

**Schrader International GmbH**  
**Aftermarket Terms and Conditions of Sale and Delivery 2016**

**1. Definitions**

**1.1** For the purposes of these Aftermarket Terms and Conditions of Sale and Delivery ("**Terms of Delivery**"):

- "**Seller**" means Schrader International GmbH;
- "**Goods**" means the goods to be delivered by Seller;
- "**Buyer**" means the party to which the Goods are sold by Seller;
- "**in writing**" excludes e-mail, unless and to the extent expressly provided otherwise.

**2. Scope of Application**

**2.1** Sales and deliveries by Seller shall be made exclusively in accordance with the following Terms of Delivery, which shall be accepted by Buyer by the placing of an order or the receipt of delivery by Buyer.

**2.2** These Terms of Delivery shall also apply to all future transactions regarding Goods with Buyer.

**2.3** The application of Buyer's conflicting or supplementary terms and conditions shall be excluded, even if Seller does not expressly object to such terms and conditions.

**3. Order and Acceptance**

**3.1** Offers by Seller shall be non-binding. Buyer's orders shall be in writing. A contract shall not become effective until it has been confirmed by Seller in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery.

**3.2** Verbal agreements or promises shall only be valid if an authorised employee of Seller has confirmed them in writing.

**4. Field Staff**

The field staff of Seller is not authorised to represent Seller. In particular, the field staff cannot conclude contracts and make binding promises concerning the Goods or other conditions.

**5. Sales Documentation and Samples**

Seller retains all rights in the sales documentation (in particular pictures, drawings, data on weight and size) and samples. These items must not be made available to third parties and must be returned to Seller without undue delay on demand.

**6. Prices**

**6.1** Unless the parties have agreed upon a certain price, the price shall be determined by Seller's price list as applicable at the date of the conclusion of the contract.

- 6.2** All prices of Seller are Ex Works (Incoterms in its latest version) of the respective plant of Seller exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. Buyer shall bear any public charges such as possible customs duties that may arise in connection with the import of the Goods.
- 6.3** If the agreed delivery date is more than four (4) months later than the conclusion of the contract and if, after conclusion of the contract, Seller has incurred unforeseeable cost increases with regard to the Goods for which it does not bear responsibility, Seller shall be entitled, at its reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis.
- 6.4** With regard to long-term contracts concluded with Buyer, in particular long-term supply contracts, Seller is entitled to reasonably increase its prices with effect from the first day of January of any calendar year if and to the extent Seller's costs for the Goods increased during the previous calendar year. Seller shall inform Buyer in writing of the intended increase at least eight (8) weeks before it will take effect.

## **7. Terms of Payment; Invoices**

- 7.1** Each invoice of Seller shall be due for payment without any deductions within thirty (30) days from the date of invoice; if this period for payment lapses unsuccessfully, Buyer shall be in default.
- 7.2** Payments by Buyer shall not be deemed to have been made until Seller has received such payment.
- 7.3** In the event that Buyer is in default, Seller shall be entitled to demand default interest in the amount of eight (8) percentage points above the base rate as defined in Section 247 BGB. Any claims for further damages due to said default shall remain unaffected.
- 7.4** Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for Seller.
- 7.5** Seller is entitled to issue partial invoices for partial deliveries as defined in Section 10.6 hereof.

## **8. Set-off and Right of Retention**

Buyer is only entitled to a set-off if its counterclaim is uncontested by Seller. Buyer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested by Seller.

## **9. Prepayment**

If Seller becomes aware of the risk of Buyer's impossibility to perform (*mangelnde Leistungsfähigkeit*) after conclusion of the contract, Seller shall be entitled to make outstanding deliveries only against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiry of a reasonable grace period, Seller may partially or totally rescind individual or all of the affected contracts. Seller shall remain entitled to assert further rights.

