

**ZF General Terms and Conditions
of Delivery for “ProVia” products**



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1.0 Delivery contract

- 1.1 These General Terms and Conditions of Delivery shall only apply with regard to commercial undertakings. Commercial undertakings within the meaning of the KSchG [Austrian Consumer Protection Act] are natural or legal persons or partnerships with legal capacity for which the legal transaction to be entered into forms part of the business of their commercial undertaking; a commercial undertaking is any organization of independent economic activity established on a lasting basis, even if it is not aimed at making a profit; legal entities under public law are always deemed to be commercial undertakings, section 1KSchG.
- 1.2 Our offers are an invitation to make a contractual offer. A delivery contract shall only come into being as a consequence of our acceptance of the order in writing.
- 1.3 Our General Terms and Conditions of Delivery shall form part of each delivery contract. Amendments and additions to the delivery contract shall only be effective if we have confirmed them in writing.
- 1.4 The present General Terms and Conditions of Delivery shall apply exclusively, unless they are modified by express written agreement between the parties. The offer, the acceptance of the offer, the order confirmation and the sale of any products shall be subject to the present General Terms and Conditions of Delivery. The present General Terms and Conditions of Delivery shall be the basis for any future individual purchase transaction for products of the "ProVia" brand and exclude any other agreement. Any other conditions of the purchaser or any other provisions of the purchaser which modify the contracts are hereby expressly disavowed. These shall only be effective if we have expressly consented to them in writing.
- 1.5 The quantity, quality and description of the goods, as well as any specification of the goods, shall correspond to our offer (in the event that it is accepted by the purchaser) or to the purchaser's order (in the event that we accept this). The purchaser shall be responsible for ensuring the accuracy of the order, and the purchaser shall be responsible for providing us with any necessary information concerning the goods ordered within an appropriate period of time, so that the order may be fulfilled in accordance with the contract.

2.0 Price

- 2.1 Prices shall apply for deliveries ex works or ex stock, including packaging. The packaging shall be calculated at cost price and shall not be reclaimed. In the event that we are prepared to deliver the goods to other locations, the purchaser shall be liable for the costs of transport, packaging and insurance.
- 2.2 All prices shall be in EURO, plus value added tax at the relevant statutory rate.
- 2.3 We reserve the right, following prompt notification of the purchaser and prior to delivery of the goods, to increase the price of the goods in a reasonable manner, as is necessary due to general price developments outside our control (such as exchange rate fluctuations, currency adjustments, customs amendments, significant increase in material and manufacturing costs) or due to a change of suppliers.

3.0 Delivery and transfer of risk

- 3.1 We endeavour to comply with agreed delivery deadlines. Details provided regarding delivery times relate to the dispatch of the goods ex works and are never binding, unless we have expressly agreed to the contrary with the purchaser. Partial deliveries are admissible.
- 3.2 Force majeure, strikes and other events for which we are not responsible, insofar as they affect the manufacture and delivery of the object to be supplied, shall entitle us to extend the delivery deadline accordingly. This shall also apply in the event that the aforementioned events occur at a point in time when we are in default.
- 3.3 In the event that a loss accrues to the purchaser on account of a delay in delivery which can be attributed exclusively to our fault, we shall be liable in accordance with the statutory provisions. If the delay in delivery is merely due to a breach of a contractual obligation that is not material, the purchaser may claim flat-rate damages for delay in the amount of at most 15% of the value of the delivery.
- 3.4 The risk shall be transferred to the purchaser no later than upon dispatch of the object to be delivered, even if partial deliveries are made or in the event that we have taken on further services, for example delivery free domicile or the costs of shipping.

