

General Terms and Conditions of Purchase

(effective from October 2002)



1. Relevant conditions

1.1 The legal relations between Supplier and Buyer are subject to the following conditions and to any other agreements existing between the contracting partners. Changes and amendments must be made in writing. No other General Terms and Conditions shall apply, even if not explicitly rejected in any individual case.

2. Orders

2.1 Supply contracts (order and acceptance) and calls for delivery as well as any changes and amendments thereof must be made in writing.

Calls for delivery may also be made by remote data transmission.

2.2 If the Supplier does not accept the order within three weeks of receipt, the Buyer shall be entitled to cancel the order. Calls for delivery shall become binding if the supplier does not submit his rejection within two weeks of the date of receipt.

2.3 The Buyer may require changes to the delivery items regarding design and version to the extent reasonably acceptable by the Supplier. The effects of such changes, especially with regard to cost increases or reductions as well as delivery dates, shall be settled appropriately by mutual agreement.

3. Payment

3.1 Payment shall be made according to the terms individually agreed. Where premature deliveries are accepted, the due date for payment shall be based on the delivery date agreed.

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

3.3 The Supplier shall not be entitled to assign his claims against the Buyer or to have them collected by third parties, except with the Buyer's prior written consent, which may not be unreasonably withheld. If extended reservation of proprietary rights applies, consent shall be deemed given.

4. Notice of defects

The Buyer shall notify the Supplier without delay in writing of defects in items supplied as soon as such defects are detected in the regular course of business. Provided this condition is complied with, the Supplier shall waive any plea of late notification of defects.

5. Secrecy

5.1 The contracting partners undertake to treat as business secrets all commercial and technical information not publicly known and which becomes known to them through their business relations.

5.2 Drawings, patterns, templates, samples and the like may not be passed on to or made available to unauthorized third parties and may only be used for the purposes of the respective contract between the Supplier and the Buyer and may not be used for other purposes of the Supplier. Such items may only be reproduced within the limits of operating requirements and copyright regulations.

5.3 Subcontractors must be bound by a corresponding obligation.

5.4 Each contracting partner may use the business relationship for publicity purposes only after written consent from the other partner.

6. Delivery dates and periods

Delivery dates and periods agreed on are binding. Compliance or non-compliance with a delivery date or period shall be judged by the date on which the goods are received by the Buyer. The Supplier shall make the goods available in good time, taking into account the usual periods required for loading and transport.

7. Delayed delivery

7.1 The Supplier shall be liable to indemnify the Buyer for losses suffered as a result of delayed delivery, with the exception of loss of profit and losses arising from interruption of business.

7.2 In cases of slight negligence, indemnity shall be limited to additional freight charges, retrofitting costs and additional expenses incurred through covering purchases after the lapse of a period of grace or if the interest in receiving the items concerned has ceased to exist.

8. Force majeure

Force majeure, labor disputes, public disturbance, action by governmental authorities, or other unforeseeable, unavoidable serious events beyond the control of the contracting partners shall for their duration and to the extent of their effect release the partners from their contractual obligations. This shall also apply if such events occur at a time when the partner affected is already in delay. As far as is reasonable, the contracting partners shall without delay provide each other with the necessary information and shall in good faith adjust their obligations to the changed conditions.

9. Quality, documentation and environmental protection

9.1 In respect of his supplies, the Supplier shall comply with the generally accepted technical procedures, safety regulations and the technical details agreed. Modifications to the delivery items require the prior written consent of the Buyer. The procedure for cooperation in the field of quality, such as initial sampling and documentation, is specified in binding form in QR-83 (ZF Guidelines for Quality Assurance of Vendor Supplies).

9.2 The contracting partners shall inform each other of any quality improvement potentials. On request, the buyer shall provide the supplier with information on relevant safety regulations.

9.3 Regarding vehicle components with specific marking (e.g. "A" or "D") in the technical documentation or on the component due to separate agreement, the Supplier shall specify in special records when, how and by whom the delivery item features subject to documentation were inspected, and also the results obtained by the quality tests required. The inspection records must be kept for 10 years and presented to the Buyer on request. To the extent legally permitted, the Supplier shall impose the same obligations on his subcontractors. For guidance, reference is made to the VDA publication "Quality Evidence- Guidelines for the Documentation and Archiving of Quality Requirements".

