



**Subject to applicable mandatory provisions of Philippine law, 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 (“T&C”) and any and all documents or agreements referred to herein, or executed pursuant to a confirmed purchase order which constitute the entire agreement of the parties with respect to the relevant purchase order:**

**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 (Philippines), Inc. (referred to in these T&C as “us/we”). To be binding on us, any such delivery contracts, and supplemental agreements, any amendments, variations or modification to such contracts and agreements, must be approved by us in writing.
2. The purchaser agrees to accept our General Conditions of Sale and Delivery (these “T&C”) at the time of its receipt of our confirmation of our acceptance of the order or its acceptance of the ordered goods or services, or the date specified by us in a notice sent by us. In relation to the production, supply or delivery of product or services ordered by the purchaser from us, the purchaser agrees that these T&C shall apply to all goods and services supplied by us and shall be deemed incorporated by reference to any delivery contracts or other agreements in relation to orders entered into with us. The purchaser irrevocably agrees to abide by the terms and conditions set out herein. We reserve the right, in terms of all existing and future sales, to amend and/or modify these T&C, from time to time in our sole discretion and all supplements, variations, amendments and modifications thereto made by us shall take effect on the date determined by us, provided such amendments or modifications shall bind you only upon your written acceptance.

We are not bound by any terms and conditions of the purchaser that differ from these T&C unless we expressly accept or approve the same in writing. Such other terms and conditions do not become part of any contract or document executed pursuant to a confirmed purchase order and incorporating these T&C, either by mere acceptance of the order or implicitly by another act. The purchaser acknowledges and agrees that by accepting these T&C, these T&C shall override any provisions in the purchaser’s general terms and conditions, standard terms, or terms of purchase, if any, unless we otherwise expressly provide in writing.

**II. PRICES / PROCESSING FEES**

The applicable prices consist of prices and discounts applicable on the date we accept the purchaser’s order plus the cost of goods and value added tax, 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 destination, delivery dates or the terms of delivery, quantities or the specifications of the products which is requested by the purchaser prior to delivery and approved by us;
- (b) Any delay caused by any instructions of the purchaser or failure of 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 labor, materials or other manufacturing costs).

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

1. Delivery periods begin to run the later of (i) our confirmation of the purchaser’s order, and (ii) final agreement regarding all matters that had to be decided prior to commencement of production, or (iii) as at the date(s) stipulated by us. We undertake to deliver the goods for which the purchaser has placed an order that has been confirmed by us on the specific date mutually agreed by us and the purchaser if such has been stipulated.

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2. While we undertake to exert best efforts to comply with estimated delivery dates, the purchaser acknowledges and agrees that we shall not be liable for any delay in delivery howsoever caused where the specified delivery dates are explicitly indicated as mere estimates.
3. In case of uncontrollable events in the production or other obstacles such as acts of god, labor disputes or other similar 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 there is an agreement between us and the purchaser for the sale of a particular volume of goods for a specific time period ("**Agreed Period**") and the purchaser has the right to determine the specific delivery date of such goods, the purchaser must notify us of the desired delivery date or dates within the Agreed Period not less than twelve (12) weeks prior to such date. If no notification is received by us of specific delivery dates, we reserve the right to deliver the agreed volume of goods on such date(s) as determined by us in our sole and absolute discretion whether or not it is within the Agreed Period. We shall invoice the purchaser for the delivery of any agreed volume of goods or portion thereof regardless of whether we have received notice from the purchaser of the delivery of the same within the Agreed Period.
5. The purchaser agrees to accept partial delivery made by us of any order of the purchaser confirmed by us subject to remedies as may be available to the purchaser hereunder or at law with respect to the undelivered portion.

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

1. Unless agreed otherwise in each individual case, delivery is EXW from designated place by us and the method of packaging and packaging material shall be agreed in writing both by us and the purchaser.
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 promptly return these to us without need of demand but no later than ten (10) calendar days from delivery of the goods utilizing such packaging. We will invoice the purchaser for all -
  - (a) Packaging costs and expenses incurred by us for any packaging not returned to us within the period indicated above; and
  - (b) Costs and expenses incurred by us in the return of the packaging to us if done so at our cost.
3. The purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.

#### V. PAYMENT

1. Payment of the amount indicated in the invoice issued by us shall be made in full, without deductions on the due date agreed upon by us. Any amount due the purchaser from us which is not disputed by us or has been otherwise finally judicially determined may be set-off to one of our accounts with the purchaser. The purchaser shall, however, notify us in writing of any intent to set-off. All banking charges with respect to payment and set-off shall be borne by the purchaser.
2. The purchaser is in payment default as soon as the agreed upon payment date has lapsed unless payment does not take place due to a force majeure. We will charge a late payment interest on any outstanding amounts due to us at the rate of 6% 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 under these T&C



4. The purchaser shall not be entitled to withhold payments by reason of counterclaims or set off any amounts due to us unless such counterclaims and amounts are undisputed by us in writing, or have been finally judicially determined by a court of competent jurisdiction.

