

**ZF Germany Standard Terms of Sale
and Delivery for ProVia Products**



ZF Germany Standard Terms of Sale and Delivery for ProVia Products

1.0 Principles

- 1.1 These General Terms and Conditions of Sale and Delivery (**hereinafter referred to as "ProVia-General Terms and Conditions"**) shall only apply with regard to companies (natural persons or legal entities or partnerships vested with legal capacity which exercise their commercial or autonomous professional activity when concluding a legal transaction, Article 14 of the German Civil Code [*Bürgerliches Gesetzbuch*]), legal entities under public law or special assets subject to public law.
- 1.2 Our offers are not binding on us. A purchase or delivery contract shall only come into effect with our declaration of acceptance.
- 1.3 Our ProVia-General Terms and Conditions form part of each individual purchase or delivery contract that we conclude, or of each offer, each declaration of acceptance or order confirmation. Amendments and additions to the ProVia-General Terms and Conditions shall only be valid following express written confirmation.
- 1.4 The ProVia-General Terms and Conditions shall apply exclusively, to the extent that they are not modified by express written agreement between the parties. Any terms and conditions with content contrary to the ProVia-General Terms and Conditions, or any other differing provisions of the relevant other contracting party shall hereby be inapplicable; such terms and conditions or provisions shall only be effective against us in the event that we consent to these in writing.
- 1.5 The quantity, quality and description of the goods, together with any specification of said 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). In principle, the Purchaser shall be responsible for ensuring the accuracy of the order. Furthermore, 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 carried out in accordance with the contract.

2.0 Prices

- 2.1 Prices shall be valid 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 locations other than the Purchaser's offices, the Purchaser shall be liable for the costs of transport, packaging and insurance.
- 2.2 All prices shall be in EUR, plus value added tax at the relevant statutory rate.
- 2.3 Following prompt notification of the Purchaser and prior to delivery of the goods, we reserve the right to increase the price of the goods as necessary due to general price developments outside our control (such as exchange rate fluctuations, currency regulations, customs amendments, significant increase in material and manufacturing costs) or due to a change of supplier.

3.0 Delivery and transfer of risk

- 3.1 Information regarding delivery times relates to dispatch of the goods from the ZF factory and is never binding on us, unless we have made other express agreements with the Purchaser.

- 3.2 *Force majeure*, labour disputes and other events for which we are not responsible, to the extent that 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 when we are behind schedule.
- 3.3 In the event that we fall behind schedule with a delivery due to our own default, the Purchaser shall have the right to withdraw from the contract after a suitable period of grace has elapsed.
- 3.4 The risk in the goods shall be transferred to the Purchaser no later than upon dispatch of the object to be supplied, even if partial deliveries are carried out or in the event that we have taken on further services, for example delivery free domicile or the costs of shipping.
- 3.5 Partial deliveries shall be permitted.

4.0 Payment

- 4.1 Payments must be made within 30 days of the invoice date, without deductions of any type, to the paying office indicated by us; the date of receipt of payment shall be used to determine whether payments are made on time.
- 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 – to choose one of the following courses of action:
 - Terminate this contract and/or cease further deliveries to the Purchaser
 - Charge the Purchaser interest on the unpaid amount, at a rate of 8% p.a. above the base rate, until such time as final, complete payment has been made.
- 4.3 Where possible, payment should only be made by bank transfer. The collection of bills of exchange or cheques require our consent. Payments made by bill of exchange or cheque shall not be recognised as fulfilling the payment obligation. 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). 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 provide the goods in return for cash on delivery.
- 4.5 In the event that the Purchaser's ability to pay deteriorates following conclusion of contract or we later become aware that there are reservations concerning the Purchaser's ability to pay, we shall be entitled to request advance payments or provision of security for all ongoing transactions. If the Purchaser is behind on payments, all existing payment claims held against the Purchaser – including deferred claims – shall fall due for immediate payment. This shall not affect any other statutory claims.
- 4.6 Retention of payments by the Purchaser or off-setting with any counter claims shall only be permitted in the event that the counter claims are undisputed or have become *res judicata*.

5.0 Retention of title

- 5.1 Title to all goods supplied by us shall remain with us until such time as full payment has been made.
- 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 third party interventions, so as to enable us to take legal action pursuant to Article 771 of the German Code of Civil Procedure [*Zivilprozessordnung*].
- 5.3 The Purchaser shall be entitled to sell on the object supplied in the normal course of business. The Purchaser hereby assigns to us all claims, in the amount of the invoice value of the retained goods, which the Purchaser acquires against the recipient or against the third parties as a result of the re-sale. The Purchaser shall be entitled to collect these accounts receivable, 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 accounts receivable ourselves. We undertake not to collect the accounts receivable as long as the Purchaser complies with its payments obligations towards us in an orderly manner and is not insolvent; otherwise, we may request that the Purchaser notifies us of the assigned claims and their debtors, provides us with all the information required to collect these accounts receivable, hands over the corresponding 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 ratio of its invoice value to the value of the new object at the time of processing. The Purchaser shall store the objects to which we hold co-ownership free of charge.
- 5.5 In the event that the value of securities held by us exceeds the claims 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 choose which securities to release.

