

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 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 Buyer hereby agrees that the quantity and quality of Goods as recorded on the shipping/delivery documents 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, to the extent permitted by law, 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 cancel the order or claim as sole remedy a compensation for damages in the amount of a maximum of 0.5 % of the invoice value for every full week of default. In all events, Seller's liability with respect to untimely delivery shall not exceed 5 % of the invoice value of the deliveries concerned.
 - 3.4 Parties agree that 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 timely notice required under section 8, pay or be credited (as the case may be) for such Goods at the agreed price based on the actually delivered quantity.
 4. **NON-ANALYSIS.** Buyer agrees that it shall not, without Seller's prior written consent, take any steps to analyse, or have a third party analyse, 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.
 - 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 of 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 to the extent allowed assigns its rights to Seller with regard to such finished goods and (already now) hereby vests in Seller (for such event) a non-possessory right of pledge on these finished goods.
 - 5.4 The Buyer is entitled to sell the processed Goods in the ordinary course of business and hereby assigns to Seller to the extent permitted by law all claims against third parties that arise from or in connection with such sale.
 - 5.5 The Buyer also undertakes that as soon as Seller expresses its wish for same, it will pledge said claims to Seller by way of further security for Seller's claims on the Buyer, whatever their basis.
 6. **PRICE AND TAXES.** All prices include standard packaging and are Ex Works unless otherwise agreed and exclusive of VAT, sales, use and/or excise taxes, and any other similar charges, duties, costs and taxes, Buyer shall be responsible for all such charges, duties, costs and taxes.
 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.
1. 总则。本协议条款和条件（以下简称“本协议条款”）应排他性地适用于销售和购买舒尔曼集团公司成员（“卖方”）销售或提供的所有产品和/或服务（“货物”），并替代和取代任何文件中货物的买方（“买方”）所规定或援引的任何其他条款或条件。买方同意买方签发订单即视为对本协议条款的完全接受。买方和卖方也可被单独地称为“一方”，合称为“双方”。
 2. 要约和订单。卖方所有的要约和报价不具约束力，除非卖方最终书面确认订单。
 3. 交付与风险
 - 3.1 除非另行书面同意，所有货物应按工厂交货价于卖方的生产场所或仓库交付，且与货物相关的风险应按国际贸易术语解释通则或任何其他约定在订单确认日适用的交付条款的规定转移至买方。
 - 3.2 买方在此同意，装运/交货文件中记录的货物数量和质量状况为交货时买方收到的数量的决定性证据，除非买方能够提供证明相反情况的决定性证据。卖方有权为部分交付，除非双方明确地另行约定。
 - 3.3 卖方指明的任何交货日期仅为预估，且交货时间除非另有书面约定应非重要因素，且卖方在法律允许的程度内对交货的延误不应承担任何责任。如卖方和买方已书面约定时间为重要因素，买方应有权取消订单或就每满一周的延迟主张最多不超过发票金额 0.5% 的损害赔偿金作为唯一救济。在任何情况下，卖方就未及时交货应承担的责任不应超过相关交货批次货物发票金额的 5%。
 - 3.4 双方同意卖方可向买方交付其所订购数量上下浮动 10% 的数量的货物。在该等情况下，买方无权以超量或缺量为由索赔或拒收货物或货物的任何部分，且买方应，以按照第 8 条要求及时通知为前提，基于实际交付数量，按照约定价格，就该等货物付款或贷记货款（视情况而定）。
 4. 禁止分析。买方同意，未经卖方事先书面同意，其不得采取任何步骤分析或促使第三方分析、反向开发、逆向翻译或编译卖方提供的任何货物、样品或材料，包括但不限于任何化合物、添加剂、母料或浓缩物的配方。
 5. 货物所有权
 - 5.1 卖方保留其销售的所有货物的所有权直至卖方从买方收到其有权收取的所有付款，包括任何的赔偿、成本、利息和税项。
 - 5.2 直至货物的所有权已经转移给买方，买方应确保货物：（1）在不花费卖方任何费用的情况下保持和维持良好的状态；（2）分别储存或标识以便于识别卖方的所有权；（3）不应受限于任何质押、抵押、留置或以其他方式使用货物设定担保；以及（4）已就所有风险按其全部重置价值投保。
 - 5.3 如货物已被买方与其或第三方的任何成品加工、组合或混合，（1）卖方按其货物发票金额与已被加工、组合或混合的其他货物的总价值获得按份共有权，且（2）买方特此将其关于该等成品的权利在允许的范围内转让给卖方，以及（现在已经）特此授予卖方（在该等情形下）对该等成品的非占有性抵押权。
 - 5.4 买方有权在正常的业务过程中销售已加工过的货物，并特此在允许程度内将由该等销售引起或与该等销售有关的所有请求权让与给卖方。
 - 5.5 买方也承诺一旦卖方表达相同意愿，其将质押前述请求权给卖方，无论该等权利基础为何，以为卖方对买方的请求权提供进一步担保。
 6. 价格和税项。除非另有约定，所有价格均包括标准包装且为工厂交货价，不含增值税、销售、使用和/或消费税，以及任何其他类似的收费、关税、成本和税项。买方应承担所有该等收费、关税、成本和税项。
 7. 付款
 - 7.1 除非另行约定，所有的发票应在发票日期后 30 天内以发票载明的货币按发票载明的金额支付。

- 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 Seller shall be entitled to first credit payments against Buyer's old debts. Buyer shall pay interest without prior written notice or demand on all late payments at the lesser of the rate of 1 % per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.
