



# **ZF [pro]Tech Terms and Conditions:**

## **Sign in and benefit from the advantages as a [pro]Tech Partner**

To:

[Business or company name] (company number [insert number – if applicable]) (the “Garage”)

[Registered office/principal place of business]

Dated: [Date]

### **1 INTRODUCTION**

- 1.1 ZF Services UK Limited (company number 1137722) (“ZF”) wishes to offer the Garage the opportunity to become a [pro]Tech Partner (a “[pro]Tech Partner”) as part of its [pro]Tech accreditation scheme (the “[pro]Tech Scheme”) for qualifying garages. A qualifying garage for these purposes is a garage which:
  - 1.1.1 works as a motor vehicle repair workshop with MOT capabilities;
  - 1.1.2 is intensely involved with the inspection, sale, and installation of Sachs clutches, Sachs dual mass fly wheels, Sachs shock absorbers, Boge coil springs, Lemforder steering & suspension, Lemforder rubber to metal and ZF transmission service parts;
  - 1.1.3 represents itself as a brand and service oriented organisation for the [pro]Tech Scheme and ZF products (the “Products”); and
  - 1.1.4 shows interest in the implementation and progress of ZF’s marketing activities & [pro]Tech Scheme meetings.
- 1.2 This agreement sets out the terms and conditions upon which membership to the [pro]Tech Scheme shall be offered to the Garage. For the avoidance of doubt, all purchases of Products, unless otherwise agreed, shall be via the Garage’s local ZF distribution partner.
- 1.3 Schedule 2 sets out the fees (“Fees”) payable as at the date of this agreement and subject to clause 4.2. ZF is entitled to vary these Fees at any time.
- 1.4 References to Clauses and Schedules are to the Clauses and Schedules of this agreement and the Schedules form part of this agreement.

### **2 [pro]Tech SCHEME BENEFITS**

- 2.1 As a [pro]Tech Partner, upon payment of the Fees, ZF shall use its reasonable endeavours to provide the Garage with the Benefits (as defined in Schedule 1). While ZF shall try to accommodate all requests, time shall not be of the essence for delivery of the Benefits.
- 2.2 The Garage may make a written request for any of the Optional Benefits (as defined in Schedule 1). Upon receipt of such request, ZF shall notify the Garage of the relevant charges and provide the Garage with an invoice for the Optional Benefits requested.
- 2.3 Following full payment, in cleared funds, by the Garage of an invoice for Optional Benefits, ZF shall use its reasonable endeavours to provide those Optional Benefits to the Garage.

### **3 DURATION**

- 3.1 This agreement shall commence on the date set out at the beginning of it and shall continue unless terminated in accordance with the terms of this agreement.
- 3.2 Either party may terminate the agreement upon not less than 30 days’ prior written notice and no refund shall be due.

### **4 FEES**

- 4.1 In consideration for the provision of the Benefits, ZF shall invoice the Garage and the Garage shall no later than 14 days after the date of this agreement, pay to ZF a commencement fee (the amount set out in Schedule 2, paragraph 1) in cleared funds (the “Initial Fee”).

- 4.2 The Garage shall pay any invoice for Optional Benefits within 14 days of the date of that invoice. If, after 14 days of making a request for Optional Benefits, the Garage has failed to receive an invoice for those Optional Benefits, the Garage shall notify ZF immediately.
- 4.3 If, in its discretion, ZF provides Optional Benefits to the Garage before it has received full payment then, ZF may, without notice, at any time and at its sole discretion, cease to provide those Optional Benefits and any other Benefits or services until full payment has been received.
- 4.4 If the Garage fails to make payment on the date upon which the relevant amount becomes due in accordance with this Clause 4, ZF shall send the Garage notice of their failure to pay and shall be entitled to suspend or terminate this agreement with immediate effect and without notice if payment of the full amount outstanding is not received within 7 days of that notice being sent.

