

## ZF017\_GENERAL CONDITIONS OF PURCHASE

### BETWEEN

The supplier (hereinafter referred to as "the Supplier") of the one part;

### AND

**ZOERKLER GEARS GMBH & CO KG** (hereinafter referred to as "Zoerkler"), a company whose registered office is at Friedrich-Zoerkler-Strasse 1, 7093 Jois, Republic of Austria of the other part, the Buyer and the Seller being hereinafter together referred to as "Parties" and individually "Party"

**WITH REFERENCE TO THE ENCLOSED ORDER ISSUED BY ZOERKLER, HEREINAFTER ALSO REFERRED TO AS THE "PURCHASE ORDER"**

#### WHEREAS:

Zoerkler wishes to purchase and the Supplier is willing to supply on the terms set out in these General Conditions of Purchase (hereinafter referred to as the "Contract") the goods and associated services as described herein.

<b>CLAUSE NUMBER</b>	<b>HEADING</b>
1	Terms of Purchase
2	Amendments
3	Delivery
4	Inspection and Warranty
5	Packaging
6	Specifications
7	Certificate of Conformity
8	Price and Transfer of Risk
9	Invoices and Payment
10	Zoerkler Furnished Equipment
11	Intellectual Property Rights and Confidentiality
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## GENERAL CONDITIONS OF PURCHASE

### 1. TERMS OF PURCHASE

- 1.1 The terms of this Contract and the enclosed Purchase Order, as applicable, constitute the sole and entire agreement between the Parties and shall supersede any prior communications or representations between them.
- 1.2 Any deviation from such terms and / or the acceptance of Supplier's general terms and conditions is therefore expressly excluded, unless the consent to such deviation and/or acceptance has been expressly provided in writing by Zoerkler.
- 1.3 No Supply will be accepted or paid for unless supplied in accordance with this Contract and with the relevant Purchase Order, as applicable. The Supplier shall make reference to the Purchase Order number on all correspondence entered into between the Parties. Within 14 (fourteen) calendar days of this Contract and the enclosed Purchase Order being issued by Zoerkler, the Supplier shall sign and return the Order Acknowledgement. Failing to comply will result in the Purchase Order being deemed as cancelled.
- 1.4 The applicable documentation regarding quality, safety at work, environmental protection and quality assurance, the logistic manual and the rules governing the delivery and packaging of the Supplies published by Zoerkler shall be an integral part of the Contract.

### 2. AMENDMENTS

- 2.1 No variation of the Purchase Order will be recognized by Zoerkler unless duly authorized by Zoerkler in writing.

### 3. DELIVERY

- 3.1 The delivery of the Supplies (hereinafter also referred to as "Delivery") shall be strictly in accordance with the instructions detailed on the Purchase Order and shall be at the risk of the Supplier. Unless differently specified on the Purchase Order, the Delivery shall be DAP (Incoterms 2010) at Zoerkler's facilities at the following address: Zoerkler GmbH & Co KG, Friedrich-Zoerkler-Strasse 1, 7093 Jois, Republic of Austria, during the following times:

- Monday to Thursday: between 08:00 and 16:00

- Friday: between 08:00 and 13:00

- 3.2 Title in the Supplies, unless differently specified in the Purchase Order, shall pass to Zoerkler upon payment of the Supply concerned, in accordance with the provisions of Clause 9 below. If for whatever reason the delivery is not effected in accordance with the Purchase Order provisions, then Zoerkler may, without prejudice to any other right or remedy, wholly or partially terminate the said order without incurring liability to the Supplier.
- 3.3 Zoerkler shall have the right to use, to the extent admissible by law, any software and/or documentation associated to the Supplies. Furthermore, Zoerkler shall be entitled to create a backup copy without the need for explicit agreement with the Supplier.

