

# Schaeffler Automotive Aftermarket

## General Conditions of Sale and Delivery



### Schaeffler Middle East FZE

All of our deliveries and services to individuals, 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 have to be executed in writing to the extent these terms and conditions do not specify otherwise. "In writing" means here the declaration must be made in a document or in another manner suitable for its permanent reproduction in writing, the person making the declaration must be named and the completion of the declaration must be shown through the reproduction of a signature of the signatory or 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. Any deviating terms and conditions are hereby expressly rejected and do not become part of the contract, either by acceptance of the order or implicitly by another act.

#### **II. Prices/Agreed Fees**

1. The applicable prices consist of prices and discounts applicable at the date of delivery or performance but exclude any customs dues, the relevant statutory value added tax or other taxes or duties.
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 our relevant offers or otherwise agreed to.

#### **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 in the production or other obstacles, including, but not limited to 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, acts of government, customs formalities, 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 default compensation. Such default compensation will be

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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 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.

#### **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 no costs to us. We will invoice disposable packaging at cost 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.

#### **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 or have been finally judicially determined.
4. If the purchaser is in payment default all outstanding payments from the business relationship shall become due and immediately payable as far as the seller has notified the purchaser and as far as further seven days are expired.

#### **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.

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2. The purchaser shall be entitled until further notice to resell the delivered goods which are under retention of title in the ordinary course of business. This authorization may be revoked at any time. Goods, over which we retain title may not be mortgaged, pledged or transferred by way of security without our prior written consent.
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. We hereby accept the assignment. Our authority to collect the receivable on our own shall remain unaffected. 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. Should the purchaser not duly honor its payments obligations towards us, we may revoke the authorization. We are entitled to inform the final purchaser of such assignment at any time.
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. The purchaser shall ensure that goods that are our reserved property are adequately insured, at the purchaser's expense, against theft, burglary, fire and damage by water and shall evidence the insurance to us on request. The purchaser shall maintain the insurance coverage so long as we hold claims against it in the context of the overall business relationship between us. The purchaser now and hereby assigns to us all insurance claims arising in connection with goods that are our reserved property. We hereby accept the assignment.
8. In case of a contract violation by the purchaser, especially in case of a delay of payment, we shall be entitled to a cancelation or to a withdrawal of the reserved goods. For the purpose of withdrawing the reserved goods, the purchaser shall irrevocably allow us to enter its business and storage premises and repossess goods.

### **VII. Warranties/Limitation of Liabilities**

1. The statutory rights of the purchaser pursuant to Art. 110, 111 UAE-Commercial Transaction Law and 272 U.A.E. Civil Code 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

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Specific Performance"). 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.
2. The additional statutory rights of the purchaser apply subject to the following:  
We are liable only in one of the following events and in each case our liability is limited to the foreseeable damages that are typically accrued in transactions of this kind:
  - (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) limited to the damages reasonably foreseeable for the relevant type of contract;

Furthermore, we shall not be responsible for defects of the goods delivered in cases as outlined in detail in Art. 545 of the UAE-Civil Code.

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 time period limitation of 6 months beginning with the installation of the delivered good into the vehicle of the end-customer 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. Furthermore, the prescription period regarding claims for rescission of a contract or for a reduction in or supplement to the purchase price shall be one year in accordance with Art. 524 of the UAE-Civil Code.
7. We may specify a reasonable period of time within which the purchaser, being entitled to withdraw must exercise that right. The right of withdrawal is extinguished if withdrawal is not declared before the end of that period.

### VIII. Guaranty / Procurement Risk

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Guaranties and procurement risks (*Beschaffungsrisiko*) 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, 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 with our prior approval and within the statutorily permitted scope ((Art.1, 2 No.2, 7 Copy Right Law of the United Arab Emirates Federal Law No 7/2002 ). Our prior agreement is not required as far as it is necessary for:
  - (a) its intended use of a computer program, including the error correction from each beneficiary;
  - (b) the creation of a backup copy made by an authorized person;
  - (c) the person who has the right to use the copy to investigate or test the elements of the program or to identify its principles if this is done while performing any acts of loading, displaying, running, transmission or storage of the program which the purchaser is entitled to do;
  - (d) the reproduction or the translation of the code in order to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:
    - (aa)The actions are made by the licensee or by another person having the right to use a copy of the program;
    - (bb)The for the production of the interoperability necessary information for the persons referred to in paragraph 1 has not previously been available;
    - (cc)The acts are restricted to the parts of the original program which is necessary for the interoperability;
    - (dd)The obtained information referred to in the previous paragraphs neither be used for any purpose other than to achieve the interoperability of the independently created computer program nor for the development, manufacture and marketing of a computer program or of any other acts which infringes copyright. In addition to this, acts referred to in the previous paragraphs should not be passed to any third person unless this is necessary for the interoperability of the created program.
3. The purchaser may not remove manufacturer information -- in particular copyright labels or notices -- or make any other modifications without our prior written express consent.

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4. In addition to Art, 38 Nr. 3 et. Seq. Copy Right Law of the United Arab Emirates Federal Law No 7/2002 the rights holder can force the owner of unlawful manufactured or illegal distributed copies to destroy all copied items.
5. We reserve all other rights to the software and the accompanying documentation, including copies.

### **X. Confidentiality**

1. The purchaser undertakes to keep all information, including but not limited to illustrations, drawings, patterns, templates, samples, calculations, information, business secrets and/or commercial and technical information not publicly known and any other documents and information he received from us strictly confidential.. This confidentiality provisions continues to apply after termination of the delivery contract. The confidentiality obligation does not apply to information that (i) the purchaser had already obtained legitimately at the time of disclosure, provided such information was not subject to a confidentiality obligation or (ii) that the purchaser 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 the purchaser. Accordingly, the purchaser shall commit his employees to secrecy.
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 where our delivery originates shall be deemed the place of performance. The place of performance for payments shall be Dubai, United Arab Emirates.
2. The place of competent jurisdiction is Dubai, United Arab Emirates. 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 United Arab Emirates except for the rules governing the conflict of laws..
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.
5. The invalidity of any term, condition, or stipulation of these Terms and Conditions shall not affect the validity of the remaining terms, conditions, or stipulations of these Terms and Conditions or its validity. In case of invalidity of any term, the parties to these Terms and Conditions shall agree on a legally effective provision coming as close to the economic purpose of the ineffective provision. The same applies analogously with respect to any omission from the provisions.
6. Any waiver, modification, alteration or addition to these Terms and Conditions or any of its provisions shall be binding only, if it has been decided in writing.

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7. All provisions shall in no way be interpreted in contradiction to the Laws of the Emirate of Dubai and of the United Arab Emirates which shall be applied complimentary and which shall be given priority over any incompatibility with these Terms and Conditions.