

All of our deliveries and services to entrepreneurs, companies, legal entities subject to public law or special assets governed by public law 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. The delivery contract as well as any changes, ancillary agreements, declarations regarding its termination or other declarations and notifications require text form (§ 126 b German Civil Code - *BGB*) to the extent these terms and conditions do not specify otherwise.
2. The purchaser accepts our General Conditions of Sale and Delivery at the time of receipt of our confirmation and/or the acceptance of the ordered goods or services. We are not bound by general terms and conditions of the purchaser that differ from these general conditions. Such deviating terms and conditions do not become part of the contract, either by acceptance of the order or implicitly by another act.

### **II. Prices/Processing Fees**

1. The applicable prices shall be those prices and discounts applicable on the date of the receipt of the order plus any relevant statutory value added tax.
2. We have the right to invoice an additional processing fee for an order if quantities do not reach the minimum quantities and/or minimum order value as contained in the relevant price list.

### **III. Delivery times/Default/Schedule Transactions**

1. Delivery periods begin to run with our confirmation of the order. Only if confirmed by us in writing delivery dates are fixed-dates.
2. In case of unforeseen and unavoidable events 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 we are entitled 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.
3. To the extent we are in default and the purchaser incurs damages as a result thereof, the purchaser may demand a default compensation. Such default compensation will be for each full week one-half percent (0.5 %) of the value of the part of the total delivery that could not be used as anticipated by the contract as a result of the delay, but in no event more than five percent (5%) of such value. All other rights for delay are governed exclusively by Article VII Sections 2 and 3 hereof. The purchaser may rescind the contract in accordance with the applicable statutory provisions only if we are responsible for the delay of the delivery.
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. After the

# Schaeffler Automotive Aftermarket

## General Conditions of Sale and Delivery

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Agreed Period has expired, we may invoice the purchaser for any volume of products with respect to which delivery has not been requested and deliver such products.

5. Partial deliveries are permissible to the extent such partial deliveries are not unreasonably burdensome for the purchaser.

#### **IV. Packaging / Shipping / Intra-Community Supply**

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 no costs to us. We will invoice disposable packaging at cost of purchaser and will not take back such packaging.
3. The purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.
4. In case of deliveries into other EU member states ("Intra-Community Supply") the purchaser is obliged to support us with any reasonable assistance in order to prove the Intra-Community Supply. In particular, we can request a signed and dated confirmation of the Intra-Community Supply containing at least: name and address of consignee, quantity and commercial description of the goods and place and date of receipt of goods. If the purchaser does not comply with the aforesaid cooperation obligation, the purchaser shall be liable for any damages resulting thereof, especially shall compensate any value added tax (VAT) imposed on us.

#### **V. Payment**

1. Unless otherwise agreed to, payment must be made without deductions to one of our accounts within thirty (30) days of the date of the invoice.
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.
3. It is not permissible to hold back payments by reason of counter claims or counter rights or to set off with counter claims or counter rights unless such counter claims or counter rights are undisputed, have been finally judicially determined, or are ripe for decision.
4. If the purchaser is in default with payment or if we become aware of any circumstances which may cause the financial status of the purchaser to substantially deteriorate, we may demand immediate payment of all amounts not yet settled in relation to the business relationship.

#### **VI. Retention of Title**

1. We retain title to all goods delivered by us until all claims resulting from the business relationship with the purchaser have been satisfied ("Retained Goods"). In cases of current accounts the retained property is deemed to be collateral for the claim to the balance of the account.

2. If the goods with respect to which title has been retained become part of a new item by way of connection 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 is entitled to resell Retained Goods in the ordinary course of business. 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 by us, 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. We are obligated to release the collateral to which we are entitled to the extent that the value of such collateral exceeds the claims to be secured by more than ten percent (10%).
6. The purchaser must notify us without undue delay if the items subject to retention of title are attached or if our rights are adversely affected by third parties in any other way.
7. To the extent mandatory legal provisions of the relevant foreign country do not contemplate a retention of title within the meaning of Article VI Sections 1-6, 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. Breaches of Duty**

1. The statutory rights of the purchaser pursuant to § 437, No. 1 German Civil Code (*BGB*) (Supplementary Specific Performance) apply subject to the following conditions:
  - a) To the extent supplied goods are unusable in whole or in part due to defects 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 Germany. 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 permit 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.
2. The additional statutory rights of the purchaser apply subject to the following. We are liable only in one of the following events:
- (1) Willfull breach of duties
  - (2) Grossly negligent breach of duties by our statutory representatives or persons employed by us in the performance of our obligations (*Erfüllungsgehilfen*);
  - (3) Willful or negligent injuries to life, body or health;
  - (4) fraudulent withholding of information about defects or guaranties for the properties of delivered goods;
  - (5) willful or negligent breach of significant contractual duties -- however, in cases of (i) simple negligence or (ii) gross negligence by individuals other than executives (*leitende Angestellte*), limited to the damages reasonably foreseeable for the relevant type of contract;
  - (6) to the extent we are liable pursuant to the Product Liability Act (*Produkthaftungsgesetz*) for personal injury or property damage to privately used objects.
3. Our liability is hereby excluded, especially any reimbursement for expenses for rental cars, any loss of use or for any loss of profit, unless Article III Section 3 or Article VII Sections 1 or 2 provides otherwise.
4. 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.
5. 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.
6. Claims for defects are subject to a limitation period of 12 months beginning with the installation of the delivered good into the vehicle of the end-customer, at maximum 36 months after the delivery unless applicable mandatory statutory law provides for a longer limitation period. The time of installation shall be proven, if appropriate, by a copy of the original invoice.
7. § 350 of the German Civil Code applies *mutatis mutandis* to statutory rescission rights.

### VIII. Guaranty / Procurement Risk

Any guarantee or procurement risk (*Beschaffungsrisiko*) on our part must be expressly accepted by us, designated as such and must be in writing in order to be effective.

The purchaser agrees with us that statements in our catalogues, printed material, mounting guidelines, repair instructions, 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

1. To the extent the scope of delivery includes software, we hereby grant to the purchaser a non-exclusive, non-transferable license 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.
2. The purchaser may reproduce, revise, translate or modify from object code to source code the software only within the statutorily permitted scope (§§ 69a et seq. German Copyright Act -- *Urhebergesetz*). The purchaser may not remove manufacturer information -- in particular copyright labels or notices -- or make any other modifications without our prior written express consent.
3. We reserve all other rights to the software and the accompanying documentation, including copies.

### X. Confidentiality

1. 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.
2. Each party retains 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 consent of the party making them available.

### XI. Miscellaneous

1. The place of performance for deliveries shall be the place from which we deliver. The place of performance for payments shall be Langen, Germany.
2. The place of competent jurisdiction is Frankfurt am Main, Germany. Notwithstanding the foregoing, we will have the right to bring actions also at the principal place of business of the purchaser.
3. The contractual relationship is governed by the laws of the Federal Republic of Germany except for the rules governing the conflict of laws. **The application of the Convention for the International Sales of Goods (CISG) is expressly excluded.**
4. The failure to assert, in whole or in part, any rights from this delivery contract or to assert such right belatedly shall not be construed as a waiver of this or any other right.

# Schaeffler Automotive Aftermarket General Conditions of Sale and Delivery

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5. If a specific provision of these General Conditions of Sale and Delivery is or becomes invalid, the remaining provisions shall remain valid.
6. Please note that we store and process personal data in the course of business transactions. All legal regulations concerning data privacy are observed.