

## **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In these Conditions (“Conditions”), the following words have the following meanings unless the context requires otherwise:
  - i) “**Schaeffler**” means Schaeffler Automotive Aftermarket (UK) Limited (Company Number 2770881) whose registered office is at Waleswood Road, Wales Bar, Kiveton Park, Sheffield, South Yorkshire, S26 5PN or such other company within the Schaeffler Group who may fulfil any accepted order from the Customer;
  - ii) “**Customer**” means the company or person buying Goods from Schaeffler;
  - iii) “**Goods**” means all or any of the Goods, materials, items, products or services supplied or rendered or to be supplied or rendered by Schaeffler;
  - iv) “**Contract**” means any contract between Schaeffler and the Customer for the sale and purchase of Goods.
- 1.2. In these Conditions, unless the context otherwise requires, the singular shall include the plural and vice versa; the use of any gender includes all genders; references to persons shall include natural persons, firms, companies, bodies corporate, partnerships and unincorporated associations; clause headings are for information only and shall not affect construction or interpretation; and any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether before or after the date of these Conditions.

## **2. BASIS OF CONTRACT**

- 2.1. Unless any variation to these Conditions has been specifically agreed to in writing by an authorised representative of Schaeffler, all sales of Goods made by Schaeffler to the Customer shall be on these Conditions only, to the exclusion of all other terms and conditions (including any terms and conditions the Customer may purport to apply under any purchase order, confirmation of order, specification or other document and regardless of whether or not such document is referred to in these Conditions). Any quotation is provided on the basis that no contract for the sale of Goods will come into force unless and until Schaeffler informs the Customer in writing that it is willing to accept the order in question or delivers the Goods which are the subject of that order to the Customer (whichever happens first). Unless otherwise stated therein, any quotation provided by Schaeffler shall be valid for 30 days unless withdrawn or varied by Schaeffler during that period.
- 2.2. All orders for Goods placed by the Customer shall constitute an offer by the Customer to buy G from Schaeffler subject to these Conditions. Orders may be placed by EDI, fax, post, telephone, email or other suitable means. No orders shall be deemed accepted or binding on Schaeffler unless and until Schaeffler informs the Customer in writing that it is willing to accept the order in question or delivers the Goods which are the subject of that order (whichever happens first).

## **3. PRICE AND PAYMENT**

- 3.1. Unless agreed otherwise by an authorised representative of Schaeffler, the price payable by the Customer for Goods supplied to it by Schaeffler shall be the price specified in Schaeffler’s most recent valid quotation or, where no valid quotation has been provided, as specified in Schaeffler’s current gross price list in force at the time of delivery.
- 3.2. All prices are stated exclusive of value added tax and all costs or charges relating to the delivery by Schaeffler of any Goods, the loading or unloading of Goods and/or insurance, all of which amounts shall be payable by the Customer in addition to the price.
- 3.3. Schaeffler shall be entitled to adjust the price in the event of:
  - i) fluctuations in exchange rates, variation or imposition of any tax, or of any export, import or customs duty or deposit, the action of any government or any other authority or labour problems; or
  - ii) the quantities not reaching the minimum quantities and/or minimum order value as contained in the quotation or the relevant price list.

- 3.4. Schaeffler shall have the right to supply and the Customer will be obliged to accept, Goods in quantities which correspond with Schaeffler's normal packaging capacities, and the price shall be adjusted accordingly.
- 3.5. Where Schaeffler has agreed to grant the Customer credit terms, all invoices issued by Schaeffler must be paid by the Customer within the period specified. No payment shall be deemed received by Schaeffler until it is received in full cleared funds.
- 3.6. Where the Customer is in dispute with Schaeffler in respect of any delivery or invoice, the Customer may not withhold either part of full payment without the prior and written agreement of Schaeffler.
- 3.7. Where no credit terms have been granted, the Customer must pay the price of the Goods to Schaeffler prior to those Goods being delivered.
- 3.8. Time of payment shall be of the essence. In the event that there are any overdue amounts outstanding from the Customer, Schaeffler reserves the right to suspend further deliveries of Goods until all overdue amounts have been received from the Customer.
- 3.9. Schaeffler may delegate the collection of any overdue amounts to a third party and/or assign its rights to receive payment to a third party (including, without limitation, any credit insurer) without the consent of the Customer. The Customer consents to Schaeffler sharing with any relevant third party (including, without limitation, any credit insurer) details of the Customer's payment history and the results of any credit checks undertaken by Schaeffler.
- 3.10. Schaeffler reserves the right to revoke or vary for any reason any credit terms at any time on notice.
- 3.11. Schaeffler shall be entitled to set off and retain any and all sums due from it to the Customer against any contingent or actual liabilities of the Customer to Schaeffler. The Customer shall make all payments due from it to Schaeffler without deduction whether by set-off, counterclaim, discount, abatement or otherwise.

