



- Definitions.** As used herein: (a) “**Buyer**” means the person, firm, company, or other entity, identified as **Buyer**, **Party**, or **You** on the face hereof, purchasing Products or Services from Seller; (b) “**Products**” means the items described on the face hereof sold by Seller pursuant to these Terms and Conditions or any related purchase order, contract, or agreement; (c) “**Services**” means size reduction, blending, compounding, processing, and any other services provided by Seller; (d) “**Seller**” or “**Company**” means A. Schulman Inc. or any of its divisions, subsidiaries, or affiliates. Buyer and Seller may also be referred to individually as a “**Party**” and collectively as the “**Parties**.”
- Pricing/Terms of Agreement.** Unless otherwise indicated as arranged by the Buyer, all prices for Products and Services purchased pursuant to any purchase order, contract, or agreement to which these Terms and Conditions apply are delivered prices and include transportation to the shipping destination. Terms of payment for Products and Services shall be net thirty (30) days unless otherwise set forth on the face of the Seller’s Order Acknowledgment. All amounts shall be paid via electronic funds transfer or in negotiable paper collectible at its face value in United States funds in the invoiced currency in accordance with the Seller’s electronic payment instructions issued on Company letterhead or to the bank specified on Seller’s invoice remittance instructions. A late charge equal to the lesser of 18% per annum or the maximum legal interest rate (calculated and compounded monthly) may accrue from the payment due date until paid. Buyer shall not charge Seller, or offset any Seller invoice, for or with respect to any administrative fees, including: charges for processing invoices; evaluating disputed items; obtaining remittance advices; the cost of electronic data interchange; or any other expense considered, in ordinary business custom and usage, to be a generally accepted cost of doing business. Further, Buyer has no right to set off or modify any payment due to Seller on account of Buyer’s dissatisfaction with any aspect of the Product or Services except in the manner and to the extent addressed in Seller’s Terms and Conditions of Sale or an independent offset agreement between the Parties.
- Purchase Orders.** Purchase orders may be placed by Buyer in any commercially reasonable manner that Buyer and Seller deem is appropriate. All purchase orders are subject to acceptance by Seller. Purchase orders shall be written to Seller and invoiced as a direct purchase.
- Products Warranty.** With regard to Products, Seller warrants that the Products will conform to the applicable Seller specification at the time that the Products are shipped from Seller’s facility. The Products will be conveyed to the Buyer with good title, free from any lawful lien or encumbrance. Seller will notify Buyer in advance if the Product specifications change. With regard to Services, provided that the materials furnished by Buyer or third parties meet the specifications for such materials and are not contaminated or damaged, Seller warrants that such materials will be processed to any specifications expressly agreed to in writing by Seller at the time of shipment. **THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY SELLER TO BUYER WITH RESPECT TO THE PRODUCTS AND SERVICES. ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED AND EXCLUDED FROM THE SALE OF THE PRODUCTS TO BUYER. ANY CLAIM THAT BUYER MAY HAVE UNDER THIS WARRANTY PROVISION IS WAIVED UNLESS BUYER NOTIFIES SELLER IN WRITING WITHIN SIXTY (60) DAYS AFTER BUYER LEARNS, OR SHOULD REASONABLY HAVE LEARNED, OF THE CLAIM.**
- Use of Products and Services.** Buyer acknowledges that it has sole control and responsibility to ensure that the Products and any method of use or application of the Products are suitable for Buyer’s purposes. Any assistance provided by Seller to the Buyer relative to the Product or Services, including without limitation, formulation, manufacturing and testing for the use or application of the Products or Services for Buyer’s purposes, is made **WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

