

SCHAEFFLER AUSTRALIA PTY LTD - STANDARD TERMS AND CONDITIONS

The Buyer agrees to purchase the Goods from the Company, and the Company agrees to supply the Goods to the Buyer, on the following terms and conditions.

1. APPLICATION OF THESE TERMS AND CONDITIONS

- 1.1 All orders placed with the Company shall be deemed subject to these Terms and Conditions and will apply to the sale of all Goods by the Company to the Buyer to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document (unless otherwise agreed to in writing by the Company).
- 1.2 An order for Goods will be deemed to be an offer by the Buyer to purchase Goods pursuant to these Terms and Conditions. Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
- 1.3 The Company reserves its right to reject any or all orders made by the Buyer.
- 1.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) will only have effect if agreed in writing by the Company.

2. QUOTATIONS

The Company may, upon the request of the Buyer, provide the Buyer with a Quotation. The Buyer acknowledges that a Quotation is a non-binding approximate quotation only and in no way will a Quotation create any legal or contractual obligations on the part of the Company. All Quotations are subject to change by the Company at any time.

3. PRICE

- 3.1 The Price of the Goods will be the price stipulated in the Company's price list current at the Invoice Date, unless the Company advises the Buyer that there has been an increase to the price stipulated in the current price list.
- 3.2 The Price is net of GST, freight and other costs. The Company will charge and invoice these costs to the Buyer in addition to the Price.

4. PURCHASE ORDER & CONFIRMATION OF ORDER

- 4.1 The Buyer may at any time place orders for the Goods by completing and delivering to the Company a Purchase Order indicating:

- (a) the type of Goods to be supplied;
- (b) the quantity of the Goods to be supplied;
- (c) the date upon which it wishes the Goods to be delivered; and
- (d) the location of the place of delivery for the Goods.

Any amendments or variations to a Purchase Order received by the Company must be approved by the Company in writing to be effective. Purchase Orders received by the Company may not be cancelled by the Buyer without the written consent of the Company.

- 4.2 The Company will, as soon as possible after receipt of the Purchase Order, deliver to the Buyer a Confirmation of Order confirming to the Buyer:

- (a) the type of Goods to be supplied;
- (b) the quantity of the Goods to be supplied;
- (c) the Price and GST payable by the Buyer;
- (d) whether the Company is able to deliver the Goods and, if so, the date upon which the Goods are to be delivered; and
- (e) the cost (if any) of delivering the Goods to the delivery address specified by the Buyer.

5. DELIVERY

5.1. DATES & PLACE

- (a) Delivery of the Goods (if confirmed by the Company in the Confirmation of Order) will be to the delivery address nominated by the Buyer in the Purchase Order.
- (b) The Buyer warrants that an individual will be present at the delivery location to accept delivery of the Goods. If no such individual is present, the Company reserves the right not to deliver the Goods to the delivery address and the Buyer will be liable to pay all of the Company's relevant delivery and storage costs.
- (c) The delivery date stipulated in the Confirmation of Order will be based on normal expectancy and should be regarded as an estimate only. The date of delivery will not be of the essence unless otherwise expressly agreed to in writing by the Company
- (d) The Company will not be liable for late delivery or non-delivery and under no circumstances will the Company be liable for any Loss, damage or delay occasioned to the Buyer or the Buyer's customers arising from late or non-delivery for any reason.

5.2. TERMS

- (a) Delivery will be effected by the Company at the risk to the Buyer,
- (b) Except where to do so would contravene any statute or cause any part of these Terms and Conditions to be void, voidable or unenforceable, and without limiting the effect of clause 9, the Company excludes all liability for any and all Loss suffered or incurred by the Buyer or any third party in connection with the Buyer's purchase, handling, delivery, transport, storage, display, use, disposal, export and on-sale of the Goods from the Company.
- (c) For delivery of the Goods by means of:
 - (i) sea freight; or
 - (ii) express service (including airfreight airmail, air parcel, courier), delivery will be made ex warehouse.All expenses and charges relating to deliveries made via sea freight or express service must be met by the Buyer.
- (d) If the Buyer does not provide details of specific shipping delivery instructions in the Purchase Order which are acceptable to the Company, routing and selection of the shipping carrier will be at the sole discretion and direction of the Company's Shipping Department. The Company's responsibility for delivery ceases when Goods are delivered in good order to selected shipping carrier.
- (e) In the event shipment of the Goods is delayed on the request of the Buyer or as a result of the Buyer's request for a specific means of delivery, the risk in the Goods will pass to the Buyer on the Invoice Date. The Company will be entitled to charge the Buyer all costs arising from the storage of the Goods until the Goods can be delivered by the specified means of delivery at a rate of 0.5% of the Price of each delayed month from Invoice Date.

