

## General Terms and Conditions for Schaeffler Digital Services, version 01 25.06.2020

### General Terms and Conditions for Schaeffler Digital Services

Schaeffler's performance of Digital Services in form of condition monitoring, analysis services and prediction services (hereinafter "Performance") in relation to any company, commercial entity, legal person of public law with VA identification number as well as in relation to any special funds under public law acting in their capacity as entrepreneur for Value Added Tax purposes (hereinafter collectively called the "Customer") shall be provided subject to and in accordance with the following conditions (hereinafter "GTC").

#### **1 Service Contract formation**

- 1.1 The contract for Performance on the basis of these GTC ("Service Contract") as well as any amendments, supplementary agreements or other agreements shall become effective after the Customer:
  - 1.1.1 either by clicking on a specific check box on the Schaeffler website made available for the subscription for Schaeffler Digital Services (hereinafter "Services"; Schaeffler website hereinafter "Digital Customer Portal") thereby confirming that the Customer has read, understood and agreed to the GTC. The subscription to the Service shall be confirmed by Schaeffler through a confirmation e-mail sent to the Customer's e-mail address given at the registration process for the Customer's Services tenant. Upon the receipt of Schaeffler's confirmation /or the acceptance of the Performance ordered the Customer shall be deemed to have accepted the GTC; or
  - 1.1.2 conclusion of a written contract signed by Schaeffler and the Customer as contracting parties which includes these GTC as an appendix ("Agreement").
- 1.2 Depending on the Services and the product solution offered by Schaeffler, the Customer is allowed to (i) to use the Services for the internal use or (ii) to use the Services as service provider for the analytics of data of its own customers and to pass on and to provide the results of the Performance received from Schaeffler to its own customers as its own contractual obligation on the basis of a contract agreed between the Customer and its own customer, if not regulated otherwise in the description of the respective Services.
- 1.3 Schaeffler shall not be subject to any general terms and conditions of the Customer. Any such terms and conditions are hereby expressly rejected. Such terms shall not become part of the Service Contract by way of the acceptance of an order or by way of any other circumstances implying acceptance. The scope of Performance to be provided shall be determined exclusively by the scope the Customer has selected on the Digital Customer Portal or as set forth in the signed Agreement.
- 1.4 If the Services are sold together with hardware components to be supplied by Schaeffler, the delivery of these components is solely executed (i) on the basis of the Schaeffler General Conditions of Sales and Delivery which are indicated on the Digital Customer Portal unless a separate Framework Agreement exists, (ii) on the basis of the Schaeffler General Conditions of Sales and Delivery which are part of the Agreement or (iii) on the basis of the stipulations as set forth in the Agreement. The provisions of the GTC relating to the use and application of the products and their components shall always apply, regardless of whether the products are ordered by the Customer before, without, simultaneously with or after the conclusion of a Service Contract.

## **2 Types of Schaeffler Digital Services**

The Customer can choose between several types of Services and various subscription models. Detailed descriptions of the scope of Services and applicable price- and payment terms are set out on the Digital Customer Portal or in the Agreement and its appendices.

Schaeffler may at any time amend, update or extend the content of the Services unilaterally at our sole discretion. In the case of functional updates with an impact on the features of the service that requires customization on the side of the Customer, the Customer shall be notified by an e-mail informing on such amendment within 60 (sixty) days before the entry into force of the said amendment. Reference is made to Customer's termination right under section 11.2. Such termination right shall be the only remedy of the Customer regarding the amendment, change or extension of the content. In particular, the Customer shall have no right of refund for any paid fees.

## **3 Obligations for Customer**

- 3.1 For the Performance the Customer shall make available data specified by Schaeffler in the Services description on the Digital Customer Portal or in the Agreement. The Customer shall transmit these data to us via the technical interface as indicated in the Services description. These data are analyzed by Schaeffler. Without adequate provision of data, Schaeffler is not obliged to provide any Performance.
- 3.2 The Customer shall cooperate at its expense in the provision of the contract Performance as necessary and reasonably required by Schaeffler in particular in providing technical support to the necessary extent.