6. **Non Analysis.** Buyer agrees that it shall not take any steps to analyze, or have a third party analyze, reverse engineer, translate or decompile any product or material provided by Seller, including, and without limitation, the formulation of any compound, additive, masterbatch or concentrate without Seller's prior written consent.
7. **Responsibility of Export Licensing.** Buyer assumes all authority, responsibility, liability, and obligations relating to licensing authority and designations with regard to Products or processed materials that are exported by or at the direction of Buyer, and Buyer agrees to indemnify and hold harmless Seller from and against any and all claims, damages, fines, penalties, or liabilities relating to the export or export licensing thereof.
8. **Delivery and Risk of Loss.** (a) All shipping dates are approximate and are not a guarantee of a particular date of shipment; (b) Seller shall ship the Products to Buyer at the Shipping Address by any commercially reasonable means, but this requirement does not impose upon Seller the duty to make delivery at such address. Seller has the option of selecting the particular route and carrier for shipment of the Products to Buyer; (c) Unless the Products are shipped "F.O.B. Delivered", title to the Products, and the associated risk, shall pass from Seller to Buyer at the shipping point. If Seller has reason to believe that delivery of Products will not be completed by the date requested, Seller will notify Buyer of the duration of the anticipated delay; (d) Buyer assumes all risks and liabilities arising out of the shipment and Buyer's unloading, discharge, storage, handling and use of the Products, or arising out of Buyer's compliance or noncompliance with federal, state, municipal, or other local laws and regulations with reference thereto.
9. **Inspection.** **Buyer shall inspect the Products or materials that have been the subject of Services immediately upon their arrival at the Shipping Address and shall, within sixty (60) days of such arrival, give written notice to Seller of any claim that the Products are non-conforming or otherwise defective. Buyer agrees that such sixty (60) day period is a reasonable time for inspection, and failure of Buyer to give such written notice within such sixty (60) day period shall constitute an irrevocable acceptance of the Products by Buyer. Buyer shall bear the expenses of inspection under all circumstances.**
10. **Cancellation and Availability.** No notice of cancellation or termination shall relieve Buyer from any obligations created by any purchase order, contract, or agreement to which these Terms and Conditions apply, without the prior written consent of Seller, which consent must be contained in a writing signed by an authorized signatory of Seller. If Seller permits Buyer to cancel or terminate the purchase order, contract or agreement to which these Terms and Conditions apply, Buyer agrees to pay Seller on demand, a minimum 50% charge of the established list or quoted prices for all completed items, and for incomplete items the full cost incurred by Seller plus 20% thereof, plus charges for packing and storing. Where the Seller does not have enough Products in inventory or transit to fulfill all existing orders, Seller may allocate available Products to Buyer and others on a reasonable basis. Seller may cancel any order or any part of an order without cause at any time and without penalty, and Seller's sole obligation shall be to return any down payment paid by the Buyer. If Buyer is delinquent in the payment of any invoice, Seller doubts Buyer's ability to pay or Buyer is otherwise in breach of any purchase order, contract, or agreement to which these Terms and Conditions apply, Seller may, at its discretion, withhold shipment (including partial shipments) of any order, or may, at its option, require Buyer to prepay for further shipments. If Buyer is delinquent in payment, Seller retains the right to retain or dispose of any inventory or other assets owned by Buyer without further liability. Buyer will pay Seller's collection costs, including attorneys' fees, if Seller is required to bring an action against Buyer to receive payment.
11. **Force Majeure.** Seller shall not be responsible for failure to perform acts, other than payment obligations, due to unforeseen circumstances or causes beyond such Seller's reasonable control, including, without limitation, wars, earthquakes, hurricanes, storms, fires, and floods. In the event of any such force majeure event, Seller's time for performance will be extended for a period equal to the duration of the delay caused thereby.
12. **Limitation of Liabilities.** NEITHER BUYER NOR SELLER WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED UNDER THEORIES OF CONTRACT OR TORT. BUYER'S EXCLUSIVE REMEDY FOR CLAIMS (INCLUDING CLAIMS FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY) IS LIMITED TO THE REPLACEMENT OF THE NON-CONFORMING PRODUCTS OR, AT BUYER'S ELECTION, THE REFUND OF THE PURCHASE

PRICE OF THE NON-CONFORMING PRODUCTS OR, WITH REGARD TO SERVICES, TO RE-PROCESS BUYER'S MATERIALS.

