specific order.

**C.** Company hereby objects to and rejects any proposal by the Customer for any terms additional to or different from the Contract Terms.

**D.** The Company reserves the right, subject to the Contract Terms and applicable law, to reject an order or release received from the Customer.

## 2 Prices

**A.** Unless otherwise expressly stated in writing, the price stated is inclusive of all discounts and productivity improvements, but exclusive of: (i) packaging; (ii) delivery and carriage charges unless such charges are borne by the Company in accordance with the applicable Incoterms® 2010 delivery term; and (iii) Value Added Tax and any other taxes and duties, which taxes and duties shall be paid by the Customer at the rate and in the manner prescribed by applicable law from time to time.

**B.** The Company may adjust the price stated to take account of any changes, including but not limited to: (i) any changes in the Product specification made at the request of the Customer and agreed by the Company; (ii) any delay caused by the Customer; (iii) any increase in raw materials or economic costs; (iv) any changes in volumes; or (v) any other changes in assumptions from the quoted levels.

**C.** The information contained in printed matter (such as price lists, brochures, and catalogs), in cost estimates, on electronic media, or on the Company's Internet pages and documents related to its offer such as illustrations, descriptions, drawings, dimension and weight information, other technical data as well as referenced standards, e.g. *Deutsches Institut für Normung* (DIN), International Organization for Standardization (ISO), Society of Automotive Engineers (SAE), or other corporate or inter-company standards and samples, are only approximately authoritative unless they are expressly identified in writing as binding.

## 3 Payment

**A.** Unless otherwise expressly stated in writing, payments are due to the Company 30 days from the date of the Company's invoice, and at such place and in such currency as designated by the Company, with funds immediately available in the Company's account.

**B.** On the Customer failing to make full payment when due, the Company may (without prejudice to other rights hereunder or otherwise): (i) require future payments in advance of delivery; (ii) suspend delivery of any Products without incurring any liability to the Customer; (iii) terminate or rescind the Contract or any outstanding release; (iv) charge interest on the amount due at the lower of: (a) four percentage points per annum above the base rate as defined, from time to time, by the central bank of the country in which the principal place of business of the Company is located, calculated from the due date, or (b) the maximum rate

under applicable law; (v) claim additional damages under applicable law; and (vi) set-off any amount owing by any ZF Company to the Customer or to any Customer affiliate.

**C.** Bills of exchange (e.g. Term Bills, Credit Notes, etc.) and checks are accepted only by way of provisional performance. They shall not be deemed payment until they are cashed. Discount charges and bill of exchange charges shall be borne by the Customer and be paid immediately. The Company reserves the right to decline bills of exchange. The Company is not liable for timely submission, protestation, notification, and return of bills of exchange in the event that they are not cashed.

**D.** Without the Company's prior written consent, the Customer may withhold payments or offset them with counterclaims only insofar as the Customer's counterclaims are uncontested or have been determined conclusively to have legal force by a court having jurisdiction over the parties.

## 4 Delivery

**A.** Unless otherwise expressly agreed in writing, the delivery term shall be FCA, Company's location, Incoterms® 2010.

**B.** The Company will endeavor to deliver the Products within the time agreed (if any), and if no time is agreed, within a reasonable time, and in the quantities agreed (if any). Notwithstanding the foregoing, the Company shall not, subject to the Contract Terms and to applicable law, be liable for any delay in the delivery of the Products, nor for discrepancies in quantities delivered.

**C.** Subject to the Company's right of rejection, releases shall be binding upon the Customer. If shipping of the Products is delayed due to the Customer's responsibility, or if the Customer otherwise fails to take delivery of the Products when they are ready for delivery, the Company may, at its option, either store the Products itself or have them stored by third parties on such terms as the Company may in its discretion think fit. The cost of storage, together with any additional insurance or handling charges, will be charged to the Customer.

**D.** The Company may make partial deliveries. Partial deliveries will be invoiced immediately and separately.

**E.** Packaging and shipping will be undertaken in accordance with the Company's best judgment but with no further liability on the part of the Company. Additional or different protective equipment will be supplied only insofar as this is expressly agreed in writing. At the Customer's request and expense, the shipment will be insured against all insurable risks.

## 5 Title, Risk and Right of Re-possession

**A.** Risk of loss to the Products shall pass to the Customer in accordance with the agreed Incoterms® 2010 delivery term.

**B.** Title to the Products shall not pass to the Customer until the price for the Products has been paid in full. Until the price for the Products has been paid in full, the Customer, or any agent of the Customer or any third party: (i) shall hold the Products subject to a security interest or lien in favour of the Company allowing for the right of re-possession by the Company to the extent permitted under applicable law; (ii) shall ensure that any processing or reworking of the Products will be deemed performed on behalf of the Company; (iii) shall not obliterate any identifying mark on the Products or their packaging; and (iv) shall keep the Products separate from any other products.

