

SCHULKE AUSTRALIA PTY LTD - TERMS AND CONDITIONS OF SALE
(ABN: 49 605 683 172)

1. APPLICATION OF TERMS AND CONDITIONS

- (a) These terms and conditions ("Terms and Conditions") govern the supply to the person(s), firm or company ("Buyer") of all products by the Seller (the "Goods") effective from 1st October 2015.
- (b) These Terms and Conditions may be changed at any time by the Seller. The Seller will endeavor to give the Buyer reasonable notice of any change to the Terms and Conditions.
- (c) These Terms and Conditions supersede all previous communications, agreements, arrangements or understandings whether oral or written. Any quotation provided by Seller to the Buyer is subject to any credit application provided by the Seller and these Terms and Conditions.
- (d) It is the Buyer's responsibility to ensure the Goods conform to the Buyer's requirements and are suitable and fit for the Buyer's purpose. The Buyer may not make a claim, and releases the Seller from any claim for any loss, damage, liability, cost, expense, fee or charge arising from or in connection with the Goods not being fit for purpose, or not conforming with the Buyer's requirements.
- (e) All goods purchased in Australia by the Buyer may only be used or resold in Australia. Where in the course of trading, the Buyer supplies Goods to any other person, the Buyer must not give or make any undertaking, assertion or representation in relation to the Goods without the Seller's prior written approval. In any event, the Buyer must not make any representations or advertise the Goods in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Goods in a way which promotes or suggests the use of any Goods in any way contrary to their ordinary use.

2. ORDERS

- (a) The Buyer is to place orders for Goods with the Seller via the method notified by the Seller. The order placed by the Buyer must include: Schulke allocated customer number, product identification number/ references, quantity to be purchased by product identification number/reference, sales value by quantity and product identification number/reference, and delivery instructions.
- (b) The Seller reserves the right to accept or decline, in whole or in part, any order placed by the Buyer, but once accepted, these Terms and Conditions become binding on the parties. If the Seller declines an order placed by the Buyer (in whole or in part), the Seller is not required to give reasons for declining that order.
- (c) Any order for Goods which is less than \$250 (the "Minimum Order Value") may at the Seller's discretion either be rejected or accepted, subject to the payment of the handling fee described in clause 2(d).
- (d) The Buyer will be advised by the Seller if the value of an order does not exceed the Minimum Order Value. If, after receiving such advice, the Buyer requests that the order(s) be processed and the Seller accepts the order, a handling fee of an amount advised by the Seller will be charged to the Buyer. This handling fee is in addition to any service or other charge.
- (e) The minimum order quantity for the supply of Goods will be one full carton ("Minimum Order Quantity"), unless the Seller has given written consent otherwise. In respect of orders for quantities of Goods which are less than the Minimum Order Quantity, the Seller supplies, and the Buyer must purchase, the Minimum Order Quantity.
- (f) The Seller warrants that all Goods shall have a shelf life of not less than 6 months from the date of dispatch from the Seller's premises.
- (g) The price of the Goods is the current list price for the Goods at the time the order is received by the Seller ("Price"). The Buyer is responsible for any tax or governmental charges, including GST (as that term is defined in clause 11 below) imposed on the sale of the Goods by the Seller to the Buyer and such charges will be added to the total invoiced price for the Goods.
- (h) The current list price for the Goods is subject to alteration without notice and will be those prices which are applicable on the day the Buyer's order is received by the Seller.
- (i) The Seller reserves the right to make part supply of any order and each part supply shall constitute a separate contract. Failure to supply a total order shall not invalidate any contract as regards supply of part of the order.
- (j) No order can be cancelled by the Buyer, except with consent in writing from the Seller's Customer Service Representative which must be obtained within 24 hours after the order has been placed with the Seller. The Seller indemnifies the Buyer for and against any and all loss, damage, cost or expense which is incurred or suffered by the Seller as a result of the cancellation of any order for the Goods.
- (k) The Buyer must obtain all necessary licenses and comply with all appropriate Commonwealth or State Acts and Regulations.

3. DELIVERY

- (a) Goods will be delivered using methods and carriers selected by the Seller.
- (b) Goods will be delivered without an invoice attached unless the Buyer has otherwise advised the Seller in writing, noting the batch number of the Goods. In the event there is a discrepancy between the batch number on the delivery note and the batch number on the Goods, the Buyer must notify the Seller within 24 hours of delivery of the Goods to the delivery location. The Seller will not accept the return of any Goods on the basis that the batch number on the Goods does not correspond with the delivery note if the Buyer has given notice to the Seller in accordance with this clause 3(b).
- (c) Delivery of Goods will be made to one delivery point nominated by the Buyer, as set out in the order for the Goods.

