



1. **GENERAL.** These terms and conditions (the "Terms") shall exclusively govern the sale and purchase of all products and/or services ("Goods") sold or provided by companies which are part of the A. Schulman group of companies ("Seller") and supersede and replace any other terms or conditions stipulated or referred to by a buyer of Goods ("Buyer") in any document. Buyer agrees that the issuance of orders by Buyer shall act as full acceptance of the Terms. Buyer and Seller may also be referred to individually as a "party" and collectively as the "parties."
2. **OFFERS AND ORDERING.** All offers and quotes from Seller are non-binding until Seller's final written order confirmation.
3. **DELIVERIES, RISK.**
 - 3.1 Unless otherwise agreed in writing all Goods shall be delivered Ex Works Seller's production facility or warehouse and the risk with regard to the Goods shall pass to the Buyer as defined in the INCOTERMS or any other agreed delivery terms applicable on the date of the order confirmation.
 - 3.2 The quantity of Goods as recorded by Seller on dispatch is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller is entitled to make partial deliveries, unless the parties expressly agree otherwise.
 - 3.3 Any dates specified by Seller for delivery of the Goods are an estimate and time for delivery shall not be of the essence unless otherwise agreed in writing and Seller shall not be liable for any delay in delivery. If Seller and Buyer have agreed in writing that time is of the essence, Buyer shall be entitled to claim as a sole remedy compensation for damages in the amount of a maximum amount equivalent to 0.5 % of the invoice value for every full week of default. In all events, Seller's liability with respect to delays in delivery shall not exceed an amount equivalent to 5 % of the invoice value of the deliveries concerned.
 - 3.4 Seller may deliver to Buyer a quantity of Goods of up to 10% more or less than the quantity ordered. In such event, Buyer shall not be entitled to make a claim or reject the Goods or any portion of the Goods by reason of the surplus or shortfall and Buyer shall, subject to providing notice required under clause 8, pay or be credited (as the case may be) for such Goods at the agreed price.
4. **NON-ANALYSIS.** Buyer agrees that it shall not, without Seller's prior written consent, take any steps to analyze, or have a third party analyze, reverse engineer, translate or decompile any Goods, samples or material provided by Seller, including, and without limitation, the formulation of any compound, additive, masterbatch or concentrate.
5. **TITLE TO THE GOODS.**
 - 5.1 All Goods sold by Seller shall remain the property of Seller until Seller has received in full from Buyer all payments it is entitled to, including any damages, costs, interest and duties ("Amounts Owing").
 - 5.2 Until such time as ownership in the Goods has passed to Buyer, Buyer shall ensure that the Goods (i) are kept and maintained in good condition at no cost to Seller, (ii) are stored separately or marked so that they may be readily identified as the property of Seller, (iii) are not subject of any charge, pledge or lien, and (iv) are insured for their full replacement value against all risks.
 - 5.3 If the Goods have been processed, combined or mixed by Buyer with finished goods of Buyer or any third party, (i) Seller acquires joint title pro rata to that part of the Goods that represents the invoiced value of Seller's Goods in relation to the total value of the other goods that have been processed, combined or mixed and (ii) Buyer hereby assigns its rights to Seller with regard to such finished goods.
 - 5.4 The Buyer is entitled to sell the processed Goods in the ordinary course of business and hereby assigns to Seller all claims against third parties that arise from or in connection with such sale.
 - 5.5 If Buyer fails to comply with any of these Terms then:
 - (i) upon request, Buyer must return all Goods in its possession;
 - (ii) Seller may enter the premises and seize possession of the Goods; and
 - (iii) Seller may retain, sell or otherwise dispose of those Goods.
 - 5.6 Without limiting the meaning of Amounts Owing, if Buyer makes a payment to Seller at any time whether in connection with the supply of Goods or otherwise, Seller may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured.