In case the Customer wishes to use the Performance in conjunction with services, including but not limited to condition monitoring services, provided by third parties or devices provided by third parties ("Third Party Services"), the Customer shall be responsible to ensure that such Performance does not violate any rights of the third party providing the Customer with such Third Party Services. In particular, the Customer shall ensure that Schaeffler can use the data that Schaeffler gain from the Performance in conjunction with the Third Party Services as provided in section 5. The Customer shall indemnify Schaeffler and hold Schaeffler harmless against any claim, for damage or loss that such third party may allege has been suffered due to a violation of their rights on the Third Party Services.

- 3.3 Customer is further obliged to:
  - 3.3.1 always provide accurate, complete, current and correct information, in particular all data needed by Schaeffler in order to set up the Customer in Schaeffler's IT systems and all data needed for using Schaeffler's Digital Service solutions;
  - 3.3.2 provide solely and always complete, accurate and correct data (in particular with correct structure, format, bug-free and correctly, especially – without being limited to - if recorded by third party sensors or other third party measuring devices) for the performance of Services ("Data") as specified by Schaeffler in the Services description;
  - 3.3.3 grant Schaeffler access to the Data starting with the duration of the Service Contract; and
  - 3.3.4 designate an Admin-User who is responsible to set up, if necessary, log-in details for Customer's employees as additional users of the Services and oblige its employees to keep their individual log-in data confidential.

- 3.4 Customers shall not:
- 3.4.1 breach the applicable law or commit any illegal conduct through using our Performance in any way;
  - 3.4.2 make available to Schaeffler any information that contain material protected by intellectual property laws, including copyright or trademark laws, or is protected by confidentiality agreements unless the Customer is permitted to do so;
  - 3.4.3 make available to Schaeffler any data of third parties without having the right to grant Schaeffler access to such data as set forth in section 5;
  - 3.4.4 resell the Services to third parties on behalf of Schaeffler; for the avoidance of doubt, the Customer shall not act as Schaeffler's representative in connection with Customer's business relationship with its own customer or to conclude any contracts on behalf of Schaeffler;
  - 3.4.5 disclose or license the results of the Performance to third parties, unless (i) the third party is Customer's customer and Customer is acting as independent service provider in this business relationship, or (ii) unless explicitly approved by Schaeffler in writing beforehand;
  - 3.4.6 make available to the Schaeffler IT infrastructure any viruses, Trojan horses, worms, malware, ransomware or any similar harmful code, software or programs that may damage the Schaeffler IT infrastructure or its affiliated companies' IT infrastructure or computers or property of third parties;
  - 3.4.7 violate the rights of Schaeffler or other Customers or of third parties by way of defamation, abuse, harassment or any other conduct that is illegal under applicable laws; or
  - 3.4.8 harvest, steal or otherwise collect information about Schaeffler, its affiliated companies or other Customers using the Digital Services without permission.
- 3.5 If a SIM-card is provided pre-installed in hardware provided by Schaeffler, only Schaeffler shall have the right to use the SIM-card for the provision of the Services to Customers for their internal use of the results of the Performance only. This right to use the SIM card is not transferred to the Customer. Customers acting as service providers must purchase SIM-cards, if needed, on their own responsibility and in their own name and on their own account and shall reflect and comply with the applicable telecommunication laws in all respects.
- 3.6 Schaeffler reserves the right to claim reasonable compensation resulting from any failure of the Customer to cooperate or if the Customer violates his obligations. Any additional rights shall not be affected thereby. The Customer shall in particular be liable for the correctness of any Data, documentation or other information supplied to Schaeffler, and also in terms of any third party rights related thereto.

## **4 Prices**

- 4.1 The Prices for the Services and various subscription models, in particular subscription and usage fees, shall be fixed and are indicated on the Digital Customer Portal or in the Agreement and depend on the selected type of Services.
- 4.2 In the event of any value added or similar sales tax being due, such shall be detailed expressly in the invoice at the applicable rate at the time of Performance and shall be paid by the Customer in addition to the net price.

