

## Terms and Conditions:

1. THESE STANDARD TERMS AND CONDITIONS COMPRISE THE BASIS ON WHICH SUPPLIER OFFERS THE PRODUCT FOR SALE. THE TERMS AND CONDITIONS OF PURCHASE SUPPLIER RECEIVED FROM CUSTOMER WILL NOT APPLY AND ARE HEREBY EXPRESSLY REJECTED. SUPPLIER'S OFFER, TOGETHER WITH THESE STANDARD TERMS AND CONDITIONS, WILL CONSTITUTE THE PARTIES' AGREEMENT WITH REGARDS TO THE SALE OF PRODUCT FROM SUPPLIER TO CUSTOMER.

### 1. Governing Terms and Conditions

- (a) The terms and conditions in this document apply to the sale of Product from Advanced Polymer Solutions (formerly A.Schulman Plastics) as division LyondellBasell (hereinafter "Supplier") to Customer. These terms and conditions prevail over any terms or conditions in any Customer documents and represent the entire agreement between Supplier and Customer. To avoid inconsistent provisions applying, no purchase order confirmation or other document issued by Customer will vary this Agreement.
- (b) When Customer places an order for Product with Supplier, accepts delivery of Product, makes payment or complies with these terms and conditions, Customer has accepted them.

### 2. Definitions

"Account" means an account within the meaning of the PPS Act;

"Agreement" means any contract between Supplier and Customer in relation to the Product;

"Chattel Paper" means chattel paper within the meaning of the PPS Act;

"PMSI" means a 'purchase money security interest' as defined in the PPS Act;

"PPS Act (Australia)" means the *Personal Property Securities Act 2009 (Cth)*;

"PPS Act (New Zealand)" means the *Personal Property Securities Act 1999*;

"Proceeds" means 'proceeds' as defined in section 31 of the PPS Act (Australia) or as defined in section 16 of the PPS Act (New Zealand);

"Product" means all or any part of materials or goods supplied or to be supplied to Customer by Supplier;

"Secured Moneys" means all debts and monetary liabilities Customer owes to Supplier on any account or in relation to any agreement between Supplier and Customer for the sale of Product and in any capacity and irrespective of whether the debts or liabilities:

- (i) are present or future;
- (ii) are actual, prospective, contingent or otherwise;
- (iii) are at any time ascertained or unascertained;
- (iv) are owed or incurred by or on account of Customer alone, or severally or jointly with any other person;
- (v) are owed to or incurred for the account of Supplier alone, or severally or jointly with any other person;
- (vi) are owed to any other person as agent (whether disclosed or not) for or on behalf of Supplier;
- (vii) are owed or incurred as principal, interest, fees, charges, taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- (viii) are owed to or incurred for the account of Supplier directly or as a result of:
  - a. **the assignment to Supplier of any debt or liability of Customer; or**
  - b. **any other dealing with any such debt or liability;**
- (ix) are owed to or incurred for the account of Supplier before the date of this Agreement, before the date of any assignment of this Agreement by Customer to any other person or otherwise; or
- (x) comprise any combination of the above.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: aussales@lyb.com**

“**Security Agreement**” means a security agreement within the meaning of the PPS Act;

“**Security Interest**” means a security interest within the meaning of the PPS Act;

“**Verification Statement**” means a verification statement within the meaning of the PPS Act;

### 3. Personal Property Security Interests

- (a) Customer acknowledges that under this Agreement, Customer grants Security Interests to Supplier including without limitation:
  - (i) *First, a retention of title in respect of the Product (in accordance with clause 9);*
  - (ii) *Secondly, a charge over the Product (in accordance with clause 10); and*
  - (iii) *Thirdly, a bailment of the pallets (in accordance with clause 18);*
- (b) Customer acknowledges that this Agreement constitutes a Security Agreement.
- (c) Customer acknowledges that Supplier may perfect its Security Interests by lodging a financing statement on the Personal Property Securities Register established under the PPS Act.

### 4. Quotations and Price

- (a) If Supplier gives Customer a quotation, Supplier is not making Customer an offer. Supplier may withdraw or alter the quotation without giving Customer notice. If Supplier does not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for thirty (30) days from the date the quotation was given.
- (b) Any description of the Product in a quotation or elsewhere is given for the purposes of identification only and the use of that description will not constitute a contract of sale by description.
- (c) An order placed by Customer will become binding on Supplier only when Supplier accepts it in writing or when Supplier delivers the Product, whichever is earlier.
- (d) Unless Supplier otherwise agrees in writing, the price of the Product will be the price Supplier usually charges for the Product. Any price concession or discount Supplier provides to Customer is conditional on Customer's full compliance with this Agreement. Supplier reserves the right to vary the price charged for the Product.

