



ZF Aftermarket

# General Terms of Supply and Payment

effective from October 2003

## 1. General provisions

1.1 The following Terms and Conditions exclusively apply to all quotations, orders, contracts, supplies and other performance unless they are amended or set aside with the express written agreement of the supplier and the express designation of the clause in these Terms and Conditions which is to be amended or set aside. Other subsidiary agreements are only binding if they have been made in writing.

1.2 Purchaser's differing terms and conditions which are not expressly accepted in writing by the supplier are not binding on the supplier even if they are made the basis of the order and the supplier does not expressly object to them again.

1.3 To the extent that a declaration must be made in writing in accordance with these Terms and Conditions or with a contract concluded on the basis of these Terms and Conditions, such a declaration must be signed or notarially attested by the maker, properly entitled to represent the respective contractual partner, with his own signature or notarially certified initials and transmitted to the other contractual partner in the original or by fax. The written form described in Sentence 1 shall not be replaced by electronic form or text form.

1.4 If a contractual partner fails to adhere to one or more provisions of these Terms and Conditions or of a contract concluded on the basis of these Terms and Conditions, and if the other contractual partner fails to pursue such a breach, then no waiver of the obligation to comply with these provisions may be derived in consequence, even if such an action occurs repeatedly.

1.5 If a provision in these Terms and Conditions or subsequent agreements made is or becomes invalid, this does not affect the validity of the remaining contract. This does not apply, however, if adherence to the contract in such an event would represent unreasonable hardship for one of the contractual partners. The contractual partners will replace the invalid provision by one approximating most closely to the original one in its economic results.

## 2. Quotations and scope of delivery

2.1 Quotations from the supplier are always subject to confirmation.

2.2 Orders from the purchaser are only binding on the supplier after the latter's written confirmation.

2.3 The scope of delivery is determined solely by the supplier's written order confirmation.

2.4 Information contained in supplier's printed matter (such as price lists, brochures), cost estimates, electronic data media or web-sites and the documentation which forms part of his quotation such as diagrams, descriptions, drawings, dimension and weight specifications, other technical data as well as DIN, VDE or other company and industry-wide standards and samples specified or referred to are only approximations unless they have expressly been designated as binding.

2.5 The supplier reserves the right of surplus or short weights and deliveries within standard commercial limits. They do not entitle the purchaser to any claim.

2.6 The supplier reserves rights of ownership and copyright in cost estimates, drawings, plans and other documents and information of a tangible and intangible nature, including in electronic form; they may only be made available to third parties with the supplier's prior written agreement.

2.7 The purchaser assumes full responsibility for the tasks incumbent on him and documentation to be provided by him such as drawings, models, gauges, samples and suchlike.

### 3. Price and payment terms

3.1 All prices are quoted in euros unless otherwise agreed. They apply to delivery ex works, excluding packaging, freight, postage and insurance. Prices are supplemented by value added tax at the appropriate statutory rate.

3.2 In the absence of any other agreement, payment must be made in cash without any deductions, free supplier's payment office within 30 calendar days of invoice date.

3.3 The supplier may offset all accounts receivable due from the purchaser against all accounts receivable which are due to the purchaser from the supplier.

3.4 In addition, the supplier may offset all accounts receivable due to him from companies associated with the purchaser in accordance with Article 15 of the German Stock Corporation Law (Aktiengesetz).

3.5 Partial deliveries are invoiced immediately.

3.6 Bills of exchange and cheques are only accepted on account of performance. They are only deemed as payment on encashment. The purchaser is liable for discount and bill charges and must pay them immediately. The supplier expressly reserves the right to reject bills of exchange. The supplier is not liable for the timely presentation, protesting, notification and return of a dishonoured bill.

3.7 Statutory interest on arrears will be charged in the event that the payment period is exceeded, without this requiring a separate reminder and in reservation of the assertion of further rights.

3.8 The purchaser is only entitled to retain payments or offset them against counter-claims if his counter-claims are uncontested or are legally enforceable.

3.9 Payment default or risk to the supplier's accounts receivable through deterioration of the credit worthiness of the purchaser entitle the supplier to demand immediate payment of all accounts receivable arising to the supplier from the business relationship – irrespective of the remaining term of any bills of exchange – or to demand security. In such events the supplier is entitled to execute outstanding deliveries only against advance payment or if security is furnished.