## 5 Data

- 5.1 The Services are performed on the basis of data made available to Schaeffler by the Customer, as specified and agreed in these GTC. The Parties agree that the Data shall be available for Schaeffler for the maintenance, the improvement or the further development of Schaeffler Digital Services, also including the use of artificial intelligence. Schaeffler is in this context expressly allowed to freely use and utilize or have used and have utilized any Data on a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sublicensable and assignable basis. Schaeffler is permitted to make available the Data only to other Schaeffler legal entities and/or Schaeffler's subcontractors to the extent that such persons need to know the Data for the Performance or the maintenance or the improvement or the further development purposes of the Digital Services.
- 5.2 Customer warrants that he is entitled to provide Data to Schaeffler for the uses and purposes as described herein and has (or has procured) all the necessary consents, permissions, authorizations or rights Schaeffler may require to use data as described in this section 5, in particular if the Data are provided to the Customer by third parties. The Customer shall indemnify Schaeffler and hold us harmless from any claim, for damage or loss that any authorities or third parties may suffer as a result or in relation to the use of their data in accordance with these terms.
- 5.3 In case the Customer or Schaeffler terminates the Service Contract, Schaeffler shall be able to retain the Data stored by Schaeffler or by Schaeffler's service providers in its current form. Schaeffler or Schaeffler's affiliated companies shall be entitled to freely continue to utilize the Data for the purposes as set forth in section 5.1. The Customer is not entitled to demand an extract or an overview of the Data as made available by him and shall have no right to ask for the deletion or return of any data in case of termination of the Contract with the exception of personal data (as defined in clause 5.5 below) and has no rights in or to the results of any analysis of the Data carried out by Schaeffler..
- 5.4 The Parties shall use appropriate technical and organizational safety measures, which shall satisfy the latest state of technology, to protect such Data.
- 5.5 Section 5.1, 5.2 and 5.3 shall not apply in cases Data are personal data. Personal data shall be Data that are considered as personal data pursuant to the applicable law of the seat of Schaeffler, in individual cases Customer's seat or at the place of operation of Customer's appliances and that are therefore under specific legal protection. In so far as the Data is personal data, both Parties shall comply with the law in effect regarding data protection and shall mutually agree on further steps to ensure compliance to the legally required data protection.
- 5.6 The Data that relates to the intellectual property within Schaeffler products shall be solely owned by Schaeffler.

## 6 Performance and Performance Times

- 6.1 Performance shall be provided in terms of Schaeffler's existing technical and operational capabilities and as specified in the Services description available on the Digital Customer Portal or as set forth in the Agreement. Binding service levels shall be binding only if explicitly specified and confirmed by us in the Services description on the Digital Customer Portal. or if explicitly agreed upon in the Agreement.

Performance shall only be provided subject to the receipt of correct data as specified in these GTC and in the Services description.

## 6.2 Schaeffler's Performance is a provision of services.

We do not accept any responsibility for the achieving of particular results or for a specific type of success in relation to the provision of any Performance.

Further we shall not be liable or accept any responsibility for any failure in Performance to the extent it results from or relates to data which does not comply with the agreed Schaeffler specifications and/or which are not correct, accurate and complete.

The Services are provided on the basis of the data and other information provided by the Customer at a specific point of time. The Service results which include in particular stochastic probabilities are only for the purpose to support decisions of the Customer. The Customer is solely responsible for any decision that he takes on the basis or in context with our Performance and the Service results.

Schaeffler is entitled to arrange for Performance by way of subcontract (subcontractors, suppliers). The parties are free to agree otherwise in a separate contractual agreement.

## 6.3 Any deadline for the completion of Performance shall be considered an estimate and shall only be contractually binding if such a binding nature is expressly agreed with the Customer or explicitly confirmed by Schaeffler. In any case obligation to meet deadlines shall be subject to mutual clarification of all matters related to the Performance as well as a requirement of prompt cooperation as well as technical support of the Customer.

## 6.4 In the event of any unforeseen or unavoidable events in the provision of the Performance as well as in the event of any hindrances, such as (but not limited to) force majeure, labour disputes or any other disruptions in Schaeffler own operations or in the operations of Schaeffler's suppliers as well as in case of any delayed delivery or delayed Performance by Schaeffler's subcontractors, Schaeffler is entitled to extend any Performance deadline by a period corresponding with such hindrance. The Customer shall be notified as soon as possible as to the commencement and end of such circumstances.