#### **4. DELIVERY AND PACKAGING**

- 4.1. Any delivery dates or times quoted or requested are estimates only and Schaeffler shall not be liable to the Customer for any failure to deliver any Goods on any particular date or by any particular time.
- 4.2. In the case of "express" orders received from the Customer, Schaeffler shall endeavour to deliver those orders to Customers in the United Kingdom mainland (excluding offshore islands) by 17:30 on the next working day (excluding for the avoidance of doubt, Saturdays, Sundays or public holidays). For all other orders, the estimated time and date of delivery shall be as advised by Schaeffler to the Customer.
- 4.3. Schaeffler shall pack all orders as it deems appropriate. In the case of "express" orders, Goods will be packed in cartons with an approximate maximum weight of 40kg, with cartons of a weight exceeding 25kg being labelled to this effect, and stating that more than one person and/or appropriate equipment should be employed when handling the carton. However, where any indivisible Goods (such as truck or tractor parts) with a weight exceeding 40kg are the subject of an "express" order, Schaeffler reserves the right at its discretion to increase the maximum carton weight to 75kg or alternatively, to ship those Goods using a three day delivery service. In the case of all other orders, Goods will normally be packaged in card cartons on non-returnable wooden pallets with a maximum pallet weight of 900kg.
- 4.4. The Customer shall be responsible for providing, at its own expense at the point of delivery, adequate and proper equipment and manual labour for the safe loading and/or unloading of Goods.
- 4.5. If for any reason the Customer fails to accept delivery of any order when Schaeffler first attempts to make delivery, the Customer shall reimburse Schaeffler for any reasonable costs and expenses incurred by Schaeffler in storing the Products and subsequently attempting to redeliver them (including without limitation, costs of storage, carriages, insurance and any taxes thereon). Further, Schaeffler is entitled to sell the Goods at any time and deducting all costs and expenses account to the Customer for any excess over the Price already paid under the Contract or charge the Customer for any shortfall between the sale Price and such costs and expenses.
- 4.6. Default or defect in the delivery of any one or more instalments shall not entitle the Customer to repudiate the Contract with regard to any other instalments to be delivered.

## **5. TITLE**

- 5.1. Ownership of all Goods supplied by Schaeffler to the Customer shall not pass from Schaeffler to the Customer unless and until such time as Schaeffler has received in full cleared funds all sums due in respect of the Goods together with any other sums which may be due from the Customer to Schaeffler on any account.
- 5.2. Until ownership of Goods has passed from Schaeffler to the Customer in accordance with Clause 5.1, the Customer shall:
  - i) hold all Goods delivered by Schaeffler on a fiduciary basis as Schaeffler's bailee;
  - ii) store those Goods (at no cost to Schaeffler) properly, and in such a way that they remain readily identifiable as Schaeffler's property;
  - iii) not modify the Goods, not destroy, deface or obscure any identifying mark or packaging on or relating to those Goods;
  - iv) maintain those Goods in a satisfactory condition, insured on Schaeffler's behalf for their full price against all risks to the reasonable satisfaction of Schaeffler. On request, the Customer shall produce such policy of insurance to Schaeffler; and
  - v) hold any proceeds of the insurance referred to in Clause 5.2(iv) on trust for Schaeffler and not mix such proceeds with any other money nor pay such proceeds into an overdrawn bank account.
- 5.3. The Customer may resell Goods before ownership has passed to it solely on the following conditions:
  - i) any such sale must be effected in the ordinary course of the Customer's business at full market value; and
  - ii) any such sale shall be a sale of Schaeffler's property on the Customer's own behalf and the Customer shall deal as principal when making any such a sale.
- 5.4. The Customer's right to possession of Goods shall immediately terminate if any of the events as detailed in Clause 9.1 (ii) or (iii) occur to the Customer or should the Customer encumber or in any way attempt to charge any of the Goods prior to ownership of them passing to it.
- 5.5. Schaeffler shall be entitled to recover payment for Goods delivered to the Customer notwithstanding that ownership of the Goods may not have passed from Schaeffler to the Customer.
- 5.6. The Customer grants to Schaeffler, its agents and employees an irrevocable licence at any time to enter any premises where the Goods may be stored by the Customer in order to inspect them, or, where the Customer's right to possession of the Goods has terminated (or should the Customer have failed to comply with any of its obligations pursuant to this Clause 5), to remove them.