**VI. RETENTION OF TITLE**

1. We retain title to all goods delivered by us until all outstanding amounts due us have been fully paid to us and claims resulting from the sale of the products to the purchaser have been satisfied ("**Retained Goods**").
2. If the Retained Goods become part of a new item by way of connection to or incorporation in an item owned by the purchaser prior to full payment of the Retained Goods, it is hereby agreed that we and the purchaser shall become co-owners of the new item. Our co-ownership share shall be determined by our respective or proportionate interests in the new item.
3. The purchaser hereby assigns to us all claims against its customers that result from the sale of the Retained Goods prior to its full payment. If the Retained Goods are sold together with other goods that are not owned by us prior to its full payment, then the purchaser shall assign to us such part of the claim resulting from the sale that is equal to the invoiced amount for the Retained Goods. If any item with respect to which title was retained is only partially owned by us and is sold, the portion of the proceeds from the sale that pertains to us will be equal to our percentage of ownership in the item sold. The assignment under this clause shall, however, be subject to any restrictions or conditions on assignment in the contracts of the purchaser with its customers. The purchaser shall execute such documents as may be necessary to formalize or otherwise ensure the validity of any such assignment.
4. We are granting revocable authority to the purchaser to collect any claims resulting from the further sale of the Retained Goods prior to the purchaser's full payment of the same to us. If requested or required by us, the purchaser shall notify its customer 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 Retained Goods are encumbered or if our rights are adversely affected by third parties in any other way.
6. To the extent that mandatory legal provisions of the Philippines do not allow a retention of title provision within the meaning of Article VI 1-6 of these T&C, but provides for other forms of security to secure payment claims of 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 and other rights with respect to the Retained Goods.

**VII. WARRANTIES / LIMITATION OF LIABILITY**

1. All warranties or conditions not expressly provided herein or otherwise not mandatory under Philippine law are excluded to the fullest extent permitted by law.
2. Subject to Section 1 above, the rights of the purchaser with respect to express warranties or warranties mandated by law covered within the applicable warranty period apply subject to the following conditions and other conditions as may be specified by us upon confirmation of the purchaser's order:
  - (a) To the extent supplied goods are unusable in whole or in part due to defects we will, in our reasonable discretion, either cure the defects at no costs to the purchaser or deliver at no costs to the purchaser replacement goods without defects (collectively, "**Supplementary Specific Performance**"). We shall not be responsible for damages due to natural wear and tear of the goods supplied by us during time of use.
  - (b) Provided the warranty is invoked within the period during which the warranty is operative as provided by applicable law or stipulation, and the terms and conditions of warranty, if any, are

complied with by the purchaser, we will provide Supplementary Specific Performance. In this regard, the purchaser shall grant to us a reasonable period of time and reasonable opportunity to perform Supplementary Specific Performance as may be necessary under the circumstances.

3. We shall be liable only for any and all claims arising from or in connection with sale or use of the goods or products covered by these T&C if such claims are directly attributable to the following events and in each case our liability is limited to actual damages or damages as may be duly proven by the purchaser: -
- (a) Willful breach of our duties;
  - (b) Gross negligence of duties by our authorized representatives or persons employed by us in the performance of our obligations;
  - (c) Willful breach or gross negligence by us directly resulting in injuries to life, body, or health;
  - (d) Fraudulent withholding of information about defect of or guarantees with regard to the specifications of delivered goods;
  - (e) To the extent we cannot be exempt from liability under applicable Philippine law for personal injury or property damage notwithstanding any contrary stipulation in these T&C and/or related agreements.

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 other costs, expenses, loss or other claims for compensation whatsoever which arise out or in connection with the sale and use of the products.

4. The purchaser hereby acknowledges and agrees that our liability is hereby excluded for all other claims or losses unless otherwise covered by Article VII Sections 1, 2 or 3.
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 shown or presented to us at the purchaser's cost. We will, however, bear the costs for shipment back to us only if such shipment takes place at our written 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 gross negligence.
7. The purchaser represents that it has the power, legal capacity and authority to express its conformity with these T&C, enter into a contract and binding agreement with us pursuant to or in connection with these T&C, and perform its obligations under these T&C and any other supplemental agreement or contract we have mutually agreed upon. In relation to the purchase of the goods under these T&C, the purchaser hereby warrants and confirms that these T&C are valid, binding and enforceable against it.