- (d) Unless otherwise agreed to by the Seller, Goods will be delivered during the Seller's normal business hours. Deliveries made outside these hours may be subject to additional delivery charges.
- (e) The Seller will not be liable for loss, damage, cost or expense (including but not limited to any consequential or indirect loss or damage) arising from any delay in delivery or failure to deliver Goods by an anticipated delivery date. The Buyer shall accept and pay for Goods delivered, notwithstanding late delivery of such Goods.
- (f) For the purpose of requesting replacement Goods or a refund in the event of any breakage, leakage or damage to individual packages occurring in transit between the Seller's warehouses and the Buyer's delivery point, or short deliveries in consignment the Buyer must notify the Seller in writing within 48 hours of delivery of the Goods. The Buyer must provide evidence of any breakage, leakage or damage in the form of photographs of Goods which have been damaged.

4. TERMS OF PAYMENT

- (a) The Seller will issue to the Buyer:
 - (i) an invoice for the Price of the Goods to the Buyer at the time the Buyer places an order for the Goods; and
 - (ii) a statement of the aggregate Price of all Goods ordered by the Buyer during the calendar month at the end of each calendar month ("Monthly Statement").
- (b) The Buyer must pay the full amount set out the Monthly Statement, including any tax or other charges, strictly within 30 days of date of that Monthly Statement.
- (c) The Buyer hereby authorizes the Seller at its sole discretion to appropriate any moneys received against amounts due by the Buyer to the Seller in respect of the Goods.
- (d) If payment of a Monthly Statement is not made by the due date, the Seller reserves the right to charge the Buyer interest at the rate of 3% above the current 90 day bank bill rate as published in "The Australian Financial Review" on the day following the due date, on all monies then outstanding.
- (e) Nonpayment by due date may result in any or all of subsequent orders being held from delivery to the Buyer.
- (f) The Seller reserves the right to terminate the Buyer's credit account in the case of non-compliance with this clause 4 at any time. Such termination shall be without prejudice to any other rights the Seller may have.
- (g) The Buyer agrees that all costs incurred by the Seller in the recovery of unpaid accounts including but not limited to commissions, fees and legal costs paid to the Seller's agents shall be reimbursed by the Buyer to the Seller immediately on demand by the Seller.

5. RISK AND TITLE

- (a) Risk in Goods purchased will pass to the Buyer when the Goods are off-loaded from the Seller's carrier at the at the delivery point.
- (b) The Buyer indemnifies the Seller for and against any and all loss, damage, cost or expense incurred or suffered in relation to the Goods between the time that risk in the Goods passes to the Buyer and the time that the full price of the Goods is received by the Seller (and title passes to the Buyer).
- (c) Legal and equitable title in the Goods will only pass to the Buyer upon payment in full for the Goods. The Buyer agrees to keep the Goods pending their sale as fiduciary for the Seller in a manner that clearly shows the interest of the Seller. The Buyer may sell the Goods to a third party in the ordinary course of business on market terms and on an arm's length basis and deliver them to that third party provided that the Buyer will account to the Seller in respect of the payment by the third party for the Goods and will keep the proceeds of those sales in a separate account with separate records in accordance with its fiduciary obligations.
- (d) If any amount due by the Buyer in respect of the Goods remains unpaid 30 days after the due date or the Buyer is in default under clause 9(a), the Buyer authorizes the Seller to enter any premises on which the Goods are located and repossess any Goods for which the Seller has not received payment in full.
- (e) The Buyer will insure the Goods for so long as title in the Goods remains with the Seller. The Seller will be entitled to receive insurance proceeds or trace insurance proceeds received in respect of any such Goods

