

In case of any sale undertaken by us any legal relationship between you ("**Customer**" being the person(s), firm or company who purchases the Goods and/or Services) and us ("**Supplier**" meaning Schaeffler (UK) Limited (Registered No: 00556493) Waleswood Road, Wales Bar, Sheffield, S26 5PN, United Kingdom) is subject to the following terms and conditions ("**GTCS**D").

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

1. The GTCS D apply to the contract for the supply of movable goods and services (including deliverables) ordered by the Customer (herein defined as "**Goods**" and "**Services**" respectively), to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. All of these GTCS D shall apply to the supply of both Goods and Services except where application to one or the other is specified.
2. Our GTCS D in their respective current version at the time shall apply as a framework agreement for all future offers and contracts concerning the sale and/or delivery of movable goods or services with the respective Customer, without any need for reference to be made to such in each individual case; in the event that our GTCS D are amended or changed, we shall notify the Customer of such without undue delay.
3. "Order" means any order from the Customer to the Supplier for the supply of Goods and/or Services in such form as the Supplier may determine from time to time. The Order constitutes an offer by the Customer to purchase Goods or Services in accordance with these GTCS D. No Order placed by the Customer shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier or (if earlier) the Supplier commences manufacture of the Goods, their appropriation to the Customer's order or despatch of the Goods to the Customer. Any Order shall be accepted entirely at the discretion of the Supplier, at which point, and on which date the Contract ("**Contract**" means any contract between the Supplier and the Customer for the sale of Goods and/or Services incorporating the GTCS D) shall come into existence ("**Commencement Date**").
4. Any quotation given by the Supplier shall not constitute an offer, and unless agreed otherwise is only valid for a period of 30 Business Days from its date of issue.
5. No purported alteration or variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.
6. The Contract will be subject to these GTCS D to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any electronic communication portal, purchase order, confirmation of order, specification or other document whatsoever and whenever). Neither a lack of an express objection to terms or conditions stipulated by the Customer nor any affirmative action or acceptance of payment for Goods or Services by the Supplier shall be construed as an agreement or acknowledgement of such Customer's terms or conditions.
7. It is the Customer's obligation to ensure that the terms of its Order and any applicable specification are complete and accurate. In these GTCS D "**Service Specification**": means the description or specification for the Services provided in writing by the Supplier to the Customer and "**Goods Specification**": means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
8. The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

**II. PRICES/ SURCHARGE**

1. The price for Goods or Services shall be the price set out in the Order acknowledgement or, if an Order acknowledgement does not exist, the price set out in the Supplier's price list currently in use on the date of delivery or deemed date of delivery of the Goods or Services. The price for the Goods or Services shall be exclusive of any value added tax or other similar taxes or levies. Where value added taxes or similar taxes or levies are statutory applicable, the Customer will pay such amounts in addition to the price for the Goods.
2. The price of the Goods shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods.

3. The Supplier shall have the right to charge the Customer a surcharge where the quantity of Goods in any Order does not meet the minimum order value, or minimum order quantity specified in the relevant price list.

**III. DELIVERY TIMES/ DEFAULT**

1. Any times specified by the Supplier for delivery of the Goods are an estimate only and time for delivery shall not be of the essence.
2. In the event the Supplier is delayed in delivering the Goods, liquidated damages shall be payable by the Supplier as set out in this clause III.2. The liquidated damages payable by the Supplier shall be 0.5% of the value of the relevant Goods that are delayed for each full week of delay, up to a maximum amount of 5% of the value of such Goods. Liquidated damages as set out in this clause III.2. shall be the Customer's sole and exclusive remedy for delay in delivery of the Goods.
3. To the extent that the parties have agreed that a particular volume specified in an Order is to be delivered within a specified time period ("**Agreed Period**") and the Customer has the right to determine the specific delivery date, the Customer shall notify the Supplier of the specific delivery date not less than twelve (12) weeks prior to such date. After the Agreed Period has expired, the Supplier shall be entitled to invoice the Customer for such Goods and deliver the Goods.
4. The Supplier shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. Any delay in delivery or Defect (as defined in clause VII.1. below) in an instalment shall not entitle the Customer to cancel any other instalment.
5. If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
6. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event. "**Force Majeure Event**" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Contract including act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction war, revolution, act of terrorism, riot or civil commotion, strikes, locks outs and industrial action, pandemic failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than three (3) months, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

