

WoodgeniX

Terms and Conditions

These Terms and Conditions and applicable Order Acknowledgements that reference these Terms and Conditions (collectively, this "**Agreement**") govern the sale of goods and services sold by Schilling Schu Industries, LLC ("**Seller**") to the buyer named on this Agreement ("**Buyer**") (collectively, Seller and Buyer, the "**Parties**", and each, individually, a "**Party**"). This Agreement comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

1. Delivery of Goods and Performance of Services.

(a) Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the goods and services specified in applicable Order Acknowledgements (respectively, "**Goods**" and "**Services**") in the quantities, at the Prices (as defined below), and upon the terms and conditions set forth in this Agreement. All Order Acknowledgements shall be agreed upon in writing and reference these Terms and Conditions.

(b) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods FOB Seller's location in Random Lake, WI. (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within the ten (10) day period of the date listed in Seller's written notice to Buyer (such period, the "**Delivery Period**" and such date, the "**Delivery Date**"). Buyer shall (i) be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point and (ii) unload and release all transportation equipment promptly so that Seller incurs no demurrage or other expense.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods by the last date of the Delivery Period, or if Seller is unable to deliver the Goods at the Delivery Point on such day because Buyer has not provided appropriate instructions, documents, licenses or authorizations: on such date, (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods at Buyer's sole liability and expense.

(e) Seller shall use reasonable efforts to meet any performance dates to render the Services as specified in applicable Order Acknowledgements. Such dates shall be estimates only. Buyer shall (i) cooperate with Seller in all matters relating to the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals,

authorizations, or decisions that are reasonably necessary for Seller to perform Services; and (iii) provide customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects.

2. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide within seven (7) days of delivery conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of the non-delivery within seven (7) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in this Section 2 are Buyer's exclusive remedies for any non-delivery of Goods.

3. Title; Risk of Loss; Security Interest. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Wisconsin Uniform Commercial Code.

4. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within seven (7) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" shall mean only products that (i) do not conform to the models listed in the applicable Order Acknowledgement; (ii) do not significantly conform to the specifications; or (iii) materially exceed the quantity of Goods ordered by Buyer.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods; (ii) repair such Nonconforming Goods such that they become conforming Goods; or (iii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller. If Seller exercises its option to repair or replace Nonconforming Goods and after receiving Buyer's shipment of Nonconforming Goods, Seller shall at its expense deliver conforming Goods to Buyer at the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided herein, all sales of Goods to Buyer are made on a one-way basis, and Buyer has no right to return Goods purchased under this Agreement.

6. Price.

(a) Buyer shall purchase the Goods and Services from Seller at the prices (the "**Prices**") set forth the applicable Order Acknowledgements.

(b) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

7. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller pursuant to the terms and conditions set forth in the applicable Order Acknowledgements. All payments hereunder shall be in US dollars and made by check or electronic transfer.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) 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, bankruptcy, or otherwise.

8. Limited Warranty.

(a) Seller warrants to Buyer that for a period of five (5) years from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship.

(b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar.

(c) **EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(d) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third Party Products are not covered by the warranties set forth in this Section or otherwise. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(e) The Seller shall not be liable for a breach of the warranties set forth in this Section unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Seller within seven (7) days of the time when Buyer discovers or ought to have discovered the defect; (ii) at Seller's election, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty to examine such Goods at Seller's location; and (iii) Seller reasonably verifies Buyer's claim that the Goods or Services are defective.

(f) The Seller shall not be liable for a breach of the warranty set forth in this Section 8 if: (i) Buyer makes any further use of such Goods after giving written notice of defective Goods or Services; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(g) Subject to Buyer's compliance with this Section, with respect to any defective Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the Price of such defective Goods; provided that, if Seller so requests, Buyer shall return such defective Goods to Seller at Seller's expense.

(h) Subject to Buyer's compliance with this Section, with respect to any Services subject to a claim under the warranty set forth in Section 8(b), Seller shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the Price of such Services.

(i) THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTIES.

9. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER OR \$150,000, WHICHEVER IS LESS.

(c) The limitation of liability set forth in this Section 9 shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

10. Indemnification. Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, incurred by Indemnified Party, relating to any claim of a third party arising out of or occurring in connection with the Goods purchased from Seller or Buyer's negligence, willful misconduct or breach of this Agreement. Buyer shall not enter into any settlement without Seller's prior written consent.

11. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

12. Termination. In addition to any remedies that may be provided under this Agreement, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

13. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within fourteen (14) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to

continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ninety (90) days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

16. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

19. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Wisconsin.

20. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America located in the Eastern District of Wisconsin, Milwaukee Division, or the courts of the State of Wisconsin located in the City of Sheyboygan and County of Sheyboygan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

21. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by email, personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

22. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. Survival. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, Survival, Limitation of Liability, Indemnification, and Waiver.

24. Amendment and Modification. This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.

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