

**All of our deliveries and services to individuals, companies, including legal entities in the public and government sector are governed exclusively by the following terms and conditions:**

**I. OFFER AND ACCEPTANCE / WRITTEN FORM**

1. Any delivery contract as well as any changes, ancillary agreements and other agreements become binding only upon confirmation by us, Schaeffler Viet Nam Co., Ltd, referred to in our General Conditions of Sale and Delivery (these “**T&Cs**”) as “us/we”. Any of such delivery contracts, and supplemental agreements, any amendments, variations or modifications to such contracts and agreements, and the termination of such contracts or agreements, must be in writing approved by us.

2. The purchaser accepts these T&Cs at the time of receipt of our confirmation of our acceptance of the order or the acceptance of the ordered goods or services, or the date you, the purchaser makes the first payment, whichever is the earliest. These T&Cs, including any additional terms imposed by the Schaeffler Viet Nam Co., Ltd in relation to the production, supply or delivery of products or services ordered by the purchaser from us, apply to all goods and services supplied by Schaeffler Viet Nam Co., Ltd and shall be deemed incorporated by reference to any orders entered into with Schaeffler Viet Nam Co., Ltd. You, the purchaser, irrevocably agree to abide by the terms and conditions set out herein. Schaeffler Viet Nam Co., Ltd reserves the right, in terms of all existing and future sales, to amend and/or modify these T&Cs, from time to time, in its sole discretion and all supplementations, variations, amendments and modifications thereto made by Schaeffler Viet Nam Co., Ltd shall take effect from the date which Schaeffler Viet Nam Co., Ltd determines, without any reference to you, and the purchaser irrevocably agrees to abide by such supplementations, variations, amendments and modifications from time to time.

We are not bound by any general terms and conditions of the purchaser that differ from these T&Cs. Such other terms and conditions do not become part of the contract at all, or either by acceptance of the order or implicitly by another act. These T&Cs override any provisions in the purchaser’s general terms and conditions, standard terms or terms of purchase if any.

**II. PRICES / PROCESSING FEES**

1. The applicable prices consists of prices and discounts applicable on the date we accept the order plus the value added tax and other taxes which is promulgated by the Government, but we reserve the right to, by giving written notice to the purchaser at any time before delivery, to increase the price to reflect any increase in the costs to us which is due to:

- (a) any change in delivery dates, quantities or the specifications for the products which is requested by you the purchaser;
- (b) any delay caused by any instructions of you the purchaser or failure of you the purchaser to give us adequate information or instructions;
- (c) any factor beyond our control (such as, without limitation, significant increase in the costs of labour, materials or other costs of manufacture).

**III. DELIVERY TIMES / DEFAULT / SCHEDULE TRANSACTIONS**

1. Delivery periods begin to run the later of (i) confirmation of the order; and (ii) final agreement regarding all matters that had to be decided prior to start of production or (iii) as at the date(s) stipulated by us.

2. Dates furnished by us for delivery are estimates only and we are not liable for any delay in delivery howsoever caused.

3. In case of unforeseen and unavoidable events in the production or other obstacles such as acts of god, labor disputes or other disruptions in our own business or in the business of our suppliers as well as delayed delivery by our suppliers, this will entitle us to extend the delivery period by a period of time equal to the duration of such force majeure event. We will inform the purchaser of the start and end of such circumstances as soon as possible.

4. To the extent that we have agreed with a purchaser that a particular delivery volume will be delivered within a specified time period (“**Agreed Period**”) and that the purchaser has the right to determine the specific delivery date, the purchaser must notify us of the desired delivery date not less than twelve (12) weeks prior to such date. If no notification is received by us, we reserve the right to deliver on such date(s) as determined by us in our sole and absolute discretion within the Agreed Period with the prior notification to the purchaser on our delivery. After the Agreed Period has expired, we may invoice the purchaser for any volume of products with respect to which delivery has not been notified and deliver such products.

5. Partial deliveries may be made by us in our sole and absolute discretion and you shall accept delivery as tendered by us.

**IV. PACKAGING / SHIPPING / TRANSFER OF RISK**

1. Delivery is EXW (most recent Incoterms) from a location designated by us, and the method of packaging and the packaging material will be determined by us in our sole discretion.