### 4. Delivery period

4.1 Delivery deadlines and dates only become binding on express written agreement.

4.2 Adherence to the delivery period by the supplier assumes that all commercial and technical issues between the contractual partners have been resolved and the purchaser has met all the obligations accruing to him, such as the provision of the necessary official certifications or approvals or the making of down payments. If this is not the case, the delivery period is extended appropriately. This does not apply if the delay is the supplier's responsibility.

4.3 The delivery period has been adhered to if the delivery item has left the supplier's factory by its end or if dispatch readiness has been notified. If acceptance is required, the acceptance date applies – except in the event that acceptance is justifiably refused – and in the alternative the notification of acceptance readiness.

4.4 The delivery period is extended appropriately in the event of actions which are part of labour disputes, particularly strikes and lockouts, as well as the occurrence of unforeseen impediments which are not the fault of the supplier, such as force majeure, action by governmental authorities, faultless delay in the production of parts from subcontractors, plant failure, the failure of subcontractors to perform, to the extent that such impediments can be shown to have significantly influenced the production or delivery of the delivery item. This also applies if these circumstances occur with subcontractors. Neither will the supplier be held liable for such circumstances if they occur during an already existing delay.

The supplier will inform the purchaser without undue delay about the start and end of such circumstances.

4.5 If unpredictable events in terms of item 4.4 significantly modify the commercial relevance or the content of the delivery or significantly interfere with the business of the supplier the contract will be adequately altered in good faith. As far as this is economically not sensible for the supplier, he shall have the right to withdraw from the contract. Such action shall immediately be communicated to the purchaser after realisation of the scope of the incident which includes the case if extension of the delivery time was granted by the purchaser at first.

4.6 The purchaser may withdraw from the contract without notice if the performance in whole becomes categorically impossible before the passing of risk. In addition, the purchaser may also withdraw from the contract if in an order the execution of one part of the delivery becomes impossible and he has a justified interest in refusing a partial delivery. If this is not the case, then the purchaser shall pay the contract price accruing to the partial delivery. The same applies in the event of supplier's inability to perform. Apart from that item 0 applies but any claim is limited up to the maximum of 10% of the value of that part of the delivery which cannot be used appropriately in cases of mandatory liability.

If the impossibility of performance or inability to perform occurs during delay in acceptance or if the purchaser is solely or overwhelmingly responsible for these circumstances, he remains under the obligation of counter-performance.

4.7 Changes subsequently requested by the purchaser entitle the supplier to put the delivery on hold until the desired changes have been examined with regard to their implementability and effects, particularly on costs and deadlines. The changes only become binding on express written confirmation from the supplier. The supplier may extend the delivery period appropriately in order to implement the changes.

4.8 If the supplier fails to complete the contract in good time and if the purchaser can show that he has suffered damage as a result, the purchaser is entitled to demand lump sum compensation for the delay. This amounts to 0.5 % for each full week of delay, with a maximum total amount of 5 %, of the value of that part of the total delivery which cannot be used in time or in accordance with the contract as a result of the delay.

If the purchaser – taking account of the statutory exceptions – grants the supplier an appropriate period for performance following the deadline, and if this period is not adhered to, the purchaser is entitled to withdraw from the contract within the framework of statutory regulations.

4.9 The purchaser is obliged to state if he withdraws from the contract for the delay of the delivery and/or if he demands indemnity instead of delivery or insists upon delivery. Further claims arising from delay of delivery are governed exclusively by Clause 0.

4.10 If dispatch or acceptance of the delivery item is delayed for reasons which are the responsibility of the purchaser, he will be charged the costs arising from the delay starting one month after notification of the readiness for dispatch or acceptance.

## **5. Dispatch and passing of risk**

5.1 Risk is transferred to the purchaser after dispatch of the delivery items ex works (EXW), including cases of partial delivery or where the supplier may exceptionally have taken on additional service performance such as delivery at no charge to the customer, installation or assembly. If there is a requirement of acceptance, this determines the passing of risk. It shall be carried out immediately on the acceptance date or in the alternative following notification from the supplier as to acceptance readiness. The purchaser shall not refuse acceptance if there is an insignificant defect.