### 5. GST

- (a) Unless stated otherwise, the price does not include goods and services tax (GST) (as defined in Australia in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or as payable in New Zealand under the Goods and Services Tax Act 1985).
- (b) Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as Customer pays the price.
- (c) If a government or other competent authority imposes, alters or repeals any tax or other levies in connection with the manufacturing, sale, exports or delivery (including but not limited to any tax or other levies on raw materials), Supplier may adjust the price accordingly at any time, or may rescind the Agreement on written notice to Customer

### 6. Payment

- (a) Unless otherwise agreed in writing, Customer must pay Supplier for the Product purchased within thirty days (30) after the end of the month in which the Product was delivered, without setting off any amounts Supplier may owe to Customer. Supplier reserves the right to set off any amount Supplier owes to Customer, against any amount Customer owes to Supplier.
- (b) When the payment due date falls on a weekend or public holiday, payment will be made on the prior working day.
- (c) Payment will be made by Customer direct to Supplier's bank account through Supplier's Electronic Funds Transfer (EFT) facility.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**

- (d) Supplier may require immediate payment of all unpaid monies (whether or not actually due by Customer):
- (i) if any of the following occurs:
- A. an order is made, or a resolution is passed, to wind up Customer, a meeting is called to consider a resolution to wind up Customer or a provisional liquidator is appointed;
  - B. a receiver or receiver and manager is appointed over the whole or part of Customer's business or assets;
  - C. Customer enters any arrangement or composition with any of Customer's creditors;
  - D. Customer is placed under administration, a meeting is called or some other step taken to place Customer under administration;
  - E. Customer cannot pay its debts as they fall due; or
  - F. Customer does not comply with this Agreement, or
- (ii) if Supplier considers (in its sole discretion) that Customer's creditworthiness has become unsatisfactory.
- (e) If Customer does not pay in full by the due date, Supplier may charge Customer a late payment fee. This late payment fee is a daily charge applied on each day from the due date until full payment is made, and is a reasonable pre-estimate of Supplier's loss resulting from Customer's failure to make payment when it is due. The daily charge (including GST) is the overdue amount multiplied by the Daily Rate. The "Daily Rate" is the rate determined by dividing the Annual Rate by 365. On any day the "Annual Rate" is the rate that is 2% per annum above the prevailing ANZ prime overdraft rate for overdrafts of \$100,000 or more.
- (f) Customer must pay all expenses incurred by Supplier in enforcing its rights under this Agreement.
- (g) Supplier may require Customer to pay cash when or before the Product is dispatched, or to provide security that Supplier deems satisfactory.
- (h) If Customer fails to make any payment in full as and when it is due and until the payment has been made, or if any of the events referred to in Clause 6(d) occur, Supplier may, in addition to other things, withhold any Product or parts of Product in transit, suspend or cancel the supply of Product under any accepted order or suspend the acceptance of any further orders made by Customer.
- (i) Any order made by Customer or quotation given by Supplier to Customer is subject to general credit approval and specific credit limits Supplier sets for Customer in its reasonable discretion. If Customer places an order which, on its own or cumulated with the value of previous orders for which Supplier has not yet received payment in full, exceeds the credit limit set by Supplier for Customer, Supplier may in its sole and absolute discretion, at any time and without notifying Customer, suspend or cancel those orders or all or any part of any delivery under such orders, for as long as Customer's credit limit is exceeded, including any order which Supplier has already confirmed.