**C.** The Company may take possession of the Products at any time after payment of the price for the Products has become due or any other payment owing to the Company under the Contract has become due.

**D.** In the event that the Customer re-sells the Products in the ordinary course of the Customer's business, the Company may require that the Customer transfer to the Company the receivables against the Customer's buyer or any third parties that arise from the sale by the Customer, together with all ancillary rights, until the Company's receivables against the Customer are discharged in full. The Customer is authorized to collect the transferred receivables even after the transfer to the Company until such time as this authorization is revoked by the Company. All costs incurred by the Company in connection with the transfer and collection of such receivables shall be borne by the Customer.

**E.** If the applicable law of the country in which the Products are located do not permit a retention of title as per this Section 5 but allow the Company to retain other comparable security interests in the Products, then the Company may enforce such other security interests. The Customer shall at its expense take any actions which may be required to validate and preserve the retention of title or other security interest.



## **6 Information, Intellectual Property and Generated Data**

**A.** Where the Products are manufactured in accordance with information, drawings, designs or specifications supplied by the Customer, or where the Products are altered by the Customer or in accordance with the Customer's instructions, then: (i) no warranty is given by the Company as to the suitability or fitness for purpose of such Products; and (ii) the Customer shall indemnify the Company against all liabilities in relation to: (a) such Products infringing any intellectual property right, including but not limited to, patents, registered designs, software and copyright ("IPR"), and (b) any defect in the Products due to faults or omissions in such information, drawings, designs, specifications, alterations or instructions.

**B.** All IPR, designs, samples, tooling, drawings, models and similar items used by the Company in relation to the Products are and shall remain the property of the Company, and such materials shall be returned by the Customer on demand, be treated as confidential, and not be used, copied, or disclosed to any third party without the Company's prior written consent. No right or license is granted to the Customer under any IPR except the right to use or re-sell the Products in the ordinary course of the Customer's business.

**C.** The Company reserves any proprietary rights it may have in relation to any data that is collected, processed or generated by or in connection with a Product after the putting into operation of the vehicle or equipment into which the Product is incorporated. At the Company's request, the Customer shall grant access to or furnish any such data to the Company; the Customer shall see to it that all applicable laws are complied with for such access or furnishing (e.g. obtaining consent from natural or legal persons).

## **7 Warranty**

**A.** If, during the Warranty Period (as per Section 7B), any Products delivered to the Customer are found upon inspection by the Company not to comply with the agreed specifications under normal use and when properly installed, the Company, at its discretion, will provide replacement Products, repair the Products or refund the price paid by the Customer to the Company for the defective Products, provided that the Company is notified in writing of the defect immediately after discovery thereof during the Warranty Period and further provided that, should the Company so require, the defective Products are returned freight prepaid. Any costs incurred by any persons removing or refitting the Products for the purpose of repair or replacement shall be borne by the Customer. If a complaint about defects is unjustified, the Company may request reimbursement from the Customer for any costs incurred as a result of the unjustified complaint.

**B.** Unless otherwise expressly stated in writing, the "Warranty Period" for the Products shall be: (i) 12 months from the date of the first registration of the vehicle in which the Product is incorporated or, in the case of other equipment which does not require registration, 12 months from the date of the first commissioning of such equipment in which the Product is incorporated; or (ii) 18 months from the date of delivery or notification of readiness for delivery to the Customer – whichever of (i) and (ii) is the earlier, except otherwise prescribed by applicable law. The Warranty Period for the Products fitted as replacement parts or repaired under warranty will be the unexpired period of the original warranty.

**C.** The warranty contained in this Section 7 shall not apply in respect of any Products: (i) supplied by the Company as samples or prototypes for test or evaluation purposes (and in these circumstances the Company's only obligation shall be to endeavor to supply such Products in accordance with any specification, performance criteria or drawings agreed with the Customer); (ii) where any information, drawing, design, specification or instruction provided by the Customer is inaccurate or incorrect; (iii) where all or part of the Products are supplied to the Company by a third party nominated by the Customer; or (iv) that have been subject to any unauthorized repair or replacement, modification or alteration.

## **8 Limitation and Exclusion of Liability**

**A.** The Company's obligations and liabilities to the Customer in respect of the Products shall be limited to those expressly set out in the Contract Terms.

**B.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 8A. ABOVE, ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS AND ALL LIABILITIES AND OBLIGATIONS WHATSOEVER AND HOWSOEVER ARISING, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE HEREBY EXPRESSLY EXCLUDED.

**C.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER

FOR LOST PROFITS NOR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS WHETHER SUPPLIED OR NOT.