## 6.5 The Customer is entitled to claim compensation for delay insofar as Schaeffler is in default and damage has directly resulted to the Customer from such delay. A delay is present if the Digital Service system is not available as agreed by Service Levels explicitly specified and confirmed by Schaeffler or if the results of Performance are not provided to the Customer within the "reaction time" as agreed with the Customer. The compensation shall be 0.5 % of the value of the respective Service (agreed price for the Service, excluding the value of any supplied hardware which may be sold together with the Services as a "bundle" etc.) for each day of delay but totaling no more than 5 % of the value of the respective Service which as a result of delay could not be used in time or in accordance with the contract. Any further claims related to default delay shall be determined exclusively in accordance with article 11. The Customer may rescind from the Service Contract in accordance with the provisions of law only if such delay in Performance is our responsibility.

## 6.6 Compliance with any deadlines for the Performance are subject to all documents, Data and other information to be supplied by the Customer being received in good time, the due provision of cooperation required, as well as compliance with the agreed payment conditions and other obligations. If such prerequisites are not satisfied in good time, Performance deadlines shall be extended accordingly to a reasonable extent.

- 6.7 Any rights resulting from delayed Performance may be exercised by the Customer only after the Customer has issued a notification of delay with a reasonable deadline for compliance and such deadline has expired.
- 6.8 Any partial Performance shall be permitted to a reasonable extent and may be invoiced as such. We are entitled to prepare any partial Performance for acceptance.
- 6.9 All rights in the results of the Performance shall belong to Schaeffler. The Customer shall (subject to any restrictions stated herein) have a non-exclusive, non-transferable, non-sublicensable (save as set out below) right to use such results for its own business purposes. This includes the right to pass on the results to his own customers if the Customer uses the Service as service provider. The disclosure or licensing of the results to other third parties is not permitted. Customer shall have no title or ownership in these results.

## **7 Force Majeure**

- 7.1 In case any force majeure event causes substantial difficulties in the Performance of the contract or temporarily prevents or renders impossible the due Performance of the contract Schaeffler shall not be liable. Force majeure shall mean all events not foreseen by Schaeffler or the Customer which are beyond Schaeffler's control and occur after the formation of the contract including, but not limited to, operational disruptions of any type, fire, natural catastrophes, epidemic or pandemic situations, weather, flooding, war and other military conflicts, uprisings, terrorism, transportation delays, strikes, legitimate lockouts, labour shortages, energy or raw material shortages, delays resulting from the granting of any necessary official permits or resulting, measures of any authority/sovereign, embargos or restrictions or sanctions due to Export Control Regulations or the unforeseen increase of risk, that the fulfilment of any obligations under this Agreement or any Individual Delivery Contract are leading to or could lead to the imposition of sanctions (e.g. secondary sanctions).
- 7.2 Insofar as Schaeffler is hindered or prevented from providing the contractual Performance by reasons of force majeure as described in 7.1 above, such failure shall not be deemed to be a breach of contract and any contractual deadlines shall be extended accordingly for a reasonable period. The same shall apply insofar as any Performance by a third party, in particular suppliers or subcontractors, is delayed in relation to us due to a force majeure event.

## **8 Payment**

- 8.1 Unless otherwise agreed, payment shall be made without any deductions to one of our bank accounts within 30 days of receipt of invoice using an agreed payment method. Depending on the means of payment or the involvement of payment service providers, different payment terms may apply and will be announced on the Digital Customer Portal or will be agreed upon in the Agreement. An invoice shall be deemed to have been received within 3 days after dispatch unless the Customer is able to prove otherwise.
- 8.2 The Customer shall be deemed to be in default in relation to any payment as soon as the Customer has failed to make a payment by the date unless payment has been delayed as a result of circumstances for which the Customer is in no way responsible.