 - 5.7 Buyer hereby acknowledges that these Terms constitute a Security Agreement which creates a Security Interest pursuant to the *Personal Properties Securities Act 2009* (Cth) ("PPSA") in favour of Seller and in all goods including services previously supplied by Seller to Buyer and all after acquired goods including services supplied to Buyer by Seller to secure the payment from time to time, including any future advances.
 - 5.8 Buyer hereby grants a Security Interest (by virtue of this clause 5) to Seller and in all goods including services previously supplied by Seller to Buyer.
 - 5.9 Buyer agrees to grant Seller a Purchase Money Security Interest ("PMSI").
 - 5.10 Buyer agrees to do anything that Seller reasonably requires to ensure that Seller has at all times a continuously perfected Security Interest over all Buyer's present and after-acquired property.
 - 5.11 Buyer consents to Seller effecting a registration on the PPSA register in relation to any Security Interest contemplated by these Terms. Buyer waives the right to receive notice of a verification statement in relation to any registration on the register.
 - 5.12 Buyer must not assign or grant a Security Interest in respect of any accounts owed to it in relation to the Goods without Seller's prior written consent.
 - 5.13 Buyer undertakes to:
 - (i) promptly sign any further documents and/or provide any further information which Seller may reasonably require to register a financing statement or financing change statement in relation to a Security Interest on the PPSA register or to register any other document required on the PPSA register;
 - (ii) indemnify, and upon demand reimburse, Seller for all expenses incurred in registering a financing statement or financing change statement on the PPSA register or releasing any Goods charged thereby;
 - (iii) not register a financing change statement in respect of a Security Interest without the prior written consent of Seller;
 - (iv) not permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party; and
 - (v) immediately advise Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 5.14 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with these Terms Buyer agrees the following provisions of the PPSA will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires Seller to give notice to Buyer;
 - (ii) section 96 (when a person with an interest in the whole may retain an accession);
 - (iii) section 117 (obligations secured by interests in personal property and land);
 - (iv) section 118 (enforcing security interests in accordance with land law decisions);
 - (v) subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (vi) section 125 (obligation to dispose of or retain collateral);
 - (vii) section 130 (notice of disposal), to the extent that it requires Seller to give notice to Buyer; paragraph 132(3)(d) (contents of statement of account after disposal);
 - (viii) subsection 132(4) (statement of account if no disposal);
 - (ix) section 135 (notice of retention);
 - (x) section 142 (redemption of collateral); and
 - (xi) section 143 (reinstatement of security agreement)
 - 5.15 The following words have the respective meanings given to them in the PPSA: account, proceeds, purchase money, register, registration, Security Interest and verification or financing statement.- 6. **PRICE AND TAXES.** All prices include standard packaging and are Ex Works unless otherwise agreed. All prices are exclusive of Goods and Services Tax ("GST"), sales, use and excise taxes, and any other similar charges, duties, costs and taxes unless otherwise stated. Buyer shall be liable for any applicable charges, duties, costs and taxes (including GST) and, if necessary, shall reimburse Seller for any such amounts upon a valid tax invoice.
- 7. **PAYMENTS.**
 - 7.1 Unless otherwise agreed, all invoices are payable in the currency stated on the invoice within thirty (30) days after the date of invoice to the account indicated on the invoice.
 - 7.2 Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach or otherwise.
 - 7.3 If Seller, acting reasonably, determines that the financial position of Buyer has become impaired or otherwise unsatisfactory to Seller, Seller may require advance payment or the posting of security by Buyer, and Seller may withhold shipments until Buyer makes such payments or posts such security.

- 7.4 Notwithstanding any provision to the contrary, Seller shall be entitled to first credit payments against Buyer's old debts.
- 7.5 Buyer shall pay interest without prior written notice or demand on all late payments at the penalty interest rate fixed by the Attorney-General under Section 2 of the *Penalty Interest Rates Act 1983* (Vic), calculated from the time such amount falls due until it is received in full, calculated daily and compounded monthly, and without prejudice to all or any of our other rights and remedies.
