

## ZF General Terms and Conditions of Purchase for Machines, Assembly Technology, and Machining Systems (China, Status April 2017)

### 1. Scope

These ZF General Terms and Conditions of Purchase apply to the purchasing of machines, assembly technology, and machining systems (hereinafter collectively referred to as "Machine") including further services required in this context, such as assembly work (delivery of machines and provision of further services, hereinafter also collectively referred to as "Services"). The present Terms and Conditions are the basis for any provisions contained in individual agreements (e.g. framework contract) made between the Contractor and the Customer (hereinafter also collectively referred to as "Contract Partners"). The General Terms and Conditions of the Contractor are hereby expressly excluded.

### 2. Prices and Weights

2.1 The agreed prices are fixed prices plus the respectively applicable VAT.  
 2.2 The prices include required measures against frost, snow, heat, and water damage, as well as the rectification of any such potential damage.  
 2.3 Costs for transport, transport insurance, packaging, and their reimbursement shall be indicated separately in the pricing terms. This applies accordingly with regard to the costs for machine assembly and initial operation, inasmuch as such costs are calculated. The total amount of the costs shall be indicated, including the respective hourly and/or daily rate and travel and overnight costs, or, if otherwise agreed, for example a overall price.

### 3. Payment

3.1 Payment shall be made according to the terms agreed individually. In case a premature provision of Services is accepted, the due date for payment shall be based on the agreed delivery date.

3.2 In case of a defective performance, the Customer shall be entitled to withhold payment in respect of the proportionate value until due performance.

3.3 Without the Customer's prior written consent, the Contractor shall not be entitled to assign his/her claims against the Customer to or to have them collected by third parties.

### 4. Invoicing Upon Cancellation due to Contract Violation

If the Customer exercises his/her right according to the agreement or to applicable law to cancel the agreement because of a contract breach by the Contractor, the Services rendered up to that point shall be invoiced at the agreed prices only to the extent that the Customer can make use of them according to the terms of the agreement. The invoicing shall be done based upon the agreement. Any damage to be compensated to the Customer shall be taken into account during invoicing. The same applies with regard to a forfeited contractual penalty.

### 5. Scope and Execution

5.1 If no other agreement has been made, the Contractor shall deliver a complete machine which includes all parts required for faultless operation in accordance with the agreed, implicitly assumed, or general conditions, even if spare parts required for this are not listed. The data provided by the Customer shall be checked independently by the Contractor. Machinery elements and parts are to be designed and arranged in such a way that they can be maintained, inspected, and replaced easily and quickly. Wearing parts shall have the longest possible tool life.

5.2 The Customer shall provide electricity in the respectively available voltages and water free of charge at the installation site at a distance of no more than 100 m. Heating construction site accommodations with electricity is permitted as much as possible under the given circumstances; the use of electricity for heating any other facilities is, however, not permitted.

The Contractor shall set up, maintain and later on remove the required supply lines and connections according to the applicable technical specifications at the Contractor's own cost.

5.3 The order scope includes the provision of all machines, equipment, scaffolding, lifting appliances, accommodation etc. required to execute the order. Inasmuch as the Customer provides such articles in the individual case, the Contractor shall be liable for the article and its use.

5.4 Components (such as automation components, tools, clamping devices, extraction/ventilation facilities, etc.) (hereinafter referred to as "Components") provided to the Contractor by the Customer remain the property of Customer. Such Components shall be marked as property of ZF and shall be stored separately from other articles so that it is clear at all times that Customer is the owner of such Components. Such Components may only be used for the purpose for which they are intended. The processing and/or transformation of Components and their assembly and/or installation in machines in order to create a finished product are carried out on behalf of the Customer. It is agreed that the Customer shall be co-owner of the finished product based on the ratio of the value of the Components to the value of the finished product. This also applies if one of the other components of the product is the major component. The finished product and/or the Components shall pro tanto be stored safely by the Contractor for the Customer.

5.5 A positive supplier's declaration according to 89/392/EEC or a respective more recent version is part of the agreed-upon service (within the European Economic Area this includes the CE marking and the certificate of conformity according to the applicable EU directives).

5.6 Any additional work required at hourly rates (see attached hourly rate sheet) may only be performed upon explicit instruction of the Customer's local construction site management. The hours shall be recorded by the Contractor in forms provided for this purpose by the Customer and shall be submitted to the Customer's local construction site management for countersigning on a daily basis; the signature only confirms the number of hours.

5.7 In case the Contractor wishes to involve subcontractors in order to fulfill his contractual obligations, the Contractor requires the written consent of the Customer before entering into any agreements with subcontractors.

