

**These Trading Terms & Conditions (“Terms”) apply (unless otherwise previously agreed in writing) to the supply of Goods by the SA to a Customer from time to time. Any supply of Goods by the SA to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the SA and any such supply does not give rise to a new or separate agreement.**

## **I. INTERPRETATION**

In these Terms unless the contrary intention appears:

**“Additional Charges”** includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, packaging, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to SA arising out of the sale of the Goods.

**“Customer”** means the person to or for whom the Goods are to be supplied by SA.  
**“Goods”** means the goods sold to the Customer by SA and includes any services provided by SA to Customer.

**“Intellectual Property Right”** means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

**“SA”** means Schaeffler Australia Pty Ltd ABN 18 001 123 208.

**“PPSA”** means the Personal Property Securities Act 2009 (Cth)

**“Purchase Price”** means the list price for the goods as charged by SA at the date of delivery or such other price as may be agreed by SA and the Customer prior to delivery of the Goods.

## **II. QUOTATIONS, ORDER FOR GOODS, ORDER CONFIRMATION**

1. SA may, upon request, provide to the Customer a quotation for the Goods. The Customer acknowledges that any quotation provided is a non-binding approximation only and in no way creates any legal or contractual obligations on the part of the SA. All quotations are subject to change by SA at any time.
2. An order given to SA is binding on SA and the Customer, if:
  - a) a written order confirmation is forwarded to Customer by SA; or
  - b) the Goods are supplied by SA in accordance with the order.
3. An acceptance of the order by SA is then to be an acceptance of these Terms by SA and the Customer and these Terms will override any conditions contained in the Customer’s order. SA reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on SA until accepted by it.
4. An order which has been accepted in whole or in part by SA cannot be cancelled by the Customer without obtaining the prior written approval of SA, which it may refuse in its absolute discretion.
5. The Customer acknowledges that in relation to orders for Goods requiring special production, SA may provide Goods ten percent (10%) more than or less than the quantity ordered by the Customer. In such a case, the Purchase Price will be varied accordingly.

### **III. WARRANTIES**

1. SA liability is limited to, to the extent permissible by law and at SA's option;
  - a) in relation to the Goods:
    - the replacement of the products or the supply of equivalent products
    - the repair of the products
    - the payment of the cost of replacing the products or of acquiring equivalent products; or
    - the payment of the cost of having the products repaired
  - b) Where the Goods are services:
    - the supply of service again; or
    - the payment of the cost of having the services supplied again.
2. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and SA is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
  - a) any increased costs or expenses;
  - b) any loss of profit, revenue, business, contracts or anticipated savings;
  - c) any loss or expense resulting from a claim by a third party; or
  - d) any special, indirect or consequential loss or damage of any nature whatsoever caused by SA's failure to complete or delay in completing the order to deliver the Goods.

### **IV. DELIVERY BY SA**

1. The times quoted for delivery are estimates only and SA accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of SA.
2. Risk in accepting the Goods passes on delivery to the Customer.
3. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
4. The Customer must ensure an individual is present at the nominated delivery location to accept delivery of the Goods. If no individual is present, SA reserves the right not to deliver the Goods and the Customer shall be liable to pay any costs incurred for storage and redelivery of the Goods by SA.

### **V. SHIPPING OF GOODS**

1. Except where to do so would contravene any statute or cause any part of these Terms to be void, voidable or unenforceable, and without limiting the effect of clause 3, SA excludes all liability for any and all loss suffered or incurred by the Customer or any third party in connection with the Customer's purchase, handling, delivery, transport, storage, display, use, disposal, export and on-sale of the Goods from SA.
2. For delivery of the Goods by means of:
  - a) sea freight; or
  - b) express service (including airfreight airmail, air parcel, courier), delivery will be made ex warehouse.

3. All expenses and charges relating to deliveries made via sea freight or express service must be met by the Customer.
4. If the Customer does not provide details of specific shipping delivery instructions in the order which are acceptable to SA, routing and selection of the shipping carrier will be at the sole discretion of SA. SA's responsibility for delivery of the Goods ceases when Goods are delivered to the selected shipping carrier.
5. In the event shipment of the Goods is delayed either on the request of the Customer or as a result of the Customer's request for a specific means of delivery, the risk in the Goods will pass to the Buyer on the date of the invoice rendered by SA. SA will be entitled to charge the Customer costs arising from the storage of the Goods until the Goods can be delivered at a rate of 0.5% of the Purchase Price per month or part of a month from the date of the invoice.