**IV. PACKAGING/ SHIPPING**

1. Unless expressly agreed otherwise the Goods shall be delivered FCA (Incoterms 2020) from the Supplier's premises as may be advised by the Supplier prior to delivery ("**Delivery Location**"). The time of delivery shall be the time the Supplier notifies the Customer that the Goods are ready to dispatch.
2. The method of packaging and the packaging materials used shall be determined by the Supplier in its absolute discretion.
3. Any reusable packaging shall remain the property of the Supplier and shall be returned by the Customer to the Delivery Location without delay and at no charge to the Supplier.
4. The Customer shall be responsible for any additional costs for express shipping and for the mailing costs for small item deliveries.
5. In case of deliveries between EU member states, including deliveries between EU member states and Northern-Ireland ("Intra-Community Supply") the Customer is obliged to support the Supplier with any reasonable assistance in order to prove the Intra-Community Supply, in accordance with Art. 45a of the Implementing Regulation (EU) No 282/2011. In particular, the Supplier can request a signed and dated confirmation of the Intra-Community Supply containing at least: name and address of consignee, quantity and commercial description of the goods and place and date of receipt of goods to be supplied to the Customer. In addition, the Supplier can request signed and dated documents relating to the transport of the goods, such as a signed CMR document or note, a bill of lading, an airfreight invoice or an invoice from the carrier of the goods; If the Customer does not comply with the aforesaid cooperation obligations, the Customer shall be liable for any damages resulting thereof, including but not limited to compensate any value added tax (VAT) and relating interest or penalties imposed on the Supplier.

**V. PAYMENT**

1. The Customer shall pay all invoices in full and cleared funds without any deduction, or withholding, within thirty (30) days of the date of the invoice unless otherwise agreed in writing. Payment shall be of the essence.
2. In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Invoices shall be deemed received within three (3) days of despatch.
3. All payments shall be in the currency as agreed between the Customer and the Supplier by electronic transfer to the Supplier's bank account as set out in the Contract, or such other bank account as the Supplier may from time to time notify to the Customer.
4. No indulgence granted by the Supplier to the Customer concerning the Customer's obligations under this clause V. shall be or be deemed to be a credit facility but if any such facility is granted to the Customer by the Supplier, the Supplier may withdraw it at its sole discretion at any time.
5. If any sum due from the Customer to the Supplier under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Supplier shall become due and payable immediately and, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
  - (a) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods and suspending delivery of any other goods to the Customer until arrangements as to payment or credit have been established which are satisfactory to the Supplier;
  - (b) appropriate any payment made by the Customer to such Goods or Services (or any goods or services supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit;
  - (c) require the Customer to pay for Goods prior to their collection from the Supplier's place of business; and
  - (d) charge the Customer:
    - (i) interest on the overdue amount from the due date until payment is made in full both before and after any judgment, at four percent (4%) per annum over the Bank of England base lending rate from time to time (accruing daily and compounded quarterly);
    - (ii) the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.
6. The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the price to the Seller.

**VI. RETENTION OF TITLE**

1. Without prejudice to clause V.6 above, full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Supplier (even though they have been delivered and risk has passed to the Customer) until:
  - (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Supplier; and
  - (b) all other money payable by the Customer to the Supplier on any other account or under the Contract or any other contract has been received by the Supplier.
2. Until full legal, beneficial and equitable title to the Goods passes to the Customer:
  - (a) the Customer shall hold the Goods on a fiduciary basis as the Supplier's bailee;
  - (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to the Supplier against all risks for their full value from the date of delivery, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by the Supplier) and are clearly identifiable as belonging to the Supplier and the Supplier shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;
  - (c) the Supplier may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Supplier and the Supplier may repossess and resell the Goods if any of the events specified in clause XI occurs or if any sum due to the Supplier from the Customer under the Contract or on any other account or under any other contract is not paid when due;
  - (d) For the purposes of clause VI.2(c) the Supplier, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice; and

(e) the Supplier shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer;  
but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.