### 6. Delivery and Shipping Instructions, Packaging

6.1 Delivery and shipping instructions specified by the Customer, as well as the Customer's material specifications for packaging shall be complied with. The quantity of packaging shall be limited to the extent required for the protection of the goods and packaging may only consist of environmentally compatible and recyclable materials. Unless otherwise agreed, the ZF Work Standard "ZFN 9004" shall be complied with. Unless otherwise agreed, packaging must be taken back.

6.2 Any costs which are incurred by the Customer as a result of noncompliance with the delivery, shipping, and packaging instructions shall be borne by the Contractor.

### 7. Work at the Customer's Facilities

7.1 Work which is to be performed at the Customer's facilities must not interfere with the operations of the Customer or third parties.

7.2 The timing and implementation of the work shall be coordinated in time with the responsible technical contact of the Customer.

7.3 Before beginning the installation and/or assembly work, the Contractor shall accept the installation site with all the foundations, connections, site markings, etc. important to the Contractor and check whether they are correctly installed /implemented.

7.4 While performing the work, the Contractor has a particular duty of care regarding substances that are hazardous to the environment. If the Contractor releases any hazardous substances, finds any hazardous substances, or suspects the presence of such substances during the performance of the work, the Contractor shall notify the Customer immediately.

7.5 The local construction site management nominated by the Customer has the authority to give instructions at the construction site during the construction period. Instructions given by other departments of the Customer may only be implemented upon coordination with the construction site management.

7.6 The Contractor shall nominate an experienced expert who is in charge of the work at the installation site and shall invest this person with the required powers and authorities. A change requires the Customer's agreement.

7.7 The Contractor shall supply a list of names of the workers the Contractor intends to recruit to work at the Customer's facility to the construction site management. This list shall be kept up to date at all times. Upon request, the Contractor shall provide evidence that all labor deployed have the legally required social security coverage.

For important reasons, the Customer may deny the labor force of the Contractor admittance to the Customer's facility.

7.8 The Contractor shall ensure that the Contractor's labor force complies with the instructions of the Customer with respect to maintaining order and safety and that they submit to the usual inspection procedures.

7.9 Any objects which are brought onto the Customer's plant premises are subject to inspection by plant security. Prior to bringing items onto or removing them from the site, a list of all items shall be submitted to the responsible technical contact of the Customer for signature and filed with this person. The Contractor and the Contractor's subcontractors shall clearly and permanently mark their tools, equipment, and assembly equipment with the company name or the company sign in advance. Railcars and other means of transport shall only be handled during normal working hours.

7.10 Inasmuch as local Customer construction site directives exist, such directives shall be complied with in addition to the above.

### 8. Accident Prevention, Emission Control, Immission-Based Damage, Fire Protection

8.1 The Contractor shall ensure compliance with the laws, regulations, and provisions for safeguarding the safety and health of employees, environmental protection, the transport of hazardous goods, and fire protection, including the leaflets of the professional association and the association of property insurance companies, insofar as they are relevant for the performance of the service.

8.2 The Contractor shall consult with the Customer's responsible specialists for health and safety at work, environmental protection, and fire protection concerning requirements, accident prevention, environmental protection, and fire protection regulations applicable at the place of fulfillment. The necessary measures shall be coordinated with the above-mentioned specialists in each case.

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8.3 The Contractor shall ensure that the Contractor's entire labor force observes the relevant provisions for environmental protection, safety, and fire protection.

8.4 Fire protection requirements issued by the plant/company fire department or the fire protection officer must be complied with at all times. If any work associated with fire risk on or near machines subject to fire and/or explosion risk such as oil tanks, cable systems etc. cannot be avoided, such work shall only be performed after approval by the responsible body. Unless otherwise agreed, the Contractor shall provide a trained fire sentry. After the work is finished, the work shall be checked. This also applies to any kind of disassembly and scrapping work.

8.5 The Contractor shall indemnify the Customer and the persons entrusted by the Customer to implement or monitor accident prevention, environmental protection, plant security, fire protection, the definition of hazardous materials, and construction site management against any claims that may be filed against the Customer or the above-mentioned persons because of damage resulting from a violation of the provisions to be complied with by the Contractor in connection with the provision of the service. This also applies to any claims that originate from damage relating to the performance of work on the equipment of third parties (e.g. supply and disposal lines); the Contractor shall consult with all responsible bodies relating to such equipment of third parties before the Contractor begins with the performance of the work. If any damage occurs, the Customer and other responsible bodies shall be notified.