### 4. INSPECTION AND WARRANTY

- 4.1 Pre-delivery inspection requirements, if applicable, shall be in accordance with the provisions indicated on the Purchase Order or with Zoerkler's applicable inspection procedure, as in force from time to time. Unless otherwise agreed upon in writing, a First Article Inspection (FAI) in accordance with standard EN9102 shall be carried out by Zoerkler and shall cover at least 10% (ten percent) of the Purchase Order volume.
- 4.2 Zoerkler shall have the right to reject at any time Supplies that are not in accordance with the Purchase Order, product specification or fit for the purpose. Rejected Supplies shall be at the Supplier's risk and expense. Any Supply rejected shall be deemed as not having been delivered.
- 4.3 Unless differently specified in the Purchase Order, if before completion of 36 (thirty-six) months from Delivery thereof any defect shall appear in any part or parts of the Supplies, the Supplier hereby warrants and undertakes it will make good such defect, at Zoerkler's sole discretion, by either repair or replacement. The warranty period for the Supplies supplied as replacement shall start anew once these Supplies have been delivered to Zoerkler.

4.4 Any costs incurred by Zoerkler due to defective Delivery of the Supplies as well as any cost incurred by Supplier in providing a warranty remedy, should a defect occur, shall be entirely borne by Supplier.

**5. PACKAGING**

5.1 All Supplies under this Contract shall be securely and adequately packed, and the packaging marked with Zoerkler's Purchase Order number. All packaging shall be non-changeable and non-returnable, unless otherwise agreed in writing by Zoerkler, whereupon it may be returned to Supplier at the Supplier's risk and cost.

**6. SPECIFICATIONS**

6.1 All the Supplies under this Contract shall conform with the quantity, quality standard and specifications stated on the Purchase Order and shall be fit for the purpose required by Zoerkler and free from any defect whether actual or latent.

**7. CERTIFICATES OF CONFORMITY**

7.1 Where applicable, the Supplier shall provide Zoerkler with one copy of the Certificate of Conformity for the Supply concerned from the Supplies' manufacturer(s).

**8. PRICE AND TRANSFER OF RISK**

8.1 Prices shall be as stated on the face of the Purchase Order and unless agreed otherwise shall be DAP (Incoterms 2010) and exclusive of VAT, customs duties and taxes.

8.2 Transfer of risk in the Supplies shall be regulated in accordance with the Incoterms specified on the Purchase Order. Should the Purchase Order not indicate such information, transfer of risk shall be DAP (Incoterms 2010) at Zoerkler's facilities in Jois, Rep. of Austria; therefore the Supplier shall bear the risk of loss or damage to the goods until receipt of the goods by Zoerkler at Zoerkler's facilities.

**9. INVOICES AND PAYMENT**

9.1 Invoices quoting the Purchase Order number, Certificate of Conformity, part numbers, description and quantity of Supplies delivered, shall be forwarded at the time of despatch and anticipated via fax/email to Zoerkler Gears GMBH & CO KG, Friedrich-Zoerkler-Strasse 1, 7093 Jois, Republic of Austria. Failure to detail any of the above information may result in a delay in payment by Zoerkler.

9.2 Unless different terms are indicated in the Purchase Order, invoices for the delivery of the Supplies concerned shall be paid either within 14 (fourteen) days, allowing a 3% (three percent) deduction for early payment, or within 60 (sixty) days, without any deduction, to be calculated from the date in which the Supplies together with the relevant invoice(s) are received by Zoerkler, provided that they have been successfully accepted in accordance with the process indicated in Clause 4.

**10. ZOERKLER FURNISHED EQUIPMENT**

10.1 Any free issue material or any material, drawings, documents, samples, jigs, tools or patterns supplied by Zoerkler or manufactured for Zoerkler by the Supplier in connection with the Purchase Order:

- shall be adequately insured by the Supplier
- shall be clearly marked as the property of Zoerkler
- shall be maintained in a reasonable condition, fair wear and tear excepted, at the Supplier's premises and entirely at the risk of the Supplier
- shall not be copied or communicated to any other party or used for any work other than that detailed on the Purchase Order, without the express written consent of Zoerkler.

10.2 Zoerkler shall at all times have the property of any scrap resulting from the free issue material, shall maintain absolute discretion as to its disposal and may at any time request the return to Zoerkler of any furnished equipment material at the risk and expense of the Supplier.

**11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

11.1 Should any work in pursuance of the Purchase Order include information, in whatever form disclosed, or drawings/design to be performed by the Supplier (hereinafter also referred to as "Technical Information"), then all rights in such Technical Information shall be vested in Zoerkler and such Technical Information shall not be used by Supplier except for the purposes of the Purchase Order, nor copied or communicated to any other party without Zoerkler's express written consent. All drawings and any other documents delineating or recording such Technical Information shall likewise be property of Zoerkler and shall be formally returned as requested by Zoerkler immediately on completion of the Purchase Order.