- 8.3 The payment shall be made in full without any deductions except as the Customer is required by law to deduct withholding tax (income tax) from the sum payable to Schaeffler. The Customer shall cooperate with Schaeffler to ensure that the amount of withholding tax required by the law or with regard to agreements for avoidance of double taxation are kept to a minimum and that Schaeffler will obtain a tax credit in respect of the amount withheld. If required by the relevant mandatory law, the Customer shall withhold the relevant taxes and pay them to the competent taxation authorities duly in accordance with the applicable law. In this case, the Customer shall immediately provide to Schaeffler the originals of the relevant tax payment certificates.
- 8.4 All other local taxes (including but not limited to sales-, excise-, business tax), duties or other governmental charges of any kind shall be borne by Customer. The Customer shall “gross up” the payment by an amount such that the grossed up payment, minus the taxes, duties or charges, equals the amount due if no such taxes, duties or charges are imposed on the costs of the services.

The Customer shall not be entitled to exercise any right of set-off or retention of fees in relation to any alleged counter-claim unless such a claim has been confirmed by way of a final binding court judgment

## **9 Warranty for Performance**

- 9.1 Unless otherwise agreed below and insofar as Schaeffler’s Performance is the Performance of a service, the provisions of law shall apply with the following modifications:
- 9.1.1 Schaeffler shall render Performance in accordance with reasonable professional standards
- 9.1.2 Schaeffler does not warrant in particular the useability or merchantability of any results of the services for Customer’s purposes. Schaeffler does not warrant in particular that the Performance and the results are fail-safe, uninterrupted and/or error-free.

## **10 Confidentiality**

- 10.1 The Parties (Schaeffler and Customer) shall keep confidential any information received from the other Party. This duty shall not apply to information already known to the receiving Party by legitimate means at the time of receipt without any duty of confidentiality, or to any information which the receiving Party later becomes aware of by legitimate means without any duty of confidentiality, or to any information which, without a breach of contract by any of the Parties, is or becomes generally known or to any information that is independently developed by a Party without reference to the confidential information. There shall also be no duty to keep information confidential as far as the receiving Party is obliged to disclose the information due to order by a court, an administrative authority or by law.
- 10.2 Each Party is entitled to pass on such information to its affiliated companies to the extent that such are bound by substantially similar confidentiality obligation. The Party sharing information with its affiliate shall be directly liable to the other Party for any breach of these obligations by such affiliated company.
- 10.3 Each Party shall retain title and ownership and any rights to documentation and data carriers made available to the other Party. The copying or passing on of such documentation or data carriers is permitted only with the written approval of the other Party providing the same.

- 10.4 Nothing herein shall limit Schaeffler's right to use and utilize any Data as described in these Terms or use and utilize any results obtained by Schaeffler's use of such Data for the purposes set forth in section 5.1.

## 11 Term and Termination

- 11.1 The contract generated according to section 1 has the term or the minimum term (i) as set forth in the subscription term details as fixed for the subscription model on the Digital Customer Portal or (ii) as regulated in the Agreement. During the minimum term, the termination of the Service Contract for convenience by the Customer shall be prohibited; the Service Contract shall automatically be prolonged by further periods as indicated in the subscription term details on the Digital Customer Portal or as set forth in the Agreement until terminated by 3 months prior written notice to the end of the minimum term or to the end of an extension period. If there is an infinite term for the subscription model, the Customer may terminate the Service Contract, with 3 months prior notice.
- 11.2 Notwithstanding the foregoing, the Customer shall be entitled to immediately terminate the Service Contract in case the Customer does not agree to any changes to the Services, which shall be communicated to the Customer pursuant to section 2.3 of these GTC. Schaeffler shall be entitled to terminate the Service Contract immediately on notice and without liability towards the Customer, if, in its sole discretion, Schaeffler determines that Export Control Regulations or internal export control regulations of Schaeffler, based on such Export Control Regulations, or any changes in such Export Control Regulations (i) render the delivery of Services impossible and delivery seems reasonably impossible for the foreseeable future or (ii) create a risk, as determined by Schaeffler in its sole discretion, that sanctions could be imposed on it for the delivery of Services or fulfilling other obligations under this contract or any individual delivery contract.
- 11.3 Schaeffler shall be entitled to immediately terminate the contract in case the Customer breaches any provisions of the contract including non-payment. Schaeffler is in particular entitled to immediately terminate the contract if the customer pass on hardware provided by Schaeffler with installed SIM-cards to third parties.
- 11.4 Termination for cause shall not be excluded. However each party shall only be entitled to terminate for breach of the agreement if the breaching party has (in respect of a breach capable of remedy) failed to remedy such breach despite having been given reasonable opportunity to do so by the injured party.
- 11.5 Any termination shall be in writing (e-mail to the e-mail address as communicated by the Customer at the registration process or provided by Schaeffler on the Digital Customer Portal).
- 11.6 In case the provisions of these terms have been breached and Schaeffler has terminated the Service Contract, the Customer shall not have any rights in regard to any refunds. Schaeffler shall not be liable for any damages the Customer may suffer due to the termination of the Service Contract in such cases.