### 9. Proof of Performance and Acceptance

9.1 Inasmuch as a joint acceptance was agreed upon, such acceptance shall take place at the location specified by the Customer. The Contractor shall request the definition of the acceptance date in writing. The acceptance shall take place immediately or, for machines requiring prior trial operation, in a time frame requested by the Customer of 4 weeks after the beginning of the trial operation at the earliest and 3 months after the beginning of the trial operation at the latest. In the framework of the possibilities given, the machine may also be used for production during trial operation.

The Contractor shall bear all essential costs incurred in the course of final acceptance. Any costs of acceptance incurred in terms of personnel shall be borne by the Customer and the Contractor themselves respectively.

9.2 If, in the course of the acceptance test, the machine does not prove to be as specified in the agreement, the Contractor shall immediately establish the state stipulated in the agreement and request a repetition of the acceptance within three months at the latest. All costs incurred in the course of the repetition of the acceptance test and all losses and damages suffered by the Customer therefrom shall be borne by the Contractor.

9.3 In case defects are found which affect neither the performance and function of the machine nor the safety and health of the employees, acceptance may still be performed under the condition that such defects are remedied immediately. An appropriate amount shall then be deducted from the remaining payment and shall be paid once such defects are remedied. In any case, however, the machine must comply with the respective applicable laws, regulations, directives, standards and requirements from competent authorities as a prerequisite for acceptance.

9.4 The successful acceptance shall be confirmed to the Contractor by means of the Customer's acceptance report.

### 10. Notice of Defects

The Customer shall notify the Contractor without delay in writing of defects in the performance provided as soon as such defects are detected in the regular course of business. In this respect, the Contractor shall dispense with objecting to later complaints.

### 11. Warranty and Liability

11.1 The machine must have the agreed quality, function, and performance and must comply with the respective applicable laws, regulations, directives, standards and Customer provisions with regard to health and safety at work, environmental protection, and fire protection.

Inasmuch as no other deviating requirements result from this or from the agreement, the generally accepted rules of technology shall be complied with.

11.2 The limitation period for defects (hereinafter referred to as "Limitation Period") is 24 months and starts on the date of the successful acceptance mentioned in the written certificate of acceptance of the Customer. In case the acceptance is delayed without this being the Contractor's fault, the Customer is willing to agree on an appropriate maximum deadline upon the Contractor's request. The limitation period for defects with regard to spare parts is 24 months starting with their successful installation and ends at the latest 36 months after the service has been provided to the Customer.

11.3 The Contractor shall correct defects free of charge. If this is not possible or if the Customer cannot reasonably be expected to accept the corrected services, the Contractor shall replace the defective services free of charge.

11.4 In urgent cases or if the Contractor is in default with regard to correcting a defect, the Customer may carry out the required measures himself or have them carried out by a third party at the Contractor's cost. The Customer shall notify the Contractor of the implementation of such measures. If this is not possible, the measures required for damage prevention may be carried out without prior notification; in such cases, the Customer shall notify the Contractor immediately as soon as possible. The obligations of the Contractor in the context of warranty shall remain unaffected; this excludes defects which can be traced back to measures carried out by the Customer or third parties.

11.5 For services provided in the context of a correction of defects, a new limitation period in accordance with subsection 11.2 starts upon the written acceptance of such services. If the Customer does not deliver the written certificate of acceptance within 15 working days or raise concerns after written notification by the Contractor regarding the actually executed proper completion of the correction of defects, the new limitation period shall begin at the end of the above-mentioned period of 15 working days.

11.6 For all parts of the machine which cannot be used as specified in the agreement due to a business interruption caused by the fact that measures for the correction of defects become necessary, the limitation period is extended by the duration of such interruption.

11.7 If a rectification is not possible or if the Customer cannot reasonably be expected to accept such rectification, the Customer's other rights shall remain unaffected.

11.8 With regard to any further rights and liability, legal regulations apply.

### 12. Intellectual Property Rights

12.1 The Contractor is liable for claims arising from the violation of intellectual property rights and intellectual property right applications (hereinafter collectively referred to as "Intellectual Property Rights") during the use of the machine in accordance with the agreement. The Contractor shall indemnify the Customer and Buyer from all claims arising from the use of such Intellectual Property Rights.

12.2 This does not apply inasmuch as the Contractor has produced products according to drawings, models or similar descriptions or information provided by the Customer, and does not know, or in connection with the products the Contractor develops does not need to know, that this violates a third party's Intellectual Property Rights.

12.3 The Contract Partners agree to inform each other immediately of risks of infringement and alleged infringements of which they become aware, and to give each other the opportunity to contest such claims by mutual agreement.