5.2 The Incoterms in force on the day of order confirmation apply for the interpretation of the delivery clauses used.

5.3 Packaging and dispatch are done according to the best judgement but without further liability of the supplier.

5.4 At the request of the purchaser, the supplier shall insure the delivery against all insurable risks at the purchaser's cost.

5.5 If dispatch or acceptance is delayed or fails to take place as the result of circumstances which cannot be attributed to the supplier, risk passes to the purchaser from the day of notification of dispatch or acceptance readiness. The supplier shall conclude the insurances requested by the purchaser at the latter's cost. The supplier is entitled, an appropriate period having been set and passed without result, to dispose of the delivery items by other means and to supply the purchaser within an appropriately extended period.

5.6 Non-returnable packages are charged at cost price and will not be taken back. Other packaging means (boxes, box pallets etc.) remain property of the supplier and shall be sent back freight paid to the supplier without delay.

5.7 The purchaser shall notify the supplier of discrepancies arising from dispatch in writing directly after receipt of the goods.

5.8 Partial deliveries are acceptable if reasonable for the purchaser.

## **6. Reservation of ownership**

6.1 The supplier reserves ownership in all goods/delivery items supplied by him until full payment – in payment by cheque or bill of exchange until encashment – of all his accounts receivable from the purchaser arising from the business relationship (conditional goods); in this respect all deliveries are deemed to be a connected delivery transaction. For open accounts the reserved property is deemed to be security for the amount outstanding.

6.2 The purchaser shall neither pledge the conditional goods nor transfer them as security. He shall inform the supplier immediately in the event of their seizure as well as attachment or other disposal by a third party. The purchaser is only entitled to sell the conditional goods or otherwise use them in the course of ordinary business activity.

6.3 Treatment and processing of the conditional goods are done for the supplier as manufacturer within the meaning of Article 950 of the German Civil Code (BGB), without liabilities thereby arising for the supplier. The treated and processed goods are deemed to be conditional goods.

6.4 If the conditional goods are combined by the purchaser with other objects into a single object, it is deemed to have been agreed that the purchaser transfers to the supplier proportionate co-ownership within the meaning of Article 947 Clause 1 of the German Civil Code (BGB) and retains the object for him in custody. If the other object is considered to be the main object, it is deemed to have been agreed that the purchaser transfers to the supplier proportionate co-ownership to the extent that he owns the main object. The rights of the supplier in items delivered by him which are not an essential part of an object are not affected by this regulation.

6.5 If the purchaser sells the supplied goods in accordance with their intended use, he hereby assigns now already all accounts receivable due from his purchasers or a third party arising from the sale to the supplier with all subsidiary rights until the latter's accounts receivable have been fully settled. The purchaser is authorised to collect these accounts receivable also subsequent to their assignment until such authorisation is withdrawn.

6.6 The supplier is entitled to rescind the collection authorisation for good reason, such as delayed payment, suspension of payment, significant deterioration in the assets of the purchaser. The purchaser is obliged on request of the supplier to notify the third party purchasers of the assignment and to provide the supplier with the information he requires to assert his rights as well as to hand over documents.

6.7 In the event of actions in breach of contract by the purchaser, delayed payment, unauthorised disposal over the conditional goods, a significant deterioration in the assets of the purchaser, bill and cheque protest or if the opening of insolvency proceedings over the assets of the purchaser is requested by the purchaser or third parties, or if the opening of such proceedings is refused due to lack of assets, the supplier is entitled to prohibit the treatment and processing as well as the sale of the conditional goods. In these events the supplier is further entitled to take ownership of the conditional goods and for this purpose to enter the business of the purchaser, demand relevant information as well as undertake necessary inspection of his books.

6.8 The reclamation, but not the taking back or distraint of the conditional goods, is deemed to be a withdrawal from the contract.

6.9 The supplier shall release the securities held by him on demand of the purchaser if their value exceeds the accounts receivable to be secured by more than a total of 20 %.

6.10 If the purchaser or a third party applies for insolvency proceedings to be opened over the assets of the purchaser, or insolvency proceedings against the purchaser are opened by court order or the opening of such proceedings is refused due to lack of assets, the supplier is entitled to rescind the contract and to demand the immediate return of the conditional goods.