4.0 Payment

- 4.1 Payments must be made within 30 days of the invoice date, without deductions of any type, free of all charges, to an account to be nominated by us; the date of receipt of payment shall be the decisive date.
- 4.2 In the event that the purchaser does not fulfil its payment obligation on the due date, we shall be entitled – without surrendering any other rights and claims we hold – as we choose:
 - to suspend further deliveries to the purchaser and to charge the purchaser interest on the amount not paid at a rate of 8% per annum above the respective base rate of interest until full and final payment has been made; in the event of a default in payment which is the fault of the purchaser, we shall additionally be entitled to claim the losses arising from the delay that we have incurred,
 - or
 - to set a reasonable grace period, to rescind the contract and demand damages for non-fulfilment.
- 4.3 Payments should only be made by bank transfer. Payments made by bill of exchange or cheque shall not be recognised as fulfilling the payment obligation. Acceptance of bills of exchange or cheques shall require our prior consent. Deliveries to foreign countries shall be dependent on the opening of an irrevocable/confirmed letter of credit at the purchaser's bank (or another bank that is acceptable to us). In this individual case it is specified that the letter of credit must be opened in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 revision, ICC Publication no. 500.
- 4.4 We shall be entitled to deliver the goods cash-on-delivery.
- 4.5 In the event that the purchaser's ability to pay deteriorates after the contract has been entered into or we later become aware that doubts exist concerning the

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purchaser's ability to pay, we shall be able to request advance payments or provision of security for all ongoing transactions. If the purchaser is in default of payment, all existing payment claims from the same contractual relationship which are held against the purchaser – including deferred claims – shall fall due for immediate payment. This shall not affect any further statutory claims.

- 4.6 Retention of payments or offsetting against any counterclaims by the purchaser shall only be permitted in the event that the counterclaims are not disputed by us or have been ascertained with final legal effect.

5.0 Retention of title

- 5.1 We shall retain title over all goods delivered by us until full payment has been made; in this regard, all deliveries shall be deemed to constitute one single delivery transaction.
- 5.2 Before full payment has been made, the purchaser may not pledge the object supplied or transfer it by way of security. We must be notified immediately in writing in the event of pledges or other interference by third parties, and all information necessary for us to enforce our right of ownership must be provided to us. In addition, in this case the purchaser must inform third parties that the goods belong to us. Insofar as the purchaser does not comply with this obligation, it shall be liable for the loss incurred.
- 5.3 The purchaser shall be entitled to sell on in the normal course of business the object delivered. The purchaser hereby assigns to us all receivables, in the amount of the invoice value of the retained goods, which accrue to the purchaser vis-à-vis its customers or third parties as a result of the re-sale. The purchaser shall be entitled to collect these receivables, even after assignment, as long as it acts in accordance with the contract and is not insolvent. This shall not affect our authorisation to collect the receivables ourselves. We undertake not to collect the receivables as long as the purchaser complies with its payment obligations towards us in a proper manner and is not insolvent. Otherwise, we may request that the purchaser notify us of the assigned receivables and their debtors, provides us with all the information necessary for the purposes of collection, hands over the associated documents and informs the debtors of the assignment.
- 5.4 In the event that retained goods are processed or re-shaped, including in conjunction with other objects that do not belong to us, we shall acquire co-ownership of the new object in the proportion of the invoice value of the retained goods at the time of processing to the value of the new object. The purchaser shall store the objects which are subject to our co-ownership free of charge.
- 5.5 In the event that the value of the securities held by us exceeds the receivables to be secured by a total of more than 20%, we shall be obliged to release securities to this extent, at the request of the purchaser. We shall make the choice as to which securities are to be released.

6.0 Warranties and damages

We shall be liable for defects in the goods delivered as follows, subject to exclusion of further claims:

- 6.1 For products of the “ProVia” brand, we provide a warranty for the period of 12 months from the transfer of risk. The purchaser's entitlements arising from the warran-

ties shall primarily be limited to a claim for rectification or replacement of the object. We shall be entitled to choose either rectification or replacement delivery. Replaced parts shall become our property. In the event that the rectification or the replacement delivery is unsuccessful, the purchaser may request a reduction in the purchase price or rescission of the contract, as it sees fit. The rectification or replacement delivery is unsuccessful if and insofar as a reasonable deadline set for these purposes has passed without result. The requirements for exercising the right of rescission are determined in accordance with section 932 ABGB [Austrian General Civil Code].

