

SCHAERER MEDICAL USA, INC.
STANDARD TERMS AND CONDITIONS

1. Agreement. These Standard Terms and Conditions (“Terms and Conditions”), together with any information or documents incorporated herein by reference, contain the entire and exclusive agreement (the “Agreement”) between Schaerer Medical USA, Inc. (“Seller”) and Seller’s Buyer (“Buyer”). By receipt of goods to be provided hereunder (the “Goods”) or by performing hereunder, Buyer agrees to the exclusive application of these Terms and Conditions, although Buyer’s agreement to these Terms and Conditions is not limited to the foregoing methods. If Buyer has heretofore made Seller an offer with respect to any Goods, this Agreement shall not operate as an acceptance of the Buyer’s offer, but shall be deemed a counteroffer by Seller. Reference to any form or communication of Buyer, including but not limited to Seller noting Buyer’s purchase order number on or in this Agreement, shall not be deemed to be an acceptance of any term or condition contained therein. Any term or condition contained in any proposal, acknowledgement, form or any other document or communication of Buyer which is different from, in addition to or conflicting with these Terms and Conditions, or any one or more of them, are hereby objected to and rejected by Seller and are superseded in their entirety by these Terms and Conditions.

2. Testing and Acceptance. Prior to delivery to Buyer, the Goods shall have successfully completed Seller’s or the original equipment manufacturer’s, as the case may be, acceptance test procedures (“ATP”). Seller shall provide Buyer with a written certification that the Goods have successfully completed the ATP. Upon completion of delivery and installation, the Goods shall be deemed accepted by Buyer without further testing. Goods found subsequently to be non-conforming shall be subject to the warranty provisions of Section 12 hereof.

3. Governing Law; Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Ohio, U.S.A. without regard to the conflict of laws principles thereof. The rights and obligations of the parties shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the related Convention on the Limitation Period in the International Sale of Goods. Any cause of action arising hereunder or related in any way hereto shall be brought only in the federal or state courts of Hamilton County, Ohio, U.S.A., and Buyer hereby irrevocably submits to the exclusive jurisdiction of such courts. Any action arising out of or related to this Agreement against Seller must be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever.

4. Delivery, Title, and Risk of Loss. All quoted delivery dates and/or periods are approximate. The delivery period shall commence when Seller has acknowledged receipt of complete specifications and/or applicable documents required to effect shipment. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in this Agreement, and all such installments, when separately invoiced, shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve the Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors must be made in writing to Seller within thirty (30) days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Buyer. Notwithstanding the foregoing, title to the Goods, and all accessories to or products or proceeds of the Goods, shall remain with Seller until payment in full of the purchase price and of other amounts owing by the Buyer. To the extent legal title to the Goods shall be deemed by law to pass to the Buyer at the time of delivery and prior to performance of all of the Buyer’s obligations hereunder, equitable title shall remain in Seller until payment in full of the purchase price and the Buyer shall grant, and by acceptance of the Goods shall be deemed to have granted, to Seller, a first security interest and charge in all Goods to secure payment of the purchase price and other amounts owing by the Buyer and performance of all the Buyer’s obligations under this Agreement; and Buyer hereby authorizes Seller to file or record such financing statements and/or other documents with the appropriate governmental bodies or agencies in order to perfect the security interest

granted hereunder or otherwise provide public notice of such security interest. Seller may reclaim any Goods delivered to the Buyer or in transit if the Buyer shall fail to make payments when due.

5. Shipment. Seller shall deliver, or cause to be delivered, the Goods F.O.B. Seller's (or the applicable vendor's) shipping dock. During shipment and during any return shipment to Seller, Buyer shall bear all risk of loss thereto, and shall carry adequate insurance for any and all loss, damage or destruction. Any charges Seller may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of the Goods shall be for the Buyer's account. Method and route of shipment will be at the discretion of Seller unless the Buyer shall specify otherwise and any additional expense of the method or route of shipment specified by the Buyer shall be borne by the Buyer.

6. Returns. No Goods may be returned for credit without prior written approval of Seller, bearing a return authorization number, or such other proof of authorization, from Seller. Goods for which return is authorized must be shipped prepaid by Buyer as directed by Seller.

7. Storage. If the Goods are not shipped within fifteen (15) days after notification to the Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including without limitation Buyer's failure to give shipping instructions, Seller may store such Goods at the Buyer's risk and expense in a warehouse or on Seller's premises. In such event, (i) Seller's delivery obligations shall be deemed fulfilled and all risk of loss or damage shall thereupon pass to Buyer, (ii) any amounts otherwise payable to Seller upon delivery shall be payable upon presentation of Seller's invoices therefor and its certification as to such cause, (iii) promptly upon submission of Seller's invoices Buyer shall reimburse Seller for all expenses incurred by Seller, such as preparation for, and placement into storage, handling, storage, inspection, preservation and insurance, and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall assist and cooperate with Buyer in any reasonable manner with respect to the removal of any Goods which have been placed in storage. Buyer shall pay handling, transportation, and storage charges at the prevailing commercial rates on submission of invoices therefor.

