

ZF Industrieantriebe Witten GmbH

General Terms and Conditions of Delivery

For use in legal transactions with entrepreneurs, public law legal entities and public law special funds.

1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern our deliveries. Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have expressly approved the application thereof. Separate service conditions shall apply to assembly and repair work.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by us to be effective.
- 1.3 If the customer fails to accept our quotation within two weeks of receipt thereof, we shall be entitled to cancel.
- 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed. Measurements, packaging measurement, weights, illustrations, simulation results and drawings are only binding for the construction of the products if this has been expressly confirmed in writing.
- 1.5 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of our new terms and conditions of delivery.

2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value-added tax will not be charged only in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be FCA dispatch place at the delivering plant (Incoterms® 2010) excluding packaging.
- 2.3 We reserve the right to adjust our prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials. Upon request we shall evidence such changes to the customer.
- 2.4 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by liability for defects.

3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon, especially effecting agreed down-payments or opening of a letter of credit. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond our control e.g. war, terrorist attacks, import or export restrictions, including such disturbances affecting subcontractors, the delivery dates agreed upon shall be extended by the period of time of the disturbance. This also applies to industrial action affecting either us or our suppliers.
- 3.3 If we are in default with our delivery, the customer shall declare upon our request and within a reasonable period of time

whether it insists upon performance of delivery or asserts its other statutory rights.

- 3.4 In case of delayed delivery, the customer may rescind the contract within the framework of statutory provisions only insofar as we are responsible for the delay.
- 3.5 Clause 9 applies to claims to damages by the customer on account of delayed delivery.
- 3.6 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties, we have the right to demand compensation for the damage incurred by us in this respect including further additional expenditure in an amount of 0.5 % of the price of the products for delivery per month or part thereof but not exceeding, on aggregate, 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower costs of additional expenditure. The right to raise further claims on account of default of acceptance shall remain unaffected hereby.
- 3.7 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

4. Transfer of Risk

- 4.1 Delivery is effected FCA dispatch place at the delivering plant (Incoterms® 2010) except as expressly otherwise agreed.
- 4.2 At the customer's request and cost we shall insure shipments against customary transport risks.

5. Complaints and Notification of Defects

- 5.1 The customer must notify us in writing immediately, no later than 15 days after receipt of the goods, of any recognisable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof.
- 5.2 The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
- 5.3 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
- 5.4 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

7. Defects/Defects of Title

- 7.1 Claims on account of defects shall become time-barred after a period of 12 months. The foregoing provision shall not apply insofar as longer time bar periods are prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and goods for building constructions), Section 479 para 1 (claim to recourse) and Section 634a (construction defects) German Civil Code [BGB].
- 7.2 The time bar period for defects commences as follows:
 - a) in case of products for vehicle and engine equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle and in other cases upon installation, but no later than 6 months after delivery of the product (date of transfer of risk);
 - b) in all other cases upon delivery of the product (date of transfer of risk).
- 7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may effect

subsequent performance at our discretion either by remedying the defect or delivering a defect-free product. The defective product has to be sent for repair either to us or to the nearest customer service unit for the respective product determined by us.

7.4 The time bar period shall be interrupted for the period of time necessary for remedying the defective product or to deliver a new product. The time bar period does not start to run anew as a result of the completion of the remedy of the defect.

7.5 If subsequent performance should be abortive, the customer may – without prejudice to any claims to damages – rescind the contract or reduce the amount of payment in accordance with statutory provisions.

7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labour and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the original place of contractual performance unless such removal is in accordance with the designated use of the product.

7.7 Claims for subsequent performance do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.

7.8 The following are not deemed to be defects:

- ordinary wear and tear;
- characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use, improper operational means, commissioning or maintenance;
- characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
- non-reproducible software errors.

Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.

We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.

7.9 Claims to recourse against us by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.

7.10 The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer may only carry out such work itself if we have given our prior consent or if Section 637 German Civil Code applies. We shall bear the costs necessary for this work to an extent which must be in a reasonable proportion to the value of the product in a defect free condition, the significance of the defect and/or the possibility of obtaining a defect-free product by an alternative method; any costs in excess of this shall be borne by the customer.

7.11 Clauses 7.3, 7.6, 7.7 shall not apply insofar as our product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.

7.12 Our obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 BGB on account of defects shall be governed by clause 9 in all other re-

spects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.

7.13 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

8. Industrial Property Rights and Copyright

8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.

8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.

8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request – insofar as possible – allow us to conduct the litigation (including non-judicial proceedings).

8.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall – insofar as the customer allowed us to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognised by us.