- 6.2 Complaints due to obvious defects and rejections due to incomplete or incorrect delivery must be asserted in writing, giving precise grounds, and immediately after delivery, in accordance with Article 377 of the UGB [Austrian Company Code]. Complaints due to latent defects must be asserted in the aforementioned form and immediately after they are discovered, in accordance with Article 377 of the UGB.
- 6.3 We shall not be liable for defects resulting from circumstances for which we are not responsible. Such circumstances shall include, for example, breach of installation or usage instructions, maintenance errors, unsuitable or inappropriate use, incorrect or negligent handling, natural wear and tear, and inappropriate interventions with the object delivered that are undertaken by the purchaser or third parties.
- 6.4 Rejected parts shall be sent to us carefully packaged, with closed connections.
- 6.5 For warranty claims relating to a newly delivered part pursuant to clause 6.1, clauses 6.0 to 6.4 shall likewise apply.
- 6.6 Pursuant to the statutory provisions, we shall be liable insofar as the purchaser asserts entitlements to damages that are based on intentional acts or gross negligence, including the intentional acts or gross negligence of our representatives or of our vicarious agents. Pursuant to the statutory provisions, we shall be liable insofar as the purchaser asserts entitlements to damages that are based on slight negligence, including slight negligence by our representatives or vicarious agents, where the breach concerned is a breach of a primary contractual obligation. Otherwise, liability for damages claims shall be excluded; in particular, we shall not be liable for damages which have not accrued to the object delivered unless the damages were caused intentionally or by egregious gross negligence or constitute an injury to life, body and/or health.

7.0 Use of software

When it purchases equipment that requires software for operation, and when it purchases software as such, the purchaser shall have the right, without any extra charge, to use the software supplied by us with the performance characteristics provided by us for the purposes of operating the equipment supplied or stipulated by us. We shall retain all other rights to the software. In particular, the purchaser shall not be entitled, without our prior written consent, to duplicate the software originating from us in any form whatsoever or to make it available to any third party not holding an authorisation from us.

8.0 Further provisions

- 8.1 We shall be entitled to modify and improve the goods without having to notify the purchaser in advance, insofar as modifications or improvements do not have a lasting impact on, or cause a lasting deterioration to, the form or function of the goods.
- 8.2 All sales documentation, specifications and price lists must be treated as strictly confidential and must not be made accessible to third parties.

9.0 Place of performance, place of jurisdiction and applicable law

- 9.1 Austrian law shall apply with exclusive effect. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the provisions of the private international law which would require application of another law shall not be applicable.
- 9.2 The registered office of the invoicing party shall be the place of performance. With regard to all disputes arising from the contractual relationship, the competent court in terms of subject-matter which has jurisdiction for our registered office is deemed to be agreed. We shall have the right to bring proceedings at the court with jurisdiction for the purchaser or at any other court which may have jurisdiction in accordance with national or international law.
- 9.3 Should individual provisions of these General Terms and Conditions of Delivery or individual parts of the contract become ineffective, this shall not affect the effectiveness of the remaining conditions or parts of the contract. In the event that a condition or a part of the contract is legally ineffective, the contracting parties agree to replace it with one which is as close as possible to the legally ineffective one in terms of its content.

10.0 Protection of Privacy

- 10.1 When processing personal data under the contract or in conjunction with the contract (designated in short as “personal data”), each Party individually determines, and not jointly with the other Party, the scope and resources for the relevant processing. Each Party therefore acts as an independent data controller. When processing personal data, each Party must meet its obligations under the applicable data privacy regulations.
- 10.2 The purchaser confirms that ZF may process the purchaser's and its representatives' personal data (e.g. name, address, telephone number, email address, credit card and transaction information) in accordance with the applicable data privacy regulations for the purposes of account management, order processing, communication and payment (designated in short as “purposes”).
- 10.3 The purchaser warrants and declares that (a) the personal data will be gathered by the purchaser and made available to ZF in accordance with the applicable data privacy regulations, (b) it will not do or refrain from doing anything which would lead to ZF violating any applicable data privacy regulations when processing the personal data, and (c) the data subjects whose personal data is provided to ZF by or on behalf of the purchaser have been informed regarding the processing of their personal data by ZF for the aforementioned purposes, and if necessary have granted valid consent to this.
- 10.4 Each Party must support, notify and cooperate with the other Party with regard to personal data in respect of data privacy matters to the appropriate extent. Moreover, this applies with respect to (a) an assertion or management or presumed management of rights on the part of a data subject or an investigation or enforcement activity by a regulatory authority regarding or in connection with personal data processing by the other Party, and (b) an actual, potential or attempted violation of the privacy of personal data.