



## Conditions for transactions of special importance

### 1. Determining Conditions

The legal relationships between the supplier and the purchaser are based on the ZF General Terms and Conditions of Purchase, Version October 2002 ("ZF General Terms and Conditions of Purchase"). Because of the special importance that the products of the supplier have for the business of the purchaser, the following conditions apply in variation from or in addition to the ZF General Terms and Conditions of Purchase for the business relationship between the supplier and the purchaser. The following conditions shall supersede any previous agreement between supplier and purchaser within its scope of application, especially any previous special agreement.

Other terms and conditions of the supplier do not apply. This also applies when the supplier explicitly refers to these, e.g., in confirmations of orders.

### 2. Orders

Replacing Items 2.2 and 2.3 of the ZF General Terms and Conditions of Purchase the following provisions apply:

2.2 Orders, arrangements and alterations are binding only if they are issued or confirmed by the purchaser in writing, by fax or in electronic form.

Correspondence is to be carried out with the Purchasing Department. Arrangements with other departments, that alter the points established in this contract, require explicit written confirmation by the Purchasing Department in the form of a supplement to the contract.

2.3 Orders and calls for delivery are considered to have been accepted if the supplier does not object to them in writing within one week of receipt. The purchaser is, however, also entitled to revoke the order within a further week, if the supplier has not issued a written acceptance beforehand.

Within an ongoing supply relationship the supplier will fulfil the orders and calls of the purchaser especially regarding delivery time und delivery quantity according to their content, unless there are compelling reasons for the rejection. In such case the supplier has immediately to explain such reasons in writing to the purchaser. If the supplier intends to terminate an ongoing supply relationship in whole or in part, he has to notify such intention in writing so sufficiently in advance that the purchaser is able to resource the purchase of such products without disturbances of its production. Furthermore the supplier shall support the purchaser in this change of supplier by providing necessary information, documents and know how. However, agreed delivery commitments have still to be fulfilled by supplier in a proper manner. The last agreed prices shall furthermore apply until the phase-out of the delivery.

The supplier must treat the conclusion of the contract as confidential. He may name the purchaser as a reference to third parties only with the purchaser's written agreement. The supplier must treat as confidential the information made available to him in connection with the conclusion and implementation of the contract, provided that this has not been proved to be or become common knowledge.

- 2.4 Estimates of costs, initial samples and samples in general are binding and not to be remunerated unless otherwise explicitly agreed in writing.

### 3. Payment

Replacing Items 3.1 and 3.2 of the ZF General Terms and Conditions of Purchase the following provisions apply:

- 3.1 The agreed prices are fixed prices and include – in addition to the rate of value added tax prevailing at the time – duty-paid free at the place of use including packaging and freight costs. If a price is agreed ‘ex works’ or ‘ex stores’, the purchaser takes over only the most favourable freight costs. The supplier bears all the costs which arise including loading and excluding haulage up to the delivery of the goods to the carrier. The agreement concerning the place of fulfilment is not affected by the method of pricing.

The purchaser reserves the right to accept over or short deliveries.

The purchaser may pay with 3% discount at the end of the month following the date of invoice, or up to 60 calendar days after the date of invoice without discount, unless otherwise agreed with supplier. Where premature deliveries are accepted, the due date is based on the agreed delivery date.

- 3.3 Payments by the purchaser do not signify acceptance of the statement of account and take place subject to the reservation of checking the bill.

Claims of the supplier arising from this contract may be assigned to third parties with the written agreement of the purchaser.

The purchaser can offset all the claims which the supplier has against him against all the claims to which he is entitled against the supplier.

### 4. Notification of Deficiencies

Item 4 of the ZF General Terms and Conditions of Purchase is replaced by the following provisions:

- 4.1 Purchaser shall perform the following checks at the incoming inspection:
- Identification check based on packaging units;
  - Inspection for any visible external transport damage;
  - Estimate of the supplied quantity;
  - Check whether agreed test certificates are attached; and
  - Occasional countercheck regarding the values stated in the test certificates.

Purchaser will inform the supplier in writing about any alleged defects of the products delivered found here without delay.

- 4.2 After that the purchaser shall notify the supplier in writing about any alleged defects of the products delivered as soon as such alleged defects have been discovered in the course of an orderly business practice.
- 4.3 In case the purchaser complies with the afore-stated conditions of clause 4.1 and 4.2 above the supplier hereby waives his right to reject delayed notification of deficiency.