3. In the event that the Supplier notifies the Customer in writing that it intends to exercise its rights contained in clause VI.2(c) (an "**ROT Notice**") to take possession of the Goods, the Supplier and the Customer agree to the following:

(a) upon the earlier of:

- (i) receipt of an ROT Notice; and
- (ii) one of the events set out in clause XI. occurring;

the Customer's right (and for the avoidance of doubt, that of anyone acting on its behalf), to resell or use the Goods (in respect of which title has not passed to the Customer) in the ordinary course of its business, shall, unless agreed otherwise by the Supplier in writing, terminate with immediate effect.

(b) Within three (3) Business Days ("**Business Day**" means any day which is not a Saturday, a Sunday or a bank or public holiday in any part of the United Kingdom;) or such other time period as specified in writing by the Supplier of an ROT Notice being given, the Customer shall give the Supplier reasonable access to their premises and, so far as it is able to any other premises where the Goods are held to enable the Supplier to inspect the goods, and subject to such access being given, such inspection to be completed within seven (7) Business Days.

(c) Within fifteen (15) Business Days of the Supplier carrying out the inspection referred to in clause VI.3(b) above, and subject always to clause VI.3(d) below, the Supplier will give notice in writing to the Customer specifying those Goods in relation to which the Supplier intends to retain ownership of and take possession of in accordance with these GTCS (the "**Uplift Stock**"), and the remaining Goods (if any) in respect of which title will pass to the Customer (subject to clause VI.1).

(d) The Uplift Stock in respect of which the Supplier will retain ownership shall be determined as follows:

- (i) the value of Uplift Stock (determined as set out below) will not exceed the aggregate amount due and owing to the Supplier;
- (ii) for the purpose of calculating the value of the Uplift Stock it shall be valued at an amount equal to the actual sales prices of the Goods when they were sold by the Supplier to the Customer; and
- (iii) any Goods which are not, in the opinion of the Supplier, in a resalable condition in accordance with the Supplier's stock cleanse procedure from time to time applying shall be disregarded and shall not form part of the Uplift Stock.

(e) The Customer agrees to give the Supplier reasonable access to its premises, and so far as it is able shall give the Supplier reasonable access to any premises where the Goods are held for the purposes of removing the Uplift Stock.

4. The Supplier's rights and remedies set out in this clause VI. are in addition to and shall not in any way prejudice, limit or restrict any of the Supplier's other rights or remedies under the Contract or in law or equity.

## **VII. WARRANTIES**

1. "**Defect**" means that the Goods or Services at the time of delivery: (i) do not comply with the Goods Specification and/or Services Specification respectively due to reasons attributable to the Supplier. If the Customer (having the burden of proof) establishes to the Supplier's reasonable satisfaction that there is a Defect in the materials or workmanship of the Goods manufactured or Services provided, then the Supplier shall at its option and sole discretion within a reasonable period of time;

- (a) repair or make good such Defect in such Goods or re-perform such Services free of charge to the Customer (including all reasonable costs of transportation of any Goods or materials to and from the Customer for that purpose); or
- (b) replace such Goods with Goods which are in all respects in accordance with the Contract; or
- (c) provide a refund for the Goods and/or Services or part thereof which were non-conforming to the Contract.