## **10. Delivery**

- 10.1** Delivery dates and delivery periods are only binding if they have been agreed in the contract as binding and Buyer has provided Seller in a timely manner with all of the information or documentation required for the performance of such delivery and Buyer has made any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of order. In the event of additional or supplementary contracts entered into at a later date, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.
- 10.2** Events that are unforeseeable, unavoidable and outside the control and sphere of influence of Seller and for which Seller does not bear responsibility shall release Seller for the duration of such event from its obligation to make timely delivery or to perform timely; in particular, acts of God, war, natural disasters and labor disputes shall be considered to be such events. Delivery and performance periods and dates, as the case may be, shall be extended or rescheduled, as applicable, by the length of such disturbance, and Buyer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two (2) months, each party is entitled to rescind the contract.
- 10.3** With regard to Goods that Seller itself does not produce, the obligation to deliver shall be subject to Seller's correct and timely receipt of such Goods from its suppliers.
- 10.4** If deliveries by Seller are delayed, Buyer shall only be entitled to rescind the contract if (i) Seller is responsible for the delay and (ii) a reasonable grace period set by Buyer has expired.
- 10.5** Should Buyer be in default of the acceptance of delivery or should he be in breach of any other obligations to cooperate with Seller, Seller shall be entitled, without prejudice to its other rights, (i) to reasonably store the Goods at Buyer's risk and expense or (ii) to rescind the contract in accordance with statutory law.
- 10.6** Seller may make partial deliveries for good reason if and to the extent this is reasonable for Buyer.

## **11. Shipment; Passing of Risk; Transport Insurance**

- 11.1** Unless otherwise agreed in advance, Seller shall ship the Goods to Buyer at Buyer's expense and risk. The shipment shall be made using a reasonable method of shipment in the usual manner of packaging. The address for shipments to Buyer shall be the address that is used by Seller for regular communication to Buyer unless otherwise designated by Buyer in writing.
- 11.2** Risk shall pass to Buyer upon delivery at the agreed place of delivery. Should Buyer be in default of acceptance, risk shall pass to Buyer upon default. If, in case the Goods shall be collected by Buyer or a third party authorised by Buyer, and delivery is delayed on grounds for which Buyer is responsible, risk shall pass to Buyer on the date Buyer is notified of the readiness of the Goods for shipment.
- 11.3** Buyer shall be obliged to inspect the Goods upon receipt for visible transport damages and to inform Seller immediately about any such transport damages in order to enable Seller to secure its potential claims against the carrier. Buyer shall, at Seller's discretion, promptly return or prepare for pick-up by Seller any damaged Goods received, in their original packaging.

## **12. Retention of Title**

- 12.1** The Goods shall remain Seller's property until any and all claims of Seller arising from its business relationship with Buyer have been paid in full. In case of current accounts, this retention of title shall serve as security for the claim for the balance to which Seller is entitled.
- 12.2** Buyer shall only be allowed to sell Goods subject to Seller's retention of title ("**RoT Goods** ") within normal and proper business transactions. Buyer is not entitled to pledge the RoT Goods, grant chattel mortgages on them or make other dispositions endangering Seller's title to the RoT Goods. Buyer hereby assigns its receivables arising from the resale of the RoT Goods to Seller, and Seller hereby accepts such assignment. Should Buyer sell the RoT Goods together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between Seller and Buyer plus a safety margin of ten (10) % of this price. Buyer is granted the revocable authorisation to collect in trust the claims assigned to Seller in Buyer's own name. Seller may revoke such authorisation and the right to resell the RoT Goods if Buyer is in default of the performance of material obligations such as making payment to Seller.
- 12.3** Should the RoT Goods be combined with other goods, Seller shall acquire joint ownership of the new goods in the ratio of the value of the RoT Goods to the other goods at the date of combination. Should the combination of the goods occur in such manner that Buyer's goods are to be regarded as the main goods, it shall be deemed to be agreed that Buyer assigns proportionate joint ownership to Seller. Buyer shall hold the joint ownership created in such manner in custody for Seller.
- 12.4** Buyer shall provide Seller at all times with all desired information concerning the RoT Goods or receivables assigned to Seller under this contract. Buyer shall immediately notify Seller of any attachments of or claims to the RoT Goods by third parties and shall provide the necessary documents in this regard. Buyer shall at the same time advise the third party of Seller's retention of title. The costs of a defense against attachments and claims shall be borne by Buyer.
- 12.5** Buyer is obliged to treat the RoT Goods with care for the duration of the retention of title.
- 12.6** Should the realisable value of the securities exceed all of Seller's claims that are to be secured by more than ten (10) %, Buyer shall be entitled to demand a release to such extent.
- 12.7** Should Buyer be in default of material obligations such as payment to Seller, and should Seller rescind the contract, Seller may, notwithstanding any other rights, request surrender of the RoT Goods and may make use of them otherwise for the purpose of satisfying its matured claims against Buyer. In such case, Buyer shall grant Seller or Seller's agents immediate access to the RoT Goods and surrender the same.
- 12.8** In case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same effect as in Germany, Buyer shall do everything to create equivalent security rights for Seller without undue delay. Buyer shall cooperate in all measures such as registration, publication, etc. that are necessary and beneficial to the validity and enforceability of such security rights.