- 7.5 In the event Buyer is in default of any payments whatsoever due to Seller, 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.
- 7.6 In addition to all other remedies available Buyer shall reimburse Seller for all reasonable costs incurred in collecting any overdue debt, including, without limitation, reasonable attorneys' fees, 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 section 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.
- 10. LIMITATION OF LIABILITY.**
- 10.1 Except for the warranty set forth in section 9.1, Seller disclaims any warranty whatsoever express or implied with respect to the Goods, including any warranty of merchantability, fitness for a particular purpose by reason of any use Buyer makes of the Goods whether used alone or in combination with any other substance or in any process. All representations and warranties provided by non-mandatory applicable laws are expressly excluded and contractually waived by Buyer.
- 10.2 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.
- 10.3 Any justified claim with respect to the Goods is limited to replacing, reworking or repairing defective or non-compliant Goods or, at the option of Seller, crediting Buyer, in full or in part, for the amount of the invoice for the Goods concerned.
- 10.4 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 incidental, consequential, exemplary or special damages, either direct or indirect, including but not limited to, loss of profits or revenue, diminution in value, machine stoppage, recall or rework.
- 10.5 Buyer acknowledges and agrees that the remedies set forth in section 10 are Buyer's exclusive remedies.
- 10.6 Nothing in these Terms will limit either party's liability for acting grossly negligent or to the extent such liability cannot be limited by applicable law.
- 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; (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.
- 7.2 买方不得以与卖方的任何索赔或争议抵销为由扣留任何到期应付款项，无论是否与卖方的违约相关。
- 7.3 若卖方合理地认为买方财务状况恶化或有其他情形而不能令卖方满意，卖方可要求买方提前付款或提供担保，且卖方可暂停装运直至买方支付该等款项或提供该等担保。
- 7.4 卖方有权首先就买方的旧债务贷记付款。买方应就所有延迟付款，按每月 1% 利率或适用法律所允许的最高利率中的较低者，按日计息并按月计复利，而无需事先书面通知或要求。
- 7.5 在买方未履行其对卖方的任何到期付款义务的情况下，卖方有权：（1）暂停买方订购的任何货物的装运直至买方支付该等款项；和/或（2）在装运之前要求买方立即支付其订购的任何追加货物的款项；和/或（3）解除销售合同。
- 7.6 除所有其他可获得的救济外，买方应赔偿卖方为催收任何逾期款项所发生的所有合理费用，包括但不限于合理的律师费、法律费用和非法法律费用。