## 12 Liability

- 12.1 Unless otherwise agreed in writing, Schaeffler's liability, regardless of the legal basis therefore and notwithstanding any statutory requirements for a claim, shall be subject to the following limitations and exclusions and such shall also apply to our personnel, agents and contractors and other third parties with which we work in relation to the contract Performance.



- 12.2 The restrictions on liability in this section 12 apply to every liability arising under or in connection with the Performance including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Nothing in these GTC limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.4 Subject to clause 12.3. Schaeffler's total liability to the Customer shall not exceed an amount equal to the price paid or payable to Schaeffler for services in the previous 12 months.
- 12.5 This section 12.5 sets out specific heads of excluded loss and exceptions from them:
- a) Subject to 12.4, the types of loss listed in clause 12.5 (c) are wholly excluded by the parties, but the types of loss and specific losses listed in 12.5 (d) are not excluded.
  - b) If any loss falls into one or more of the categories in 12.5 (c) and also falls into a category, or is specified, 12.5 (d), then it is not excluded.
  - c) The following types of loss are wholly excluded:
    - (i) loss of profits;
    - (ii) loss of sales or business;
    - (iii) loss of agreements or contracts;
    - (iv) loss of anticipated savings;
    - (v) loss of use or corruption of software, data or information;
    - (vi) loss of or damage to goodwill; and
    - (vii) indirect or consequential loss.
  - (d) The following types of loss and specific loss are not excluded:
    - (i) sums paid by the Customer to Schaeffler pursuant to the Agreement, in respect of any Goods or Services not provided in accordance with the Agreement;
    - (ii) wasted expenditure;
    - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Agreement. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
    - (iv) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Schaeffler. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, Schaeffler's personnel, regulators and customers of the Customer.

- 12.6 Schaeffler has given commitments as to compliance of the Goods and Services with relevant specifications and warranties within this Agreement. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.7 Unless the Customer notifies Schaeffler that it intends to make a claim in respect of an event within the notice period, Schaeffler shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event shall expire 24 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.8 This section 12. shall survive termination of the Agreement
- 12.9 The price of the Goods has been calculated on the basis that Schaeffler will exclude or limit its liability as set out in the Agreement and the Customer by placing an order agrees that such exclusions and limitations are reasonable and warrants that the Customer shall insure against or bear itself any loss for which Schaeffler has excluded or limited its liability in the Agreement and Schaeffler shall have no further liability to the Customer.
- 12.10 The Digital Services are provided on the basis of network and services and/or components of third party operators or suppliers. While Schaeffler will use reasonable efforts to maintain availability of connectivity as required for the Performance of Digital Services, Schaeffler assumes no liability for failures or malfunctions related to the provision of the Digital Service resulting from outages or other malfunctions in the public telecommunications networks or defective products and components provided by suppliers, used to convey the required M2M-communications. For the avoidance of doubt Schaeffler assumes in no event any liability for Data which are not correct, complete or accurate or which are not complying with the requirements on the Data as set forth in the Service description.

## **13 Guarantee and Impossibility**

- 13.1 The details contained in our catalogues, printed materials, type lists, data sheets and other advertising materials or in specifications, specification sheet or other technical delivery conditions, in certificates (e.g. certificate of compliance) or other forms or documentation or on the Subscription page for Schaeffler Digital Services on the Schaeffler website shall not constitute in any event a guarantee beyond the normal scope of a warranty. Any statements concerning reliability (life period, long-time stability etc.) are statistically-calculated medium values. These are calculated to the best of our knowledge and subject to deviations in individual cases.
- 13.2 Performance shall be provided in terms of our existing technical and operational capabilities.

