



ZF Off-Highway Solutions Minnesota Inc. TERMS AND CONDITIONS OF SALE

- 1. SOLE AND EXCLUSIVE TERMS OF SALE.** Except as otherwise specifically agreed in writing by ZF Off-Highway Solutions Minnesota Inc., a Minnesota corporation ("Seller"), these terms and conditions, together with any other documents of Seller pertaining to this transaction ("Terms and Conditions"), contain the sole and exclusive terms and conditions which shall apply to the sale by Seller to the buyer ("Buyer") of the goods and/or services referenced in Seller's quotation, proposal, order acknowledgement or Buyer's purchase order and shall govern any sale of goods by Seller through the Internet. The provisions of these Terms and Conditions shall not apply to any application software that may be provided by Seller; and the terms and conditions relating to the licensing or use of such software shall be governed by a separate written agreement between the Seller and the Buyer. The sale of goods and/or services by Seller is expressly conditioned on assent by Buyer to these Terms and Conditions and any additional or different terms or provisions in documents provided by Buyer relating to such sale shall not apply to such sale, are hereby objected to by Seller and shall be of no force or effect. Your placement of a purchase order or acceptance of goods and/or services shall constitute your validation for your application of any modified to order goods and acceptance of these Terms and Conditions. No order shall be binding on Seller unless such order constitutes a binding, "firm" order by Buyer that is not rejected by Seller within a reasonable time of receipt. All orders are non-cancellable except in the sole discretion of Seller and on terms and conditions acceptable to Seller.
- 2. PRICES; PAYMENT.** Prices for goods and/or services are subject to change without notice except for goods and/or services identified in "firm" orders not rejected by Seller within a reasonable time of receipt.. Unless otherwise agreed by Seller in writing, terms of payment for any goods or services are net 30 days date of shipment or date of invoice, whichever is earlier ("Due Date"). If payment is received more than thirty (30) days after the Due Date, a service charge of 1 ½% per month (18% annual rate), or such lesser rate as may be permitted by law, shall be payable from the Due Date until the date payment is received. Seller reserves the right to require different payment terms in its sole discretion. All currency values stated in these Terms and Conditions or any ancillary documents and payments made hereunder are to be made in US Dollars unless otherwise agreed by Seller.
- 3. DELIVERY; SECURITY INTEREST.** All goods are delivered EX WORKS Seller's designated facility (INCOTERMS 2010) unless otherwise agreed in writing by Seller. Buyer is responsible for all costs of shipping, including but not limited to freight forwarder or custom broker fees, insurance duties, port costs and other applicable taxes or levies. Title to goods and risk of loss or damage shall pass to Buyer on delivery. Seller reserves a security interest in all goods, additions and accessions thereto and the proceeds of the sale thereof until Seller receives payment in full for such goods. Buyer authorizes Seller to file these Terms and Conditions or other financing statements pursuant to the applicable Uniform Commercial Code to evidence or perfect Seller's security interest in the goods. Buyer shall execute such documents as may be required by Seller in connection with the filing or perfection of Seller's security interest in the goods. Buyer shall not permit any lien or encumbrance to attach to the goods until Seller receives payment in full.
- 4. TAXES.** All prices are exclusive of any applicable taxes, whether in the nature of sales, use, VAT or other taxes. Any tax imposed by Federal, state or other governmental authorities on or with respect to the sale, purchase, delivery or use of goods and/or services referred to herein shall be paid by Buyer in addition to the price and other charges, unless Buyer provides Seller with a tax exemption certificate acceptable to the relevant taxing authorities.
- 5. INDEMNIFICATION.** Buyer shall indemnify, save and hold harmless Seller from any and all losses, expenses, damages, liabilities and claims, including but not limited to personal injuries, property damage, incidental and consequential damages and reasonable attorneys' fees, arising from Buyer's breach of or failure to comply with these Terms and Conditions, the services or the use of the goods, not due to the fault or negligence of the Seller.
- 6. LIMITED WARRANTY; REMEDIES.** Seller's warranties with regard to any goods or services sold hereunder is that warranty in effect on the date of purchase as set forth on Seller's website, www.mico.com, and is subject to the warranty returns requirements, limitations on liability and remedies set forth therein.