**12.9** On Seller's demand, Buyer is obliged to appropriately insure the RoT Goods, provide Seller with the respective proof of such insurance and assign the claims arising under such insurance to Seller.

**13. Trademarks and Advertising**

**13.1** Buyer shall not perform and may not authorise a third party to perform any act that may endanger the trademarks or other intellectual property rights used by Seller in relation to the Goods. In particular, Buyer may not obscure, alter or remove in any manner the trademarks and/or other distinctive features, whether imprinted or attached, that are part of Seller's Goods and may not include or attach any other features.

**13.2** If Seller provides Buyer with sales promotional, advertising and sales material ("**Advertising Material**"), such Advertising Material shall remain the property of Seller. Buyer may use the Advertising Material only in accordance with the instructions of Seller and in relation to the sale of Goods, and Buyer may not authorise any third party to use the Advertising Material.

**13.3** Buyer may only advertise the Goods and use the Advertising Material and the trademarks of Seller for advertising the Goods if Seller has granted its prior express consent in writing. Seller may withdraw its consent at any time; in such case the entire advertising of Buyer must be ceased at Buyer's expense according to the instructions of Seller. Irrespective of Seller's consent, Buyer shall in any event remain responsible for ensuring that all advertising measures or advertisements fulfill the applicable statutory requirements, if any, and do not breach any industrial property rights of third parties.

**14. Quality; Buyer's Rights in case of Defects; Duty to Inspect the Goods**

**14.1** Upon passing of the risk the Goods shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the Goods.

**14.2** Information provided in sales catalogues, price lists and any other informative literature provided by Seller or any other descriptions of the Goods shall under no circumstances constitute a guarantee for any specific quality of the Goods; such specific quality or durability guarantees must expressly be made in writing.

**14.3** Buyer's rights in case of defects of the Goods shall require that Buyer inspects the Goods upon delivery without undue delay and notifies Seller of any defects in writing and without undue delay, but no later than two (2) weeks following delivery; hidden defects must be notified to Seller in writing without undue delay upon their discovery.

**14.4** In the event of a notification of a defect, Seller shall have the right to inspect and test the Goods to which objection was made. Buyer will grant Seller the required period of time and opportunity to exercise such right. Seller may also demand from Buyer that Buyer returns to Seller at Seller's expense the Goods to which objection was made. Should Buyer's notification of the defect prove to be unjustified and provided Buyer has realised this prior to the notification of the defect or has not realised it in a negligent manner, Buyer shall be obliged to reimburse Seller for all costs incurred in this respect, e.g. travel expenses or shipping costs.

- 14.5** Seller shall be entitled to remove the defect at its option by remedying the defect or, alternatively, by delivering a replacement, both free of charge to Buyer (together "**Subsequent Performance**").
- 14.6** Buyer shall give Seller reasonable time and opportunity for Subsequent Performance.
- 14.7** Items that have been replaced by Seller shall, upon its demand, be returned to Seller.
- 14.8** Buyer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear; (ii) defects of the Goods due to reasons for which Buyer is responsible; (iii) incorrect assembly and/or installation by Buyer or a third party commissioned by Buyer.
- 14.9** Subsequent Performance does not include installation and removal of the defective Goods; Buyer shall bear installation and removal costs.
- 14.10** Should the Subsequent Performance fail, should such remedy be unreasonable for Buyer or has Seller refused such remedy pursuant to Section 439 (3) German Civil Code (*Bürgerliches Gesetzbuch*; "**BGB**"), Buyer may, at its option, rescind the contract in accordance with statutory law or reduce the purchase price and/or claim either damages pursuant to Section 15 or the reimbursement of its futile expenses.
- 14.11** The limitation period for Buyer's claims for defects shall be twelve (12) months beginning with the handover of the Goods to Buyer. The provisions on the statute of limitations of Section 479 BGB shall remain unaffected. For damage claims of Buyer due to other reasons than defects of the Goods or for rights of Buyer with respect to defects concealed in bad faith or caused intentionally, the statutory limitation period shall apply.
- 14.12** If used Goods are sold, all rights of Buyer due to defects shall be excluded, save for Buyer's mandatory claims.

## **15. Limitation of Liability and Damage Compensation**

- 15.1** Seller's obligation to pay damages shall be limited as follows:
- a) For damages caused by a breach of a material contractual obligation, Seller shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract. Seller shall not be liable for damages caused by a breach of a non-material contractual obligation.
  - b) The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent Seller has assumed a guaranty.
- 15.2** Buyer shall take all reasonable measures necessary to avert and reduce damages.
- 15.3** The above limitation of liability shall apply mutatis mutandis to claims for the reimbursement of expenses.

