



ZF Friedrichshafen AG · 97424 Schweinfurt ·

Division  
Aftermarket

## Digital Content and Data Use Agreement

### “Agreement”

between

ZF Friedrichshafen AG  
ZF Aftermarket  
Obere Weiden 12  
97424 Schweinfurt Germany

- hereinafter referred to as “**ZF**” or “**Party**” -

and

“Business Customer”

- hereinafter referred to as the “**User**” or “**Party**” -

- hereinafter jointly referred to as “**Parties**” -

### **Scope of Application**

The following terms and conditions (“Terms”) govern the adding of the Agreement for the Digital Content and Data Use (“Agreement”) made available to the User via the ZF Aftermarket Portal, available under <https://aftermarket.zf.com/>. This Portal is owned and operated by ZF Friedrichshafen AG (“ZF”).

By signing up for this Agreement, the existing ZF-Aftermarket-Account of the User is amended by the following stipulations. Unless not stipulated deviating hereinafter, the Terms of Use for the ZF-Aftermarket-Portal remain valid.

This Agreement is addressing only business-customers. “Business Customer” for the meaning of these Terms is an individual, company or partnership vested with legal capacity who enters into the relevant contract in the conduct of its business or its self-employed professional activity (§14 BGB [German Civil Code]).

### **1. Conclusion of Agreement**

### **1.1. Signing Up**

Before the User can use the Digital Content and Data, provided to the User via the ZF-Aftermarket-Portal, signing up to this Agreement is mandatory.

- 1.2. By signing up for this Agreement, the User requests ZF to make an offer to amend the existing ZF-Aftermarket-Account by these Terms.
- 1.3. By signing up for this Agreement, the User accepts these Terms and especially declares that the User is a Business Customer.
- 1.4. ZF will confirm receipt of the signing up request by email. ZF may at its own discretion choose to decline a signing up request. If ZF chooses to accept the signing up, ZF will send an email to the User and confirm that the signing up was successful. In order to complete the signing up for the Agreement, the User will be required to define a personal password which is required for the user to log in to the ZF-Aftermarket-Portal, available under <https://aftermarket.zf.com/>

## **2. Scope of Agreement**

### **2.1. Content**

2.1.1. The Digital Content and Data provided under this Agreement is related to information such as Product-Master-Data (e.g. but not limited to product descriptions, commercial measures, imagery, basic stock and availability information, ...) (in the following jointly also "CONTENT").

2.1.2. The Digital Content and Data may include text, information, data, images, audio and video material.

2.1.3. For avoidance of doubt it is mutually agreed that the latest version of the CONTENT is supplied only via the E-Business Toolbox Application on the ZF-Aftermarket-Portal. It is in the own and sole responsibility of User to update the data within its use-cases.

Furthermore, for avoidance of doubt User is aware and accepts that the CONTENT is subject to continuous changes/modification and downloaded CONTENT is not subject to revision services.

User especially is aware and accepts that the CONTENT may have changed when User is ordering products.

2.2. The present Agreement governs the relationship between the contractual partner named above ("User") and the rights holder of Digital Content and Data provided ("ZF") in relation to the User's use of the CONTENT owned or licensed by ZF as detailed below.

## **3. License Grant**

During the Term of this Agreement, ZF shall grant to USER the following License-Grant:

3.1. Digital Content and Data shall be made available for restricted use as defined herein in this Agreement.

3.2. This Digital Content and Data may only be used by User for the following purpose ("Purpose"):

Display of the CONTENT in Users' print and web catalogues

Display of the CONTENT in Users' web-shop

Display of the CONTENT in Users' notifications and advertisement

- 3.3. CONTENT may only be used and represented in conjunction with Products of ZF. The use of CONTENT for the purposes of advertising and representing products of third parties is not permitted and will result in the assertion of compensation claims by ZF or its affiliates against the User.
- 3.4. The License is granted non-exclusive, revocable, non-transferrable (neither whole nor partly) and non-sub-licensable. Especially, any transfer by the User to third parties or reproduction of the CONTENT is prohibited.
- 3.5. In downloading or copying the CONTENT from digital media, the User does not acquire ownership rights or any other rights in such CONTENT unless not otherwise explicitly granted in this Agreement. Following the conclusion of the present Use Agreement with ZF, the User shall solely be authorised to make use of CONTENT in accordance with this Agreement.
- 3.6. All rights in the CONTENT shall remain with ZF or its Affiliates (any company affiliated to ZF according to §§15 ff AktG).
- 3.7. ZF is entitled to revoke this License-Grant whole or partially at any time without notice period at its own and sole discretion without giving any reason to USER.
- 3.8. In case of revoking this License-Grant or in case of any other termination of this Agreement, any of USER's rights to use and/or display any CONTENT shall cease immediately.
- 3.9. Any further usage and/or display of the CONTENT by USER exceeding a grace-period of 4 (four) weeks after receipt of the revoking-notice or – if applicable – termination of this Agreement, forfeits a contractual penalty of EUR 5.000,00 (five-thousand Euros) in each single case per each month of usage and/or display. The contractual penalty is to be paid upon first request without any right for retention. For avoidance of doubt, such contractual penalty is not providing any License-Grant. Claims for damages and further legal steps are reserved.
- 3.10. Trademarks  
ZF will further permit the User to use the "Brake Engineering", "Boge", "Gabriel", "Girling", "Lemförder", "Sachs", "TRW" or "ZF" word mark and/or figurative mark as registered in the relevant countries in connection with such CONTENT for the Term of this Agreement, for the purpose of advertising the products. For the purposes of this Agreement, such marks shall be deemed to comprise CONTENT.