**D.** The Company does not exclude or limit its liability (if any) to the Customer for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability.

## **9 Force Majeure**

Neither the Company nor the Customer will be liable for a failure to perform that arises from causes or events beyond its reasonable control (including but not limited to, war, terrorism, natural catastrophes, epidemics, fire, strikes and lock-outs, embargoes, governmental sanctions and supplier disruptions or insolvencies) and without its fault or negligence ("Force Majeure"). The party claiming the Force Majeure shall give notice in writing as soon as possible both after the occurrence of the Force Majeure event and after termination of the Force Majeure event. The Customer shall continue to pay for the Products delivered prior to the Force Majeure event and shall be responsible for any holding costs during the Force Majeure event. If this is unreasonable in commercial terms, the Company may terminate or rescind the Contractor the relevant portions thereof.

## **10 Assignment**

The Customer shall not assign, mortgage, or otherwise dispose of the Contract or any rights thereunder in whole or in part without the Company's prior written consent.

## **11 Termination for Cause**

**A.** Any of the following shall constitute "Cause" (as referred to in Section 11B): (i) the Customer fails to pay the price when due or otherwise breaches the Contract or any other contract with the Company or any ZF Company; (ii) the Customer is unable to pay its debts as they become due, or the Customer otherwise becomes insolvent or suspends payment or threatens to do so or ceases to do business; or (iii) steps are taken to: (a) propose any composition or arrangement involving the Customer and its creditors generally, (b) obtain an administration order or appoint any receiver in relation to the Customer or any of its property, (c) wind-up or dissolve the Customer, or (d) change who has control of the Customer; or (iv) there is a reasonable suspicion that a Breach (as defined in Section 14C.) has occurred or is likely to occur.

**B.** If any Cause occurs, or if the Company reasonably believes that any Cause is about to occur, then the Company may (without prejudice to its other rights hereunder or otherwise) at any time by 24 hours prior notice to the Customer, and without opportunity to cure (unless prescribed by applicable law), do any one or more of the following: (i) modify payment terms under Section 3; (ii) terminate or rescind the Contract or any release, or any other contracts with the Customer; (iii) suspend any deliveries to be made under the Contract or any release, or under any other contracts with the Customer; (iv) revoke any authority to sell, use or consume any delivered Products and require the Customer to return to the Company any delivered Products and, if the Customer fails to do so, the Customer shall reimburse the Company for all costs to obtain re-possession of delivered Products and costs to re-sell any such Products without giving notice; and/or (v) require the Customer to reimburse the Company for costs related to any purported cancellation or failure to take delivery, including but not limited to the cost of any material, labor, plant, tools and any overheads used, or intended to be used, for the Customer's order(s).

## **12 Termination for Convenience**

The Company may (without prejudice to its other rights hereunder or otherwise) at any time by 30 days prior written notice to the Customer terminate or rescind the Contract or any release. Claims for damages on the part of the Customer due to such termination or rescission are excluded.

## **13 Confidentiality**

The Customer shall consider all information furnished by the Company under the Contract (including drawings, specifications, or other documents prepared by the Company for the Customer in connection with an order) to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than the purchase, use or sale of the Products in accordance with the Contract, unless the Customer obtains the Company's prior written consent.

## **14 Compliance with Laws**

**A.** In the performance of the Contract, the Customer warrants that it shall fully comply with all applicable laws and regulations as well as with the ZF Business Partner Principles (as amended regularly and available at [www.zf.com](http://www.zf.com)). The



Customer warrants that it is familiar with and in compliance with, and shall continue to comply with: (i) all applicable anti-bribery laws including but not limited to, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010, as such acts may be amended from time to time; (ii) not make, directly or indirectly, any payments or give anything of value to (A) any government official (including employees of government departments, agencies, or instrumentalities; employees or agents of wholly or partially government-owned businesses; political parties; candidates for political office; and, employees or agents of public international organizations) while knowing or having a reasonable belief that all or some purpose will be used for the purpose of influencing such person in his or her official capacity or securing an improper advantage, in order to obtain or retain business or an advantage in conducting such business, or (B) any other person in order to induce or reward such person for the corrupt or improper performance of a function or activity in the course of such person's employment or when acceptance of the offer would itself constitute such corrupt or improper performance; and (iii) all applicable laws and regulations related to product compliance, including but not limited to applicable product safety and environmental standards.

**B.** The Customer shall inform the Company of the regulations and standards that relate to the performance of the deliveries and services, operational matters, and illness and accident prevention no later than the point of order. The Customer shall make the above-referenced regulations and standards available to the Company upon request.