## 5 PAYMENT

Any payments made pursuant to Clause 4 above or any other clause under this agreement, may be made by bank transfer to the following details:

Bank Name: Deutsche Bank

Sort Code: 23-10-48

Account No: 15490100

## 6 THE GARAGE'S OBLIGATIONS

- 6.1 The Garage shall:
  - 6.1.1 pay the Initial Fee and any invoice for Optional Benefits in accordance with Clause 4;
  - 6.1.2 spend not less than the amount set out in Schedule 2, paragraph 2 per calendar month on Products purchased by the Garage from a local ZF distribution partner, a list of which can be requested from ZF. The Garage will provide evidence of such purchases to ZF;
  - 6.1.3 use its best endeavours to promote and enhance:
    - 6.1.3.1 the trademarks, brands, names, artwork, designs, slogans, text or other collateral marketing signs owned or used by ZF or any company affiliated with ZF and any other brands for which ZF has given the Garage its prior written consent to use (the "Brands"); and
    - 6.1.3.2 the reputation of ZF and any company affiliated with ZF; including, but not limited to, by the proper use of all advertising and promotional material provided by ZF; and
  - 6.1.4 abide by ZF's instructions as to the use of the Brands, including any request by ZF for the Garage to refrain from using any one or more of the Brands.
- 6.2 The Garage shall not:
  - 6.2.1 except as permitted by this agreement, use or conduct business under any of the Brands; or
  - 6.2.2 use any of the Brands as a lead-in for products other than the Products or the products of any company affiliated with ZF; or
  - 6.2.3 do, or omit to do, any act which damages the goodwill of, or otherwise disparages or discredits, ZF, any company affiliated of ZF, or any of the Brands.

## 7 LIMITATION OF LIABILITY

- 7.1 Nothing in this agreement excludes the Liability of either party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 7.2 Subject to Clause 7.1:
  - 7.2.1 ZF shall have no liability for any:

- 7.2.1.1 expenses, loss of profits, loss of business, depletion of goodwill and/or similar losses;
- 7.2.1.2 pure economic loss;
- 7.2.1.3 aggravated, punitive and/or exemplary damages;
- 7.2.1.4 business interruption, loss of business, loss of contracts, loss of opportunity and/or production; and/or
- 7.2.1.5 any special, indirect or consequential losses; and
- 7.2.2 ZF's total aggregate Liability in each year of this agreement arising in connection with this agreement shall be limited to 100% of the Fees paid in that year.
- 7.3 For the purposes of this clause 7, "Liability" means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;
- 7.4 Each of the limitations and/or exclusions in this agreement shall be deemed to be repeated and apply as a separate provision for each of:
  - 7.4.1 Liability in contract (including fundamental breach);
  - 7.4.2 Liability in tort (including negligence);
  - 7.4.3 Liability for breach of statutory duty; and
  - 7.4.4 Liability for breach of common law and/or under any other legal basis.
- 7.5 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 7.6 ZF shall not be liable for any delay or failure in performing its obligations under this Agreement as a result of reasons beyond its reasonable control.
- 7.7 The provisions of this clause 7 shall survive termination of this agreement, however arising.

## 8 INDEMNITY

The Garage shall indemnify and hold harmless ZF from and against all losses, claims, costs, demands, proceedings and expenses incurred by ZF arising out of or in connection with any breach of this agreement by the Garage.

## 9 CONFIDENTIALITY

- 9.1 The Garage shall not use and/or disclose any confidential information about ZF's business, processes, products and/or services which is acquired by it and/or given by ZF to the Garage and/or generated by the Garage from ZF's confidential information except in the proper performance of this agreement.
- 9.2 The obligations of confidentiality and non-use set out above shall not apply to information:
  - 9.2.1 which the Garage proves was already in its possession and at its free disposal prior to disclosure by ZF;
  - 9.2.2 which the Garage proves was developed by it without reference to any of ZF's confidential information;
  - 9.2.3 which is after the date of this agreement disclosed to the Garage without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;
  - 9.2.4 which is or becomes generally available to the public through no default and/or omission on the Garage's part; or