## **6. RISK**

- 6.1. Risk of loss or damage to all Goods supplied by Schaeffler shall pass from Schaeffler to the Customer at the time of delivery. Delivery shall be deemed to occur when the carrier releases Goods to the Customer or his agent acting on its behalf where Schaeffler has agreed to arrange delivery or, where Goods are to be collected by the Customer from any premises of Schaeffler, when the Customer or any third party acting on its behalf commences collection of the Goods.
- 6.2. The Customer shall, within 3 working days of the delivery of any Goods, notify Schaeffler in writing of any defect by reason of which the Customer alleges that the Goods delivered are not in accordance with their specification and which should be apparent on reasonable inspection.
- 6.3. If the Customer fails to give notice under Clause 6.2 then, except in respect of any defect that is not one which should be apparent on reasonable inspection, the Goods shall be deemed conclusively to be in all respects in accordance with their specification and accepted by the Customer.

## **7. STOCK CLEANSE**

- 7.1. Subject to the prior agreement of Schaeffler, the Customer shall be entitled to return unsold Goods to Schaeffler.
- 7.2. In the event that the Customer wishes to return unsold Goods, it must advise Schaeffler of the items that it wishes to return and obtain the agreement of Schaeffler to the return of those specific Goods. Following receipt of that agreement, the Customer must return the Goods in question to Schaeffler at its own expense packed in pallet cases or similar accompanied by a detailed packing list.
- 7.3. Following receipt of the returned Goods, Schaeffler shall issue a credit note to the Customer for the price actually paid by the Customer for the returned Goods. In the event that any returned Goods need to be repackaged by Schaeffler, Schaeffler reserves the right to reduce the value of the credit note issued by it by a maximum of 20% to cover such costs.
- 7.4. Risk and title (if title has passed to the Customer in accordance with these Conditions) in any returned Goods shall pass from the Customer to Schaeffler at the time of delivery of the returned Goods to Schaeffler. Schaeffler shall be entitled to reject the return of any Goods which are damaged, incomplete or obsolete and no credit shall be provided to the Customer in respect of any such returned Goods (which Schaeffler reserves the right to return to the Customer at its discretion and at the cost of the Customer).