11.2 The Supplier, its officers, employees and agents, shall ensure to maintain at all times in the strictest confidence the terms of this Contract and relevant Purchase Order and any other information of confidential nature related to the execution thereof.

## **12. INDEMNITY**

12.1 In respect of the Purchase Order the Supplier hereby agrees to indemnify and hold harmless Zoerkler against all claims, damages, liabilities and costs whatsoever resulting from:

- any damage, loss, death or injury caused by an act, negligence or omission of the Supplier or any of its subcontractors;
- any alleged or actual infringement of any patent, registered design, trademark or copyright in existence or pending at the date of the Order relating to the Supplies.

12.2 In particular, in the event of claims raised against Zoerkler on the ground of product liability, the Supplier undertakes to indemnify Zoerkler against such claims, should the relevant loss or damage being caused by a defect in the Supplies delivered by Supplier, due to Supplier's fault or negligence. The Supplier shall bear all the relevant costs and expenses, including the costs of any legal action.

## **13. WORK ON ZOERKLER'S PREMISES**

13.1 Any work in pursuance of the Purchase Order to be carried out by or on behalf of the Supplier at Zoerkler's facilities in pursuance of the Purchase Order shall be subject to Zoerkler's applicable "Work on Site Conditions", as in force from time to time. No liability shall be assumed for accidents suffered by the Supplier, unless such accidents were caused by Zoerkler's wilful intent or gross negligence.

## **14. ASSIGNMENT AND SUBCONTRACT**

14.1 No work in pursuance of the Purchase Order shall be assigned or subcontracted by Supplier without the prior written consent of Zoerkler.

## **15. EXPORT CONTROLS AND CUSTOMS**

15.1 Any requirement to obtain governmental approvals for the transit, import or (re)export of the Supplies shall be declared in writing to Zoerkler by the Supplier. To this purpose, the following information, plus any additional information that may be required from time to time by Zoerkler, shall be provided by Supplier during the quotation phase of the Purchase Order:

- the export control list number in accordance with Annex AL to the Austrian Foreign Trade Regulations or other different applicable export control lists,
- for Supplies being imported from USA, the ECCN (Export Control Classification Number) pursuant to the US Export Administration Regulations (EAR), or the different classification number, should the Supply be considered military in accordance with USA applicable laws,
- the (commercial) place of origin of the Supplies and components thereof, including technology and software,
- whether the Supplies were transported through the USA, produced or stored in the USA or manufactured using USA technology,
- the part numbers of the Supplies, and

- a contact person within the Supplier's organization to address any supplemental question or clarification request.

15.2 The Supplier shall also notify to Zoerkler in writing, prior to the Supplies' delivery, any changes in the information detailed above.

## **16. COMPLIANCE**

16.1 The Supplier undertakes to comply with all the applicable regulations on employment, environmental protection and safety at work and to develop a management system in accordance with ISO 14001 standard. The Supplier shall also comply with the principles of the United Nations Global Compact Initiative, which are aimed at the protection of international human rights and promote greater environmental awareness and anti-corruption best-practices (for more information on the UN Global Compact Initiative, please refer to the following website-link: [www.unglobalcompact.org](http://www.unglobalcompact.org)).

16.2 Should any serious breach of Austrian and/or international law in the areas covered by Clause 16.1 occur, Zoerkler reserves the right to terminate this Contract and the relevant Purchase Order.

## **17. FORCE MAJEURE**

17.1 Zoerkler shall be released from the obligation to receive and accept the Supplies where prevented from or impeded or delayed in doing so on account of any cause beyond the Zoerkler's reasonable control ("Force Majeure") including, but not being limited to, act of God, fire, flood, war (whether or not declared), hostilities, civil commotion, accident, labour disputes, strikes, unsuitable weather conditions, non-availability of transport, any laws, orders, regulations, measures, decisions, or requirements issued by any government department or other duly constituted authority, trade or export license restrictions or revocation of any necessary licences or authorisations or other acts of any governmental or other authority.