9.4 If governmental authorities responsible for vehicle safety, exhaust emission regulations or the like demand inspection of the Buyer's production procedures and inspection records in order to verify certain requirements, the Supplier shall, at the Buyer's request, agree to grant to such authorities the same rights on his own premises and to give them any reasonable assistance.

9.5 The Supplier has to comply with Environmental Protection Regulations and the ZF Group Standard ZFN 9003 specifying the exclusion of hazardous materials.

10. Liability for defects

10.1 If defective goods are delivered, the Buyer may make the demands below, provided that the respective legal conditions and those listed below are met and insofar as nothing to the contrary has been agreed on:

10.1.1 Prior to production launch (machining or fitting), the Buyer has to grant the Supplier the opportunity for sorting out as well as remedial action or additional supply (replacement), unless this cannot reasonably be expected from the Buyer. If this cannot be effected by the Supplier or if he does not effect this without undue delay, the Buyer can withdraw from the contract without any respite and also return the goods at the risk of the Supplier. In urgent cases and following coordination with the Supplier, the Buyer may carry out remedial action himself or have it performed by a third party, with the costs incurred being borne by the Supplier. If the same product is repeatedly delivered in faulty condition, the Buyer, following a written complaint and renewed defective delivery, shall be entitled to withdraw from the contract also with regard to the delivery scope not yet fulfilled.

10.1.2 If despite observance of the obligation pursuant to Clause No. 4 (Notice of defects) the defect is only discovered after production launch, the Buyer may demand a) according to § 439 Sections 1, 3 and 4 BGB (German Civil Code), subsequent performance and restitution of the transport costs (without salvage costs) incurred by subsequent performance as well as the disassembly and assembly costs (labor cost, material cost to the extent agreed on) or b) abatement of the purchase price.

10.1.3 In the event of a culpable breach of duty beyond the supply of defective goods (e.g. regarding information, counseling or inspection duties), the Buyer may demand compensation for consequential damages as well as for the compensation paid by the Buyer to his customer for consequential damages pursuant to the legal provisions, but subject to Clause No. 11. Consequential damages shall be considered to be any damage incurred by the Buyer on other legally protected rights than the product itself due to the delivery of defective goods.

10.2 Any further claims for expenses and damage due to the delivery of defective goods pursuant to § 437 BGB (German Civil Code) or other regulations mentioned there shall be enforceable by the Buyer only if agreed on by contract. If new agreements are reached, Clause No. 15.1 is to be considered.

10.3 Upon request and at the expense of the Supplier, the Buyer must make the parts to be replaced available to the Supplier without delay.

10.4 Claims resulting from liability for defects become statute-barred 24 months after first vehicle registration or spare part installation, but not later than 30 months after shipment to the Buyer. Products for commercial vehicles are subject to the statutory period of limitation, unless otherwise agreed.

10.5 Claims due to defects shall not arise if the defect is the result of a violation of operation, maintenance and installation instructions, unsuitable or improper use, faulty or negligent handling and natural wear as well as any tampering with the delivery item on the part of the Buyer or any third party.

10.6 In the event of defective delivery, the Buyer's claims resulting from product liability, wrongful act and action without authority shall remain unaffected by the stipulations in this Clause No. 10. Quality and service life guarantees must be in writing and always explicitly referred to as such.

11. Liability

11.1 Unless these terms and conditions contain a liability regime to the contrary, the Supplier shall be liable only as follows to make compensation for damage suffered by the Buyer directly or indirectly due to defective delivery, infringement of governmental safety regulations or any other cause legally attributable to the supplier.

11.2 A priori, liability for damages exists only if the damage was caused through the Supplier's fault.

11.3 If a claim for liability without fault according to *jus strictum* regarding a third party is brought against the Buyer, the Supplier shall assume liability on the Buyer's behalf to the extent to which he would himself have been directly liable. Adjustment between the Buyer and the Supplier shall be made according to the principles set forth in § 254 Bürgerliches Gesetzbuch (German Civil Code). The same shall apply if a claim is brought directly against the Supplier.

11.4 Liability shall be excluded insofar as the Buyer has effectively restricted his own liability towards his client. To the extent legally permitted, the Buyer shall endeavor to stipulate liability limitations to the Supplier's benefit as well.