## **7. Claims arising from defects**

The supplier provides warranty for defects in quality and deficiencies in title regarding the delivery as follows, excluding further claims and subject to the regulation in Clause 0:

### **7.1 Defects in quality**

7.1.1 The supplier shall, at his discretion, either repair or replace free of defects (repair or replacement delivery; hereinafter together: "post-performance") at no charge all those parts which have turned out to be defective as the result of circumstances before the passing of risk.

7.1.2 The supplier shall be informed immediately in writing as soon as such defects are determined.

7.1.3 Parts which are the subject of complaint shall be returned to the supplier only on his request. Costs for the return shipment of the parts which are the subject of complaint are born by the purchaser.

7.1.4 Concerning replaced parts, the supplier is entitled to demand handing out and the transfer of title.

7.1.5 In the event of notice of defects, payments by the purchaser may only be withheld to an extent which is in proportion to the defects in quality which have occurred. The purchaser may only withhold payments if a notice of defect is asserted about which there is no dispute. If the notice of defect is unjustified, the supplier is entitled to demand compensation from the purchaser for costs which have arisen as a result.

7.1.6 In order to undertake all the work for post-performance deemed necessary by the supplier, the purchaser shall make the required time and opportunity available following consultation with the supplier. If he fails to do so, the supplier is released of liability for the consequences arising. The purchaser only has the right to rectify the defect himself or have it rectified by third parties and to demand compensation for the necessary costs from the supplier in the event of urgent cases when operational safety is at risk or to prevent disproportionately large damage. The supplier shall be informed immediately in such an event.

7.1.7 Of the direct costs arising through post-performance, the supplier shall bear the costs of the replacement part including shipping if the complaint turns out to be justified.

To the extent that the purchaser demands compensation for expenditures arising to him or recompensed to his customer by legal requirement, the compensation to be paid by the supplier shall be determined as follows:

Compensation shall only be paid for removal and installations costs necessary for post-performance as well as transport costs. In determining the level of such compensation, the economic circumstances of the supplier, type, scope and duration of the business relationship as well as the degree of causation and any fault of the supplier and the installation situation of the delivery item concerned shall be appropriately taken into consideration in favour of the supplier. In particular, the compensation to be paid by the supplier shall be in an appropriate relationship to the value of the delivery item concerned as well as to the annual turnover between supplier and purchaser with regard to these delivery items.

The obligation to pay compensation shall be excluded to the extent that the purchaser has, in turn, effectively limited liability towards his customer. Here the purchaser shall endeavour to agree limitations on liability in the legally permissible scope also in favour of the supplier.

7.1.8 Within the framework of statutory regulations, the purchaser has a right to rescind the contract if – taking account of the statutory exceptions – an appropriate period for post-performance of a defect has been set by the purchaser and passed without result. If the defect is immaterial, the purchaser only is entitled to an abatement of the contract price. The right to an abatement of the contract price is excluded in all other respects.

Further claims are determined in accordance with Clause 0.

7.1.9 No warranty is assumed in the following cases, in particular:

Minor deviation from the agreed condition, minor impairment of usability, unsuitable or improper use, defective assembly or commissioning by the purchaser or third parties, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable operating media, chemical, electro-chemical or electrical influences – to the extent that they are not the responsibility of the supplier.

7.1.10 Guarantee promises by the supplier, particularly quality and durability guarantees, such as in delivery specifications, contract specifications, performance specifications, performance descriptions, bills of quantities or other documents are expressly excluded subject to the provisions in Clause 1.1, even if they are designated as such.

7.1.11 If there is improper reworking by the purchaser or a third party, the supplier shall not be liable for any consequences arising. The same applies to changes to the delivery item undertaken without agreement of the supplier.

7.1.12 The results on the supplier's test bed determine the function and operation characteristics of the delivery items. The supplier does not assume liability for defects occurring through the installation conditions or improper operation and maintenance.

7.1.13 Post-performance, no matter in what form, under no circumstances shall represent acceptance of a claim accruing to the purchaser.

## 7.2 Deficiencies in title

7.2.1 If use of the delivery item leads to the breach of third party industrial property rights or copyrights existing at the time of transfer of ownership in the Federal Republic of Germany, the supplier shall, at his cost, in principal acquire for the purchaser the right to further use of the delivery item or modify it in an acceptable manner for the purchaser such that the breach of property rights no longer exists.