- 7.6. In the event Buyer is in default of any payments whatsoever due to Seller by more than fifteen (15) days, Seller shall be entitled to: (i) hold the shipment of any Goods ordered by Buyer until Buyer makes such payments; and/or (ii) require from Buyer immediate payment of any additional Goods ordered by Buyer prior to their shipment and /or (iii) rescind the sale agreement.
- 7.7 In addition to all other remedies available Buyer shall upon demand reimburse Seller for all reasonable costs incurred in collecting any overdue debt, including, without limitation, reasonable attorneys' fees (on an indemnity basis), legal- and non-legal costs.
- 8. INSPECTION AND REJECTION OF NONCONFORMING GOODS.** Buyer shall inspect the Goods immediately upon delivery and shall, latest within ten (10) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, or ten (10) days from the date on which any hidden defect was or ought to have been apparent, give written notice to Seller of any claim with respect to the Goods. Failure of Buyer to give such written notice within such ten (10) day period shall constitute an irrevocable acceptance of the Goods by Buyer. Upon making any such claim Buyer shall not further use the Goods and shall retain the Goods for inspection by Seller or its representative.
- 9. LIMITED WARRANTY.**
- 9.1 Seller warrants to Buyer good and free title to the Goods and that the Goods supplied will conform to the agreed written or published specifications at the time Goods are shipped.
- 9.2 Seller has based any recommendations to Buyer for the use or application of the Goods as well as any services provided by Seller upon information supplied by Buyer, but Seller gives no warranty with respect to results Buyer might obtain based on such recommendations or services and any use or application for the Goods. Except to the extent attributable to the Goods sold hereunder failing to meet the express warranties set forth in paragraph 9.1, Buyer will indemnify, defend and hold Seller harmless from all costs, expenses, damages, judgments or other loss, including costs of investigation, litigation and reasonable attorney's fees, arising out of Buyer's selection, use, sale, applications or further processing of the Goods sold.
- 10. LIMITATION OF LIABILITY.**
- 10.1 Seller acknowledges that provisions in the *Competition and Consumer Act 2010* (Cth) (as amended) and other statutes from time to time in force imply or impose statutory guarantees, conditions or warranties into contracts for the supply of goods which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent ("Non Excludable Terms"). Nothing in these Terms is intended to exclude or restrict the application of the Non Excludable Terms. Other than the Non Excludable Terms, Seller hereby excludes, to the maximum extent permitted by law, all conditions, warranties, guarantees, terms and obligations expressed or implied by law in connection with these Terms, or any goods obtained under them.
- 10.2 Except for the limited warranty set forth in section 9.1 and subject to clause 10.1, Seller is not liable to Buyer or any other person for any loss or claim of any kind in connection with these Terms, or any goods obtained under them, except to the extent caused directly by the negligence or willful misconduct of Seller.
- 10.3 If any Non Excludable Terms apply, then to the extent to which Seller is entitled to do so, its liability under those Non Excludable Terms will be limited at its option to:
- (i) the replacement of the Goods or the supply of equivalent goods; or
 - (ii) the repair of the Goods; or
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired.
- 10.4 To the maximum extent permitted by law, Seller's aggregate liability to Buyer for claims and damages, whether under breach of warranty, tort or any other cause whatsoever, shall in no event exceed the total of the purchase price for the Goods which gave rise to Buyer's claim.
- 10.5 In no event will Seller have liability to Buyer arising out of or relating to any breach of these Terms or the Goods, for any indirect, incidental, consequential, exemplary or special damages, including but not limited to, loss of contract, profits or revenue, diminution in value, machine stoppage, recall or rework howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.
- 10.6 Buyer acknowledges and agrees that the remedies set forth in section 10 are Buyer's exclusive remedies.
- 11. TERMINATION.** In addition to any remedies that may be provided under these Terms, Seller may terminate any sale agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 15 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, assignment for the benefit of creditors or similar event. For the avoidance of doubt, termination of these Terms or any sale agreement for any reason will not release Buyer from its obligation to pay to Seller any amounts due under these Terms or any sales agreement.