#### **VI. DEFECTS AND RETURNS**

1. Any claims to be made against SA for short delivery of Goods must be lodged with SA in writing within 7 days of the delivery date. The Customer will give SA an opportunity to inspect the Goods within a reasonable time of delivery.
2. Return of Goods will not be accepted by SA except by prior agreement in writing with SA. Any Goods returned by the Customer without SA's prior written agreement will be returned to the Customer and a delivery charge of no more than fifteen percent (15%) of the Purchase Price will be payable by the Customer.
3. Any shortage of quantity of one percent (1%) or less of the quantity set out in the order may be disregarded by SA.

#### **VII. PRICE AND PAYMENT**

1. The Customer must pay the Purchase Price and the Additional Charges to SA.
2. If the Customer is in default, SA may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
3. All payments are due within 7 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by SA.
4. All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

#### **VIII. INTELLECTUAL PROPERTY**

1. The Customer acknowledges and agrees that SA will be the sole owner of all right, title and interest (including copyright) in all Intellectual Property relating to the Goods.
2. The Customer must not, without the prior written approval of SA, reproduce or copy any Intellectual Property relating to the Goods.

3. The Customer must immediately, upon SA's request, return to SA all Intellectual Property relating to the Goods in the Customer's possession or control and, if requested by SA, must return or destroy all copies or reproductions of such material.
4. If requested by SA, the Customer must provide a written certification signed by the Customer or a director of the Customer confirming that clause 8.3 has fully been complied with.

**IX. RETENTION OF TITLE**

1. Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with SA until payment in full for the Goods and all sums due and owing by the Customer to SA on any account has been made. Until the date of payment:
  - a) the Customer has the right to sell the Goods in the ordinary course of business;
  - b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for SA;
  - c) the Goods are always at the risk of the Customer.
2. The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - a) if any payment to SA is not made promptly before the due date for payment;
  - b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to SA is dishonoured;
3. In the event of a default by the Customer, then without prejudice to any other rights which SA may have at law or under this agreement:
  - a) SA or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
  - b) SA may recover and resell the Goods;
  - c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, SA may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of SA and the Customer may be ascertained. SA must promptly return to the Customer any goods the property of the Customer and SA is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for SA. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the SA at the time of the receipt of such proceeds. The Customer will pay SA such funds held in trust upon the demand of SA.

5. Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral as original collateral, or any of it, in favour of the SA.

**X. PERSONAL PROPERTY SECURITIES ACT (“PPSA”)**

1. Defined terms in this clause have the same meaning as given to them in the PPSA.
2. SA and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the SA to claim:
  - a) a Purchase Money Security Interest (“PMSI”) in favour of SA over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
  - b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
3. The goods supplied or to be supplied under these Terms fall within the PPSA classification of “Other Goods” acquired by the Customer pursuant to these Terms.
4. The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of “Account”.
5. SA and the Customer acknowledge that SA, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.
6. To the extent permissible at law, the Customer:
  - a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to SA.
  - b) agrees to indemnify SA on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
    - registration or amendment or discharge of any Financing Statement registered by or on behalf of SA; and
    - enforcement or attempted enforcement of any Security Interest granted to SA by the Customer;
  - c) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;.
  - d) agrees to waive its right to do any of the following under the PPSA:
    - receive notice of removal of an Accession under section 95;
    - receive notice of an intention to seize Collateral under section 123;
    - object to the purchase of the Collateral by the Secured Party under section 129;
    - receive notice of disposal of Collateral under section 130;
    - receive a Statement of Account if there is no disposal under section 132(4);
    - receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.



- receive notice of retention of Collateral under section 135;
  - redeem the Collateral under section 142; and
  - reinstate the Security Agreement under section 143.
- e) All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

## **XI. ON SALE**

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- a) inform any third party involved of these Terms;
- b) inform any third party of the SA's product warranties if any; and
- c) not make any misrepresentations to third parties about the Goods.

## **XII. INDEMNITY**

To the full extent permitted by law, Customer will indemnify SA and keep SA indemnified from and against any liability and any loss or damage SA may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

## **XIII. GENERAL**

1. These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
2. These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
3. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
4. No waiver of any of these Terms or failure to exercise a right or remedy by SA will be considered to imply or constitute a further waiver by SA of the same or any other term, condition, right or remedy.