1. General provisions

1.1 The following Terms and Conditions exclusively apply to all quotations, orders, and deliveries, 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 understandings are binding only if they are confirmed in writing by the supplier.

1.2 Purchaser’s differing terms and conditions which are not expressly accepted in writing by the supplier shall not become part of the contract with the supplier as they are made the basis of the order and the supplier does not expressly object to them accordingly.

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, this declaration must be made in writing. It shall be signed or notarially certified by the respective contractual partner, with his own signature or a power of attorney granted by him. A declaration transmitted by electronic means, by telex or by fax. The written form described in Sentence 1 shall not be replaced by electronic form or text form.

1.4 If the 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 obligations arising therefrom shall be effective. Provisions may be derived in consequence, even though 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 other provisions to which the purchaser to any claim.

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, and similar documents or documents containing such information which are part of his quotation such as diagrams, drawings, descriptions, 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 been designated as binding.

2.5 The supplier reserves the right of surplus or short weights and deliveries within statistically reasonable tolerances. If this is the case, the prices shall still apply.

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 which he submits; 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 against claims due to him from companies associated with the purchaser in accordance with Article 15 of the German Stock Corporation Law (Aktiengesetz).

3.5 Bills of exchange are paid 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 the timely presentation, presentation, notification and return of a dishonored bill of exchange immediately.

3.7 The supplier will charge 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 creditor-claims if his counter-claims are uncontested or are legally enforceable.

3.9 Partial deliveries — in payment. In case of partial delivery, the accounts receivable through deterioration of the credit worthiness of the purchaser entitle the seller to demand immediate payment of all accounts receivable arising to the supplier from the business relationship — irrespective of the remaining term of all 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 purchase order has been made in due time and in the form and to the extent of 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 accordingly. This does not apply if the delay of the supplier is not attributable to his own fault.

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 delivery period is valid only if the acceptance is given in writing. It shall be determined in the event of unforeseen impediments which are not the fault of the supplier, such as force majeure, accidents, natural disasters, strikes, lockouts, production difficulties, failure of raw materials, delivery times by sub-suppliers, 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.

4.4 In the event of the occurrence of events which are unforeseeable at the time of the contract, such action shall immediately be communicated to the purchaser after realization, however including the circumstances to which such a deviation was granted by the purchaser at first.

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 supplier may also withdraw from the contract if in the execution of one part of the delivery becomes impossible and he has a justifiable interest in refusing a partial delivery. If this is not the case, the supplier is not liable for any delay.

The same applies in the event of supplier’s inability to perform. Apart from that item.8.2 applies but any claim is limited up to the maximum of 10% of the value of that part of the delivery which is not executable in its entirety. If the impossibility of performance or inability to perform occurs during delay in acceptance or if the supplier is solely or overwhelmingly responsible for these circumstances, he may 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 week of delay; however, the maximum total amount shall be 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.

4.9 The supplier 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 insist upon delivery. If the supplier is able to prove that the payment on the demand arising from delivery or of the bills of exchange is covered by his own security, the supplier is entitled to withdraw. 4.10 If delay 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 from 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 deliveries; 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. The bill is only considered as paid if the purchaser and the other contractual partner fails to pursue such a breach, then no waiver of the obligations arising therefrom shall be effective. Provisions may be derived in consequence, even though such an action occurs repeatedly.

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 insulate the delivery against all insurable risks at the purchaser’s cost.

5.5 The supplier only accepts 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 collect all the insurances required. The delivery item is deemed to have been accepted, only 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 must be returned in their original condition and freight paid by the purchaser.

5.7 The purchaser shall notify the supplier of discrepancies arising from dispatch in writing 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 has been made.

6.2 The supplier reserves ownership in all goods/delivery items supplied by him until full payment has been made.

6.3 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.

6.4 If the supplier sells the goods/purchase item for 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 supplier is authorised to collect these accounts receivable also subsequent to their assignment until such authorisation is withdrawn.

ZF Race Engineering GmbH
General Terms of Supply and Payment
effective from August 2016)
The supplier shall inform the customer immediately in writing as soon as such defects are determined.

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

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

7.5 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. If 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 of this unsettlement.

7.6 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 consent. If the purchaser fails to do so, this shall be deemed to have caused the consequences arising. The purchaser only has the right to rectify the defect himself in an appropriate manner to the extent that they are unsuitable operating media, chemical, electro-technical or other media.

7.7 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 undertake to conclude a declaration of consent with his customer and to inform the supplier accordingly.

7.8 Within the framework of statutory regulations, the purchaser has a right to rescind the contract if the contract is caused as a result 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 to an abatement of the contract price or the contract price is excluded in all other respects. Further claims are determined in accordance with Clause 8.2.

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

- In the event of improper reworking by the purchaser or a third party, the supplier shall not be liable to any consequences arising. The same applies to changes to the delivery item in agreement with the purchaser.
- In the event of claims arising from the information he has, the supplier shall be released from liability for any consequences arising.
- In the event of breaches of the contract by the purchaser or third party, the supplier shall be released from any liability to the extent that they are due to lack of assets of the supplier, bill and cheque protest or if the opening of insolvency proceedings over the assets of the purchaser is requested by the purchaser or third party.
- 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 only entitled to take ownership of the conditional goods for the purpose of ensuring the business of the supplier or the business of the purchaser, demand relevant information as well as undertake necessary inspection of his books.

8. Reclamation

8.1 If, through culpable violation of the supplier, the delivery item cannot be used by the purchaser as specified in the contract due to omissions or defects in its design or execution, the purchaser has a right to rescind the contract. If the contract is rescinded, the supplier is entitled to demand the immediate return of the conditional goods. The reclamation, but not the taking back or distraint of the conditional goods, is subject to the statutory limitation periods apply to claims for damages in accordance with Clause 7.2.

8.2 If, through culpable violation of the supplier, the delivery item cannot be used by the purchaser as specified in the contract due to omissions or defects in its design or execution, the purchaser has a right to rescind the contract. If the contract is rescinded, the supplier is entitled to demand the immediate return of the conditional goods. The reclamation, but not the taking back or distraint of the conditional goods, is subject to the statutory limitation periods apply to claims for damages in accordance with Clause 7.2.

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 Culpable 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-manageable employees and slight negligence, in the latter case limited to reasonably foreseeable typical contract damage.

A part from that, claims for damages and reimbursement of expenses of the purchaser for the withdrawal of the contractual obligation in the case of non-manageable employees in the contract obligations in the case of non-manageable employees and slight negligence, in the latter case limited to reasonably foreseeable typical contract damage.

9. Other

9.1 If and insofar as software is included in the scope of delivery, the purchaser shall use the software to the exclusion of all other software supplier. Sub-licences may be granted if there is consent of the owner/the organs or manager of the supplier.

9.2 All claims of the purchaser – for whatever legal reasons – are subject to a limitation period of 6 months. This period begins 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 8.1 and 8.2 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 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.