## **5. Confidentiality**

Item 5 of the ZF General Terms and Conditions of Purchase is supplemented by the following provisions:

- 5.5 Drawings and other documents, devices, models, tools and other means of production that are handed over to the supplier, remain the property of the purchaser. The ownership of tools and other means of production that are paid for by the purchaser is based on the arrangements made in a separate tool agreement.
- 5.6 Without the written agreement of the purchaser the above-mentioned objects may neither be scrapped nor made available to third parties, e.g. for the purpose of production. They may not be used for purposes other than those contractually agreed, e.g. supply to third parties. During the implementation of the contract they are to be carefully stored for the purchaser by the supplier at the supplier's cost. The regulations in Items 5.5 and 5.6 also apply accordingly to printing orders.
- 5.7 The care, maintenance and partial renewal of the above-mentioned objects are based on the arrangements made at the time between the purchaser and the supplier.
- 5.8 The purchaser reserves all the rights to drawings or products made according to his information as well as to procedures developed by him.
- 5.9 All commercial or technical information made available by the purchaser (including features that are to be gathered for instance from the objects, documents or software handed over, and other knowledge or experiences) are, as long as and as far as they are not demonstrably public knowledge, to be kept in confidence from third parties and may be made available in the supplier's business only to such persons as necessarily have to be brought in for their use for the purpose of supply to the purchaser and who are likewise committed to maintaining confidentiality; they remain the exclusive property of the purchaser. Such information – except for supplies to the purchaser – may not be reproduced or used in any other way without the prior consent of the purchaser in writing. All information originating from the purchaser (if applicable including copies or drawings made) and objects entrusted by way of a loan are on demand of the purchaser to be returned to him completely and without delay or to be destroyed.

The purchaser reserves all rights to such information (including copyrights and the right to registration of industrial property rights, such as patents, utility models, semiconductors etc.). In so far as these were made available to the purchaser by third parties, this reserved right also applies in favour of these third parties.

## **6. Delivery dates, time limits, proofs of origin and export restrictions**

Item 6 of the ZF General Terms and Conditions of Purchase is replaced by the following provisions:

- 6.1 Variations from the contracts concluded and orders of the purchaser are permitted only after prior consent in writing.
- 6.2 Agreed dates and time limits are binding. The receipt of the goods by the purchaser defines the compliance with the delivery deadline or delivery period. If the delivery is not agreed as 'free at factory gate' (DDU or DDP in accordance with Incoterms 2000), the supplier must make the goods available in due time, taking into account the time to be agreed with the carrier for loading and dispatch.
- 6.3 If agreed delivery dates are not kept, the legal regulations apply in principle.

- 6.4 As soon as the supplier becomes aware of difficulties with regard to the production, provision of primary material, keeping of appointments or similar circumstances that could prevent him from making a delivery in accordance with the appointment or from delivering in the agreed quality, the supplier must inform the Purchasing Department of the purchaser without delay. The obligation to comply with agreed appointments is not affected by this.

Furthermore the supplier is obliged in the event of exceeding agreed deadlines to compensate the purchaser and/or the purchaser's own customer for the damage arising from exceeding the time limit.

- 6.5 In the event of delay of the supplier, and after the expiry of an appropriate subsequent period set by the purchaser without result, the purchaser can have the supply not yet provided by the supplier carried out by a third party at the expense of the supplier. Instead of this, the purchaser can also withdraw from the contract after the expiry of a subsequent period set by him without result.
- 6.6 The acceptance without reservation of the delayed delivery or service does not include a renunciation of the claims to compensation to which the purchaser is entitled on account of the delayed delivery or service; this applies until the completion of the payment owed by the purchaser for the delivery or service concerned.
- 6.7 Partial deliveries are in principle not authorised, unless the purchaser has explicitly agreed to these or they are reasonable to him.
- 6.8 Subject to other proof, the values ascertained by the purchaser in the process of incoming goods inspection are definitive for the number of items, weights and measures.
- 6.9 For software, including its documentation, that is part of the scope of supply, the purchaser has in addition to the right of usage to the legally authorised extent (Paragraphs 69a ff. UrhG [German Copyright Act]) the right of usage with the agreed performance characteristics and to the extent necessary for a use of the product in accordance with the contract. The purchaser may also make a back-up copy without explicit agreement.
- 6.10 The supplier bears the risk for the object until the acceptance of the goods by the purchaser or by the purchaser's agent at the place at which the goods are to be delivered in accordance with the order.
- 6.11 *Force majeure*, industrial disputes, operational interruptions that are not the fault of the operator, disturbances, official measures and other unavoidable events entitle the purchaser regardless of his other rights to withdraw from the contract wholly or partly, as far as they are of considerable duration and have a considerable reduction of the needs of the purchaser as a consequence.
- 6.12 Proofs of origin requested by the purchaser will be provided by the supplier with all the necessary information and made available properly signed without delay. This applies correspondingly to proofs under value added tax law in the case of foreign and intra-Community supplies.
- 6.13 The supplier will inform the purchaser without delay if a delivery is wholly or partly subject to export restrictions according to German or other law.
- 6.14 Suppliers from member states of the European Union are required to let the purchaser have long-term supplier declarations in accordance with the European regulation prevailing at the time without being asked within 30 days of the acceptance of the order and then in each case within the first two months of each calendar year. If this cannot take place for particular supplies of goods, the corresponding proofs of origin must be supplied at the latest with the presentation of the bill.