6. PAYMENT

- 6.1 The Company may stipulate a manner of payment acceptable to the Company prior to fulfilling any order.
- 6.2 The Company will provide the Buyer with a valid tax invoice for each delivery or provision of Goods, including the amount of the Price.
- 6.3 The Buyer must pay the Company the Price, without set-off or deduction, within seven (7) days from the date of invoice.
- 6.4 The Buyer acknowledges that time for payment will be of the essence. The Buyer hereby waives any cross-claim against any Price or other payment due.
- 6.5 The Company reserves the right to charge interest on any late payments until payment is made in full at the rate prescribed from time to time pursuant to clause 10A of the Legal Profession Regulation.
- 6.6 Unless otherwise agreed by the Company in writing, where Goods are sold and/or delivered to a Buyer located outside of Australia, the Buyer must have in place a confirmed letter of credit in favour of the Company with a bank in New South Wales approved by the Company and the Company will have the right to approve the Letter of Credit. The Buyer acknowledges that the Company's payment terms for export orders are irrevocable.

7. TITLE & RISK

- 7.1 Notwithstanding sale and/or delivery of Goods to the Buyer, until the Buyer has made full payment of the Price for such Goods and all other sums due to the Company:

- (a) legal title to, and beneficial ownership of, the Goods will remain with the Company;
- (b) the risk in the Goods will pass to the Buyer on delivery to the Buyer or its agent or collection of the Goods by the Buyer;
- (c) the relationship between the Company and the Buyer will be fiduciary;
- (d) the Buyer will
 - (i) hold the Goods as bailee for the Company;
 - (ii) hold the Goods and any proceeds, rights and claims arising there from to the Company's account and for the Company's benefit
 - (iii) keep the Goods separate for the other Goods; and
 - (iv) label the Goods so that they are identifiable as the goods of the Company.

- 7.2 If the Buyer fails to make full payment of the Price for such Goods and all other sums due to the Company or otherwise breaches any term of these Terms and Conditions, the Company may without demand retake possession of the Goods and may without notice sell and dispose of the Goods on such terms and in such manner as it determines and will be entitled to deduct all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, the Buyer irrevocably authorises and licenses the Company and its servants or agents to enter upon any of the Buyer's premises where any Goods may be stored and to take possession of the Goods. The Buyer may make no claim against the Company in respect of such entry or disposal save to recover any balance due to the Buyer after the Company has disposed of the Goods and recouped all sums due from the Buyer to the Company.

- 7.3 The Buyer acknowledges that legal title to any Converted Goods will pass to the Company and will remain with the Company from the moment the Converted Goods come into existence until the Buyer has paid all sums due to the Company. The provisions in this clause 7 will apply to any such Converted Goods as if they were the Goods themselves.

- 7.4 The Buyer may not in the ordinary course of business sell or otherwise dispose of the Goods or any Converted Goods to a third party. The Buyer must hold the proceeds of any such sale or disposal (and any rights or claims against third parties arising out of such sale or disposal) in a fiduciary capacity for, and to the account of, the Company until the Buyer has paid all sums due to the Company. The Buyer must take all necessary steps to keep such proceeds separate from other monies, to pay such proceeds to the Company and to transfer any such rights or claims to the Company necessary or required to fully discharge the Buyer's indebtedness to the Company.

8. WARRANTY

The Buyer agrees that:

- (a) it has the authority to enter into and perform its obligations under these Terms and Conditions;
- (b) except as provided in these Terms and Conditions, it has not relied on any inducement, representation or statement made or by or on behalf of the Company in purchasing the Goods;
- (c) no warranty, condition, description or representation in relation to the Goods is given by the Company expressly or impliedly by these Terms and Conditions or outside of these Terms and Conditions; and
- (d) all warranties, terms and conditions in relation to the state, quality or fitness of the Goods and of every other kind whether expressed or implied by use, statute or otherwise is excluded to the full extent permitted by law.

