

Purchase Order Terms and Conditions



1. ACCEPTANCE

Seller has read and understands this order (the "Order") and agrees that Seller's written acceptance or commencement of any work or service under this Order shall constitute Seller's acceptance of these terms and conditions and all aspects of this Order (including products, services, quantities, prices and delivery terms in total) only. Seller understands and acknowledges that this Order is expressly contingent upon Seller's acceptance of all terms hereof, including but not limited to Seller's implied warranty liability. All terms and conditions proposed by Seller which are different from or in addition to this Order are expressly rejected by Schaeffler Group USA Inc. ("Buyer") and shall not become a part of this Order. Any modifications to this Order shall be made in accordance with Paragraph 24. IF THIS ORDER HAS BEEN ISSUED BY BUYER IN RESPONSE TO AN OFFER AND IF ANY OF THE TERMS HEREIN ARE ADDITIONAL TO OR DIFFERENT FROM ANY TERMS OF SUCH OFFER, THEN THE ISSUANCE OF THIS ORDER BY BUYER SHALL CONSTITUTE AN ACCEPTANCE OF SUCH OFFER SUBJECT TO THE EXPRESS CONDITION THAT SELLER ASSENT TO SUCH ADDITIONAL AND DIFFERENT TERMS HEREIN AND ACKNOWLEDGE THAT THIS ORDER CONSTITUTES THE ENTIRE CONTRACT BETWEEN BUYER AND SELLER WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THE SUBJECT MATTER OF SUCH OFFER. SELLER SHALL BE DEEMED TO HAVE SO ASSENTED AND ACKNOWLEDGED UNLESS SELLER NOTIFIES BUYER TO THE CONTRARY IN WRITING NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF THIS ORDER.

2. SHIPPING, BILLING AND FLSA CERTIFICATION

Seller agrees to (a) properly pack, mark and ship goods in accordance with the requirements of Buyer and carriers in Order to minimize transportation cost; (b) route shipments in accordance with instructions from Buyer; (c) not charge for handling, packaging, storage transportation or drayage of goods unless otherwise stated in this Order; (d) provide with each shipment packing slips, in English, listing all items contained in the shipment and with Buyer's order number marked thereon; (e) to properly mark each package with this Order number, the factory, and where multiple packages comprise a single shipment, to consecutively number each package; and (f) promptly forward the original bill of lading or other shipping receipt in accordance with Buyer's instructions. Seller will include on bills of lading or other shipping receipts correct classification identification of the goods shipped in accordance with Buyer's instructions and carrier's requirements. International shipments shall be accompanied by all necessary documentation to allow legal entry and customs clearance into country of destination. Seller further agrees to (a) promptly render, after delivery of goods or performance of services, correct and complete invoices to Buyer; and (b) accept payment by check or, at Buyer's discretion, other cash equivalent (including electronic transfer of funds). Seller hereby warrants and represents that all goods were produced in compliance with the applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulation and orders of the United States Department of Labor issued in connection therewith. Invoices for international shipments shall itemize all non-dutiable charges. All items shipped to the United States from another country shall be marked with their country of origin in accordance with U.S. Customs requirements. Any U.S. Customs or other penalties or charges or other losses or costs incurred, which result from lack of adequate documentation or marking of the contents of a shipment shall be paid or reimbursed by Seller, at Buyer's option. The payment date is set forth on the face side of this Order, or if not stated, shall be on the 25th day of the month following Buyer's receipt of a proper invoice (except as may otherwise be agreed upon by Buyer and Seller in connection with a program providing for electronic funds transfer). Time for payment shall not begin until correct and complete invoices are received, and Seller's cash discount privileges of Buyer shall be extended until such time as payment is due. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances and claims on the goods or services under this Order. If Seller provides goods to Buyer in returnable, reusable packaging, and Buyer returns such packaging to Seller, Buyer shall be credited with the full value of the packaging material.