- 6.15 The supplier undertakes to supply the purchaser with replacement parts and replacement products for a period of up to 15 years after the end of the last delivery to the purchaser.
- 6.16 The prices for replacement parts and replacement products are standard prices. Claims regarding defects of quality, liability and delay are based on the arrangements of this contract.

## 7. Delay

The provisions of Item 7 of the ZF General Terms and Conditions of Purchase lapse.

## 8. Force majeure

The provisions of Item 8 of the ZF General Terms and Conditions of Purchase lapse.

## 9. Quality and Documentation

Item 9 of the ZF General Terms and Conditions of Purchase is supplemented by the following provisions:

- 9.5 The supplier must set up and maintain a quality management system that is suitable in type and extent, corresponds to the current state of the art and is documented. All products and processes of the supplier have to be according to the current state of the art. He must draw up records, in particular concerning his quality checks, and make these available to the purchaser on request.
- 9.6 The supplier herewith consents to quality audits for the evaluation of the effectiveness of his quality assurance system by the purchaser or by his agent, if applicable with the participation of the purchaser's own customer.
- 9.7 The supplier is obliged at the request of the purchaser to conclude a quality assurance agreement with the purchaser.
- 9.8 The supplier will also carry out an examination of stock without charge several times in the calendar year at the request of the purchaser if required.
- 9.9 As supplier for the automotive industry, the purchaser is subject to the statutory end-of-life vehicle regulation which is based on the directive 2000/53/EG. The supplier is therefore obliged to confirm adherence to the bans on heavy metal when submitting an offer. These requirements must be adhered to during the entire product life cycle.  
The purchaser must also be provided with the material composition in the International Material Data System IMDS, no later than at the time of initial sampling.

## 10. Warranty

Item 10 of the ZF General Terms and Conditions of Purchase is replaced by the following provisions:

- 10.1 The supplier warrants that the products delivered
- a) will conform to the agreed specification and the initial samples delivered;
  - b) fulfil any laws and regulations of those countries in which such products or the vehicles containing such products will be sold; and
  - c) are perfectly suitable for the functional requirements and the capacity of purchaser's products and for the specified use.

The supplier declares to be informed about these requirements, capacity and use.

- 10.2 The supplier shall immediately check whether the demands imposed by purchaser are in any way incorrect, unclear, incomplete or inconsistent. If the supplier notes such a case, he shall immediately inform the purchaser in writing.
- 10.3 The purchaser is in principle entitled to choose the type of subsequent fulfilment. The supplier is entitled to refuse the type of subsequent fulfilment chosen by the purchaser under the conditions of Paragraph 439 Section 3 BGB [German Civil Code].
- 10.4 If the supplier does not rectify the defect within a period of time adequate to the individual circumstances, the purchaser is entitled in urgent cases, in particular to avoid acute dangers or greater damage, to carry out these himself, or have them carried out by a third party, at the cost of the supplier.
- 10.5 Warranty claims expire in 48 months, but not before the expiry of six months after the lodging of the complaint in respect of the defects, unless the object has been used in accordance with its usual usage for a construction and has caused its defectiveness. The period of limitation for warranty claims begins with the supply of the contractual object (transfer of risk). The period of limitation in accordance with Paragraph 479 BGB remains unaffected.
- 10.6 The purchaser is entitled to rights of recourse in accordance with Paragraphs 478 and 479 BGB towards the supplier, in particular when the purchaser is responsible for such claims towards a third party. This also applies in the event that the object supplied has been used or further processed by the purchaser or a third party.
- 10.7 In the event of deficiencies in title caused by negligence or intention of the supplier, the supplier additionally releases the purchaser from possibly existing claims of third parties.
- 10.8 If costs arise to the purchaser as a result of defective delivery, in particular transport costs, tolls, working costs, material costs or costs for an incoming goods inspection going beyond the usual extent, the supplier must bear these costs.
- 10.9 If the purchaser takes back products produced and/or sold by himself as a consequence of the defect of the contractual product supplied by the supplier or if because of this the purchase price to the purchaser was reduced or if there was a claim against the purchaser in some other way because of this, the purchaser reserves the right of recourse to the supplier, in the process of which there is no need for an otherwise necessary setting of a limit of the purchaser's rights regarding the defects.
- 10.10 The purchaser is entitled to demand compensation from the supplier for the expenditure which the purchaser was responsible for in relationship to his own customers, because they have a claim against the purchaser for compensation of the expenditure necessary for the purpose of the subsequent fulfilment, in particular transport costs, tolls, working costs and material costs.
- 10.11 The expiry of the limitation period in the cases of Items 10.9 and 10.10 comes into effect at the earliest two months after the date at which the purchaser has fulfilled the claims of his own customers against him.
- 10.12 The supplier has liability without fault for the guaranteed properties of the deliveries. The period of limitation according to Paragraph 479 BGB applies to such derelictions of duty. The guaranteed qualities are agreed between the parties