- 9.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the Garage gives ZF as much advance notice of such disclosure as possible.
- 9.3 At ZF's request, made at any time during the course of this agreement, and in any event upon termination of this agreement for whatever reason, the Garage will deliver up to ZF or at ZF's option destroy any and all materials containing ZF's confidential information in whatever medium which is in its possession, power or control.
- 9.4 The Garage will be liable under this agreement for the acts and/or omissions of any agent, employee or sub-contractor as if they were its own acts and/or omissions under this agreement.
- 9.5 The provisions of this clause 9 shall survive termination of this Agreement, however arising.

## 10 **TERMINATION**

- 10.1 Without prejudice to any other rights or remedies to which ZF may be entitled, ZF may terminate this agreement without liability to the Garage if the Garage:
  - 10.1.1 commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of receiving a written request to remedy it; or
  - 10.1.2 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 10.1.3 convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) their creditors or they are unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of their business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for their winding up or for the making of an administration order.
- 10.2 On termination of this agreement for any reason:
  - 10.2.1 all of the rights granted to the Garage under Clause 2 shall immediately terminate;
  - 10.2.2 the Garage shall cease to claim to be a [pro]Tech Partner or to have any association with the [pro]Tech Scheme, ZF or any of its affiliates; and
  - 10.2.3 the Garage shall remove from display, make no further use of, and return, all of the equipment, property, materials or other items provided by ZF in connection with the [pro]Tech Scheme or containing any of the Brands including without limitation any signage provided to the Garage on behalf of ZF.
- 10.3 In the event that ZF terminates this agreement other than in accordance with Clause 10.1, if a technician enrolled on a Training Programme has not attended any one-day TTTMs during the Training Programme in which they are enrolled at date of termination, ZF shall refund the Garage any amount paid for the TTTMs that the technician has not attended (such amount to be calculated by ZF, in its reasonable discretion).

## 11 **BRIBERY ACT**

- 11.1 Each party to this agreement shall comply with all applicable laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements") and shall have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.
- 11.2 Each party shall:

- 11.2.1 promptly report to the others any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this agreement; and
- 11.2.2 from time to time upon one of the other party's request certify to that party in writing signed by an officer of the certifying party compliance with this clause 11. by the certifying party and all persons associated with it under clause 11. The certifying party shall provide such supporting evidence of compliance as the party making the request may reasonably require.
- 11.2.3 procure that any person associated with it who is performing services in connection with this agreement (a "Related Party") shall comply with obligations equivalent to those set out in this clause 11 and each party shall be directly liable to the others for any breach by any of their Related Parties of any such obligations.
- 11.3 Breach by a party of this clause 11 shall allow either of the other parties not in breach to terminate this Agreement.
- 11.4 For the purpose of this clause 11, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 11 a person associated with a party includes but is not limited to any subcontractor of that party.

## 12 MODERN SLAVERY ACT

- 12.1 The Garage warrants and represents to ZF that:
  - 12.1.1 it is not aware of any offence committed by it under the Modern Slavery Act 2015 and/or contravention of any other applicable anti-slavery or human trafficking law;
  - 12.1.2 it is not aware that any employee, agent, representative consultant, supplier (direct and indirect) or other person associated with it has committed any offence under the Modern Slavery Act 2015 and/or contravened any other applicable anti-slavery or human trafficking law;
  - 12.1.3 it understands that ZF operates a zero-tolerance policy to slavery and human trafficking and other corrupt practices and the Garage supports such approach unconditionally;
  - 12.1.4 it has adopted a policy on modern slavery that covers not only its own operations, but also contractors and sub-contractors and has governance procedures to ensure compliance;
  - 12.1.5 it will not, and that it will use all reasonable endeavours to procure that none of its employees or suppliers will commit any offence under the Modern Slavery Act 2015 and/or contravene any other applicable anti-slavery or human trafficking law (including contractual prohibitions); and
  - 12.1.6 it will promptly bring to the attention of ZF in writing any information that it may receive in relation to the commission of any offence under the Modern Slavery Act 2015 and/or contravention of any other applicable anti-slavery or human trafficking law.