## 7. Delivery

- (a) Any delivery time given is only an estimate. Supplier is not liable to Customer for any loss or damage suffered or incurred as a result of late or early delivery.
- (b) Customer must accept and pay for the Product even if delivered late.
- (c) The terms of delivery will be as agreed between Customer and Supplier for each order. The terms of delivery will be interpreted on the basis of Incoterms 2010, except in the case of a conflict with this Agreement (in which case this Agreement will prevail) or unless otherwise agreed.
- (d) Unless otherwise agreed in writing, delivery takes place when Supplier notifies Customer that they may collect the Product from Supplier's premises or the Product is otherwise collected from Supplier's premises on Customer's behalf.
- (e) Supplier may deliver the Product in installments. Each installment will be treated as a sale under this Agreement. If Supplier fails to deliver any installment, Customer must still accept and pay for the remaining installments. If Customer does not pay for an installment, Supplier may treat the non-payment as a breach of contract relating to the other installments.
- (f) If Supplier and Customer agrees to arrange delivery of the Product to Customer's premises, Customer undertakes to provide adequate and proper facilities for the reception and storage of the Product at the expected delivery date and Customer warrants that those facilities comply with all relevant statutes or regulations, including health and safety regulations and that all necessary permits and licences have been obtained.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**

## 8. Risk

Risk of damage to or loss of the Product passes to Customer at the time of delivery. Supplier is not liable to Customer for any loss or damage or deterioration of the Product after delivery, even if Supplier arranged freight.

## 9. Title

- (a) Supplier retains title to and ownership of the Product until Customer has paid all monies owed to Supplier (and all checks or negotiable instruments have been paid) in respect of the supply of the Product.
- (b) Customer acknowledge and agree that:
  - (i) Supplier's rights in the Product established by clause 9(a) are a PMSI; and
  - (ii) Supplier will have a PMSI in any Proceeds of the Product.
- (c) Until title passes to Customer, Customer holds the Product on Suppliers behalf as bailee and Customer acknowledges that a fiduciary relationship exists between Customer and Supplier. Customer must store the Product so that it is clearly identifiable as belonging to Supplier, and Customer must return the Product to Supplier if requested. Supplier can retake possession of any Product in Customer's possession if any of the events in clause 6(d) occur. Customer must take out and pay for insurance sufficient to cover both Supplier's and Customer's interests in the Product. The insurance must be in both the names of Supplier and Customer. At the request of Supplier, Customer will provide a certificate of insurance to show compliance with this clause 9(c).
- (d) Within seven (7) days after the end of each month, Customer must, if requested by Supplier, provide a statement for the relevant month showing the quantity and type of Product used or sold and the quantity and type in Customer's possession. Customer must keep accurate records to support the monthly statements. Customer must allow Supplier to review and copy the records to verify the monthly statements.
- (e) Customer will allow Supplier to enter any premises under Customer's control where the Product is kept for the purposes of inspecting the Product or to repossess the Product in the event of any Customer default under these terms.
- (f) If title in the Product has not passed to Customer, Customer may use the Product in, or subject the Product to, any manufacturing, mixing or other value adding process ("Value Adding Process"). If Customer chooses to do so:
  - (i) title in and to the Product will remain with Supplier, unless the effect of the Value Adding Process is to destroy the essential identity or character of the Product, even if benefit accrues to Supplier as a result;
  - (ii) where the essential identity or character of the Product is destroyed, Customer will hold such part of the product of the Value Adding Process as relates to the price of the product which form part of, or a constituent ingredient of, the product on trust for Supplier ("Value Added Goods").
- (g) Customer acknowledges that, if any Product or Value Added Goods are sold before Customer has paid for all Product in full, Customer is selling as a fiduciary agent of Supplier, provided that such sales will not give rise to any obligations on Supplier's part. Customer will hold the price of the Product, or the part of the Proceeds that relate to the Product, on trust for Supplier. Customer must hold these Proceeds in a separate account that clearly identifies the Proceeds as monies held on trust for and on behalf of Supplier.
- (h) In respect of Product supplied in New Zealand, by accepting delivery of the Product, Customer agrees that these terms constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999.
- (i) Customer acknowledges that under this clause 9 Supplier has a Security Interest (for the purposes of the PPS Act) in the Product and any Proceeds until Customer has paid for the Product in full. Customer further acknowledges that the Security Interest over the Product (or the Proceeds) is a "purchase money security interest" under the PPS Act to the extent that it secures payment of the amounts owing in relation to the Product. Customer will do anything reasonably required by Supplier to enable Supplier to register the Security Interest, with the priority Supplier requires, and to maintain the registration.
- (j) The Security Interest arising under this clause 9 attaches to the Product when Customer obtains possession of the Product and the parties confirm that they have not agreed that any Security Interest arising under this clause 9 attaches at any later time.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**

## 10. Charge

In addition to Supplier's rights in clause 9, as security for the due and punctual payment of the Secured Moneys, Customer:

- (a) charges and grants a Security Interest in all of its present and future rights and interest in the Product to Supplier; and
- (b) charges to Supplier, as an additional and separate Security Interest, all present and future Accounts, Chattel Paper and all other rights which form part of or relate to the Product or any part of them at any time.