**C.** The Customer shall immediately notify the Company of any indication, in relation to ZF Company business, of unlawful conduct or conduct resulting in a Product failing to comply with any laws or regulations referenced in Section 14(A)(iii) or violation of the ZF Business Partner Principles by any of Customer's executives, employees, agents or business partners ("Breach").

**D.** In the event of a Breach the Customer shall indemnify the Company against all liabilities resulting from such Breach.

**E.** The Customer shall keep complete records in relation to the Contract and the Products, and shall retain such records in accordance with applicable laws but at least for a period of six years. The Company and its third-party representatives with confidentiality obligations may, during normal business hours and upon reasonable prior notice, enter the Customer's premises and examine its books and records to the extent necessary to verify compliance by the Customer with applicable laws and regulations.

#### **15 Remedies**

The rights and remedies provided in the Contract Terms shall provide the exclusive remedies for the Customer for any misrepresentation, breach of warranty, covenant or other agreement, and for any other claims, rights, remedies or matters resulting from, arising out of or relating to the Contract.

#### **16 Severability**

If one or more provisions of the Contract should be or become invalid or unenforceable, the balance of the Contract shall remain in full force and effect. In this event, the parties shall substitute the invalid or unenforceable provision by a valid one which as closely as possible achieves the economic purpose of the invalid or unenforceable provision.

#### **17 No Implied Waiver**

The failure of either party at any time to require performance by the other party of any provision of the Contract will not affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of the Contract constitute a waiver of any later breach of the same or other provision of the Contract.

#### **18 Law / Arbitration**

**A.** Where the principal place of business of the Company is located in the EU, the Contract shall be governed exclusively by and construed in accordance with the law of Switzerland. Otherwise the Contract shall be governed exclusively by and construed in accordance with the law of the country or state in which the principal place of business of the Company is located. In any case the Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**B.** The parties shall use good faith efforts to resolve any dispute, controversy or claim arising out of or in connection with the Contract through friendly consultations between the parties. Unless otherwise mutually extended by the parties, if no settlement is reached within 30 days from the date one party notifies the other in writing of its intention to submit the dispute, controversy or claim to arbitration, then any such dispute, controversy or claim arising out of or relating to

the Contract or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the following Sections 18C and 18D.

**C.** Subject to Section 18D, the arbitration shall be conducted under the rules of the International Chamber of Commerce (ICC), however the ICC Expedited Procedure Provisions shall not apply. The number of arbitrators shall be three. The place of arbitration shall be Zurich, Switzerland. The language of the arbitration shall be English. The parties and the arbitrators shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings, and in particular regarding the parties involved, the witnesses, the experts and other evidentiary material. Persons acting on behalf of any person involved in the arbitral proceedings shall likewise be obliged to maintain confidentiality. The arbitration award shall be final and binding on the parties. The award will be issued in writing and include a decision on the cost of the proceedings.

**D.** Notwithstanding Section 18C, the following special rules shall apply: (i) where the principal place of business of the Company is located in China: (a) the arbitration shall be conducted by CIETAC according to its rules, (b) the place of arbitration shall be where the principal place of business of the Company is located, or if CIETAC does not administer arbitration at such location, such other place closest to the principal place of business of the Company where CIETAC administers arbitration, and (c) the number of arbitrators shall be three; (ii) where the principal place of business of the Company is located in Canada, the US or Mexico: (a) the arbitration shall be conducted by AAA under its Commercial Arbitration Rules, (b) the place of arbitration shall be Detroit, and (c) the number of arbitrators shall be three; or (iii) where the principal place of business of the Company is located in Argentina, Brazil or Colombia: (a) the arbitration shall be conducted by AMCHAM Brazil according to its rules, (b) the place of arbitration shall be Buenos Aires (for Argentina), Sao Paulo (for Brazil) or Bogota (for Colombia), (c) the language of the arbitration shall be Spanish (for Argentina and Colombia) or Portuguese (for Brazil), and (d) the number of arbitrators shall be three.

#### **19 General**

**A.** The Company will (without prejudice to its other rights hereunder or otherwise) have in respect of all unpaid debts due from the Customer a lien on: (i) finished Products delivered to the Customer; (ii) finished Products that have yet to be delivered to the Customer; and (iii) all property of the Customer in the possession of the Company.

**B.** The Company may set-off any liability of the Customer under the Contract or any other contract with any ZF Company, against any liability of the Company or any ZF Company to the Customer or any affiliate of the Customer.

**C.** The Company and the Customer are contracting solely on the basis of orders expressly agreed by the Company, including the Contract Terms, which contain the entire understanding of the parties and is intended as a final expression of the Contract and a complete statement of the terms thereof, and may not be amended, modified or otherwise supplemented unless such amendments, modifications or supplements are in writing and signed by an authorized representative of the Company.