2. Palettes, containers, and other reusable packaging remains our property and must be returned by the purchaser to our delivery center without undue delay and at the purchaser's costs, with no costs to us. It is the purchaser's responsibility and obligation to return these to us as we will not effect collection. We will invoice the purchaser for all:-

- (a) disposable packaging costs and expenses incurred by us for any packaging not returned to us.
- (b) costs and expenses incurred by us in the return of the packaging to us if done so at our costs.

3. The purchaser is responsible for additional costs for express shipping (upon the purchaser's request) and for the mailing costs for small item deliveries.

**V. PAYMENT**

1. Payment must be made in full, without deductions, and cannot be set-off without our written approval, to one of our accounts as stipulated by us to you in writing within thirty (30) days of the date of the invoice. You will bear all banking charges.

2. The purchaser is in payment default as soon as the agreed upon payment date has passed unless payment does not take place due to a circumstance for which the purchaser is not responsible. We will charge a late payment interest on any outstanding amounts due to us at the rate of 18% per annum on all unpaid amounts from the date payment is due until full payment is made.

3. Time of payment of the price shall be of the essence of these T&Cs.

4. The purchaser will not hold back payments by reason of counterclaims or set off any amounts due to us unless such counter claims are undisputed by us in writing or, have been finally judicially determined by a court (or arbitrator panel) of competent jurisdiction.

**VI. RETENTION OF TITLE**

1. We retain title to all goods delivered by us until all payments have been fully paid to us and claims resulting from the sale of the products to the purchaser have been satisfied ("**Retained Goods**"). All risks (destruction, lost, thievery, etc) associated to the Retained Goods are fully and solely responsible by the purchaser.

2. If the goods with respect to which title has been retained become part of a new item by way of connection or is built-in and if such item is owned by the purchaser, it is hereby agreed that the purchaser transfers co- ownership to the new item to us and acts as bailee without compensation for such item. Our co-ownership share shall be determined by the relationship of the value of the goods with respect to which title was retained to the value of the new item.

3. The purchaser hereby assigns to us all claims against its customers that result from the sale of the goods with respect to which title was retained. If the goods with respect to which title was retained are sold together with other goods that are not owned by us, then the purchaser assigns to us such part of the claim resulting from the sale that is equal to the invoiced amount for the goods with respect to which title was retained. If an item with respect to which title was retained is only partially owned by us and is sold, the part of the claim resulting from the sale that is assigned to us will be equal to our percentage of ownership in the goods with respect to which title was retained.

4. We are granting revocable authority to the purchaser to collect any claims resulting from the further sale of the Retained Goods. If requested, the purchaser must notify its customers of the assignment of the claim and deliver to us all information and documents required to enforce our rights.

5. The purchaser must notify us without undue delay if the items subject to retention of title are encumbered or if our rights are adversely affected by third parties in any other way.

6. To the extent mandatory legal provisions of the relevant foreign country do not contemplate a retention of title within the meaning of Article VI 1-6 of these T&Cs, but such country's legal system provides for other forms of security to secure payment claims for invoices by sellers, we hereby reserve such rights. The purchaser is obligated to cooperate with us with respect to all actions we may reasonably request to be undertaken in order to protect our title or the replacement rights with respect to the Retained Goods.

## **VII. WARRANTIES/ LIMITATION OF LIABILITY**

1. Subject as expressly provided in these T&Cs, all warranties, conditions or other terms implied by legislation and/or common law, are excluded to the fullest extent permitted by law.

2. Subject to Section 1 above, the statutory rights of the purchaser, if any, and only if applicable under these T&Cs, apply subject to the following conditions:

a) To the extent supplied goods are unusable in whole or in part due to defects contributed by us, we will, in our reasonable discretion, choose to cure the defects at no cost to the purchaser or deliver, at no cost to the purchaser, goods without defects (collectively, "**Supplementary Specific Performance**"). In addition we will bear the purchaser's direct costs of disassembly and assembly. Such an obligation to bear the direct disassembly and assembly costs does not exist if the costs are incurred outside of Vietnam. The obligation also does not exist if there is no reasonable relationship between such costs and the delivery price of the defective delivered goods. All other costs are borne by the purchaser. We are not responsible for damages due to natural wear and tear during the time of use.

b) The purchaser must grant to us a reasonable period of time and reasonable opportunity to perform Supplementary Specific Performance, which Supplementary Specific Performance will be performed by us in our reasonable discretion. The purchaser has the right to perform Supplementary Specific Performance itself or to cause a third party to perform such Supplementary Specific Performance and, in each case, demand reimbursement of the costs associated therewith, only (i) in case of emergency relating to operational security, (ii) to avoid unreasonably high damages or (iii) when we are in default with respect to the Supplementary Specific Performance. The purchaser must notify us immediately of an occurrence of any of the events described in the previous sentence.