8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.

8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee.

8.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.

8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.

8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

9 Claims to Damages

9.1 We are liable to pay damages and compensation of abortive expenditure within the meaning of Section 284 BGB (hereinafter referred to as damages) on account of a violation of contractual and non-contractual obligations only in case of

- (i) intent or gross negligence,
- (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
- (iii) on account of assuming a quality or durability guarantee,

- (iv) in case of a negligent or deliberate breach of material contractual duties,
 - (v) on account of compulsory statutory liability pursuant to the German Product Liability Act or
 - (vi) on account of any other compulsory liability.
- 9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.
- 9.3 Liability for damages exceeding that provided for in clause 9 is excluded irrespective of the legal nature of the claim raised. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), on account of other breaches of duty and to tort claims for compensation of property damage pursuant to Sec 823 BGB.
- 9.4 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of our employees, representatives and of persons engaged by us in performance of our obligations.
- 9.5 No change to the burden of proof to the detriment of the customer is connected with the aforementioned rulings.

10 Retention of Title

- 10.1 We retain title to the products delivered until the full purchase price due under this contract has been paid.
- 10.2 If the retention of title is not effective under the laws of the country in which the product is located, a respective security shall be deemed agreed upon which is as far as possible equivalent to the retention of title. If the co-operation of the customer is required for the enforcement of such rights and/or for the retention of title, the customer shall take all measures necessary for the enforcement and preservation of such rights and for the retention of title.
- 10.3 Insofar as it is enforceable under the laws of the country in which territory the products are located to agree upon a further-reaching retention of title (e.g. the assignment in advance of claims of the customer arising from the sale of the products delivered by us), the customer shall, upon our request, agree upon such a further-reaching retention of title with us.

11 Cancellation

- 11.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, we have the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.
- 11.2 We have the right to withdraw from the contract without setting an extended deadline if the customer suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement.
- 11.3 We are also entitled to withdraw from the contract without setting an extended deadline if:
- (i) the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized, or
 - (ii) if the customer is insolvent or overindebted.
- 11.4 After declaration of such withdrawal, the customer shall immediately grant us or our agents access to the products to which we have retained title and surrender them. After respective notification in good time we may also otherwise market the products to which we have retained title in order to satisfy our due claims against the customer.
- 11.5 Statutory rights and claims shall not be restricted by the provisions contained in this clause 11.

12 Export Control Clause

- 12.1 Deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. The customer undertakes to provide all information and documentation which is required for export and shipment. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of being approved, the contract shall be considered not concluded with respect to the parts affected.
- 12.2 We have the right to terminate the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.
- 12.3 In the event of termination pursuant to clause 12.2, the customer is excluded from raising a claim for any damage or other rights on account of the termination.
- 12.4 When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in Germany and abroad, the customer must comply with the respectively applicable provisions of national and international (re-) export control law.

13 Confidentiality

- 13.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.
- 13.2 We reserve all rights to the information mentioned in clause 13.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

14 Payment Terms

- 14.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever. We may also, however, make delivery conditional upon contemporaneous payment (for instance cash on delivery or bank direct debiting service) or on pre-payment.
- 14.2 We are entitled to offset payments made against the oldest claim due.
- 14.3 In case of delayed payment we are entitled to charge default interest at 8 percentage points above the base interest rate. The right to assert a claim on account of further damage is not excluded.
- 14.4 Payment by bill of exchange is only admissible following prior agreement with us. We only accept bills of exchange and cheques on account of performance and they shall not be deemed to constitute payment until honoured. The costs of redeeming a bill of exchange or cheque shall be borne by the customer.
- 14.5 If the customer is in arrears in payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is

no defence. Furthermore we are also entitled to perform outstanding deliveries only against payment in advance or against provision of a security. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or cheques.

- 14.6 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
- 14.7 The customer shall only be entitled to withhold payments to the extent that its counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.

15 Miscellaneous

- 15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.
- 15.2 The courts of Stuttgart (with regard to local court matters the Amtsgericht (local court of) Stuttgart in 70190 Stuttgart) or, at our discretion, if the customer is,
- a registered merchant, public law legal entity, public law special fund or
 - has no general domestic place of jurisdiction or
 - has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown,
- the courts with jurisdiction at the registered office of the operating facility carrying out the order, shall have jurisdiction and venue.
- We are also entitled to take legal action at the court having jurisdiction at the registered office or a branch office of the customer.
- 15.3 All legal relationships between us and the customer shall be exclusively bound by and construed in accordance with the laws of the Federal Republic of Germany excluding the rules on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).