- 7. LIMITATIONS OF LIABILITY.** IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR LOST REVENUES) UNDER ANY THEORY OF LIABILITY, EVEN WHEN SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER OR ANY THIRD PARTY EXCEED THE AMOUNTS SELLER HAS RECEIVED FROM BUYER IN CONNECTION WITH THE SALE OF GOODS AND/OR SERVICES UNDER THESE TERMS AND CONDITIONS.
- 8. COMPLIANCE WITH LAWS.** The provision of goods and/or services to you shall be subject to Seller's right and ability to make such sales, and obtain any required licenses and permits, under all United States federal, state and local laws, decrees, statutes, rules and regulations, and such other applicable laws and regulations then in effect (collectively, "Applicable Laws"). Any purchase order which has been accepted by Seller but which cannot be fulfilled due to any such Applicable Law shall be considered to have been rejected when submitted to Seller for acceptance or rejection. Buyer agrees that Buyer will not, directly or indirectly, export or transmit any goods and/or services covered by these Terms and Conditions to any country or end-user to which such export or transmission is restricted by applicable regulations of the United States or any agency thereof, without the prior written consent of the U.S. Department of Commerce or any other required governmental agency or otherwise engage in any acts which would violate Applicable Laws governing the export, shipment, re-export, diversion or disposition of United States origin products, know-how, technical data, documentation or other materials that may be provided to you pursuant to these Terms and Conditions. Buyer shall provide Seller with all necessary information for Seller to make a licensing determination.
- 9. RETURNS.** Seller shall not be obligated to accept any returns of goods. Any returns shall be subject to Sellers' return policy in effect on the date of return as set forth on Seller's website, www.mico.com.
- 10. INSPECTION; ACCEPTANCE.** Buyer shall inspect goods delivered hereunder within thirty (30) business days after the date of delivery and within said period of time shall send Seller a written notice fully specifying in detail any respects in which said goods are non-conforming. Failure to send said written notice shall constitute waiver of Buyer's claims for all non-conformities that an inspection, whether or not in fact carried out, should have discovered. Buyer shall be deemed to have accepted goods delivered hereunder unless within thirty (30) business days after the date of delivery of said goods, Buyer sends Seller a written notice of rejection accompanied by a written statement detailing the grounds for rejection.
- 11. FORCE MAJEURE.** Seller will not be liable for any delay in performance or nonperformance hereunder in connection with the sale evidenced hereby, or for any damages, loss or expense suffered by Buyer by reason of such delay or non-performance is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, riots, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, materials or supplies, transportation delays, acts by Buyer, delay or nonperformance by Seller's suppliers or any other cause or causes whether or not similar in nature to any of those listed above beyond Seller's control.
- 12. BUYER'S SPECIFICATIONS.** If any goods sold hereunder are manufactured to Buyer's plans or specifications, Buyer shall indemnify and hold Seller harmless from and against any suits, claims, losses, expenses or other liabilities, whether in the nature of losses, personal injury, infringement or otherwise, which result from Buyer's plans or specifications. Unless otherwise agreed in writing by Seller, any tools, machines, dies or other materials used in producing goods to Buyer's specifications shall remain the property of Seller.
- 13. INTELLECTUAL PROPERTY.** You are not granted any rights to use Seller Intellectual Property (as defined below) unless specifically authorized by Seller in writing. All right, title and interest in and to all know-how, trade secrets, trade names, trade marks, service marks, copyrights, patents, domain names and other intellectual property rights associated with the goods and/or services ("Seller Intellectual Property"), and the goodwill associated therewith belong solely to Seller and no right, title, or interest in Seller Intellectual Property is transferred to Buyer hereunder. Buyer may not register or otherwise seek to record rights in Seller Intellectual Property or other intellectual property based on or substantially similar to Seller Intellectual Property.
- 14. GOVERNING LAW.** These Terms and Conditions, and all purchases made by Buyer from Seller pursuant to these Terms and Conditions, shall be governed by, construed under and interpreted in accordance with the internal laws of the State of Minnesota, U.S.A., and the laws of the United States without regard to any provisions pertaining to conflict of laws. THE PARTIES SPECIFICALLY DISCLAIM APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, 1980.



- 15. SETTLEMENT OF DISPUTES.** All disputes arising out of or related to these Terms and Conditions and the sale of goods and/or services hereunder shall be resolved in the state or federal courts located in Hennepin County, Minnesota. The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Hennepin County, Minnesota.
- 16. LANGUAGE.** The English-language version of these Terms and Conditions (and all Ancillary Documents (as defined below) and attachments hereto) shall be controlling in all respects and shall govern the meaning and interpretation of these Terms and Conditions. These Terms and Conditions may be translated into other languages; provided, however, translation into any other language shall be for accommodation only and shall not be binding upon the parties. All communication, notices, or other documents to be made, given, or approved pursuant to these Terms and Conditions shall be made in the English language.
- 17. MISCELLANEOUS.** Any claim or action arising hereunder or in connection with the sale evidenced hereby, whether in contract, in tort, or otherwise, other than an action for failure to make payment of the purchase price specified herein, must be commenced within one (1) year after the date the claim arises or the cause of action accrues. Any stenographical or clerical errors appearing in the typed portion of any documents ancillary to these Terms and Conditions may be corrected at any time by Seller. These Terms and Conditions and any ancillary documents of Seller's relating hereto ("Ancillary Documents") constitute the entire agreement between Seller and Buyer regarding the sale of the goods and/or services associated herewith and may be modified only by written agreement signed by Seller and Buyer. These Terms and Conditions and Ancillary Documents supersede all prior oral or written representations, negotiations, understandings, agreements and promises with respect thereto; and there are no conditions to these Terms and Conditions which are not expressed herein or in Ancillary Documents. In the event these Terms and Conditions conflicts with any terms used by Seller or Buyer in the ordering, shipment and receiving of goods and/or services including without limitation, any purchase orders or order acknowledgements, these Terms and Conditions will control. In the event any portion of these Terms and Conditions is held to be invalid the same shall not affect in any respect whatsoever the validity of the remainder of the Terms and Conditions. The waiver by one party of a breach of these Terms and Conditions, or failure to require performance of any provision of these Terms and Conditions, will not be a waiver of any later breach or affect the right to require performance of that or any other provision at a later time. Buyer may not assign, transfer or otherwise dispose of Buyer's rights under these Terms and Conditions without Seller's prior written consent.