**14 Indemnification**

Customer agrees to defend, indemnify, and hold Schaeffler and its directors, officers, employees, affiliates and agents harmless and will keep them indemnified from any and all actual or alleged, actions, causes of action, claims, demands, costs, liabilities, expenses and damages (“Claims”) relating to or arising from (i) any violation by Customer of the Service Contract; or (ii) Customer’s violation of any other party’s rights or of applicable law. If any claim subject to indemnification under this section is brought against Schaeffler, or if Schaeffler receives a notification of an intention of a party to make a claim, against it which may reasonably be considered likely to give rise to a liability under this indemnity Schaeffler will promptly notify Customer in writing; provided, however, that failure to give prompt notice will not relieve Customer of its obligations under this section except to the extent that Customer was actually and materially prejudiced by that failure. Customer may not settle any Claim without the prior written consent of Schaeffler. Schaeffler shall not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed), provided that Schaeffler may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to Customer, but without obtaining Customer's consent) if Schaeffler reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect.

**15 Limitation Period**

15.1 The general limitation period for any and all claims of the Customer shall be, particularly in relation to claims arising from defects or defects of title in relation to the Performance of a work, 12 months from the time of the provision of Performance. Insofar as any acceptance procedures are agreed, the limitation period shall begin to run from the time of acceptance.

**16 Export Control**

16.1 In regard to business with Schaeffler products, technology, software, services or any other goods (hereinafter "Schaeffler Items") the Customer strictly complies with all applicable European Union (hereafter “EU”), United States of America (hereafter “US”) and other export control and sanction laws and regulations (hereafter “Export Control Regulations”).

The Customer shall notify Schaeffler beforehand and disclose any information (incl. end-use) necessary for Schaeffler to comply with Export Control Regulations in case Schaeffler items are specifically ordered for use in connection with

- a. any country, territory, person or entity that is subject to any restrictions or prohibitions under the EU, US or any other applicable export control and sanction regulations or
- b. design, development, production or use of military or nuclear goods, chemical or biological weapons, rocket, space or air vehicle applications and means of transportation.

16.2 Schaeffler informs the Customer

- c. that – for the purpose of the US Department of the Treasury’s Office of For-foreign Assets Control (OFAC) regulations on Iran (“ITSR”) and Cuba (“CACR”) – Schaeffler must be treated as a US Person, and therefore

d. that Schaeffler Items shall not– without required prior authorization by the competent US governmental authorities – be used, supplied, exported, re-exported, sold or otherwise transferred, directly or indirectly, to any country or territory that is subject to any restrictions or sanctions of the US government or any person or entity on any sanction list maintained by the U.S. government.

16.3 The fulfillment of the contractual obligations by Schaeffler is subject to the proviso that the applicable Export Control Regulations do not contravene. In such a case, Schaeffler is, in particular, entitled to refuse or withhold the contractual fulfillment without any liability towards the Customer.

## **17 Miscellaneous**

17.1 Any differences or disputes arising from these GTC shall be settled by an amicable effort on the part of the parties to the Agreement. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties to the Agreement so notifies the other party in writing.

17.2 No person who is not a party to the Service Contract (including any customer, employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Service Contract.

17.3 If any attempt at settlement has failed, any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration. It is agreed that:

17.3.1 the tribunal shall consist of a panel of three arbitrators

17.3.2 in default of the parties' agreement as to the arbitrator(s), the appointing authority shall be the Chartered Institute of Arbitrators in London;

17.3.3 the seat of the arbitration shall be London;

17.3.4 the law governing this arbitration agreement shall be English; and

17.3.5 the language of the arbitration shall be English.

17.4 The contractual relationship shall be subject to the law of the England and Wales.

17.5 Any omission or part omission or failure to claim any right arising under this contract in good time shall not constitute a waiver of such right or any other right.

17.6 If a specific provision of these terms and conditions is or becomes ineffective, the remaining terms and conditions shall not be affected thereby. In such case the parties shall replace any ineffective provision with a provision which most closely reflects the commercial purpose of the original ineffective provision. The same shall apply accordingly in case of any omission.

17.7 The parties acknowledge that the Service Contract has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out herein

17.8 Please note that we store and process personal data in according with the requirements of law in the course of commercial transactions.