- 12. FORCE MAJEURE.** Either party may suspend performance hereunder (except with respect to payment obligations for any of the Goods) in the event of fire, explosion, flood, hurricanes, strikes, lockouts or other industrial disturbances or riots, war, compliance with any acts or omissions of any local or governmental authority, inability or delay in obtaining supplies, labour, power, machine or equipment breakdown, fuel or raw materials, or any other cause or causes of any kind or character reasonably outside the control of the party failing to perform, whether similar or dissimilar from any of the above mentioned causes. If the event in question continues for a continuous period in excess of twenty (20) days, the affected party shall be entitled to give notice in writing to the non-performing party to terminate the sale agreement with respect to Goods undelivered at the time of termination.
- 13. HEALTH & SAFETY.** Buyer shall handle the Goods in accordance with the recommendations given by Seller in Material Safety Data Sheets or Seller's safety literature. If Buyer is not already in the possession of such literature or requires any information or advice in connection with the safe use of the Goods Buyer shall immediately contact Seller. Buyer will disseminate such information so as to give warning of possible hazards to persons whom Buyer can reasonably foresee may receive exposure to such hazards.
- 14. TRANSLATION.** In the event these Terms are for convenience translated from English into another language, the parties agree that, to the extent permitted by law, the English version shall prevail.
- 15. GOVERNING LAW AND JURISDICTION.** All sales of the Goods and these Terms shall be governed by the laws of the country of establishment of Seller, without reference to its principles of conflict of laws. Any dispute arising from the execution, implementation or interpretation of a sale agreement between Buyer and Seller shall be subject to the exclusive jurisdiction of the courts of the country of establishment of Seller. Without prejudice to the above Seller may choose to bring a dispute before the court of the country of establishment of Buyer.
- 16. MISCELLANEOUS.**
- 16.1 The invalidity or unenforceability for any reason of any part of these Terms shall not prejudice or affect the validity or enforceability of the remainder.
- 16.2 Buyer shall not assign any contract for the purchase/sale of Goods or any rights hereunder in whole or in part to any third party without the prior written consent of Seller.
- 16.3 Seller shall be entitled to assign to or carry out this contract in whole or in part through one or more of the business enterprises of the Seller's group of companies, who shall be authorized to act on Seller's behalf, even though Seller continues to be Buyer's sole contracting party.
- 16.4 Buyer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and servicing of the Goods and related technology, including without limitation, tax, anti-corruption and foreign exchange legislation or regulations and export, and anti-boycott restrictions in force at the time of the sale of the Goods.
- 16.5 All trade mark, copyright, design right and other intellectual property in any design, specification, process, method of working or other information relating to the Goods shall remain vested for all time in Seller. Any sale of Goods, or suggestions Seller makes about possible applications, designs or uses of Seller's Goods shall not, by implication or otherwise, convey any license to or transfer of any intellectual property rights related to Goods. Buyer assumes all risks of any intellectual property infringement claims resulting from the use, (re)sale or processing of the Goods, whether singly or in combination with any other materials.
- 17. USE OF PERSONAL INFORMATION.**
- 17.1 Buyer agrees that for the purposes of processing its application for credit facilities Seller may:

- (i) seek consumer credit information (Section 18K (1) (b) of the Privacy Act 1988 (Cth)).
 - (ii) obtain from a credit reporting agency a credit report containing personal credit information about Buyer in relation to commercial credit; and/or
 - (iii) exchange information with other credit providers (Section 18N (1) (b) of the Privacy Act 1988 (Cth)).
- 17.2 Buyer agrees to Seller obtaining personal information about Buyer from other credit providers, whose names Buyer may have provided for Seller or that may be named in a credit report, for the purpose of assessing Buyer's application for commercial credit.
- 17.3 Buyer agrees that Seller may disclose Buyers personal information to persons within Seller's organisation and to third parties including but not limited to courier companies and credit reporting agencies.