3. DELIVERY SCHEDULES

Deliveries shall be made both in quantities and at times specified in Buyer's schedules. Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for goods or services

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covered by this Order. For Orders of goods where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and at such times as Buyer may direct in subsequent releases of the schedules. Unless specifically stated in this Order, Buyer shall not be required to only purchase the subject goods and services from Seller.

4. PRICE

Seller warrants that the prices for the Goods and the Services are and shall remain not less favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services in the same or substantially similar quantities and delivery requirements. If Seller reduces the prices of such same or substantially similar goods or services during the term of this Order, Seller shall reduce the prices of the Goods and the Services correspondingly. Seller further warrants that the prices in this Order shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any foreign exchange rate changes, increases in raw materials costs, inflation, increases in labor and other manufacturing costs.

5. PREMIUM SHIPMENTS

If Seller fails to meet Buyer's delivery requirements, Buyer shall have the right to request a different method of transportation. Seller shall bear any additional costs resulting from such request.

6. INSPECTION

Seller agrees that Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by this Order. Buyer's inspection of the goods shall not constitute acceptance of any work-in-progress or finished goods.

7. CHANGES

Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to drawings, designs or specifications of the goods or to otherwise change the scope of the services covered by this Order, and Seller agrees to promptly make such changes. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by written agreement between Seller and Buyer. Seller shall notify Buyer immediately of any planned changes in (i) the manufacturing process or (ii) the place of manufacturing by Seller or by subcontractors of Seller and in (iii) materials used for manufacturing by Seller. Any such change requires Buyer's prior written consent.

8. NONCONFORMING GOODS

If any goods or services do not conform to Buyer's requirements under this Order, Buyer may, at its option, reject the defective goods, the entire lot of goods received, or the defective services. Unless Buyer agrees otherwise at the time of rejection, Seller's right to cure shall be limited to delivering conforming goods within five (5) days after any such rejection. If Buyer rejects or cancels two or more separate lots of goods or provisions of services, it may also, at its sole election (i) cancel any undelivered lots or unprovided services, (ii) purchase elsewhere and charge Seller with any loss, damage, and expenses incurred by Buyer, (iii) require the correction of such goods or services at the location of such item at the time the defect is discovered or where such Services were to be provided, at Seller's risk and expense: (iv) replace or correct the defective goods or services and charge Seller for the cost of such replacement or correction (v) accept the defective goods or services and charge Seller for the amount that in the Buyer's reasonable judgment, represent the difference between the fair value of the rejected goods or services and their value if they had complied with this Order. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

9. SETOFF

Buyer may setoff any amount due from Seller, or its affiliates, to Buyer or its affiliates, whether or not under this order, from any amounts due to Seller or its affiliates under this order.

10. WARRANTY

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Seller expressly warrants that all goods or services covered by this Order will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship, free from all liens, claims and encumbrances and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this Order which have been selected, designed, manufactured, or assembled by Seller, based on Buyer's stated use, will be fit and sufficient for the particular purposes intended by Buyer.

11. CANCELLATION FOR BREACH

Buyer reserves the right to cancel all or any part of this Order, without liability to Seller, if Seller (a) repudiates or breaches any of the terms and conditions of this Order, including Seller's warranties, (b) fails to perform services or deliver goods as specified by Buyer; or (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods; provided Seller does not correct such failure or breach within ten (10) days after receipt of written notice from Buyer specifying such failure or breach.

12. TERMINATION

Buyer may, at any time, upon reasonable notice in writing, terminate this Order in whole or in part. Such notice shall state the extent and effective date of termination and upon the mailing or delivery thereof to Seller, Seller will, in accordance with such notice, terminate work hereunder and under any orders, and/or property in Seller's possession in which Buyer has or may acquire an interest. Upon such termination, Buyer's obligation to Seller shall be limited to payment for (1) the goods completed in accordance with the terms hereof and not previously paid for, (2) the actual cost incurred by Seller which are properly allocable under recognized commercial accounting practices to the terminated portion of the contract, including Seller's obligations to subcontractors which are so allocable (but excluding any charge for interest or goods which may be diverted to other orders), provided, however, that the total payments which Buyer is obligated to make hereunder shall not exceed the Order price of goods to which such termination applies. Termination by Buyer hereunder shall be without prejudice to any claims which Buyer may have against Seller.