8. 查验和拒收不合格货物。买方应在收货时立即查验货物，且最迟应在交货日起 10 日内就收货时通过合理检验即可发现的瑕疵、违约或短少，或在任何隐藏的瑕疵被发现或应当被发现之日起 10 日内，向卖方发出有关货物的任何索赔的书面通知。买方未能在该等 10 日的期限内发出该书面通知，将构成买方对货物不可撤销的接受。买方一旦作出任何该等索赔，不应再使用货物并应保留货物以待卖方或其代表的检验。
9. 有限保证
- 9.1 卖方向买方保证其对货物拥有完好且自主的所有权，其所供应的货物在装运时符合书面约定或公布的技术规格。
- 9.2 卖方基于买方提供的信息就其所提供的货物和服务的使用或应用向买方提供建议，但卖方并不就买方基于该等建议或服务或货物的任何使用或应用可能获得的结果作出任何保证。除可归因于本协议项下所售货物未能达到 9.1 条明示保证的情形外，买方应补偿、抗辩并使卖方免受所有成本、花费、损害、判决或其他损失的损害，包括因买方对货物的挑选、使用、销售、应用或进一步加工而引起的调查费用、诉讼和合理的律师费。
10. 责任限制
- 10.1 除 9.1 条列明的保证外，卖方未作出与货物有关的任何明示或默示的保证，包括任何适销保证、适于买方单独或与任何其他物质结合或在任何流程中使用货物的特定目的。所有非强制适用法律规定的所有陈述和保证已被明示排除且买方同意放弃。
- 10.2 卖方就索赔和损害赔偿对买方的累计责任，无论是基于违反保证条款、侵权或其他任何原因，在任何情况下均不应超过引致买方索赔的货物的总购买价。
- 10.3 对货物的正当索赔应限于更换、重新加工或修理有瑕疵的或不合格的货物，或，按照卖方自主决定，按照货物发票金额全部或部分贷记买方。
- 10.4 在任何情况下卖方不应就本协议项下违约或货物引起的或与之有关的任何偶然的、后果性的、惩罚性的或特殊的损害，不论直接或间接，包括但不限于利润或收入损失、价值减少、机器故障、召回或返工，对买方承担责任。
- 10.5 买方确认和同意第 10 条列明的救济为买方的排他性救济。
- 10.6 本协议条款的任何内容将不会限制任何一方就重大过失行为应承担的责任，也不会将该等责任限制在适用法律规定不得被限制的范围内。
11. 解除。除本协议条款规定的可能救济外，卖方可书面通知买方立即解除任何销售合同，如买方：（1）未支付任何到期货款；（2）全部或部分地未履行或遵守本协议条款的任何内容；（3）资不抵债，申请破产或针对其的有关破产、接收、重组、为债权人利益转让或类似事件的程序开始或已经开始。

- 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 People's Republic of China, 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 Dongguan. 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.
12. 不可抗力。如发生火灾、爆炸、洪水、飓风、罢工、封锁或其他工业上的干扰、暴动、战争、遵守当地或政府机关的任何作为或不作为要求，未能或延迟获得供给、劳工、电力、机械或设备故障、燃料或原材料，或未能履行义务的当事人合理控制以外的任何种类或性质的任何其他事由，无论与上述提及的事由类似或不同，任何一方可推迟履行（有关任何货物的支付义务除外）。如上述情形持续超过 20 日，则受影响的一方有权书面通知未履行方关于未交付货物的销售合同于解除时解除。
13. 健康与安全。买方应根据卖方在材料安全数据表或卖方的安全文档中的建议处理货物。若买方尚未持有该等文档或需要与货物的安全使用相关的任何信息或建议，买方应立即联系卖方。买方应散播该等信息以就可能的危险警示买方能够合理预见可能暴露于该等危险的人员。
14. 翻译。如本协议条款为方便起见被从英文翻译成其他语言，双方同意，在法律允许的范围内，应以英文文本为准。
15. 准据法和管辖法院。所有的货物销售和本协议条款应适用中华人民共和国法律，而不考虑其冲突法规则。买方和卖方之间因销售合同的签订、履行或解释引起的任何争议，均应由东莞市的法院排他管辖。无损于前述规定，卖方可选择向买方设立国法院提起诉讼。
16. 其他
- 16.1 本协议条款任何部分由于任何原因导致无效或不可强制执行，均不应影响其余部分的有效性或可强制执行性。
- 16.2 买方未经卖方事先书面同意，不得将货物销售/购买的任何合同或其项下的任何权利全部或部分地转让给第三方。
- 16.3 卖方有权通过其集团公司所属的经授权以卖方名义行使的一个或多个商业实体全部或部分转让或履行本合同，即使卖方持续为买方的唯一合同相对方。
- 16.4 买方应遵守所有适用的法律、法规与与货物及相关技术的出口、进口、销售、分销、推广和维修有关的其他法律要求，包括但不限于货物销售时实行的税务、反腐败和外汇法令或规定以及出口和反抵制限制。
- 16.5 与货物相关的所有商标、版权、设计权和任何设计、说明、流程、工艺或其他信息中的其他知识产权应永久地持续为卖方所有。货物的所有销售或卖方关于其货物的可能的应用、设计或使用均不应，暗示或以其他方式，传递任何与货物有关的许可或转让任何与货物相关的知识产权。买方应承担因货物的使用、销售（转售）或加工，无论是单独地或与任何其他材料相组合，而导致的知识产权侵权索赔的所有风险。