

**All of our deliveries and services to individuals, companies, legal entities subject to Malaysian law or special assets governed by the Malaysian law are governed exclusively by the following terms and conditions:**

**I. OFFER AND ACCEPTANCE / WRITTEN FORM**

1. The Purchaser hereby agrees and accepts that the General Conditions of Sale and Delivery shall take effect at the time of receipt of our confirmation of the Purchaser's order(s).
2. The Purchaser further agrees that any delivery contract, changes, ancillary agreements, declarations and other agreements regarding any termination, rescission or other declarations and notifications to the extent these terms and conditions do not specify otherwise, become binding only upon our confirmation.
3. The Purchaser further agrees that the terms and conditions of the Purchaser and its agents, servants, representatives and/or affiliates shall neither be applicable nor bind us. Except where we have expressly agreed to be so bound, such deviating terms and conditions do not become part of the sales contract between the Parties hereto, either by acceptance of the Purchaser's order(s) or implicitly by any other act and/or means.

**II. PRICES / PROCESSING FEES**

1. The applicable prices consists of prices and discounts applicable on the date of delivery or performance plus the relevant statutory sales tax.
2. All sales shall be at prices and upon terms established by us and we shall have the sole right to establish, change, alter, or amend prices and other terms and conditions of sale.
3. We shall further 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 will commence only on our confirmation of the following :
  - (i) confirmation of the Purchaser's order; and
  - (ii) final agreement regarding all necessary matters prior to start of production.
2. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
3. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (I) by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**Provided always** in the occurrence of such said events in Article III Sections 2 and 3 above, 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 by written notice within 15 days from occurrence of such event, and of the ending of such event

4. The Purchaser has the right to determine the specific delivery date of a particular delivery volume within a specified time period ("the Agreed Period") subject always that the Purchaser must notify us of the desired delivery date not less than twelve (12) weeks prior to such date. On the expiry date of the Agreed Period, 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.

**V. PACKAGING / SHIPPING / TRANSFER OF RISK**

1. Delivery (base on agreed incoterms in Accounts Opening Form) 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. The Purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.

**VI. PAYMENT**

1. The Purchaser shall ensure prompt payment without any deductions or discount to one of our designated accounts within the agreed credit term. If the Purchaser shall be unable to make payment on the expiry of the Billing Date, the Purchaser shall automatically be deemed to have defaulted the payment unless the Purchaser can prove to our satisfaction that there are circumstances and/or reasons for which the Purchaser is not responsible for such default.
2. The Purchaser further acknowledges and agrees not to withhold any payment(s) then due to us by way of counter claim, counter right or set-off with counter claim or counter right unless such counter claim or counter right are undisputed, or have been judicially determined to be valid by a competent court in Malaysia.

**VII. RETENTION OF TITLE**

1. We own all right, title and interest, including without limitation all copyrights, patents, trademarks, trade secrets and other intellectual property rights, 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 or is built-in 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 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, 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.

#### **VIII. WARRANTIES / LIMITATION OF LIABILITY**

1. The statutory rights of the Purchaser pursuant to the applicable laws in Malaysia 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 such 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. However, such an obligation to bear the direct disassembly and assembly costs does not exist if the costs are incurred outside of Malaysia. 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 and in each case our liability is limited to the foreseeable damages that are typically in transactions of this kind:

  - (a) Willful breach of duties
  - (b) Grossly negligent breach of duties by our statutory representatives or persons employed by us in the performance of our obligations ;
  - (c) Willful or negligent injuries to life, body or health;
  - (d) fraudulent withholding of information about defects or guaranties for the properties of delivered goods;
  - (e) willful or negligent breach of significant contractual duties -- however, in cases of (i) simple negligence or (ii) gross negligence by individuals other than executives , limited to the damages reasonably foreseeable for the relevant type of contract;
  - (f) to the extent we are liable pursuant to the any Malaysian laws in relation to product liability,for personal injury or property damage to privately used objects.
3. Our liability is hereby excluded unless Article III Section 3 or Article VII Sections 1 or 2 provide 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 bar period of 12 months beginning with the delivery of the delivered goods unless applicable mandatory statutory law provides for a longer limitation period.

#### **VIII. GUARANTY / PROCUREMENT RISK**

1. Guarantees and procurement risks 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 that statements in our catalogues, printed material, brochures and other general information in no event and at no time constitutes a guarantee 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 strictly 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. 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**

1. Each party hereby agrees to keep confidential all information received from the other party ("Confidential Information") and further agrees to use the Confidential Information solely in connection with the performance of the contract. This confidentiality provision shall continue 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 where our delivery originates shall be deemed the place of performance.
2. Notwithstanding the foregoing, we will have the right to institute civil action at the principal place of business of the Purchaser.
3. The contractual relationship is governed by the laws of the Malaysia except for the rules governing the conflict of laws.

**General Conditions of Sale and Delivery**  
**Schaeffler Bearings (Malaysia) Sdn. Bhd**



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. 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.

Schaeffler Bearings (Malaysia) Sdn. Bhd