6. RETURNS

- (a) No returns shall be accepted by the Seller unless authorized in writing by the Seller's Customer Service Representative.
- (b) For any returns of non-defective Goods, the Buyer must provide to the Seller a written report detailing the Goods it wishes to return, the original invoice number, the original order number, the Goods batch number, and the reason for the return. The report must be forwarded to the Seller's Customer Service Representative within 48 hours of delivery of the Goods, and be approved by the Seller's Customer Service Representative prior to the return of any Goods.
- (c) For any returns of defective Goods, the Buyer must provide to the Seller a written report detailing the Goods it wishes to return, the original invoice number, the original order number, the Goods batch number, photographic evidence of the Goods being defective, and the reason for the return. The report must be forwarded to the Seller's Customer Service Representative within six months of supply, and be approved by the Seller's Customer Service Representative prior to the return of any Goods. If the Seller agrees that the Goods were defective at the time of supply, the Seller will arrange replacement of Goods to the equivalent value. For the purposes of this clause 6(c) short dated Goods will be considered to be defective where the shelf life of such Goods was less than six months at the date of supply, unless agreed otherwise.
- (d) Any report required under clauses 6(b) and (c) should be sent to the Seller's Customer Service Representative via email customerservice.au@schulke.com or fax 02 8875 9301.
- (e) The Buyer is responsible for all costs and delivery applicable to the return of Goods to the Seller, unless the Seller otherwise agrees.

- (f) Authorized returns must be sent via the Seller's nominated freight carrier. The Seller will not accept responsibility for freight costs associated with Goods returned via any other method.
- (g) All returned Goods must be unused, undamaged and carefully packed in their original packing so as to be in a saleable condition and compliant with the Seller's quality operations procedures with their original marks and sales order or invoice numbers unaltered. The Seller may reject Goods that do not comply with clause 6(f) unless the Seller has requested their return or if the Goods were defective at the time of supply and compliance is not possible.
- (h) Subject to the Seller's discretion, discontinued Goods will not be accepted for return and no credit will be granted, or monies paid to the Buyer in respect of such Goods.
- (i) The Seller reserves the right to charge the Buyer a restocking fee on Goods returned, at a rate of 15% of invoiced cost of the Goods (which includes the cost of freight associated with returning the Goods).

7. PRODUCT RECALLS

Should any of the Goods be subject to a recall, field safety alert or hazard alert by either the Seller or any government agency or regulatory authority, the Buyer must take all necessary steps to assist with the relevant process as necessary (including identification of any party to whom the Goods have been supplied by the Buyer), and will comply with any reasonable directions given by the Seller in respect of such matter.

8. WARRANTY AND LIABILITY

- (a) Our Goods may come with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Law applies, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Where the Australian Consumer Law applies, you are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) Subject to clauses 8(c) and 8(d), Goods are sold by the Seller only on these Terms and Conditions to the exclusion of anything to the contrary (except to the extent permitted by law) in the terms of the Buyer's order notwithstanding that any such order is placed on such terms as purport to override these Terms and Conditions.
- (c) The Seller excludes all liability in connection with Goods (or advice regarding Goods) supplied to the Buyer other than that which may not be excluded under the Australian Consumer Law or other relevant legislation. For the avoidance of doubt, this exclusion includes but is not limited to an exclusion of all conditions and warranties implied by custom, the general law of statutes, damages suffered by the Buyer arising in any way out of the supply, delay in supplying or failure to supply Goods, except as set out in these Terms and Conditions.
- (d) The Seller's liability under any non-excludable implied condition or warranty (except a non-excludable condition or warrant implied by the Australian Consumer Law or similar legislative provision) is limited to, at the Seller's option:
 - (i) the replacement of the Goods or the supply of equivalent Goods; or
 - (ii) the refund of the price paid by the Buyer for the Goods.
- (e) Under no circumstances will the Seller be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with these Terms and Conditions or the Goods or any party's actions or omissions under these Terms and Conditions.

9. BUYER DEFAULT

- (a) The Seller will consider the Buyer to be in default if any of the following occur:
 - (i) the Buyer fails to pay when due any amount owing to the Seller or breaches any other provision of these Terms and Conditions;
 - (ii) any step is taken for the Buyer to enter into any arrangement with its creditors;
 - (iii) the Buyer ceases to be able to pay its debts as they become due;
 - (iv) the Buyer ceases to carry on business; or
 - (v) any step is taken to appoint a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or any other similar person of the whole or any part of the Buyer's assets or business.
- (b) The Seller reserves the right to take the following actions if according to the scope of clause 9(a), the Buyer is considered in default (in addition to any other rights the Seller may have):
 - (i) require the Buyer to immediately pay all amounts invoiced but unpaid or to pay in advance of or on delivery;
 - (ii) suspend or cease supplying Goods to the Buyer (whether or not the Buyer has ordered Goods that are yet to be supplied);
 - (iii) request that the Buyer treat as trust property Goods for which full payment has not been received; and
 - (iv) enter any premises which the Goods are located and repossess Goods for which payment has not been made.