9. LIMITATION OF LIABILITY

- 9.1 The liability of the Company for any breach of these Terms and Conditions or for the supply and delivery of the Goods will at all times be limited to the Price paid or payable by the Buyer in relation to the Goods connected with the breach.
- 9.2 To the extent that the Company's liability is not excluded under this clause 9, the Company's liability for any breach of any provisions of these Terms and Conditions (including for any defective Good) shall be limited to one of the following as determined by the Company:
 - (a) the replacement of the Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods; or
 - (d) the payment of the cost of repairing the Goods.
- 9.3 To the fullest extent permitted by law, all warranties, including as to quantity and fitness for purpose, implied or expressed by the common law or under statute are expressly excluded and the Company will in no circumstances be liable for any consequential or special damages whatsoever.

10. DEFECTS & RETURNS

- 10.1 The Buyer will inspect the Goods upon delivery and must within seven (7) days of delivery, notify the Company in writing of any alleged defect, shortage of quantity, damage or failure to comply with the description or Price set out in the Confirmation of Order. The Buyer will give the Company an opportunity to inspect the Goods within a reasonable time of delivery.
- 10.2 If the Buyer does not notify the Company of an alleged defect, shortage of quantity, damage or failure to comply with the description or Price in the Confirmation of Order during the period specified in clause 10.1:
 - (a) the Goods will be conclusively presumed to be in accordance with the Confirmation of Order and these Terms and Conditions and free from any defect or damage; and
 - (b) the Company will not accept Goods returned by the Buyer without written agreement being obtained from the Company.Any Goods returned by the Buyer without the Company's written agreement will be returned to the Buyer and a delivery charge of no more than fifteen percent (15%) of the Price will be payable by the Buyer.
- 10.3 Subject at all times to these Terms and Conditions, the Company shall incur no liability under these Terms and Conditions:
 - (a) unless the Company is notified in writing upon discovery of any alleged defect, shortage of quantity, damage or failure to comply with the description or Price in the Confirmation of Order by the Buyer in accordance with clause 10.1;
 - (b) for any Goods in which the alleged defect is found on examination to have been caused in whole or in part by misuse, neglect, overload, unsuitable lubricant, improper installation or repair, alteration or accident;
 - (c) for any loss of or damage to the Goods in the course of delivery; or
 - (d) for any transport, installation, removal, labour or other costs;
- 10.4 Any shortage of quantity of one percent (1%) or less of the quantity set out in the Confirmation of Order may be disregarded by the Company.
- 10.5 With respect to any Goods not manufactured by the Company, the Company will use its best endeavours to pass onto the Buyer the benefit of any claim made by the Company and accepted by the manufacturer of such Goods under warranty given by the manufacturer.

11. PACKAGING

- 11.1 The Company will charge the Buyer expenses relating to the packaging of the Goods at cost, Clause 10 will not apply to packaging and packaging material is non-returnable.
- 11.2 The method and manner of packaging will be at the Company's sole discretion.

12. SERVICES

- 12.1 Any Service provided or made by the Company is intended for general guidance only and is not in any way guaranteed. The Buyer acknowledges that the Services do not constitute representations inducing the Buyer to enter into a contract with the Company.
- 12.2 The Company hereby disclaims any and all Loss arising either directly or indirectly from any Service or any reliance on the part of the Buyer or an Associate of the Buyer on any Service.

13. INTELLECTUAL PROPERTY

- 13.1 The Buyer acknowledges and agrees that the Company will be the sole owner of all right, title and interest (including copyright) in all drawings, plans, designs, specifications, information, cost estimates and other technical data of, or relating to, the Goods.
- 13.2 The Buyer must not, without the prior written approval of the Company, reproduce or copy (in any format) any drawings, plans, designs, specifications, information, cost estimates and other technical data of, or relating to, the Goods.
- 13.3 The Buyer must immediately, upon the Company's request, return to the Company all drawings, plans, designs, specifications, information, cost estimates and other technical data of, or relating to, the Goods in the Buyer's possession or control and, if requested by the Company, must return or destroy all copies or reproductions of such material.
- 13.4 If requested by the Company, the Buyer must provide a written certification signed by the Buyer or a director of the Buyer confirming that clause 13.3 has fully been complied with.