3. Subject to Section 1 above, the additional statutory rights of the purchaser, if any and only if applicable under these T&Cs, apply subject to the following:

We are liable only in the following events and in each case our liability is limited to the foreseeable damages arising from the sale of goods as follows:

- (a) Willful breach of duties by us;
- (b) Grossly negligent breach of duties by our authorized representatives or persons employed by us in the performance of our obligations;
- (c) Willful or negligent breach by us directly resulting in injuries to life, body or health;
- (d) fraudulent withholding of information about defects or guaranties for the specifications of delivered goods;
- (e) To the extent we are liable under applicable Vietnamese law which cannot be contracted out of or exempted pursuant to these T&Cs, for personal injury or property damage to privately used objects.

Save as set out in the above situations, we are not liable to you or any end-user of the goods for loss of profit, disruption of business activities, any indirect, special or consequential loss or damage, any costs, expenses, loss or other claims for compensation whatsoever which arise out of or in connection with the sale and use of the products.

4. Our liability is hereby excluded unless Article III Section 3 or Article VII Sections 1, 2 or 3 provides otherwise.

5. Defects must be notified to us after discovery without undue delay. The delivered goods with respect to which defects have been notified must be made and kept available to us. We will bear the costs for shipment back to us only if such shipment takes place at our request.

6. The purchaser bears the burden of proof that all requirements are met for the claims alleging our breach of duty to be valid as asserted by the purchaser. This burden of proof applies also to our willful misconduct or negligence.

7. Claims for defects are subject to a time bar period of 12 months beginning with the delivery of the delivered goods unless applicable mandatory statutory law provides for a longer limitation period.

8. You the purchaser represent that you have the power, legal capacity and authority to enter into a contract and binding agreement with us, and perform your obligations under these T&Cs and any other supplemental agreement or contract we require you to, in relation to the purchase of the goods under these T&Cs. You hereby warrant and confirm that these T&Cs are valid, binding and enforceable against you.

#### **VIII. GUARANTY / PROCUREMENT RISK**

Guarantees and procurement risks require, in order to be validly assumed by us, (i) a specific assumption of risk expressly designated as such and (ii) written form. The purchaser agrees with us that statements in our catalogues, printed material, brochures and other general information in no event and at no time constitutes a guaranty or the assumption of the procurement risk.

#### **IX. USE OF SOFTWARE**

To the extent the scope of delivery includes software, we hereby grant to the purchaser a non-exclusive, non-transferable license on a free of charge basis that is limited to a definite time period pursuant to the provisions of the particular delivery, to use the software and its accompanying documentation in connection with the relevant delivered item. The software may not be used in connection with more than one delivered item. The granting of sub-licenses is not permitted. The purchaser shall not reproduce, revise, translate or modify the software except as expressly permitted under these T&Cs or otherwise permitted under the laws of Vietnam. The purchaser may not remove manufacturer information -- in particular copyright labels or notices -- or make any other modifications without our prior written express consent. We reserve all other rights to the software and the accompanying documentation, including copies.

In case of termination as provided in Article XI (regardless of reasons for termination), the purchaser shall immediately return the software and its accompanying documentation (including copies) associated to the delivered goods to us, at the purchaser's cost.

#### **X. CONFIDENTIALITY**

The purchaser and we will keep confidential all information received from the other party. This confidentiality provisions continues to apply after termination of the delivery contract. The confidentiality obligation does not apply to information that (i) the receiving party had already obtained legitimately at the time of disclosure, provided such information was not subject to a confidentiality obligation or (ii) that the receiving party later obtains independently and legitimately without being obligated to keep such information confidential, or (iii) that is or becomes generally known without any breach of contract by one of the parties.

Each party retains its respective background intellectual property rights, title and all rights to all documents or other media made available to the other party. Such documents or other media may be reproduced, replicated or transferred to third parties only with the written consent of the party making them available.

#### **XI. TERMINATION/ FORCE MAJUERE**

1. We may by giving 7 days' notice, terminate any purchase order in whole or in part if the purchaser breaches any terms of the purchase order, fails to perform any of its obligations herein, becomes insolvent or is unable to pay its debts. In the event of such termination, you will deliver all goods which have been paid by us, to us in good and proper condition, without any delay. We are not responsible nor liable for any costs or expenses incurred by you in the event of such termination.

