



Supplementary agreement pertaining to product supply for the ZF Boge Elastmetall GmbH

1. General provisions

Supply agreements, orders, product acceptance, delivery call-offs, delivery notes, credit memos and invoices, as well as any changes and additions thereto, shall only be binding insofar as they are issued or confirmed by the customer in writing, by telefax or via electronic data transfer. Call-offs can also be realized via electronic data transfer. All documents shall indicate the relevant supplier and/or order number as well as the tax number.

All correspondence pertaining to the Agreement shall be conducted with the Purchasing division. Any arrangements made with other divisions or departments pertaining to modifications in contracts require the express written authorization of the Purchasing division in the form of an Annex to the contract.

Should the supplier fail to accept the order within two weeks of receipt thereof, the customer shall be entitled to cancel the order. Call-offs shall become binding insofar as the supplier does not rescind them within no more than two working days of receipt thereof.

2. Prices

The applicable prices shall be set forth in the Agreements concluded between the customer and the supplier.

3. Orders and deliveries

Call-offs shall only be valid if they occur under a master agreement. Call-off dates also constitute delivery dates for the receiving factory. We reserve the right to cancel or change orders in light of changes in customers' orders. Overdeliveries and early deliveries are inadmissible. We issue production authorizations for four week periods. Materials and capacity planning authorizations are issued for four weeks in addition to the aforementioned.

Call-offs are automatically extended by one month where they are not rendered moot by a new call-off. Any production plans for periods exceeding the aforementioned shall be regarded as non-binding forecasts only.

Partial consignments are inadmissible unless they are expressly authorized in writing by the customer or if the customer regards such consignments as a reasonable solution.

The supplier shall bear all material risk until the products are accepted by the customer or his agent at the place of delivery pursuant to the contract.

4. Delivery dates

In the event problems pertaining to manufacture, raw material supply, completion dates or related factors come to the supplier's attention that could prevent timely delivery or delivery of products of the agreed quality, the supplier shall immediately notify the materials planner at the receiving factory and the customer's purchasing division. This provision shall not diminish the enforceability of the agreed delivery dates.

5. Delay in delivery

In the event of a delivery delay on the part of the supplier and to the extent the supplier fails to comply with a reasonable supplementary delivery date set by the customer, the latter shall be entitled to either a) hire a third party at the supplier's expense to carry out the unperformed service or b) rescind the Agreement. Any costs incurred by the customer arising from such delay shall be borne by the supplier.

6. Environmental protection documentation

The supplier shall include with the consignment the most recent EC product safety form (pursuant to EC 91/155) from the documentation for the initial sample. The supplier shall provide this form without having to be prompted to do so and shall update it in accordance with the Directive. The supplier shall also comply with ZF standard ZFN 9003, *Ausschluss von Gefahrstoffen* ("Eliminating hazardous substances"). At the customer's behest, the supplier shall devise a recycling program for his materials, preparations or products in accordance with DIN ISO 22628.

7. Quality assurance and documentation

The following VDA (German automaker's association) publications shall apply to first article testing: *Sicherung der Qualität von Lieferungen* ("Quality assurance for consignments: supplier selection"); *Produktionsprozess – und Produktfreigabe* ("Production processes and product release"); *Qualitätsleistung in der Serie* ("Achieving quality in series production") (VDA-Schrift, Frankfurt am Main 1998). Apart from compliance with the foregoing, the supplier shall also carry out frequent quality inspections of components on an ongoing basis. The Parties shall exchange information regarding the possibility of establishing a quality improvement plan.

Where the customer and supplier have not reached a firm decision as to the type and scope of tests as well as test media and methods, at the supplier's behest the customer shall share his product testing expertise and experience with the supplier within the framework of discussions aimed at determining the most suitable testing method. In addition, upon request, the customer shall provide the supplier with information regarding the applicable safety regulations.

Notwithstanding clause 9.3 of the ZF Lemförder Conditions of Purchase, documentation from tests conducted during the active lifecycles of production and replacement parts is to be archived for one additional calendar year following termination of such lifecycles and for a minimum of at least 15 years thereafter, and is to be submitted to the customer if necessary.

8. Defect claims and recourse

Notwithstanding clause 10.1.1 of the ZF Lemförder Conditions of Purchase, in the event consignments containing defective products are received prior to production startup, the customer shall be entitled to require either payment for economic loss, or reimbursement of fruitless expenditures.