## **8. QUALITY**

- 8.1. The specification for all Goods supplied by Schaeffler shall be to Schaeffler's or its third party manufacturer's (as appropriate) specification for the Goods in question.
- 8.2. All drawings, descriptive matter, specifications, recommendations, suggestions and advertising issued by Schaeffler and any descriptions or illustrations and particulars of weights, measurements, ratings, performance figures and other information contained in its catalogues or brochures are provided solely for the purpose of providing the Customer with a general description of the Goods and their application, are not guaranteed, do not constitute representations and shall not form part of any contract for sale.
- 8.3. Subject to the other provisions of these Conditions, Schaeffler warrants that the Goods supplied by it shall comply with their specification and shall be fit for the purpose for which they are designed. This warranty may be limited by either vehicle mileage or time period as may be defined by Schaeffler and communicated to the Customer in writing from time to time. Otherwise Schaeffler makes and gives no representation, promise, guarantee, or warranty, express or implied, as to the quality, performance or description of the Goods or as to their fitness for any particular use or purpose.
- 8.4. The warranty as set out in Clause 8.3 shall cease to apply in the event that the reason for the failure of any Goods to comply with their specification or be fit for purpose is attributable to any alterations or modifications carried out by the Customer, handling damage, incorrect installation, improper driving techniques, fair wear and tear, oil or grease contamination, damage due to worn or broken vehicle components, incorrectly reworked or worn flywheels, parts incorrect for vehicle application or fitted by methods other than those as set out in the manufacturer's guidelines or the Schaeffler technical bulletins and brochures issued from time to time.
- 8.5. In the event that the Customer wishes to make any claim under the warranty set out in Clause 8.3, prior to returning any Goods to Schaeffler it must first contact Schaeffler for a warranty return number and claim form to be issued. Once received, the Customer must return the Goods in question to Schaeffler at its own expense together with a completed claim form and accompanying proof of purchase.
- 8.6. Following receipt of any returned Goods, Schaeffler shall undertake a technical inspection of those Goods. If the findings of that technical inspection are that the Goods have failed to comply with the warranty as set out in Clause 8.3 then Schaeffler shall (at its discretion) either issue the Customer with a credit note for the price actually paid by the Customer for the returned Goods or provide the Customer with a replacement for those Goods. In addition, Schaeffler shall also refund the cost of carriage for returning the Goods to Schaeffler. If the findings of the technical inspection are that the Goods did comply with the warranty as set out in Clause 8.3 or that the reasons for any failure were attributable to one or more of the causes set out in Clause 8.4 then no refund or replacement shall be due to the Customer and Schaeffler shall return the Goods to the Customer at the Customers expense together with an engineers report detailing the findings of the technical inspection and setting out the reasons for the failure of the Goods.

- 8.7. Any replacement Goods provided by Schaeffler pursuant to Clause 8.6 shall be warranted on the same terms under this Clause 8 as the original Goods for the remainder of any unexpired period referred to in Clause 8.3.
- 8.8. Subject to the other provisions of these Conditions, compliance by Schaeffler with its obligations pursuant to this Clause 8 shall represent the full liability of Schaeffler to the Customer in respect of the supply of any defective Goods.

## **9. TERMINATION**

- 9.1. Schaeffler shall be entitled to terminate all and any orders which have become binding upon it immediately should the Customer:
  - i) be in breach of any term of these Conditions and such breach is either not capable of remedy or, where the breach is capable of remedy, the Customer fails to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
  - ii) (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the Customer enters into any informal or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with or for the benefit of the general body of creditors of the individual, the partnership or the body corporate; or
  - iii) suffer the equivalent of any similar or analogous event as detailed in Clause 9.1(ii) in any jurisdiction.

- 9.2. All amounts outstanding from the Customer to Schaeffler shall immediately become due and payable by the Customer upon termination.
- 9.3. Any termination shall not affect the continuing in force or coming into force of any provision of these Conditions which, whether expressly or by implication, is to continue in force following termination.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1. All intellectual property rights subsisting or capable of subsisting in any Goods supplied by Schaeffler shall at all times be vested in Schaeffler or its third party licensors or manufacturers (as appropriate) and Schaeffler or the relevant third party licensor or manufacturer shall be responsible for the registration and other protection of such intellectual property rights as they deem fit.
- 10.2. The Customer shall not use Schaeffler's name, logo or any other identification marks for the purpose of advertising or publicity without the prior written consent of Schaeffler.

## **11. LIMITATION OF LIABILITY**

- 11.1. Schaeffler does not attempt to exclude any liability for any of the following matters and no provision of these Conditions shall be interpreted as such:
  - i) breach of Schaeffler's obligations arising under Section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
  - ii) personal injury or death resulting from Schaeffler's negligence; and
  - iii) any matter for which it would be illegal for Schaeffler to exclude or limit or to attempt to exclude or limit its liability.
- 11.2. Schaeffler shall not be liable to the Customer for any loss of profit, loss of anticipated profit, loss of business, loss of contract, economic loss, overhead recovery, anticipated savings, replacement vehicle hire, loss of data, loss of production, depletion of goodwill, product recall, nor for any special, indirect or consequential loss or damage, or otherwise for any costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) in each case regardless of whether or not Schaeffler was aware or ought reasonably to have been aware of the potential for the loss or damage in question.