#### **VIII. GUARANTEE / PROCUREMENT RISK**

Unless it is mandatory under applicable laws of the Philippines that certain risks be assumed by us even in the absence of an express designation, to be validly assumed by us, guarantees and procurement risks require (i) a specific assumption of risk expressly designated by us as such, (ii) that they be in writing, and (iii) a statement of the conditions for making such assumption of risk, if any. The purchaser acknowledges and agrees that statements in our catalogues, printed material, brochures and other general information in no event and at no time constitutes a warranty or the assumption of procurement risk.

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

To the extent the scope of delivery by us includes the use of specific 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 them. The software may not be used in connection with goods

other than the specified delivered goods. The granting of sub-licenses by the purchaser is not permitted. The purchaser shall not reproduce, revise, translate or modify the software except as expressly permitted under these T&C, or by us in writing, or otherwise permitted under the laws of the Philippines. 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.

**X. CONFIDENTIALITY**

Each party will keep confidential all information received from the other party and shall disclose the same to its officers, agents, and employees who have a need to know and only in connection with its performance of obligations under these T&C and the delivery and related contracts, or otherwise to any person or entity only upon prior written consent of the other party. This confidentiality provision shall continue to apply after termination of the delivery contract for a period of five (5) years from such termination or, if such information is considered as trade secret under Philippine law, for so long as such information remains a trade secret under Philippine law. The confidentiality obligation provided herein 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) the receiving party later obtains independently and legitimately without being obligated to keep such information confidential, or (iii) is or becomes generally known or part of the public domain without any breach of contract by the receiving party, (iv) required to be disclosed by order of competent court or relevant regulatory authority.

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 maybe reproduced, replicated or transferred to third parties only with the prior written consent of the party making them available.

**XI. TERMINATION AND FORCE MAJUERE**

1. A party may by giving seven (7) calendar days prior written notice to the other party, terminate any purchase order confirmed or approved by us in whole or in part if the other party breaches any terms of the purchase order, fails to perform any of its obligation herein, becomes bankrupt, insolvent or is unable to pay its debts as they fall due. The termination of a confirmed purchase order due to breach or failure to perform shall not affect or automatically cause the termination of other confirmed purchase orders which shall continue to be in effect unless sooner terminated in accordance with the termination provisions hereof.
2. We are not liable to the purchaser or any other party 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, prohibitions or directives of any kind on the part of any governmental, 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 and the period to perform our obligations shall correspondingly be extended to a period equivalent to the period during which the force majeure persisted. However, if the force majeure persists continuously for a period of three (3) months or more, either party may terminate the purchase order affected by such force majeure.

**XII. FURTHER TERMS/MISCELLANEOUS**

1. No right or obligation under these T&C and any contract incorporating these T&C pertaining to a purchase order confirmed by us shall be assigned by the purchaser without our prior written consent. We may assign the performance of any order confirmed or approved by us at any time if we consider such assignment necessary.

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2. In the event of dispute arising from or in connection with these T&C and other related contracts, we and the purchaser agree that such dispute shall be brought before the competent courts of Makati City. Notwithstanding the foregoing, we shall have the right, at our option, to bring actions arising from or in connection with these T&C also at the principal place of business of the purchaser.
3. These T&C and and the contracts incorporating these T&C shall be governed by the laws of Philippines. The application of the United Nations Convention on Contracts for the International State of Goods ("Vienna Convention") is expressly excluded.
4. Our failure to assert, in whole or in part, any rights under these T&C or the delivery contract or our belated assertion of any right shall not be construed as a waiver of this or any other right.
5. If a specific provision of these T&C 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&C 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&C.
6. All communications or notices required under these T&C shall be and shall be delivered:
  - (i) By hand; or
  - (ii) By pre-paid registered post (by first class pre-paid air mail if to or from an address outside Philippines with recorded delivery to the address of each party as set out in the purchase order and order confirmation respectively, 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 the purchase order and order confirmation respectively, or such other number as the addressee may from time o time notify the other party in writing, or
  - (iv) By electronic mail ("**Email**") communication in accordance with the Email address set out in the purchase order and order confirmation respectively , or such other Email address as the addressee may from time to time, have notified the other party in writing.

Communications shall be deemed to have been duly given:

- (i) If given or made by letter, seventy-two (72) hours after posting (exclusive of the day of posting) if sent by one party to another in the Philippines, or if sent to or from an address outside the Philippines, seven (7) days after posting (exclusively of the day of posting);
- (ii) If delivery by hand, 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.

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

Acknowledgement and acceptance by the purchaser:

We hereby confirm that we have read the General Conditions of Sales and Delivery (also referred to as the T&C) and agree to all its terms and conditions. We undertake to comply with all our obligations under the T&C.

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

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