#### **4. Provision of Digital Content and Data**

- 4.1. CONTENT is provided via [www.zf.aftermarket.com](http://www.zf.aftermarket.com) for download by USER. Deviating provision of CONTENT requires a separate agreement between ZF and USER.
- 4.2. CONTENT is provided "as is" and is subject to continuous changes by ZF at ZF's own and sole discretion. Anyhow, there is no obligation for ZF to update, alter or otherwise change the CONTENT.
- 4.3. USER is obliged to ensure that USER is using and/or displaying only the latest version of CONTENT.

## **5. No alteration of CONTENT, Disclaimers and Display of CONTENT**

- 5.1.** The User shall agree only to use Digital Content and Data made available in unaltered form. Subsequent alterations such as retouching and the editing out of water marks, brand names or copyright will result in the assertion of compensation claims by ZF or its affiliates and in the immediate cancellation of the present Use Agreement. The above shall not apply to alterations of the dimensions of images or alterations to image quality insofar as such alterations are necessary in order to fulfil the purpose of use and insofar as the actual image motif is not rendered unrecognisable.
- 5.2.** The USER is obliged to display any disclaimers and/or warnings as stated under [www.zf.com/dis](http://www.zf.com/dis). Further, USER is obliged to add further information, stating clearly that in case of any discrepancies, the disclaimers and/or warnings as stated under [www.zf.com/dis](http://www.zf.com/dis) prevail. Any alteration is expressly prohibited.
- 5.3.** The USER is obliged to display any copy-right marks as well as any further markings and/or trademarks as stated under [www.zf.com/dis](http://www.zf.com/dis). Any alteration is expressly prohibited.
- 5.4.** The USER is obliged to place a link (or in case of print-catalogues, a corresponding hint) to the website **[www.aftermarket.zf.com](http://www.aftermarket.zf.com)**.

## **6. Pricing**

- 6.1.** CONTENT shall be made available free of charge pursuant to the present Use Agreement.
- 6.2.** ZF reserves the right to provide the CONTENT subject to payments. In this case, ZF will inform USER in advance.

## **7. Liability**

- 7.1.** ZF assumes no liability for the correctness and actuality of the CONTENT.
- 7.2.** In case of any infringement of this Agreement by USER, USER shall be liable without any limitations to ZF and/or ZF's Affiliates. In the latter case, USER shall indemnify ZF and/or its Affiliates from any claims and costs in connection with such infringement upon first request.

## **8. Term and Termination**

- 8.1.** This Agreement is concluded by signature of both Parties and is concluded for an indefinite term (also "Term").
- 8.2.** Each Party may terminate this Agreement for any reason with no notice-period.
- 8.3.** In case of termination of this Agreement, any of USER's rights to use and/or display any CONTENT shall cease immediately.
- 8.4.** Notwithstanding the further stipulations in this Agreement, any further usage and/or display of the CONTENT by USER exceeding a grace-period of 4 (four) weeks after receipt of the revoking-notice or – if applicable – termination of this Agreement, forfeits a contractual penalty of EUR 5.000,00 (five-thousand Euros) in each single case per

each month of usage and/or display. The contractual penalty is to be paid upon first request without any right for retention. For avoidance of doubt, such contractual penalty is not providing any License-Grant. Claims for damages and further legal steps are reserved.

- 8.5.** Each Party's right for extraordinary termination for cause without notice period remains unaffected.

## **9. Miscellaneous**

- 9.1.** The User shall in particular be obliged to comply with the journalistic principles promulgated by the German Press Council (Press Code) and to observe the rights of third parties.
- 9.2.** The conclusion of the present Use Agreement and any subsequent contractual amendments and/or supplementary provisions shall not be valid unless made in writing. The same shall apply equally to any amendments to the present written form clause.
- 9.3.** In the event that a provision contained within the present Use Agreement should be null and void or invalid in any other way, this shall be without prejudice to the remaining provisions herein contained. Both parties shall agree to continue in compliance with said remaining provisions and shall further agree that an invalid provision shall be replaced by a new provision in the interests of both parties.

## **10. Applicable laws and legal venue**

- 10.1.** The present Agreement is governed by German law as it applies to the legal relations between domestic parties, excluding its conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Place of jurisdiction is Schweinfurt / Main.

Last modified: 03/2019