12.4 Upon the Customer's request, the Contractor shall reveal the use of published or unpublished proprietary and licensed intellectual property rights and applications for such intellectual property rights in the machine.

### 13. Force Majeure

Force majeure, labor disputes, public disturbance, action by governmental authorities, and other unforeseeable, unavoidable, and serious events shall for their duration and to the extent of their effect release the Contract Partners from their contractual obligations. As far as is reasonable, the Contract Partners shall without delay provide each other with the necessary information and shall in good faith adjust their obligations to the changed conditions.

### 14. Software

14.1 Inasmuch as the services of the Contractor include the delivery of standard software or the creation and delivery of individual software, the Customer shall acquire the respective rights of use described in detail below:

14.2 For the standard software, the Customer acquires the irrevocable, non-exclusive, transferable right of use unlimited in time and place for any known kind of use including the right to revise, copy, change and expand the software and to grant rights of use to third parties.

14.3 For the programs or portions of programs individually developed for the Customer and all other results of services, the Customer irrevocably acquires an exclusive right of use, unlimited in terms of time and place, comprising every known kind of use including the right to revise, copy, change, and expand such programs and results of services, and to grant rights of use to third parties, provided that no limitation results from the following paragraphs.

14.4 If third parties have rights to external programs or other external results of services which are part of the services provided that contradict the acquisition of a right of use according to the previous paragraph, the extent of the right of use by the Customer shall be defined in the agreement accordingly.

14.5 The Contractor remains entitled to continue to use standard programs, program components, and tools used by the Contractor, and know-how the Contractor has supplied in the context of creating the results of services, including for orders by third parties. The Contractor shall not be permitted to copy, edit, or make other use of the results of the services and solutions that have been created for the Customer, either in part or as a whole.

14.6 The Contractor is only authorized to publish any type of results of services created for the Customer – even in parts – if the Customer gives his consent in writing.

### 15. Data Protection

The Contractor may only employ individuals for the implementation of contractual tasks whom the Contractor has instructed to be in compliance with data confidentiality in accordance with the respective applicable laws, regulations, directives, standards and requirements from competent authorities (hereinafter referred to as "Data Confidentiality Regulations"). The Contractor must ensure that all individuals the Contractor entrusts with processing or implementing contractual tasks observe the Data Confidentiality Regulations. The Contractor shall guarantee the data security measures as required per Data Confidentiality Regulations and shall, upon the Customer's request, provide the Customer with any information and evidence required for job control in accordance with the Data Confidentiality Regulations.

### 16. Export Controls

The Supplier shall immediately inform the Customer and shall provide the Customer with all relevant required information if the delivery object is –

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as a whole or in part – subject to approval and/ or subject to (re-) export controls.

### **17. Non-Disclosure**

17.1 The Contract Partners agree to treat all commercial and technical details not publicly known and which become known to them through their business relations as business secrets.

17.2 Drawings, patterns, templates, samples, and the like may not be passed on or made accessible to unauthorized third parties, may only be used for the purposes of the respective agreement between the Contractor and the Customer, and may not be used for other purposes of the Contractor. The reproduction of such objects is only permitted within the framework of operational requirements and copyright provisions.

17.3 Sub-contractors shall be bound by corresponding obligations.

17.4 The Contract Partners may only advertise their business relations with prior written consent.

### **18. Use of Production Means and Confidential Information Provided by the Customer**

Models, die plates, templates, samples, tools, and other production facilities, as well as confidential information provided to the Contractor by the Customer, or for which the Customer has borne a significant part of the cost, may only be used for the performance of the respective agreement with the Customer, and may not be used for the Contractor's own purposes or for deliveries to third parties without the prior written consent of the Customer.

### **19. General Information**

19.1 Unless otherwise agreed, new quotations shall be sent to the Customer in duplicate and shall be marked in such a way that they can be assigned to the respective request by the Customer without particular effort, preferably by means of the Customer project number.

19.2 The Contractor shall assume joint liability for the obligations and responsibilities of the Subcontractors under these ZF General Terms and Conditions of Purchase and relevant agreement.

### **20. Place of Fulfillment, Partial Ineffectiveness, Applicable Law, Dispute Resolution**

The place of fulfillment for deliveries is the place of use.

In case individual agreement terms become invalid, the remaining agreement terms remain unaffected.

In addition to the agreement terms, the law of the P.R.China applies. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

Any dispute arising from these ZF General Terms and Conditions of Purchase/relevant agreement or in relation to the same that cannot be amicably settled between the Contract Partners shall be submitted to Shanghai International Economic and Trade Arbitration Commission for arbitration in Shanghai.

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