## 11. PPS Act (Australia) Enforcement Provisions

- (a) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these terms, except as excluded by (b).
- (b) The following provisions of the PPS Act will not apply to the enforcement of these terms:
  - 1) section 95 (notice of removal of accession), to the extent that it requires Supplier to give a notice to Customer;
  - 2) subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - 3) section 130 (notice of disposal), to the extent that it requires Supplier to give Customer a notice;
  - 4) paragraph 132(3)(d) (contents of statement of account after disposal);
  - 5) subsection 132(4) (statement of account if no disposal);
  - 6) section 135 (notice of retention);
  - 7) section 142 (redemption of collateral); and
  - 8) section 143 (reinstatement of security agreement).

## 12. PPS Act (New Zealand) Enforcement Provisions

- (a) The Supplier and the Customer agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPS Act will apply to these Terms and Conditions.
- (b) The Supplier and the Customer also agree that the following rights of the Customer as debtor will not apply:
  - 1) To receive a statement of account under section 116;
  - 2) to recover surplus under section 119;
  - 3) to receive notice of a secured party's proposal to retain collateral under section 120(2);
  - 4) object to a secured party's proposal to retain collateral under section 121;
  - 5) not to have goods damaged when a secured party removes an accession under section 125;
  - 6) refuse permission to remove an accession under section 127;
  - 7) receive notice of the removal of an accession under section 129;
  - 8) apply to the Court for an order concerning the removal of an accession under section 131; and
  - 9) redeem collateral under section 132.

## 13. Quantity Discrepancy

If the quantity of Product delivered is less than the amount ordered by Customer, Customer must notify Supplier in writing of the shortfall within seven (7) days after delivery, otherwise Supplier will assume that the correct quantity of Product has been delivered, and Customer must accept the Product and pay for Product in full despite the shortfall.

If the quantity of Product delivered is more than the amount ordered, Customer must immediately inform Supplier in writing and Supplier is entitled to charge Customer for the excess or recover the excess from Customer.

## 14. Change of Circumstances

In the event of any circumstances arising during the term of this Agreement which would result in changes whereby either the Supplier or Customer is disadvantaged, Supplier and Customer will meet together to endeavour to agree on steps which might be taken in order to eliminate such disadvantage or reduce it. Without limiting the generality of the aforesaid, examples of changes likely to cause hardship might be a significant variation in hydrocarbon feedstock costs, inability to obtain raw materials supplies (e.g., plant shutdown), the closure of Supplier's manufacturing site(s) for any reason, and the rate of exchange between the Australian dollar and other currencies. If during the meeting Supplier and Customer cannot reach an agreement, either Supplier or Customer will have the right to terminate this Agreement

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**



upon three (3) months prior written notice to the other party. During this time, previously operating prices will apply. In this Clause 14, "Supplier" also includes parent companies and affiliates, joint ventures and joint ventures of parent companies and affiliates, toll manufacturers and toll manufacturers of parent companies and affiliates, whichever produces the Product under this Agreement.

## 15. Force Majeure

- (a) Supplier is not liable for failure to comply with this Agreement if the failure (directly or indirectly) arises out of any circumstances which are not within Supplier's reasonable control. If such circumstances occur, Supplier may delay or cancel delivery of the Product or reduce the quantity to be delivered.
- (b) The following are examples of situations beyond Supplier's reasonable control: strikes; lock-outs; accidents; war (declared or undeclared); acts of terrorism; fire; flood; accident, explosion; shortage of power; breakdowns of plant or machinery; shortage of raw or other materials from normal sources of supply; acts of God; and any order or direction of any local, State or Federal Government, Government authority or instrumentality (within the Commonwealth of Australia or elsewhere).
- (c) Supplier is not obliged to remedy such circumstances. Supplier is especially not obliged to settle any strike, lock-out or any other kind of labor dispute.
- (d) In this Clause 16, "Supplier" also includes parent companies and affiliates, joint ventures and joint ventures of parent companies and affiliates, toll manufacturers and toll manufacturers of parent companies and affiliates, whichever produces the Product under this Agreement.