- 11.3. Subject to the other provisions of these Conditions, Schaeffler's total liability in contract, tort (including breach of statutory duty), misrepresentation or otherwise arising in connection with the supply of Goods under these Conditions shall be limited to the price actually paid by the Customer for the supply of Goods giving rise to the claim in question.
- 11.4. Save as provided for in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.

## **12. FORCE MAJEURE**

- 12.1. No failure or omission by Schaeffler to perform or carry out any of its obligations in accordance with these Conditions shall give rise to any claim by the Customer or be deemed to be a breach of these Conditions to the extent that such failure or omission results from any event affecting the performance by Schaeffler (or any of its suppliers, sub-contractors or group companies) of any of its obligations under these Conditions arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of Schaeffler (or any of its suppliers, sub-contractors or group companies).

## **13. EXPORT TERMS**

- 13.1. Where the Goods are supplied for export by Schaeffler from the United Kingdom, the provisions of this Clause 13 (including the most recent edition of "Incoterms" published by the International Chamber of Commerce) shall (subject to any special terms agreed in writing between Schaeffler and the Customer) apply notwithstanding any other provision of these Conditions.
- 13.2. Any term or expression which is defined in the provisions of the most recent Incoterms shall import the respective obligations of buyer and seller into these Conditions, but in the event of conflict these Conditions shall prevail.
- 13.3. Unless otherwise agreed in writing between Schaeffler and the Customer, the Goods shall be delivered ex-works Schaeffler's plant and Schaeffler shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 13.4. Save where otherwise agreed, payment of all amounts due to Schaeffler shall be made by irrevocable letter of credit opened by the Customer in favour of Schaeffler and confirmed by a bank in London acceptable to Schaeffler.

## **14. GENERAL**

- 14.1. Any notice required to be served by one party on the other shall be served at the registered office for the party in question and shall be deemed served:
  - i) if served personally, at the time of delivery; or
  - ii) in the case of pre-paid or recorded or registered delivery post, 48 hours from the date of posting.  
Notice may not be served by any means other than those set out above and, for the avoidance of doubt, whilst operational communications may be made via email, the service of formal notice by email shall not be permitted.
- 14.2. If any provision of these Conditions is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of these Conditions which shall remain in full force and effect.
- 14.3. No delay, indulgence or omission in exercising any right, power or remedy provided by this agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy.
- 14.4. No single or partial exercise or non-exercise of any right, power or remedy shall in any circumstances preclude any other or further exercise of such right, power or remedy in the exercise of any other right.
- 14.5. Any waiver of a breach or default of any term, condition, warranty or obligation contained in this Agreement shall not constitute a waiver of any subsequent breach or default and shall not prevent a party from subsequently requiring compliance with the waived term, condition, warranty or obligation.

- 14.6. Save in respect of any Schaeffler Group company who, as envisaged by Clause 1.1(i), may supply Goods to the Customer, no person who is not a party to this Agreement shall be entitled to enforce its terms pursuant to the Contracts (Rights of Third Parties) Act 1999. Any relevant Schaeffler group company shall be entitled to the benefit of these Conditions (including the right pursuant to the Contracts (Rights of Third Parties Act) 1999 to enforcement their terms) notwithstanding that they are not a direct party to these Conditions.
- 14.7. For the purposes of calculating any loss or damage flowing from a breach of these Conditions by the Customer, there shall be included not only any loss or damage incurred by Schaeffler itself flowing from the breach in question but also, any loss or damage flowing from such breach incurred by any Schaeffler group company as referred to in Clause 14.6. The Customer acknowledges and agrees that Schaeffler shall be entitled to claim for any such loss or damage from the Customer on the behalf of those Schaeffler group companies.
- 14.8. Nothing contained in this Agreement shall be deemed to create a relation of partnership, principal/agent or any other fiduciary relationship between the parties.
- 14.9. The Customer shall not be entitled to assign any of its rights or obligations under this Agreement without the prior written consent of Schaeffler.
- 14.10. This Agreement and the relationship between the parties generally shall be governed by and construed in accordance with the laws of England and Wales, whose courts (save in respect of the enforcement of any judgement) shall have exclusive jurisdiction.

Schaeffler Automotive Aftermarket (UK) Ltd  
Holme Lacy Road  
Rotherwas  
HEREFORD  
HR2 6BQ  
United Kingdom

Dated 02/2014