17.2 Should an event of Force Majeure occur, and within the following 2 (two) weeks, Zoerkler reserves the right to cancel the Purchase Order and/or any undelivered portion thereof, by giving the Supplier written notice.

## **18. TERMINATION**

### **18.1 For Convenience**

18.1.1 Zoerkler shall have the right to terminate the Purchase Order in whole or in part for convenience, at any time before the shipment of the Supplies or the agreed delivery date, as applicable, by serving on the Supplier a written notice of termination. Upon receipt of such notice of termination, all terminated work shall be discontinued and Zoerkler shall pay to the Supplier such sum as fair and reasonable in respect of any direct loss sustained by the Supplier by reason solely of such termination and the Supplier agrees to accept such sum in full and final satisfaction of all claims arising out of such termination.

18.1.2 In the event of termination of the Purchase Order, the Supplier shall use its best endeavours to mitigate the loss arising from such termination. In no case shall the amount payable by Zoerkler for the terminated work exceed the price that would have been payable if the work had been completed. In addition, Zoerkler reserves the right to recover any partially completed work, including any relevant jigs, tools, fixtures or documentation.

### **18.2 For breach of Contract/Purchase Order**

18.2.1 Zoerkler shall notify the Supplier of any breach or default of this Contract or of the Purchase Order. If the Supplier is unable to remedy such breach of contract within a period of 15 (fifteen) calendar days from the relevant written notice being served, then Zoerkler reserves the right to terminate the Purchase Order in whole or part, without any prejudice in Zoerkler's right to recover further damages which Zoerkler may have suffered.

18.2.2 In particular, should a delay in the delivery of the Supplies occur, Zoerkler reserves the right to claim starting from the due delivery date and as liquidated damages an amount of 5% (five percent) of the price of the delayed Supply for each complete week (i.e. seven calendar days) of delay. Should the incurred delay be a week's fraction, such liquidated damages shall be calculated on a pro-rata basis for each calendar day of delay.

### **18.3 For Insolvency**

- 18.3.1 In addition to the remedies provided in accordance with the applicable law, Zoerkler shall also have the right to rescind or terminate the Purchase Order with immediate effect in case the Supplier has ceased to make deliveries to customers, if the financial situation of the Supplier has deteriorated or threatens to do so, therefore putting at risk the fulfilment of the contractual obligations towards Zoerkler, if the Supplier becomes insolvent or has reached a considerable level of indebtedness, or if the Supplier ceases to make payments.
- 18.3.2 Zoerkler shall also have the right to rescind or terminate the Purchase Order if insolvency proceedings or similar proceedings for debt settlement against the Supplier's assets are opened or filed for.
- 18.3.3 If the Supplier has provided only partial performance of the Purchase Order, Zoerkler shall have the right to rescind it as a whole, should Zoerkler have no interest in such partial performance.
- 18.3.4 If Zoerkler rescinds or terminates the Purchase Order based on the above grounds, the Supplier shall compensate Zoerkler for any loss or damage incurred, unless the grounds for rescission or termination are not attributable to the Supplier.
- 18.3.5 The provisions set forth in this Article 18 shall not restrict or limit any statutory rights and claims.

## **19. PARTIAL INVALIDITY AND WAIVER**

- 19.1 Any provision of this Contract or of the Purchase Order subsequently found to be invalid shall not in any way affect the validity or enforceability of the remainder of the Contract or of the Purchase Order. Any failure by either Party to enforce any provision of the Contract or of the Purchase Order shall not be construed as a waiver of that or any other provision.

## **20. NOTICES**

- 20.1 Any notice or other communication entered into between the Parties shall be in writing and addressed to the Zoerkler's nominated point of contact, as indicated in the Purchase Order.

## **21. APPLICABLE LAW**

- 21.1 This Contract and the relevant Purchase Order shall be subject exclusively to Austrian law, excluding the applicability of its conflict of law provisions and the UN Sales Convention (CISG).
- 21.2 The place of jurisdiction for all legal disputes arising directly or indirectly from this Contract or the Purchase Order shall be the Austrian court competent for Zoerkler's registered officer. Zoerkler reserves the right, at its own discretion, to bring proceedings against the Supplier before the court having jurisdiction at the Supplier's head office or branch office or at the place of contractual performance.