## 16. Pallets

Returnable pallets from Supplier remain Supplier's property and must be returned to Supplier at Customer's expense in good and clean condition. Supplier will invoice Customer for the cost of any pallets supplied and then reverse the invoiced amount provided the pallets are returned to Supplier within thirty (30) days.

## 17. Cancellation

- (a) Customer cannot cancel any order or Agreement or return any Product unless Supplier first agrees in writing. Supplier will not agree to any cancellation or return unless Customer indemnifies Supplier for all loss or damage suffered or incurred as a result of the cancellation or return. Supplier may cancel any order or Agreement if Supplier may be unable to supply the Product.
- (b) If any of the events set out in clause 16(b) occur or if the Product remains uncollected after fourteen (14) days from notice that the Product is ready for collection, Supplier may cancel the whole or part of an order or Agreement by giving Customer notice. If Supplier cancels in these circumstances, Customer must pay Supplier for any loss or damage suffered or incurred as a result of the cancellation, including costs and expenses Supplier incurred before the cancellation and a reasonable cancellation fee fixed by Supplier.
- (c) Customer has no claim against Supplier and Supplier is not liable to Customer for any damage, loss, costs or expenses which Customer may suffer or incur as a result of a cancellation under this clause.

## 18. Medical Applications

Customer hereby warrants that:

- (a) Product will not, directly or indirectly, by Customer or by any third party, be used in any of the following applications without prior written approval by Supplier for each specific product and application: U.S. FDA Class I or Class II medical devices; Health Canada Class I, Class II or Class III medical devices; European Union Class I or Class II medical devices; or similar classifications by any regional, national, or local governments; film, overwrap and/or product packaging that is considered a part or component of one of the aforementioned medical devices; and packaging in direct contact with a pharmaceutical active ingredient and/or dosage form that is intended for inhalation, injection, intravenous administration, nasal spray or ophthalmic (eye) administration.
- (b) Product will not, directly or indirectly, by Customer or by any third party, be used in any of the following applications: U.S. FDA Class III medical devices; Health Canada Class IV medical devices; European Class III medical devices; or similar classifications by any regional, national, or local governments; applications involving permanent implantation into the body and life-sustaining medical applications.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**

## 19. Technical Assistance

Any technical advice, assistance, testing or reports furnished by Supplier or any of Supplier's affiliates to Customer with respect to (i) the selection or use of the Product delivered to Customer or (ii) the storing, handling or usage of Product (collectively, the "Technical Assistance") will be given and accepted at Customer's sole risk, and Supplier will have no liability whatsoever for the use of, or results obtained from, the Technical Assistance. Customer agrees that Supplier or Supplier's affiliates, agents, officers, directors, employees, representatives and insurers will not be liable or responsible for any aspects of the Technical Assistance, including the preparation and delivery thereof. Customer agrees to indemnify Supplier or Supplier's affiliates, agents, officers, directors, employees, representatives and insurers from and against any and all loss, damage or liability resulting from demands, claims, suits, or actions with regard to any action relating to the Technical Assistance. The indemnity provided will include, but not be limited to court costs, attorneys' fees, costs of investigation, costs of defense, settlements, and judgments associated with such demands, claims, suits or actions. The indemnification will survive the cancellation, termination, completion, or expiration of this Agreement.

## 20. Limitation of Liability

- (a) Except for such representations, warranties or guarantees as cannot be excluded by virtue of the Consumer Guarantees Act 1993 (New Zealand) or the Competition and Consumer Act 2010 (Australia), all terms, conditions, warranties or undertakings whether express or implied, statutory or otherwise, oral or written, relating to the sale of Product, or to this Agreement are excluded to the fullest extent permitted by law.
- (b) Customer must examine Product upon delivery. If Product is not of merchantable quality, does not conform to any agreed specification or has defects, Customer must notify Supplier in writing within thirty (30) days of delivery. If Customer does not notify Supplier within thirty (30) days, Customer will be deemed to have accepted the Product as being of merchantable quality, free from defects and compliant with the agreed specification.
- (c) Supplier has the right to examine the Product subject of a notification under paragraph (b) and Customer must either return the Product to Supplier, or if they are not capable of redelivery, Customer must make the Product available for inspection by Supplier and permit Supplier to take samples.
- (d) If Supplier determines that Customer's claim is valid, Supplier's liability to Customer will not in any case exceed:
  - (i) *replacing the Product or supplying equivalent Product; or*
  - (ii) *paying the cost of replacing the Product or of acquiring equivalent Product,*

and the limitation will apply to liability howsoever arising whether in contract or in tort (including negligence). In no circumstances will Supplier be liable to Customer for any indirect, incidental, consequential or special loss, including loss of profits, goodwill or reputation, or any special or exemplary damages (even if Supplier or Customer were advised of the possibility of such loss or damages).