13. **Reliance.** AS MORE FULLY SET FORTH IN OTHER PROVISIONS OF THESE TERMS AND CONDITIONS, SELLER AND BUYER HAVE REACHED EXPRESS AGREEMENT WITH RESPECT TO THE LIMITATION OF THE LIABILITY OF SELLER IN CONNECTION WITH THESE TERMS AND CONDITIONS, AND THE SELLER AND BUYER EXPRESSLY RECOGNIZE THAT (i) THE PRICE FOR WHICH SELLER HAS AGREED TO PERFORM ITS OBLIGATIONS HEREUNDER AND IN RESPONSE TO BUYER'S PURCHASE ORDER HAS BEEN PREDICATED ON THE FOREGOING LIMITATION OF LIABILITY, AND (ii) SELLER, IN DETERMINING TO PROCEED WITH ITS WORK PURSUANT TO THESE TERMS AND CONDITIONS, HAS EXPRESSLY RELIED ON SUCH LIMITATION OF LIABILITY AND WOULD NOT HAVE AGREED TO SELL TO BUYER BUT FOR SUCH LIMITATION OF LIABILITY.
14. **Proprietary Rights.** Seller retains for itself and its affiliates all intellectual property rights, including without limitation, patents, copyrights, and trade secrets, relating to all of Seller's proprietary Product formulations and specifications, and Seller's proprietary equipment and technology used by Seller to perform Services or produce Products. With regard to Products that are manufactured pursuant to the express instructions and/or specifications provided by Buyer ("Buyer Designed Products"), Buyer represents that Seller's manufacture and sale of such Buyer Designed Products, and the use of such Buyer Designed Products, does not infringe upon the intellectual property rights (including patents, trademarks, service marks, or other proprietary rights) of any other person or entity ("third party"), and Buyer agrees to defend, indemnify, and hold harmless Seller from any claims, demands, suits, or other losses resulting from any allegations or liability for infringement asserted by any third party and/or which are asserted against Seller as a result of the foregoing representation being untrue.
15. **Form, Formation, and Readjustment of the Agreement.** (a) These Terms and Conditions, and any purchase order, contract, or agreement to which these Terms and Conditions apply, constitute the entire agreement between the **Parties** as to contractual terms and conditions, incorporating all prior negotiations and understandings relating to the subject matter hereof, whether written or oral. (b) These Terms and Conditions, and any purchase order, contract, or agreement to which these Terms and Conditions apply, shall not be modified or rescinded except by written instrument executed by an authorized representative of Seller.
16. **Limitation on Actions; Waiver.** Any action by Buyer for an alleged breach of warranty, breach of contract, or tort arising out of or related to these Terms and Conditions and/or any related purchase order, contract, or agreement to which these Terms and Conditions apply, shall be commenced no later than one year after the cause of action accrues. If Buyer fails to commence any such action within one (1) year after the cause of action accrues, the action shall be deemed barred and Seller and its affiliates shall have no liability whatsoever to Buyer with respect thereto. The rights and remedies herein reserved to Seller shall be cumulative and in addition to any other rights and remedies provided by law. The failure of Seller to insist upon strict performance of any purchase order, contract or agreement at any time shall not constitute a waiver of, or estoppel against, Seller's right to require such performance in the future, nor shall a waiver of estoppel in any one instance constitute a waiver or estoppel against Seller with respect to a later breach of a similar nature or otherwise.
17. **Taxes.** The Buyer is responsible for the payment of any federal, state, local, sales, use, excise, *ad valorem*, or other taxes or charges assessed or assessable with respect to the sale, use or transportation of the Products.
18. **Governing Law; Consent of Jurisdiction.** These Terms and Conditions, and any corresponding purchase order, contract, or agreement to which these Terms and Conditions apply, shall be deemed to have been made under, and shall be construed and interpreted in accordance with, the substantive laws of the State of Ohio without regard to the otherwise applicable Ohio choice of law rules or principles. Buyer hereby submits to the jurisdiction of the State of Ohio and federal Courts in the State of Ohio and hereby designates the Secretary of State of the State of Ohio as an authorized agent to accept on behalf of Buyer service of any and all process in the State of Ohio in connection with these Terms and Conditions and any related purchase order, contract or agreement.
19. **Severability.** If any of these Terms and Conditions, or any related purchase order, contract, or agreement is held by any court to contravene or to be invalid under the laws of any political body having jurisdiction over the

subject matter hereof, such contravention or invalidity shall not invalidate the Terms and Conditions or related purchase order, contract or agreement, but, instead, they shall be construed as if not containing the particular provision or provisions held to be in contravention of law or invalid the rights and obligations of the Parties shall be construed and enforced accordingly, and they shall otherwise remain in full force and effect.

20. **MSDS Information.** Buyer acknowledges that Seller has furnished Buyer with Material Safety Data Sheets (“MSDSs”) including warnings and safety and health information concerning Seller’s Products and/or the containers for such Products. Buyer agrees to disseminate such MSDSs to persons whom Buyer reasonably foresees may come into contact with the subjects of the MSDSs, including, but not limited to, Buyer’s employees, agents, contractors, and customers.
21. **Assignment.** The purchase order, contracts, or agreements to which these Terms and Conditions apply are not assignable or transferable by Buyer, in whole or in part, without the prior written consent of Seller.
22. **Modification.** No statement or agreements, oral or written, made before or at the time of execution of purchase orders, agreements or contracts to which these Terms and Conditions apply, shall vary or modify them, and neither Party shall claim any amendment, modification or release from any provision hereof unless such change is in writing signed by an authorized representative of each Party and states specifically that it is an amendment to these Terms and Conditions and/or related agreement. No modification or addition to these Terms and Conditions or the purchase orders, contracts, or agreements to which they relate shall be made effective by the acknowledgment or acceptance by Seller or any purchase order, acknowledgment, release or other forms submitted by the Buyer which contain additional or different terms or conditions. Seller hereby gives the Buyer notice of the rejection of such additional or different Terms and Conditions and under no circumstances are any such different and/or additional terms to be considered a part of any contract between Buyer and Seller.