## **16. Product Liability**

If Buyer sells the Goods, whether unchanged or changed, Buyer shall indemnify Seller in their internal relationship against any product liability claims of third parties if and

to the extent Buyer is responsible for the defect leading to the liability also within their internal relationship.

## **17. Confidentiality**

**17.1** “Confidential Information” shall mean any business and trade secrets and any other confidential information of Seller or Buyer, irrespective of (i) its nature and (ii) whether and in which form it is tangible, which the respective party itself or by a third party delivers or otherwise discloses to the other party, whether orally, in writing, electronically or in any other manner whatsoever; this includes in particular all information related to its records, know-how, manufacturing methods, techniques, raw materials, sources of supply, financial information, pricing, sales, marketing plans, market reports, research and development activities, and inventions. Information which is designated as confidential shall in case of doubt be regarded as Confidential Information.

**17.2** The parties shall treat all Confidential Information confidential and shall refrain from making Confidential Information available to third parties. With respect to safeguarding the confidentiality of Confidential Information, either party undertakes to employ the same degree of diligence and care it would employ in its own matters; in any event, it must at least employ the diligence and care usual in the ordinary course of business.

**17.3** Either party may only disclose Confidential Information of the other party to its own managing directors, employees, staff, authorised persons, advisors, consultants and/or subcontractors if and to the extent (i) this is necessary for the performance of their contractual obligations towards the other party and (ii) it is ensured that the relevant persons are obligated in writing to keep Confidential Information confidential to the largest extent legally permissible.

**17.4** The above obligations shall not apply to any information that:

- (i) has already been common knowledge at the time of disclosure or becomes common knowledge afterwards without any breach of the above obligations;
- (ii) the party obliged to maintain confidentiality legally receives or has legally received from a third party if the third party or the person from whom the third party received the information is not obliged to maintain confidentiality;
- (iii) upon disclosure of the respective information to the party that is obliged to maintain confidentiality is already known to that party independent from the other party and without using the information received so far; this exception from the confidentiality obligation shall only apply if the obliged party objects to its confidentiality obligation without undue delay after receipt of the information; and/or
- (iv) is legally required to be disclosed.

**17.5** The above obligations under this Section 17 shall apply during the term of the contract and shall remain effective for a term of five (5) years thereafter.

## **18. Compliance with Anti-Corruption Laws**

**18.1** Both Seller and Buyer represents, warrants and undertakes to comply with any anticorruption law or similar legislation, codes, rules, policies and regulation

applicable to the performance of its obligations in relation to any contract ('Anti-Corruption Laws') and not take any action or permit, authorise or tolerate any action in violation of the Anti-Corruption Laws.

## **19. Compliance with Data Protection**

**19.1** From time to time Seller may transfer data acquired from Buyer for the purpose of carrying out the performance of this contract with any member of its group (which means subsidiaries, ultimate holding company and its subsidiaries worldwide). The data collected may be transferred to, and stored at, a destination outside the European Economic Area ("EEA"). It may also be processed by staff operating outside the EEA who work for Seller. By Buyer submitting data, Buyer agrees to this transfer, storing or processing. Seller will take reasonable steps necessary to ensure that Buyer's data is treated securely and in accordance with the practices contained in Directive 94/46/EC.

## **20. General Provisions**

**20.1** Both parties agree to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code. Accordingly, neither party shall sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by U.S. or applicable non U.S. laws. Each party shall secure at its own expense, such licenses and export and import documents as are necessary for each respective part to fulfil its obligations under the contract and/or these Terms of Delivery.

**20.2** Buyer may assign the rights arising from the parties' contractual relationship to third parties only with Seller's written consent. Section 354a German Commercial Code (*Handelsgesetzbuch*; "HGB") shall remain unaffected hereby.

**20.3** Amendments and supplements to the contract and/or these Terms of Delivery and any side agreements must be made in writing. The same shall apply to the amendment of this written-form requirement.

**20.4** If a provision of the contract and/or of these Terms of Delivery is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected hereby.

**20.5** Exclusive venue for any and all disputes arising from or in connection with the parties' contractual relationship shall be Munich. Seller is entitled, however, to sue Buyer at any other court having statutory jurisdiction.

**20.6** The laws of the Federal Republic of Germany shall apply to these Terms of Delivery and to the parties' contractual relationship. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.