- (e) Customer will indemnify Supplier for all liabilities, losses, damages, costs or expenses suffered or incurred by Supplier as a result of any of the following:
  - (i) Supplier's compliance with Customer's instructions regarding the Product;
  - (ii) Customer's failure to:
    - a. provide or display safety information on or relating to the Product;
    - b. comply with laws relating to the use, sale, marketing, labeling or marking of Product; or
    - c. detect and bring to Supplier's attention matters for which Supplier may become liable, whether for negligence, under legislation or otherwise;
  - (iii) any statement Customer makes about the Product without Supplier's written approval;
  - (iv) the use of Product by Customer or a third party;
  - (v) any loss, damage or injury to a person or Customer's property or to others arising out of the use or possession of the Product sold to Customer, whether that Product is used singularly or in combination with any other substances or processes;
  - (vi) Customer's negligence or breach of this Agreement.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**

- (f) Customer agrees that:
  - (i) the Product is not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
  - (ii) Customer is acquiring the Product for resupply or for using it up or transforming it in the course of a process of production or manufacture in its business.
- (g) From the date on which the Product or any part of the Product has been treated, processed or changed in any manner whatsoever, subject to any liability imposed by statute, Customer will have no claim whatsoever arising directly or indirectly out of the Product or the sale of Product to Customer. Customer has the sole responsibility of determining whether the Product is suitable for any use contemplated by Customer, whether or not Supplier is aware of that use.

## 21. Storage and Handling

- (a) Supplier may charge Customer for storage if Customer does not collect the Product or provide adequate delivery instructions within fourteen (14) days after notification that the Product is ready for collection. Customer must pay the charges specified by Supplier. Product stored by Supplier on Customer's behalf is at Customer's sole risk.
- (b) In storing and handling the Product, Customer must comply with all applicable laws, especially those relating to health, safety and the environment. Upon written notice, Customer must allow Supplier to enter Customer's premises to inspect the storage and handling of the Goods.
- (c) Customer hereby agrees that Supplier will have the right to immediately cease delivery of Product to Customer, pursuant to this Agreement or otherwise, if, in Supplier's reasonable opinion, Customer fails to take necessary action, within a commercially reasonable time, to prevent or mitigate imminent endangerment to human health, safety, or the environment with regards to Customer or Customer's representatives or agents', storing, handling and usage of the Product.

## 22. Variation

Supplier is entitled to vary the terms and conditions in this Agreement at any time by giving Customer written notice.

## 23. Waiver

Even if Supplier does not insist on strict performance of this Agreement, Supplier is not taken to have waived its rights to later require strict performance. Even if Supplier provides an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition in this Agreement.

## 24. Notices

- (a) Notices under this Agreement must be in writing. A notice must be delivered personally or sent by facsimile transmission or post to the other person at their last known address.
- (b) Supplier may or may not give Customer any notice under the PPS Act unless the notice is required by the PPS Act and that requirement cannot be excluded.
- (c) Customer waives any right to receive a copy of a Verification Statement under the PPS Act.

## 25. Severability

If any of these terms and conditions are invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

## 26. Assignment

This Agreement may not be assigned by Customer without Supplier's prior written consent. Supplier may assign this Agreement to another party upon written notice to Customer of that assignment.

**A. Schulman Plastics Pty Ltd (ABN: 15 600 489 736)**

**10/19-23 Japaddy Street, Mordialloc, Vic 3195**

**Phone (03) 8374 6400**

**Email: [aussales@lyb.com](mailto:aussales@lyb.com)**





## 27. Confidentiality

The parties agree that neither party will disclose to an “interested person” (as defined in section 275(9) of the PPS Act (Australia)) or any other person, any information of the kind described in section 275(1) of the PPS Act (Australia). Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act (Australia).

## 28. Governing Law and Jurisdiction

If Customer is an Australian entity, then these terms and conditions are governed by the law in force in Victoria, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which may hear appeals from those courts. If Customer is a New Zealand entity, then these terms and conditions are governed by the law in force in New Zealand, and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which may hear appeals from those courts.