In addition, notwithstanding clause 10.1.2 of the ZF Lemförder Conditions of Purchase, the customer shall be entitled to require payment for damages for any additional expenditures, as well as any economic loss with respect to machines and/or tools (e.g. for components upon which work was performed) occasioned by the use of defective parts. Here, pursuant to clause 15.1 of the ZF Lemförder Conditions of Purchase, such reimbursement shall be proportional to reasonable additional expense incurred.

Where the customer accepts returns on products manufactured and/or purchased by him as a result of having received from the supplier defective products under a contractual agreement with the supplier; or if, as a result of having accepted such returns, the customer's sale price is reduced; or if any other claim of this nature is lodged against the customer, the latter shall be entitled to lodge a recourse claim against the supplier. The right to lodge such a claim shall not necessitate the setting of a deadline as is customarily the case.

Notwithstanding clause 10.3 of the ZF Lemförder Conditions of Purchase, and unless otherwise agreed, any defect claims asserted by the customer shall expire either 36 months after the vehicle is initially registered or 36 months after a replacement part is mounted. No mileage limitation shall apply in either of the aforementioned cases. The limitation period for contractual components that are reworked within the customer's defect claim limitation period shall start over again beginning from the time the supplier fully remedies the defect that provoked the customer's claim.

Customer recourse claims against the supplier pursuant to sections 478 and 479 of the German Civil Code exist when a claim lodged by the customer is ignored by a third party. This also applies where the customer or a third party has installed a component improperly or has performed work on it. Such customer claims also exist where the third party or end customer is an enterprise rather than an end user and the enterprise uses the product or deliverable in question for business or operational purposes.

In the event a defect comes to light within 18 months following the passage of risk, the defect shall be presumed to have existed at the time of passage of risk, unless this assumption is inconsistent with the type of object or defect.

In the case of any deficiency in title, the Supplier shall exempt the customer from any third-party claims. The period of limitation for deficiency in title shall be 10 years.

Insofar as not otherwise agreed in the foregoing, quality defect claims shall be governed by the applicable legal regulations. Here, however, the provisions of clause 15.1 of the ZF Lemförder Conditions of Sale pertaining to limitations on liability shall apply, notwithstanding the benefit to the supplier therefrom.

9. Use of production materials, information and customer's trade secrets

Drawings and other documentation, devices, models, tools and any other production material provided to the supplier shall remain the sole property of the customer. Ownership of tools and other production material whose costs were borne by the customer shall be governed by a separate Tool Agreement between the parties. In the event no such Agreement is concluded, the supplier shall hand over the customer's proprietary materials to a person designated by the customer, in proportion to the costs of the production materials owned by the customer.

The customer shall retain all proprietary rights to drawings or products executed according to his specifications, as well as to all processes developed by him.

Any destruction of production materials (tools, patterns, templates etc.) or the sale of single-purpose machines shall be admissible only with prior written authorization from the customer.

The supplier shall maintain, repair and carry out any requisite parts replacement with respect to the aforementioned items.

No documentary, technical or commercial information provided by the customer (including features or properties that are ascertainable from the products, documentation or software provided, and any other type of knowledge or experience) is to be disclosed to third parties insofar as such information has not been demonstrably publicized. Such information shall only be provided to those persons in the supplier's company who need access to such information in order to supply items and services under this agreement. Such persons shall also keep such information confidential. Such information shall remain the sole property of the customer, and shall not be reproduced in any form without prior written authorization from the customer, except to the extent that copies of such information are needed in connection with customer consignments. At the customer's behest, all information provided by the customer (including, if applicable, any copies or drawings) and any items on loan from the customer shall be returned to the customer forthwith and in full, or destroyed.

The customer shall retain all proprietary rights to such information (including copyrights and the right to register commercial rights of use such as patents, industrial designs, and mask work protectable under semiconductor chip protection laws etc.). Insofar as any third party has assigned such rights to the customer, such third parties shall likewise retain proprietary rights pursuant to the aforementioned proviso.

10. Final Provisions

The place of jurisdiction is the registered office of the orderer.

Damme / Bonn,

....., (date).....

ZF Boge Elastmetall GmbH

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