10.13 The purchaser is entitled to the legal and contractual claims under the guarantee.

In this the following applies in particular:

The purchaser can demand from the supplier subsequent improvement or the replacement of defective parts by parts without defects according to his own choice. The costs to be borne in these cases by the supplier also include the additional costs which have arisen for the purchaser and for the purchaser's own customers, in particular transport costs, tolls, working costs and material costs, including the costs for repair and exchange of such parts as were not supplied by the supplier but which likewise have to be repaired or exchanged as a result of the defective parts of the supplier. In particular they also include the removal and installation costs in the case of replacement delivery by the supplier or replacement procurement by the purchaser. Costs within the terms of this Item 10.13 also include flat-rate amounts that the purchaser has to pay on the basis of corresponding agreements in the event of defective supplies to his own customers.

The right to compensation, in particular to compensation for non-fulfilment, remains unaffected by this.

## 11. Liability and insurance

Item 11 of the ZF General Terms and Conditions of Purchase is replaced by the following provisions:

- 11.1 If a claim arising from product liability is made against the purchaser under German or other law, the supplier will intervene on behalf of the purchaser, in so far as he would be directly liable. A contractual liability of the supplier remains unaffected. The supplier is obliged to release the purchaser from claims of this kind, if and as far as the damage has been caused by a defect of the contractual object supplied by the supplier. In cases of liability with fault, however, this applies only when the supplier is at fault. If the cause of the damage lies within the area of responsibility of the supplier, he bears the burden of proof in this respect. In these cases the supplier takes over all the costs and expenditure including the costs of possible legal proceedings or recall action. In addition, the legal provisions apply.
- 11.2 The purchaser will inform the supplier without delay if he wants to assert a claim against him in accordance with the preceding paragraph. As far as it is reasonable to the purchaser, he will give the supplier the opportunity to examine the claim and to come to an agreement with the purchaser about the measures to be taken, e.g. negotiations about a settlement.
- 11.3 The supplier will also bear the cost of preventive customer service measures by the purchaser and/or the purchaser's own customers, in particular of measures to avoid claims (e.g. recall) without there being a legal obligation for this, provided that the preventive customer service measure can at least also be attributed to defective supplies of the supplier.
- 11.4 The supplier is obliged to take out a product liability and recall campaign cost liability insurance with a coverage for personal injury, damage to property and pecuniary loss in the amount of at least Euro 2.5 million per case, to maintain these insurances during the ongoing supply relationship without any disruption and provide evidence to purchaser at all times, if so requested.
- 11.5 Purchaser will demand from the supplier to increase his insurance coverage on the merits or in terms of amount, based on the demands of purchaser's particular customer, the supplier's capability, the business relationship and liability risks. The supplier is obliged to study these demands and provide his agreement wherever possible. Such agreement shall not be unreasonably refused by the supplier.

- 11.6 In case that an insured event occurs, purchaser and supplier are obliged to provide each other with information on all circumstances and events associated with the insured event.
- 11.7 At the change of the liability insurance company the supplier shall immediately provide purchaser with the corresponding supporting documents without delay and unrequested.

## **12. Industrial Property Rights**

Items 12.3 and 12.4 of the ZF General Terms and Conditions of Purchase lapse without substitute.

## **14. Retention of Title**

Item 14 of the ZF General Terms and Conditions of Purchase is replaced by the following provisions:

Persons who carry out work on factory premises in fulfilment of contract must respect the provisions of the factory regulations in each case. The liability for accidents which happen to these people on the factory premises is excluded as far as these were not caused by intent or grossly negligent dereliction of duty of the legal representative or vicarious agents of the purchaser.

Materials, parts, containers and special packing made available by the purchaser remain the property of the purchaser. These may be used only in accordance with the conditions. The processing of materials and the assembly of parts take place for the purchaser. Agreement exists that the purchaser is co-owner of the products manufactured with the use of materials and parts of the purchaser in proportion to the value of the materials made available to the value of total product; these products are kept in this respect by the supplier for the purchaser.

## **15. General provisions**

Item 15.1 of the ZF General Terms and Conditions of Purchase lapses and is replaced by the following provision:

- 15.1 The place of fulfilment for deliveries is the place of use, for payments it is the business headquarters of the purchaser.