11.5 Claims made by the Buyer shall be excluded if the damage was caused through violation of operating, maintenance or installation instructions, unsuitable or improper use, incorrect or negligent treatment, normal wear or faulty repair attributable to the Buyer.

11.6 To the extent legally bound, the Supplier shall be liable for measures taken by the Buyer to prevent damage (e.g. recall campaigns).

11.7 If the Buyer intends to bring a claim against the Supplier on the basis of the above provisions, he shall without delay and comprehensively inform and consult the Supplier. He must give the Supplier the opportunity to investigate the claim. The contracting partners shall jointly decide on the action to be taken, in particular in the event of conciliation procedures.

11.8 The principles set forth in 7.1 shall apply insofar as the Supplier is inadequately or not insured.

12. Proprietary rights

12.1 Contract-conforming use of the delivery items provided, the Supplier shall be liable for claims resulting from infringements of proprietary rights held or applied for (industrial property rights), of which at least one is published in the Supplier's country, by the European Patent Office, or in the Federal Republic of Germany, France, the United Kingdom, Austria or the USA.

12.2 He shall release the Buyer and the Buyer's clients from all claims arising out of the use of such proprietary rights.

12.3 This shall not apply if the Supplier manufactured the goods in accordance with drawings, models or other equivalent descriptions or information provided by the Buyer and regarding the goods developed by him is not aware or need not be aware that proprietary rights are infringed by such manufacture.

12.4 Insofar as the Supplier is not liable pursuant to Clause 12.1.3, the Buyer shall release him from all third-party claims.

12.5 The contracting partners undertake 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 in a mutually agreed manner.

12.6 At the Buyer's request, the Supplier shall inform the Buyer of any use of published or unpublished, owned or licensed, proprietary rights and proprietary rights applications relating to the delivery item.

12.7 The principles governing the limitation of liability set forth in Clause 7.1 shall apply *mutatis mutandis*.

13. Use of means of production and confidential information provided by the Buyer

Patterns, molds, templates, samples, tools and other manufacturing equipment as well as confidential information made available to the Supplier by the Buyer, or for which the Buyer has borne a significant part of the cost, may only be used for the performance of the relevant contract with the Buyer, and may not be used for the Supplier's own purposes or for supplies to third parties without the prior written consent of the Buyer.

14. Reservation of ownership

The Supplier retains title in all goods supplied by him until paid for in full, with all shipments deemed part of a connected supply transaction. For open accounts, the retained title shall be security for the balance owing to the Supplier. If the goods are combined by the Buyer with other items to form a single product, and if such a product is to be considered the main product, the Buyer shall be obliged to assign to the Supplier proportionate title therein, insofar as the main product is the Buyer's property. If the Buyer resells the goods supplied as specified, he shall thereby assign to the Supplier all claims and associated rights against his clients arising out of the sale until all the Supplier's claims are paid in full. If requested by the supplier for compelling reasons, the Buyer shall notify third-party purchasers of such assignment, and shall provide the Supplier with such information and documents he requires to assert his rights. If the value of the security held by the Buyer exceeds the Buyer's claims against the Supplier by more than 20 %, the Supplier shall release the excess amount of the security.

15. General conditions

15.1 When determining the amount of damages to be paid by the Supplier pursuant to Clauses No. 7, 10, 11 and 12, the Supplier's economic situation, type, extent and duration of the business relation, any causative or default contribution on the part of the Buyer pursuant to § 254 BGB (German Civil Code) and any particularly unfavorable installation situation must be appropriately considered in favor of the Supplier. Above all, damages, costs and expenses to be borne by the Supplier must be reasonably proportionate to the value of the delivery item.

15.2 If a contracting partner discontinues payments or a petition in bankruptcy or a composition proceeding is filed, then the other partner shall be entitled to cancel the contract regarding the part not yet fulfilled.

15.3 Should any of the provisions of these conditions or of other terms agreed be or become void, the validity of the remaining parts of these conditions shall not be affected. The contracting partners undertake to replace any void provision with another provision permitting as closely as possible the same economic success.

15.4 Unless agreed otherwise, the laws of the Federal Republic of Germany shall apply exclusively.

Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

15.5 Place of performance shall be the registered office of the Buyer. Another location may be agreed for delivery.

15.6 Place of jurisdiction shall be the plaintiff's registered office or another competent court.