10. APPLICATION OF THE PPSA

- (a) In this clause "PPSA" means the Personal Property Securities Act 2009 (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- (b) This clause applies to the extent that the Seller's interest in any Goods is a security interest ("Security Interest").
- (c) The Buyer agrees that the Security Interest is over the Goods, any proceeds of the Goods and any product that the Goods may be or become part of. The Goods, proceeds and product are referred to in this clause collectively as the "Collateral".
- (d) The Buyer acknowledges that the Seller may register a financing statement in relation to the Security Interest. The Buyer waives its right under s. 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

(e) The Buyer undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Security Interest. If such a security interest does arise the Buyer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the proceeds, and must immediately pay those proceeds to the Seller in reduction of all amounts owing by the Buyer to the Seller.

(f) The Seller can apply amounts it receives from the Buyer towards amounts owing by the Buyer to the Seller to it in such order as the Seller chooses.

(g) The Seller and the Buyer agree not to disclose information of the kind referred to in s.275 (1) of the PPSA except in the circumstances required by ss 275(7) (b) to (e) of the PPSA. The Buyer agrees that it will only authorize the disclosure of the information under s.275 (7) (c) or request information under s.275 (7) (d) of the PPSA if the Seller approves. Nothing in this clause will prevent any disclosure by the Seller that it believes is necessary to comply with its other obligations under the PPSA.

(h) If the Buyer defaults in the timely performance of any obligation owned to the Seller, the Seller may enforce the Security Interest by exercising all or any its rights under these conditions of sale, the general law and the PPSA. The Seller and the Buyer agree that the following provisions of the PPSA do not apply (a) to the extent that s.115(1) of the PPSA allows them to be excluded: ss 95, 118,121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and (b) in addition to the extent that s.115(7) of the PPSA allows them to be excluded: ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.

(i) The Buyer must promptly do anything the Seller requires to ensure that the Security Interest is a perfected security interest and has priority over all other security interests.

(j) Nothing in this clause is limited by any other provisions of these conditions of sale or any other agreement between the Buyer and the Seller.

11. GST

(a) Unless expressly indicated to the contrary, all prices quoted or listed are exclusive of GST.

(b) If GST is payable as a consequence of any supply made (or deemed to be made) by the Seller in connection with the Goods, the Buyer must pay the Seller an amount equal to the GST payable in respect of the supply, in addition to the amounts otherwise payable.

(c) Any payment of GST must be made at the same time as payment is due for the Goods.

(d) Terms used in this clause 11 which are defined in the A New Tax System (Goods and Services Tax Act) 1999 (Cth) (the "Act") and any regulations thereto or such other legislation or regulations of equivalent effect, including GST, which means the goods and services tax imposed under the Act.

12. INTELLECTUAL PROPERTY

(a) The Buyer is not permitted to use any intellectual property of the Seller or its related bodies corporate for any purpose without the prior written consent of the Seller or its related bodies corporate.

(b) All intellectual property rights owned or licensed by the Seller or its related bodies corporate or developed during the course of supplying the Goods and any improvement or modifications to such intellectual property rights remain with the Seller or its related bodies corporate and nothing in these Terms is intended to grant or transfer any interest in such intellectual property rights to the Buyer.

13. FORCE MAJEURE

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Seller or the Buyer either is unable to perform in whole or in part any obligation under this agreement (other than an obligation to pay for the goods) such party shall be relieved of that obligation under this agreement to the extent and for the period that it is unable to perform, and shall not be liable to the other party to this agreement in respect of such inability.

14. GOVERNING LAW

The contract for the sale of goods is made in the state of New South Wales and the parties agree to submit all disputes arising between them to the courts of such state at any court competent to hear appeals therefrom.

15. WAIVER AND VARIATION

(a) These terms and conditions contain the whole contract between the Seller and the Buyer, supersede all prior representations and agreements between the parties and override any inconsistent terms, unless agreed to in writing by the Seller. No variation of the terms and conditions shall be binding on the Seller unless assented to on its behalf in writing.

(b) A provision of or a right created under these terms in favor of the Seller may not be waived or varied except in writing signed by the Seller. The Seller may elect not to exercise its rights arising from a breach of any provision of these terms and conditions and such election, even if the breaches are continuous and multiple, shall not create any estoppel or presumption against the Seller.