If this is not possible under the appropriate economic conditions or within an appropriate period, the purchaser is entitled to rescind the contract. The supplier also has a right of rescission of contract under the specified conditions.

In addition, the supplier shall indemnify the purchaser against undisputed or legally enforceable claims from the relevant owners of the property rights.

7.2.2 The supplier's undertakings in Clause 7.2.1 are, subject to the provisions in Clause 0, final in the event of breaches of industrial property rights or copyrights. They are in force only if

- a) the purchaser immediately notifies the supplier of asserted breaches of industrial property rights or copyrights,
- b) the purchaser supports the supplier to the appropriate extent in the defence against asserted claims and/or enables the supplier to carry out the modification measures in accordance with Clause 7.2.1,
- c) the supplier retains the right to take all defensive measures including out-of-court settlements,
- d) the deficiency in title is not due to an instruction from the purchaser, and
- e) the infringement of rights was not caused by the purchaser changing the delivery item on his own authority or using it in a manner in breach of contract or the purchaser is otherwise responsible for the infringement of an industrial property right.

7.2.3 Claims arising from defects are subject to a limitation of 12 months. Divergent from this, the statutory limitation periods apply for defects in a construction or for delivery items which were used in a construction in accordance with their normal use and caused its defectiveness. The provisions of Clause 9.2 remain unaffected.

## 8. Liability

8.1 If, through culpability of the supplier, the delivery item cannot be used by the purchaser as specified in the contract due to omissions or defects in the execution of proposals and consultations occurring before or after conclusion of contract or through the breach of other contractual subsidiary undertakings – in particular operating and maintenance instructions for the delivery item – the provisions in Clauses 7 and 0 apply accordingly with the exclusion of any other claims from the purchaser.

8.2 The supplier shall only be liable, for whatever legal reasons, for damage not arising on the delivery item itself in the event of

8.2.1 intent

8.2.2 gross negligence by the owner/the organs or managerial employees of the supplier,

8.2.3 culpable injury to life, body and health,

8.2.4 defects which he has deceitfully kept hidden or the absence of which he has guaranteed,

8.2.5 defects of the delivery item to the extent that there is liability under product liability law for personal injury or damage to property in privately used objects.

In the culpable breach of material contractual obligations, the supplier shall also be liable in the event of gross negligence of non-managerial employees and slight negligence, in the latter case limited to reasonably foreseeable typical contract damage.

Apart from that, claims for damages and reimbursement of expenses of the purchaser regardless of which cause in law, particularly due to infringement of contractual duties and tortious act are excepted.

## 9. Other

9.1 If and insofar as software is included in the scope of delivery, the purchaser shall be granted the non-exclusive right to use the supplied software including its documentation. It is provided for use on its intended delivery item. The software may not be used on more than one system.

The purchaser may only copy, rework or translate the software or translate its object code into source code within the legally permissible scope (Articles 69 a ff. of German Copyright Law (Urheberrechtsgesetz, UrhG)). The purchaser undertakes not to remove producer information – particularly copyright marks – or to change them without the previous express agreement of the supplier.

All other rights in the software and documentation, including copies, shall remain with the supplier and/or software supplier. Sub-licences may not be granted.

9.2 All claims of the purchaser – for whatever legal reasons – are subject to a limitation of 12 months without prejudice to the provisions of Article 479 Clause 1 of the German Civil Code (BGB) to the extent that the latter is applicable. In divergence therefrom, the statutory limitation periods apply to claims for damages in accordance with Clauses 0 to 0 as well as to defects in a construction or to delivery items used in a construction in accordance with their normal use and causing its defectiveness.

## 10. Place of fulfilment, place of jurisdiction, applicable law

10.1 Place of fulfilment for both partners is the supplier's principal place of business.

10.2 Place of jurisdiction is the competent court for the supplier's principal place of business. The supplier is, however, entitled to take legal action at the principal place of business of the purchaser.

10.3 All legal relations between the supplier and the purchaser are governed exclusively by the German Law as it applies to the legal relations between domestic parties.

\* The English version is for comfort only; in case of doubts the German version applies.