14. CONFIDENTIALITY

- The Buyer undertakes to the Company that the Buyer will to maintain in confidence (and will ensure that its Associates maintain in confidence) the terms of this Agreement and all other information relating to the Goods (including all drawings, plans, designs, specifications, information, know-how, copyright, industrial property and other technical data of, or relating to, the Goods) and the business of the Company disclosed to the Buyer except that such undertaking does not restrain disclosure of the confidential information as maybe required by law or where the confidential information has entered the public domain other than through the Buyer.

15. INDEMNITY

- The Buyer will at all times indemnify and keep indemnified the Company and its Associates from and against any Loss that the Company and its Associates may pay, suffer, incur or sustain arising directly or indirectly from:
 - (a) any breach by the Buyer of any provision of these Terms and Conditions; or
 - (b) any reliance on a Service provided by the Company; or
 - (c) any act or omission (including any negligent act or omission) of the Buyer or any of its Associates.

16. ASSIGNMENT

- The Company may assign its right or novate its obligations under these Terms and Conditions without the prior written consent of the Buyer. The Buyer may assign its rights under these Terms and Conditions with the prior written consent of the Company.

17. DIRECTOR'S GUARANTEE & INDEMNITY

- In the event the Buyer is a corporate entity, and if requested by the Company, the Buyer will procure the directors of the Buyer to:
 - (a) guarantee to the Company that the Buyer will comply with all of its obligations under these Terms and Conditions at the time they should be complied with;
 - (b) indemnify the Company for all Loss the Company suffers as a result of the Buyer not complying with its obligations under these Terms and Conditions.

18. SPECIAL PRODUCTION

- The Buyer acknowledges that in relation to orders for Goods requiring special production, the Company may provide Goods ten percent (10%) more than or less than the quantity ordered by the Buyer pursuant to the Purchase Order and confirmed by the Company in the Confirmation of Order. In such a case, the Price will be varied accordingly.

17. JURISDICTION

- These Terms and Conditions shall be governed by and construed subject to the laws of the State of New South Wales and shall be deemed to have been made in the State of New South Wales and the parties hereto submit to the jurisdiction of the Courts of the State of New South Wales.

18. DEFINITIONS

- In these Terms and Conditions:
 - (a) Associate means, in respect of a party, that party, its related bodies corporate (as that term is defined in the Corporations Act 2001) and their respective officers, employees, agents and contractors.
 - (b) Buyer means the person or entity who purchases or agrees to purchase Goods from the Company, whether directly for through an agent.
 - (c) Company means Schaeffler Australia Pty Ltd.
 - (d) Confirmation of Order means a document prepared by the Company and delivered to the Buyer confirming the details set out in clause 4.2 of the Terms and Conditions.
 - (e) Converted Goods means goods in the possession or control of the Buyer which have been created in the ordinary course of the Buyer's business, as a result of the Goods having been mixed with other objects or materials or the Goods having been converted into another object, whether by the process of manufacture or otherwise and whether or not such mixture or conversion renders the Goods unidentifiable as the goods of the Company
 - (f) Goods means the goods and associated packaging, which the Buyer agrees to purchase from the Company.
 - (g) GST means the goods and services tax or similar value added tax levied or imposed in Australia under the A New Tax (Goods and Services) Act 1999 (Cth), as amended from time to time.
 - (h) Invoice Date means the date the Company directs its fulfillment officer or contractor to deliver any Goods, as specified on the invoice rendered to the Buyer in respect of the Goods.
 - (i) Loss means all liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis and whether incurred or awarded), legal or otherwise (including fees and disbursements reasonably incurred) of any kind and nature whether arising in contract or tort (including negligence) or under any statute.
 - (j) Price means the total fee payable by the Buyer for the supply of the Goods by the Company.
 - (k) Purchase Order means the order form for the purchase of Goods from the Company, containing the information set out in clause 4.1 of the Terms and Conditions.
 - (l) Quotation means the Company's non-binding estimate of the total Price which will be paid by the Buyer for the supply of the Goods.
 - (m) Service means any service, recommendation, suggestion, advice, proposal, drawing, illustration, description, particulars of weight, measurements, ratings, performance figures and any other information provided or made by the Company to the Buyer in connection with the Goods, whether in technical literature, specifications, brochures, catalogues, price lists or advertising material, or in response to a specific enquiry.
 - (n) Terms and Conditions means the terms and conditions set out in this document.