13. NON-ASSERTION OF CLAIMS AND INDEMNIFICATION

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this Order. Seller shall indemnify, defend and hold harmless Buyer, its subsidiaries and affiliates and their respective directors, officers, agents, employees, and customers against any and all liability for the injury or death of any person, damage to property, or any other loss arising from or relating to nonconforming goods or services or other breach of the terms and conditions of this Order. This indemnity shall apply, without limitation, to any claim based upon (i) improper manufacture, materials, construction, and/or design, (ii) failure to comply with specifications, (iii) the failure of goods to comply with any express or implied warranty or other provisions of this Order, or (iv) violation of any federal, state, or local statute, rule, regulation, ordinance, or government order. Seller shall also indemnify, defend and hold harmless Buyer and its officers, agents, employees and customers against any claims, losses, damages or expenses resulting from the acts or omissions of Seller, its officers, agents or employees. Any indemnification under this Section 13 shall include reasonable fees and out-of-pocket expenses of counsel.

14. REMEDIES

The rights and remedies reserved to Buyer in this Order shall be cumulative and in addition to all other remedies provided in law or equity, including, without limitation, any rights to obtain incidental and consequential damages.

15. INSURANCE

(a) Seller shall maintain and carry: (i) property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverages; and (ii) workers' compensation and employers' liability insurance covering all employees engaged in the performance of this Order; in each case in such amounts and with such limits (subject to subparagraph (c)) and with such insurers that are reasonably acceptable to Buyer.

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(b) Unless otherwise expressly stated in this Order, Seller's liability insurance policies shall have combined single limits of no less than U.S. \$5,000,000 per occurrence and in the aggregate; provided that such limits shall not limit Seller's liability under this Order. Seller's property insurance policies shall be written on a "replacement cost" basis and Seller's workers' compensation policies shall be in compliance with applicable statutory requirements and limits.

(c) Seller shall furnish Buyer with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within ten (10) days of Buyer's request. Any such certificate shall provide for terms and conditions satisfactory to Buyer whereby, among other things: (i) the interest of Buyer in such insurance coverage has been recognized, whether by way of designating Buyer as loss payee or otherwise, as may be requested by Buyer from time to time; and (ii) Buyer will receive not less than thirty (30) days prior written notice from the insurer before any termination or reduction in the amount or scope of coverage can occur, with Buyer having the right, but not the obligation, to maintain such insurance coverage prior to the expiration of such notice. The receipt or review of such certificates or other proof of insurance coverage at any time by Buyer shall not relieve Seller from its insurance obligations hereunder or reduce or modify such insurance obligations.

16. CONFIDENTIALITY

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this Order, or use any trademarks or tradenames of Buyer in Seller's advertising or promotional materials. All drawings, specifications and data (the "Confidential Information") furnished to Seller shall remain the property of Buyer and shall not be disclosed or used except as required by law or by this Order. Seller shall not make any copies, notes in any form or media with respect to the Confidential Information. Seller shall not divulge, publish or reproduce in any way in any media an in any way make known to any other person, firm, corporation, or other entity any of the Confidential Information, or retain our use the Confidential Information, directly or indirectly for Seller's benefit or that of any other person, firm, corporation or entity without the prior written consent of Buyer.

17. GOVERNMENT COMPLIANCE

Seller agrees to comply with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this Order, including but not limited to the Occupational Safety and Health Act of 1970 (P.L. 91-596, as amended) and the Toxic Substance Control Act (P.L. 99-469, as amended).

18. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

This Order incorporates by reference, to the extent mandated by law: (a) all provisions of 41 C.F.R. 60-1.4, as amended, pertaining to the equal opportunity clause in government contracts; (b) all provisions of 41 C.F.R. 60-250, as amended pertaining to affirmative action for disabled veterans of the Vietnam Era; and (c) all provisions of 41 C.F.R. 60-741, as amended, pertaining to affirmative action for handicapped workers. Seller certifies that it is in compliance with all applicable provisions of 41 C.F.R. 60-1, including but not limited to: (a) developing and presently having in full force and effect a written affirmative action compliance program for each of its establishments as required by 41 C.F.R. 60-1.40, as amended; (b) filing EEO-1 Reports as required by 41 C.F.R. 60-1.7, as amended; and (c) neither maintaining segregated facilities nor permitting its employees to perform services at segregated facilities as prohibited by 41 C.F.R. 60-1.8 as amended. Buyer requests that Seller adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion or national origin.

19. INTELLECTUAL PROPERTY

Seller warrants that any goods furnished to Buyer will not infringe, or induce any third party to infringe, on any United States or foreign patent, trademark, copyright or mask work right by reason of their manufacture, use or sale, and will not misuse or misappropriate any trade secret (collectively, the "Infringement"). Seller agrees to defend, hold harmless and indemnify Buyer, its subsidiaries and affiliates and their respective customers, officers, directors, agent and employees from and against all such claims, demands, losses, suits, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of any suit, claim or action for actual or alleged Infringement by reason of the manufacture, use or sale of the goods or services ordered. If Seller

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delivers goods that violate this Section 19, Buyer shall have the right to reject such goods and return them to Seller at Seller's expense and Seller shall provide within five (5) days goods that are not in violation of this Section 19.

20. NO IMPLIED WAIVER

The failure of Buyer at any time to require performance by the Seller of any provision of this Order shall in no way affect the Buyer's right to require such performance at any time thereafter, nor shall the waiver of Buyer of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

21. NON-ASSIGNMENT

Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent.

22. TOOLING

If Buyer provides models, drawings, patterns, molds, jigs, fixtures, tools, measuring instruments or any other documents or equipment related to the production process, such items will remain the property of the Buyer, must not be duplicated without permission and must be returned to the Buyer upon request. Such items must be properly and continuously maintained and fully insured by the Seller until such items are returned to the Buyer.

23. FORCE MAJEURE

Neither Party shall be held responsible for any failure to perform its obligations hereunder in whole or part due directly or indirectly, without limitations, including but not limited to war, floods, acts of God, accidents, shortage of transportation, regulations of any kind, strikes or labor troubles or any other causes of a similar nature. Occurrence of any of the above shall excuse Buyer from further performance under this Agreement, or at Buyer's option, extend the time of performance under this Agreement until such issues are resolved.

24. GOVERNING LAW

In the case of domestic Orders, this Order is to be governed by and construed according to the laws of the State of South Carolina without regard to any principles of conflicts of law. In the case of international Orders, the rights and obligations of the parties under this Order shall not be governed by, or construed in accordance with, the provisions of the 1980 U.N. Convention of Contracts for the International Sale of Goods; rather, these rights and obligations shall be governed by, and construed in accordance with, the laws of the State of South Carolina, U.S.A., including its provisions of the Uniform Commercial Code and excluding provisions of the U.N. Convention.

25. SEVERABILITY

The invalidity or unenforceability of any particular provision of these terms and conditions shall not affect the other provisions hereof, and these terms and conditions shall be construed in all respects as if such invalid or unenforceable provision were omitted.

26. ENTIRE AGREEMENT

This Order, together with the schedules or any other document specifically referenced in this Order, constitutes the entire agreement between Seller, and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This Order may only be modified by written agreement between the parties.

Schaeffler Group USA Inc.