2. Clause VII.1 shall not apply unless the Customer:
  - (a) notifies the Supplier in writing of the alleged Defect within seven (7) days of the time when the Customer discovers or ought to have discovered the Defect and in any event within twelve (12) months of the delivery of the Goods or performance of the Services to the Customer or such other periods as agreed by the Supplier in writing; and
  - (b) affords the Supplier a reasonable opportunity to inspect the relevant Goods and, if so requested by the Supplier and where it is reasonable to do so, promptly returns to the Supplier or such other person nominated by the Supplier a sample of the Goods within fourteen (14) days, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Supplier to have access to the Goods at the Customer's premises or other location where they may be for such purposes.
3. If the Supplier elects to replace the Goods pursuant to clause VII.1, the Supplier shall deliver the replacement Goods at the Supplier's own expense to the Delivery Location and the legal, equitable and beneficial title to the Defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in the Supplier, and the Customer shall make any arrangements as may be necessary to deliver up to the Supplier the Defective Goods which are being replaced.
4. The Supplier shall be under no liability under clause VII.1:
  - (a) in respect of any Defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Supplier's approval;
  - (b) if the total price for the Goods or Services has not been paid by the due date for payment;
  - (c) for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Supplier by the Customer;
  - (d) in respect of any type of use, Defect, damage or wear specifically excluded by the Supplier in writing as not being within the Supplier's responsibility; or
  - (e) if the Customer makes any further use of the Goods after giving notice in accordance with clause VII.2.and performance of any one of the options in clause VII.1. shall constitute an entire discharge of the Supplier's liability under this warranty provision.
5. The Customer will be deemed to have accepted the Goods or Services as being in accordance with the Contract unless:
  - (a) within fourteen (14) days of the date of delivery of the Goods or Services, the Customer notifies the Supplier in writing of any Defect or other failure of the Goods or Services to conform with the Contract (which would be apparent upon reasonable inspection and or testing of the Goods within fourteen (14) days); or
  - (b) the Customer notifies the Supplier in writing of any Defect or other failure of the Goods or services to conform with the Contract within a reasonable time where the Defect or failure would not be so apparent within fourteen (14) days of the date of delivery, failing which the Customer shall not be entitled to reject the Goods or services and the Supplier shall have no liability for such Defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
6. The Supplier reserves the right to amend the Goods Specification or Services Specification provided if required by any applicable statutory or regulatory requirements.
7. The terms of the Contract shall apply to any repaired or replacement Goods or reperformed Services supplied by the Supplier.
8. If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market ("**Recall Notice**") it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.
9. Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.
10. To the extent that the Goods are to be manufactured or Services are to be provided in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights

arising out of or in connection with the Supplier's use of the Goods Specification or Services Specification. This clause shall survive termination of the Contract.

**11. CUSTOMER'S OBLIGATIONS**

12.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

12.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause VII.12.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

**VIII. LIABILITY AND LIMITATION OF LIABILITY**

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 1. The restrictions on liability in this clause VIII. apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 2. Nothing in the Contract 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).
- 3. Subject to clause VIII.2. the Supplier's total liability to the Customer shall not exceed an amount equal to the price paid or payable to the Supplier for the Goods under the relevant Order. The amounts awarded or agreed to be paid under clause III.3. shall count towards the cap on the Supplier's liability under this clause VIII.3.
- 4. This VIII.4 sets out specific heads of excluded loss and exceptions from them:
  - (a) Subject to VIII.3, the types of loss listed in clause VIII.4(c) are wholly excluded by the parties, but the types of loss and specific losses listed in VIII.4(d) are not excluded.
  - (b) If any loss falls into one or more of the categories in VIII.4(c) and also falls into a category, or is specified, VIII.4(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 the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
  - (ii) wasted expenditure;
  - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. 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 Supplier. 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, the Supplier's personnel, regulators and customers of the Customer.
5. The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in VII. 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 Contract.
6. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier 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.
7. This clause VIII. shall survive termination of the Contract.
8. The price of the Goods has been calculated on the basis that the Supplier will exclude or limit its liability as set out in these GTCSD, 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 the Supplier has excluded or limited its liability in these GTCSD and the Supplier shall have no further liability to the Customer.

**IX. INTELLECTUAL PROPERTY RIGHTS**

1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
2. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
3. In case software is included within the Goods, the Supplier hereby grants to the Customer 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 by the Customer is not permitted.
4. The Customer shall not copy any software included within the Goods, or any part thereof or modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights ("**Intellectual Property Rights**" means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing) in the software except to the extent permitted by any applicable laws.

**X. CONFIDENTIALITY**

1. **“Confidential Information”** means the provisions of the Contract and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the Commencement Date. The Customer shall keep and procure to be kept secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under or relating to the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the Supplier.
2. The obligations of confidentiality in this clause X. do not extend to any Confidential Information which the Customer can show:
  - (a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under the Contract; or
  - (b) was in its written records prior to entering into the Contract and not subject to any confidentiality obligations; or
  - (c) was or is disclosed to it by a third party entitled to do so; or
  - (d) the parties agree in writing is not Confidential Information or may be disclosed; or
  - (e) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
3. The Customer shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of the Supplier.

#### **XI. TERMINATION**

1. The Supplier may immediately terminate the Contract without payment of compensation or other damages caused to the Customer solely by such termination by giving notice in writing to the Customer if any one of the following events happens:
  - (a) the Customer fails to pay any sum payable under the Contract within seven (7) days of its due date;
  - (b) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - (c) the Customer commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after thirty (30) days of having been required in writing to remedy or desist;
  - (d) the Customer:
    - (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
    - (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
    - (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
    - (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
    - (v) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
    - (vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
    - (vii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
    - (viii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this clause XI.1(d); and/or;
  - (e) the Customer ceases or appears in the reasonable opinion of the Supplier likely or is threatening to cease, to carry on all or a substantial part of its business.

#### **XII. CONSEQUENCES OF TERMINATION**

1. On termination of the Contract:
  - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of the Supplier Materials and any deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises

and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

**XIII. EXPORT CONTROL**

1. Customer shall observe and comply with export control regulations of the EU, the US or all other applicable export control laws and regulations. The Customer shall also observe and comply with all obligations and restrictions in the context of export regulations as imposed on the Customer by the Supplier.
2. The Customer shall inform the Supplier in advance if goods, technology, software or services (hereinafter "**Schaeffler Items**") are ordered from Supplier for use in connection with (i) a country or territory, a natural or legal person subject to restrictions and sanctions of Germany, the EU, the USA or other applicable export control laws and regulations or sanction laws and regulations or (ii) the construction, development, production or use of military or nuclear goods, chemical or biological weapons, missiles, space or aircraft application and launching systems therefor.
3. The Customer acknowledges (i) that for the purpose of the US Department of the Treasury's Office of Foreign Assets Control (OFAC) regulations on Iran ("ITSR") and Cuba ("CACR") Schaeffler must be treated as a US Person, and therefore (ii) that Schaeffler Items shall not without 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.
4. The Customer shall indemnify and hold harmless the Supplier from any and all claims by third parties that may arise directly or indirectly from the violation of export control regulations or instructions given by the Supplier pursuant to this Agreement. In particular the Customer must issue to Supplier upon request end user certificates or, if applicable, international import certificate necessary for the application of an export license. In no case shall Supplier be liable for any damages incurred by Customer due to Customer's failure to issue such documents.
5. The Supplier shall be entitled to suspend performance of its obligations under these GTCSD or any Contract with no liability towards the Customer in the event that fulfillment is in conflict with applicable national or international export control laws and regulations or internal restrictions of the Supplier based on such regulations. The Customer shall disclose to the Supplier any information necessary for the Supplier to comply with such regulations and restrictions in the individual case.
6. The Supplier shall be entitled to cancel the Contract(s) immediately and without liability towards the Customer, if changes in applicable national or international Export Control laws and regulations or internal export control regulations of the Supplier, which are based in such laws and regulations, render the delivery of Goods or Services impossible or unlawful, and delivery is likely to be unlawful or reasonably impossible for the foreseeable future.

**XIV. MISCELLANEOUS**

1. The place from which the Supplier's delivery originates shall be deemed to be the place of performance.
2. All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.
3. The Contract, these GTCSD and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by and construed in accordance with the Law of England and Wales.
4. No person who is not a party to the Contract (including any 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 Contract.
5. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.
6. **Entire Agreement**

- (a) The Contract contains the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter.
- (b) The parties acknowledge that the 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 in the Contract.
- (c) Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.
- (d) All warranties and conditions, terms and conditions not set out in the Contract whether implied by statute or otherwise are excluded to the extent permitted by law.
- (e) Nothing in this clause XIV.6 will exclude any liability in respect of misrepresentations made fraudulently.

**7. Precedence**

In the event of a conflict between the Supplier's acknowledgment of order and these GTCSD, the Supplier's acknowledgment of order shall take precedence.

**8. Waiver**

The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Contract shall be in writing. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**9. Severability of Provisions**

If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract, and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

**10. Notices**

- (a) Any notices sent under the Contract must be in writing.
- (b) Notices may be served by personal delivery, registered postal service or normal mail. The notices shall be deemed to have been delivered on the third business day after posting in case of registered postal service and on the fifth business day after posting in case of normal mail.

11. The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible. References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.

12. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.