6.0 Liability

We shall be liable for defects in the object of purchase as follows, subject to exclusion of other claims:

- 6.1 The liability for defects for all other ProVia original parts shall be 12 months from transfer of risk (point 3.4).
- 6.2 The Purchaser's claims for remedy of defects shall firstly be limited to a claim for subsequent performance, i.e. a claim for rectification of the defect or replacement delivery. We shall be entitled to choose either to rectify the defect or to provide a replacement delivery. Replaced components shall become our property. In the event that the work to rectify the defect or the replacement delivery is unsuccessful, the Purchaser may request a reduction in the purchase price or withdraw from the contract, as it sees fit.
- 6.3 We shall only be liable for damages to the extent our liability is based on malicious intent or gross negligence, including malicious intent or gross negligence on the part of the legal representative or our vicarious agents. Liability for simple negligence, including slight negligence on the part of the legal representative or our vicarious agents,

shall be excluded. The aforementioned exemptions from liability shall not affect our liability for damages in line with the statutory provisions due to culpable breach of a guarantee provided by us or of one of our significant contractual obligations, or our liability due to culpable injury to life, body or health, or our liability in accordance with the Product Liability Act [*Produkthaftungsgesetz*] and other mandatory statutory bases for liability.

- 6.4 Complaints due to obvious defects and claims due to incomplete or incorrect delivery must be asserted in writing, giving precise grounds, and in accordance with Article 377 of the Commercial Code [*Handelsgesetzbuch*].
Complaints due to concealed defects must be asserted in the aforementioned form and in accordance with Article 377 of the Commercial Code.
- 6.5 We shall not be liable for defects resulting from circumstances outside our responsibility. Such circumstances shall include, for example, breach of installation or usage regulations, maintenance errors, unsuitable or inappropriate use, incorrect or negligent handling, natural wear and tear and inappropriate interventions in the supplied object carried out by the Purchaser or by third parties.
- 6.6 Rejected components shall be sent to us carefully packaged.

7.0 Use of software

When purchasing equipment that requires software for operation, and when purchasing software as such, the Purchaser shall have the right to use the software supplied by us with the performance characteristics provided by us at no extra charge, however this use is permitted only for operation of the equipment supplied or stipulated by us. We shall retain all other rights to the software. Furthermore, the Purchaser shall be specifically prohibited from duplicating the software originating from us in any form without our written consent or making it available to any third party not holding authorisation from us, unless the Purchaser sells on the object of purchase to a third party and must permit the third party to use the software in this context.

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 the form or function of the goods or result in a lasting deterioration in these aspects.
- 8.2 All sales documentation, specifications and price lists must be treated as strictly confidential and may not be made accessible to third parties.

9.0 Applicable law, place of performance, jurisdiction

- 9.1 The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the provisions of the conflict of laws which would require application of another law shall not be applicable.
- 9.2 The registered offices of the invoicing party shall be the place of performance.
- 9.3 With regard to all disputes arising from the contractual relationship, we shall be entitled, in the event that the Purchaser is a businessman/woman, a legal entity un-

der public law or a special asset under public law, to bring the case before competent court for our headquarters (Hanover). In addition, we shall also have the right to bring legal action against the Purchaser at the competent court for its headquarters or at any other court that can be deemed competent in accordance with national or international law.

10.0 Data protection compliance

- 10.1 Each party, when processing personal data under or in connection with the Agreement (collectively, "Personal Data"), determines alone and not jointly with the other party the purposes and the means of such processing. Each party shall therefore act as a separate data controller. When processing Personal Data, each party shall comply with its obligations under applicable data protection legislation.
- 10.2 Buyer acknowledges and agrees that ZF may process Personal Data of Buyer and its representatives, including name, address, telephone number, email address, credit

card and transaction details, for account and order processing, communication and payment purposes (collectively, "Purposes").

- 10.3 Buyer warrants and represents that (a) the Personal Data is collected by Buyer and provided to ZF in accordance with applicable data protection legislation, (b) it will not do or omit to do anything which may cause ZF to be in breach of applicable data protection legislation when processing Personal Data, and (c) the persons whose Personal Data are provided by or on behalf of Buyer to ZF have been informed of, and if required, have given valid consent to the processing of their Personal Data by ZF for the Purposes.
- 10.4 Each party shall, in relation to the Personal Data, provide reasonable assistance, information and co-operation to the other Party in respect of data protection matters, including (without limitation) in respect of (a) any claim or exercise of purported exercise of rights by a data subject or any investigation or enforcement activity by a regulator relating to or connected with the other party's processing of Personal Data, and (b) any actual, potential or attempted personal data breach.