## 13 GENERAL

- 13.1 This agreement does not create any right enforceable by any person not a party to it.
- 13.2 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 13.3 No variation of this agreement shall be valid unless it is in writing and signed by the parties.

- 13.4 A waiver of any right under this agreement is only effective if it is in writing and shall not be construed as a waiver of any other provision of this agreement.
- 13.5 If any provision of this agreement (or part of any provision) is found by the court to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.
- 13.6 This agreement contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement. Nothing in this agreement shall exclude liability for any fraudulent statement or act made prior to the date of this agreement.
- 13.7 The Garage shall not, without ZF's prior written consent, assign, transfer, subcontract or deal in any manner with any of their rights or obligations under this agreement.
- 13.8 A person who is not a party to this agreement shall not have any rights under or in connection with it.
- 13.9 The validity, construction and performance of the agreement set out in this agreement shall be governed by English law, and the Parties submit to the exclusive jurisdiction of the English courts in respect of any dispute arising in connection therewith.

**SCHEDULE 1**

**[pro]Tech PARTNER: [pro]Tech SCHEME BENEFITS**

1. The Garage shall be entitled to the following benefits (the “**Benefits**”):
  - 1.1 technical information relating to the Products, including assembly instructions and access to a ZF technical telephone hotline;
  - 1.2 access to a password protected online portal for [pro]Tech Partners; and
  - 1.3 email access to an out of hours ticketing system through which the Garage can log issues and receive a response within the next working day, subject to availability, from ZF providing support for those issues.
2. The Garage may request the following optional benefits (the “**Optional Benefits**”), for which an extra fee is payable:
  - 2.1 the enrolment of technicians in ZF’s technician training programme including the opportunity for technicians to attend TTTMs (the “**Training Programme**”), at the cost (set out in Schedule 2, paragraph 3), to be paid by the Garage to ZF;
  - 2.2 where issues cannot be resolved via ZF’s technical telephone hotline or ticketing system, subject to ZF’s technical engineer availability, ZF technical engineer site visits at any Garage workshop location and at the cost (set out in Schedule 2, paragraph 4), to be paid by the Garage to ZF. These visits are only to be used for technical diagnostic assessments. ZF’s technical engineers are not authorised to conduct any work on behalf of the Garage, including without limitation, conducting vehicle or component programming;
  - 2.3 support for the Garage’s advertising efforts and market presence through marketing material, including branded leaflets and posters (the cost of which shall be provided to the Garage by ZF upon request).

**SCHEDULE 2**

**[pro]Tech PARTNER: [pro]Tech PARTNER FEES (“Fees”)**

- 1 In accordance with Clause 4.1, the Initial Fee is £100 plus VAT;
- 2 In accordance with Clause 6.1.3, the Garage shall spend not less than £[350] plus VAT per calendar month on Products purchased by the Garage from a local ZF distribution partner, a list of which can be requested from ZF;
- 3 The Garage may request the Optional Benefit detailed in Schedule 1, paragraph 2.1 for an extra fee of £175 plus VAT per day for each technician enrolled (as may be amended from time to time); and
- 4 The Garage may request the Optional Benefit detailed in Schedule 1, paragraph 2.2 for an extra fee of £95 plus VAT for each hour that a technical engineer is required on site.
- 5 The Garage may request the Optional Benefits detailed in Schedule 1, paragraph 2.3, the costs of which shall be provided to the Garage upon request.



Signed on behalf of ZF Services UK Limited

-----

Date:

Please sign and return the duplicate copy of this agreement as soon as possible to confirm your agreement to its terms.

We confirm our agreement to the provisions of this agreement.

Signed by

-----

For and on behalf of [NAME OF GARAGE]

Date: