

# ZF SERVICES MIDDLE EAST LLC

## TERMS AND CONDITIONS OF SALE 2015

### Article 1: Definitions

**"Agreement"** shall mean the agreement between the Buyer and the Seller comprising the Order, an order acknowledgment from the Seller, these Conditions and any other documents which may be incorporated by parties' agreement in writing;

**"Buyer"** shall mean the party to whom the Goods and/or Services are to be supplied;

**"Conditions"** shall mean the terms and conditions of sale set out in this document;

**"Goods"** shall mean all or any part of the machinery, equipment and parts specified in the Order with such changes (if any) as may be mutually agreed to between the Buyer and the Seller or incorporated by the Seller;

**"Services"** shall mean any work, labor or technical services, including advise, testing, supervision of repairs or maintenance work, carried out by or on behalf of the Seller under the Agreement;

**"Order"** shall mean the order placed by the Buyer with the Seller wherein the machinery, equipment, parts and/ or services ordered by the Buyer and to be supplied by the Seller to the Buyer are specified;

**"Seller"** shall mean ZF Services Middle East LLC, Dubai, United Arab Emirates.

### Article 2: Scope

2.1 These Conditions apply to all Agreements for the sale of Goods and/ or Services by the Seller to the Buyer, to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any other purchase order, confirmation of order or any similar document. These Conditions apply as a framework agreement with the Buyer and to each future Agreement, contracts for the sale and/or delivery of Goods subsequent to signing hereof, even if these Conditions are not expressly referred to, unless otherwise agreed in writing by Seller.

2.2 Any standard conditions used by the Buyer which deviate, contradict or supplement these Conditions do not apply unless those conditions have been explicitly accepted in writing by the Seller.

2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### Article 3: Orders and Order Acknowledgments

3.1 Unless otherwise expressly stated in writing, Seller's quotations shall be without obligation and non-binding. Samples and specimens shall be for guidance only and be without any commitment. The placement of an Order for Goods by the Buyer is treated as a binding contractual offer. Unless otherwise provided in the Order, the Seller is entitled to accept this contractual offer within [21] calendar days following its receipt by Seller. Acceptance is indicated by way of a written order acknowledgment issued and signed by the Seller

and returned to the Buyer. A fax transfer or remote data transmission is the equivalent of writing.

3.2 These Conditions are deemed incorporated into all Order acknowledgments issued by the Seller, even if these Conditions are not expressly referred to or otherwise agreed on.

3.3 Individual arrangements made with the Buyer for specific cases deviating from or supplementing the Conditions (including, for example, collateral agreements, additions and amendments) shall take precedence over these Conditions, provided, however, such arrangements are confirmed by Seller in writing.

### Article 4: Prices

4.1 Prices of Goods and/or Services shall be at the price quoted by the Seller and be valid for max. 30 calendar days from the date of quoting, subject always to Article 3.1. In case Goods and/or Services are ordered per agreed and valid prices list, prices are as per the date of the written Order acknowledgement issued by the Seller.

4.2 Should there be any changes of certain cost factors before the date of delivery, e.g. due to the price increase of raw materials, Seller hereby reserves his right to adjust the prices accordingly.

4.3 Unless otherwise specified in writing, quoted Services are priced excluding expenses incurred by personnel carrying out such Services such as travelling expenses, accommodation expenses and telephone/fax expenses. These expenses shall be additionally charged to the Buyer at cost.

4.4 For quotations involving a cost estimation for the provision of Services, prices are only binding on the basis of special written agreements and only after inspection or disassembly of the object of repair, which the Buyer has to send to the Seller.

4.5 Quotations for repair services include the costs involved in preparing the cost estimate for the repair, especially costs of removal, inspection, reinstallation and disassembly. Should the Buyer not place an Order to carry out the quoted Service within 30 calendar days of submission the quotation by Seller, the Seller reserves the right to invoice the Buyer for the costs occurred for preparing the cost estimate.

4.6 Work performed in connection with the submission of a cost estimate as well as any extra and documented expenses (whereby trouble shooting time equals working time) will be charged to the Buyer if the Service cannot be performed for reasons for which Seller cannot be held liable, especially (without limitation hereto) because the fault complained about did not occur during inspection, replacement parts are not available, the Buyer culpably failed to fulfill his obligations, or the Agreement was terminated during execution.

4.7 Unless otherwise specified in writing by Seller, the quoted price shall apply to delivery Ex-Works (in general, any international sale trade terms used by the Parties shall have the meaning as defined under the INCOTERMS 2010, as amended from time to time). The Buyer shall pay any additional expenses or costs, including without limitation, transportation costs, wharfage, port dues, duties, taxes, fees and other charges imposed by any governmental authorities,

insofar as the same are not expressly included in the quoted price.

#### **Article 5: Industrial and Intellectual proprietary rights**

5.1 The Seller retains, unless otherwise agreed in writing, the copyright as well as all other rights to intellectual or industrial ownership concerning the designs, sketches, illustrations, drawings, models, software and offers supplied by the Seller. Those documents and items continue to be the Seller's property and may not, unless the Seller has given explicit permission to do so [in writing], be copied, shown to third parties or used in any other way, whether or not the Buyer has paid for the items and documents in question. The Buyer is required to return those items and documents to the Seller as soon as the Seller requests the Buyer to do so. The Buyer shall be liable to the Seller for all loss, damage and expenses suffered or incurred by the Seller as a result of (i) the Buyer's failure to return such items and/or documents; and/or (ii) the Buyer's violation of any of the above obligations with respect to Seller's industrial and intellectual property rights.

#### **Article 6: Packaging**

6.1 The Seller may charge for any packaging which may be necessary at cost price. The Seller shall decide whether packaging is necessary.

#### **Article 7: Specifications**

7.1 All information on weight, dimensions, capacity, technical and other data stated in catalogues, prospectus, circulars, advertisement and illustrated matter are to be considered approximate. Such information is only binding to the extent stated explicitly in writing in the order acknowledgment.

#### **Article 8: Agreements with unauthorized persons**

8.1 Any agreements entered into with any persons who have not been authorized by the Seller to enter into such agreements shall not be binding on the seller in so far as such agreements have not been accepted by the seller in writing.

#### **Article 9: Collection of Goods and date of delivery**

9.1 If the Buyer fails to collect the Goods purchased on their behalf within 30 calendar days from the date of delivery, the Seller shall be entitled to sell such Goods irrespective of whether the Buyer has made payment for the Goods. The Seller shall then notify the Buyer of the sale of the Goods and, if the Buyer has made payment of the Goods or any part thereof, the Seller shall forward to the Buyer the proceeds of the sale minus any amounts owing to the Seller, including any storage charges.

9.2 Delivery or completion dates stated in the order acknowledgment are approximate, unless the Seller has otherwise expressly guaranteed in writing delivery or completion at a definite time.

9.3 If a definite time of delivery or completion has been expressly agreed upon in writing, such time of delivery or completion is stated with reservation for delays due to any reasons beyond the Seller's control, including without limitation the delay in the supply of materials to the Seller as well as Buyer's non-fulfillment of his obligations in due time. In such cases the time of delivery or completion shall be deferred, if

necessary, for a period corresponding to the duration of the delay. The delivery period commences when the order confirmation is sent but not before the technical data, supporting documentation, approvals and releases to be obtained by the Buyer have been provided or before receipt of an agreed advance payment. The delivery period is deemed complied with if the Good to be delivered has left the works or notice of readiness for dispatch has been sent before such period expires.

9.4 Notwithstanding the above, late delivery shall only give rise to a claim for compensation if the reason for such delay falls solely into Seller's sphere of responsibility and lies within Seller's control.

9.5 Unless otherwise agreed, delivery is from the warehouse instructed by Seller,

9.6 The risk of accidental loss and of accidental damage to the Goods passes to the Buyer no later than at the time of delivery which is at the Seller's warehouse, unless otherwise specified.

9.7 All complaints in respect of incomplete delivery, defective or incorrect goods must be reported to the Seller in writing without delay and at the latest within 15 calendar days of receiving the Goods. Deliveries shall otherwise be deemed as having been approved, subject to the mandatory laws.

#### **Article 10: Technical assistance for field service**

10.1 The Buyer is obligated at his own expense to provide technical assistance for field service, especially for:

- a) The provision of suitable staff, sufficient in number and for the time required; the staff has to follow the instructions of the Seller's repair manager. The Seller assumes no liability for the staff provided by Buyer.
- b) Provision of the fixtures and heavy tools required as well as of the material and objects needed.
- c) Provision of heating, lighting, power, water, including the connections required.
- d) Provision of dry rooms that can be locked and used to store the tools, material and equipment of the Seller's repair staff.
- e) Provision of protection for place of repair and repair material against detrimental influences of any kind; cleaning of the place of repair.
- f) Provision of suitable burglar-proof recreation and working rooms (With heating, lighting, washing facilities, sanitary facilities) and first aid equipment for the Seller's repair staff.
- g) Provision of all material and execution of all measures needed for the adjustment of the object of repair and for the performance of a test as required by the Agreement.

#### **Article 11: Collection of Goods to be repaired**

11.1 If repaired goods are not collected within 15 calendar days from notification of completion of repair work, the Seller reserves the right to charge the Buyer warehousing charges for storing the goods.

11.2 If shipment or acceptance of repaired goods is delayed over 15 calendar days at the request of the Buyer, the Seller reserves the right to charge the Buyer warehousing charges for storing the goods.

11.3 If repairable quoted goods are not collected or ordered to be repaired within 30 calendar days from notification of repair estimation, Seller reserves the right to charge the Buyer warehousing charges for storing the goods.

11.4 The Seller may at his own discretion store these goods at his own facility or at an external service provider.

11.5 If the Buyer fails to collect any repaired or repairable goods for a period of over 6 months from date of notification, the Seller reserves the right to claim penalty and send the goods back to the Buyer at Buyer's expense.

11.6 For any goods held by the Seller, which is deemed to be non-repairable or scrap, the Seller reserves the right to send the goods back to the Buyer at Buyer's cost, after 30 calendar days from notification, unless the Buyer transfers the ownership to the Seller willingly in writing.

#### **Article 12: Warranty and responsibility for defects**

12.1 Subject to the conditions set below the Seller warrants that the Goods shall correspond with the specifications given in writing (subject to Clause 7.1) and performance standards (subject to Clause 12.2) at the time of delivery and will be free from defects in material or workmanship for such period (warranty period) as is defined in individual Agreements between Seller and Buyer, otherwise to the minimum mandatory warranty period provided under UAE law.

12.2 For repaired and inspected Goods the test results attained at the Seller's testing facility concerning the operational characteristics establish the performance standards for these goods.

12.3 In the event that during the warranty period any Goods or part thereof delivered to the Buyer is defective due to defective materials or workmanship, the Seller, at his own discretion shall replace or repair such Goods or part thereof free of charge.

12.4 Defects caused by normal depreciation or wear and tear, incorrect installation, incorrect use or incorrect maintenance, or which occur after changes or repair carried out by or on behalf of the Buyer or by third parties shall not be covered by the warranty. No warranty is given and all warranty shall be hereby excluded for Goods which are not assembled by the Seller.

12.5 The warranty shall only apply if the Buyer has met all its obligations under the Agreement towards the Seller or has provided satisfactory security that the obligations shall be met.

12.6 Unless otherwise specified in writing by Seller, the obligation of the Seller to repair or replace defective Goods or any part thereof in accordance with Article 12.3 shall be fulfilled by delivery Ex Works (INCOTERMS 2010) of the repaired or replaced Goods or part thereof. The forwarding and returning of the Goods or part thereof are at the Buyer's sole risk and expense.

12.7 Except as stipulated in this Article 12, the Seller shall not be liable for defects or damages caused by any other causes whatsoever.

#### **Article 13: Limitation of Liability**

13.1 Notwithstanding any other term or provision of the Agreement, the Seller's liability in respect of any and all claims, liability, loss, expense or damage of any kind whatsoever ("loss") shall not exceed USD 100,000 or 10% of the total invoice value related to the Order (whatever is higher), whether such loss be suffered by the Buyer or otherwise, and whether such loss arises out of or results from or is in any way connected with the Agreement or the performance or breach thereof, or from negligence, or from the design, manufacture, sale, storage, handling, delivery, installation, repair, modification, operation or use of any Goods.

13.2 The Seller shall under no circumstances whatsoever be liable for any indirect or consequential or special loss, including but not limited to loss of profits, loss of use and loss of business opportunities.

#### **Article 14: Payment**

14.1 Unless otherwise stated in the Seller's Order acknowledgement, payment must be made so as to be received by the Seller within 30 calendar days from the date of invoice issued by the Seller, without any set-off, deduction or counterclaim the Buyer considers it to have against the Seller in respect of the Goods or any other goods or matter whatsoever. Payment must be rendered irrespective of any notification of defects.

14.2 The Seller shall be entitled, before delivery of the Goods, to require the Buyer to provide a guarantee at first demand by a third party which is satisfactory to the Seller, guaranteeing the Buyer's obligations to make payment of the Goods. In the event that the Buyer refuses to provide such a guarantee, the Seller shall be entitled to terminate the Agreement by means of a written notice to the Buyer, without prejudice to its rights to claim compensation for costs and loss of profits.

14.3 The Buyer's obligations to make payment of the Goods shall not be affected by any requirements specified by any authority whatsoever which may hinder the use of the Goods.

14.4 The Seller reserves the right to claim interest at the rate of up to 10% per annum on all outstanding amounts after the due date for payment of such amounts has expired. For the avoidance of doubt, default shall occur without prior request for payment if period for payment is exceeded; default shall also occur if Buyer does not pay after having received a reminder following the due date. Interest shall be calculated on a monthly basis and interest shall be calculated for the whole month in respect of amounts which have been overdue for part of a month.

14.5 Bills and cheques will only be accepted for collection with a view to payment and only at Seller's sole discretion, whereby Seller shall not be liable for due presentation and protest. Any charges incurred shall be invoiced; acceptance by Seller shall be subject to the right at any time of Seller to demand cash payment against return of the documents.

14.6 In the event of default of payment, all current accounts and the sums of all bills shall become due immediately and enforceable. If the terms of payment are not observed or in the event of circumstances occurring that are capable of impairing the credit worthiness of the Buyer, Seller shall be entitled to render immediately payable his entire receivables, regardless of the term of any bill accepted and not

yet payable. Furthermore, Seller shall be entitled to effect any outstanding delivery only against advance payment or the provision of additional security. If advance payments are not made or security not provided after setting a reasonable period, Seller shall be entitled to terminate the respective Agreement in respect of any Services or Goods still outstanding, with the result that Buyer shall have no claims whatsoever in relation to those shipments not yet effected.

14.7 Buyer shall be entitled to set off all receivables that are due to Seller from the Buyer against all receivables demanded from Seller by the Buyer.

#### **Article 15: Retention of proprietary rights and the right of lien**

15.1 The Seller shall retain ownership of the Goods until full payment of the price of the Goods have been received by Seller, irrespective of whether the Goods have been delivered or not.