2. We are not liable to you the purchaser or any other parties by reason of any delay in performing, or any failure to perform, any of our obligations herein in respect of delivery or any other obligation, if the delay or failure was due to any cause beyond our reasonable control, including but not limited to an Act of God, explosion, flood, tempest, fire or accident, war, or threat of war, sabotage, insurrection, civil disturbance, outbreak of infectious diseases, government legislation, restrictions, regulations, bye-laws, prohibitions or directives of any kind on the part of any governmental, parliamentary or local authority that prevents the performance of the obligations. Where any of the above events should occur, our obligations shall be postponed to such time as the event has passed enabling us to perform our obligations. If however the delay persists for a period of 3 months or more, either you or we may terminate all work under the purchase orders.

3. Termination of any purchase order(s) shall not affect the purchaser's obligation to pay us all amounts owing or to become owing as a result of goods tendered or delivered to you the purchaser on or before the date of such termination (regardless of reasons for termination, including termination due to force majeure event), to the extent any such amounts are paid after the date they became or will become due pursuant to the purchase order. All outstanding accounts with us including any credit facilities (if any) shall be settled in full within thirty (30) days commencing from the date the notice of termination is issued or within thirty (30) days of the date of the invoice as provided in Article V, Section I, whichever is earliest.

## **XII. FURTHER TERMS/ MISCELLANEOUS**

1. No right or obligation under these T&Cs shall be assigned by you the purchaser without the prior written consent of us. We may assign this order at any time if such assignment is considered necessary by us.

2. The place of competent jurisdiction is Ho Chi Minh City. Notwithstanding the foregoing, we will have the right to bring actions also at the principal place of business of the purchaser, in compliance with the applicable laws.

3. The contractual relationship is governed by the laws of Viet Nam. The application of the United Nations Convention on Contracts for the International Sale of Goods ("**Vienna Convention**") is expressly excluded.

4. The failure by us in any way to assert, in whole or in part, any rights from these T&Cs or to assert such right belatedly shall not be construed as a waiver of this or any other right.

5. If a specific provision of these General Conditions of Sale and Delivery is or becomes invalid as determined by a court of competent jurisdiction, such provision shall be fully separable and the remaining provisions of these T&Cs shall remain in full force and effect and shall not be affected by the illegal or invalid provision or by such severance from these T&Cs.

6. (a) Save where sub-section(c) below applies, all communications in writing (including notices or other information required under these T&Cs between you and us shall be delivered:

- (i) By hand; or
- (ii) By pre-paid registered post with recorded delivery to the address of each party as set out in our order, or to such other address as the addressee may, from time to time, have notified the other party in writing for the purpose of this paragraph;
- (iii) By facsimile in accordance with the facsimile number set out in our purchase order confirming the order, or such other number as the addressee may from time to time, have notified the other party in writing; or
- (iv) By electronic mail ("**Email**") communication in accordance with the Email address set out in our order, or such other Email address as the addressee may from time to time, have notified the other party in writing.

(b) Communications shall be deemed to have been duly given:

- (i) If given or made by letter, 48 hours after posting (exclusive of the day of posting) if sent by one party to another in Vietnam, or, if sent to or from an address outside Vietnam, seven days after posting (exclusive of the day of posting);
- (ii) If delivered by hand or courier, on the date of delivery;
- (iii) If sent by facsimile, 24 hours after the time of transmission supported with a successful transmission report;
- (iv) If sent by Email, 24 hours after the time the Email is sent and no "failure of delivery" report (or the like) is received by the sender.

(c) Any notice or other information on any legal proceedings concerning or arising out of these T&Cs shall be sent to the party's registered office.

7. Save for any other entity in the Schaeffler Group, a person who is not expressly named as a party in these T&Cs or the purchase order issued by us has no right to enforce any term of these T&Cs.

Schaeffler Viet Nam Co., Ltd



***Acknowledgement and acceptance by purchaser***

We hereby confirm that we have read the General Conditions of Sales and Delivery (also referred to as the "T&Cs") of Schaeffler Viet Nam Co., Ltd and agree to all the terms and conditions. We undertake to comply with all our obligations under the T&Cs.

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Signed by \_\_\_\_\_ for and on behalf of Purchaser: \_\_\_\_\_

Date: \_\_\_\_\_