15.2 The Buyer shall not, for as long as the Goods have not been paid in full, be entitled to sell, create any mortgage, lien, pledge or any other encumbrances on the Goods, and the Buyer agrees that it shall at all times make known to third parties such restrictions on the sale of and the creation of encumbrances over the Goods. In the event of third parties' acts aimed at obtaining the Goods under retention of title, the Buyer shall draw attention to Seller's title, inform Seller without delay and provide Seller with any assistance that is necessary to safeguard Seller's rights.

15.3 In the event of the Buyer acting in breach of contract - in particular default in payment - Seller shall be entitled to assert his retention of title and to demand the immediate surrender of the Goods under retention of title and, by himself or through agents, obtain their direct possession or, if necessary, to demand assignment of the Buyer's claims for the return of the goods from third parties. Asserting the retention of title shall not be construed so as to withdrawing from the contract, though the Seller's right to do so (and any further remedies hereunder and under the applicable law) shall remain unaffected.

15.4 The Buyer shall adequately insure all Goods under retention of title against fire and theft. Any claims for damages against the insurers shall hereby be assigned to Seller in the amount of the value of goods under retention of title.

#### **Article 16: Termination**

16.1 Either party may, by written notice to the other party, terminate the Agreement in the event of a material breach by the other party of any terms of the Agreement.

16.2 The non-defaulting party shall, before providing any written termination notification to the defaulting party in accordance with Article 16.1, first notify the defaulting party in writing that it is in default of its obligations, and shall grant the defaulting party a reasonable period of time for the defaulting party to rectify such default. The notification by the non-defaulting party shall clearly state the nature of the default.

16.3 Without prejudice to any other right or remedy available to it the Seller may cancel the Contract or suspend any further deliveries or performance of Services without liability and with immediate effect if the Buyer makes any voluntary arrangement with its creditors or becomes subject to

an administration order or (being an individual or firm) becomes bankrupt or goes into liquidation; or an encumbrance takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer.

16.4 The Buyer shall not be entitled to terminate the Agreement or to suspend its obligations therein if it is itself in default of any obligations therein.

16.5 Any termination of the Agreement shall not prejudice, discharge or diminish any other rights or remedies the Seller may have against the Buyer.

#### **Article 17: Force Majeure**

17.1 If a Force Majeure event should occur then the affected contractual party shall immediately inform the other party thereof in writing, if possible within three calendar days of gaining knowledge of the circumstance. The event shall be described in further detail as well as stating which contractual obligations cannot be fulfilled due to the occurrence of the Force Majeure event or which contractual obligations can only be fulfilled with a delay. The affected contractual party shall not be responsible for the delay or impossibility caused by these circumstances

17.2 Force Majeure events shall include, but are not limited to, acts of war, rebellion, coup, excesses, embargo, public authority decree, sabotage, (go-slow) strikes, lock-outs, epidemics, fire, storms, natural disasters, general lack in plant or raw materials, lack of harbour and offloading capacity, serious transport accidents.

17.3 If the period of Force Majeure persists for more than thirty 30 calendar days from the day the affected contractual party has informed the other party about the Force Majeure event, either party may, by written notice to the other party, terminate the Agreement and Buyer shall remit the agreed payment to Seller, whereby Seller must permit such payment to be reduced by the amount of the expenses that Seller saves as a result of termination of the Agreement.

17.4 For the avoidance of doubt, any obligation of payment arising or in connection with this Agreement or any Order cannot be affected by a Force Majeure event.

#### **Article 18: Applicable law and Arbitration**

18.1 The law of the United Arab Emirates, as applicable in [Dubai] shall apply to these Conditions and any Agreement and any ancillary business for the parties.

18.2 Any disputes arising out of the formation, performance, interpretation, nullification, termination or invalidation of this Agreement or arising therefrom or related thereto in any manner whatsoever, including those past the date of its existence or termination shall be finally settled, under exclusion of recourse to the courts, by arbitration court consisting of one arbitrator under the Rules of Arbitration of the International Chamber of Commerce in accordance with the said rules. Place of arbitration shall be Dubai, UAE, and the language of arbitration shall be English.