8. Descriptive Literature and Modifications. Catalogues, product brochures, photographs, and other illustrations are a general representation of the products offered but shall not be taken as precise and shall not form part of this Agreement. Seller reserves the right to make changes in design, specifications, or materials that in Seller's opinion are an improvement or necessary because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

9. Price and Payment. Buyer shall pay for the Goods in U.S. Dollars at the prices and on the payment terms described in or on this Agreement or in any separate cover attached, which separate cover is hereby incorporated in this Agreement by this reference. The prices for the Goods covered by this Agreement are Seller's prices for such Goods with (i) the Warranty as found in Section 12 below, and (ii) the Exclusion of Consequential Damages and Disclaimer of Liability as found in Section 13, below. If the Buyer desires for Seller to provide a greater or additional warranty and/or to be liable for some or all of the matters disclaimed in Section 12 or 13, and/or to be liable for consequential or incidental damages, then the Buyer must notify Seller before the Buyer accepts (or is deemed to accept) this Agreement pursuant to Section 1, in which event Seller may, in its sole discretion, modify these Terms and Conditions to reflect higher sales prices reasonably compensating Seller for assuming such additional exposure. In the absence of such a notification and modification, by accepting this Agreement the Buyer is accepting such limitations and disclaimers in exchange for the lower prices set forth herein. Payment terms shall be as described on the face hereof or on the accompanying documentation; provided, however, if payment terms are not so described, then payment shall be cash in full no later than thirty (30) days from the date of shipment, without discount. Payments not made when due shall bear interest at the rate of 1½% per month from date of shipment until paid in full. If, during the period of performance of an

order, the financial condition of the Buyer is determined by Seller not to justify the terms of payment specified, Seller may demand full or partial payment in advance before shipment of Goods or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract. If delivery is deferred, the Goods may be stored as provided in Section 7 hereof and Seller may submit a new estimate of costs for completion based on prevailing conditions. If the Buyer defaults in any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving the Buyer are initiated by or against the Buyer, then the whole contract price shall immediately become due and payable on demand, or Seller, at its option without prejudice to its other lawful remedies, may defer, deliver or cancel this contract.

10. Taxes and Other Costs. All amounts payable hereunder are exclusive of all applicable U.S. and foreign, federal, state, local, municipal or other excise, sales, use, value-added, stamp, property or similar taxes and fees and all export or import fees, customs duties, tariffs or consular fees, now in force or enacted in the future. All such costs, duties, tariffs, taxes and fees shall be paid by Buyer. If any government or body or similar authority determines that Seller is liable for any such costs, duties, tariffs, taxes and fees, then Buyer shall promptly reimburse Seller for any such liabilities paid by Seller.

11. Packing and Documents. Prices include Seller's standard commercial packing and documentation which will vary depending on whether shipment is made by ground, air or ship. The Buyer shall bear any additional expenses required to satisfy the Buyer's specifications. The Buyer shall supply Seller with all necessary information and assistance for the most expeditious delivery of each shipment.

12. Warranty. Seller warrants Goods manufactured by it to be free from defects in materials and workmanship for a period of twelve (12) months after the date of installation or thirteen (13) months after the date of shipment, whichever is the shortest. If within such period any such Goods shall be proved to Seller's satisfaction to be non-conforming, such Goods shall be repaired or replaced at Seller's option. Seller's warranty obligations shall be limited to such repair or replacement, shall be Buyer's sole and exclusive remedy hereunder and shall be conditioned on Seller's receiving written notice of any alleged non-conformity within ten (10) days after its discovery and, at Seller's option, return of such Goods to Seller's factory. Any such non-conformity shall not be cause for the extension of the duration of the warranty specified in this Section 12. If such non-conformity cannot be corrected by Seller's reasonable efforts, the parties shall negotiate an equitable resolution. The limited warranties contained in this Section 12 shall be valid and remain in effect only if: (i) the Goods are used, maintained, installed, stored and repaired by Buyer as directed by all applicable documentation; (ii) Buyer has paid Seller all sums due hereunder; (iii) Buyer has not in any way modified the Goods; (iv) the claim is unrelated to normal wear and tear; (v) the claim is unrelated to the failure by Buyer to follow the most current instructions issued by the manufacturer with respect to the proper use of the Goods; (vi) the claim is unrelated to the negligence or act of Buyer or any third party; (vii) there has been no operation of the Goods under conditions more severe than those for which the Goods were designed; or (viii) the claim is unrelated to force majeure. With respect to Goods not manufactured by Seller, Seller passes to Buyer the warranties provided by the manufacturer, if any. **THE FOREGOING WARRANTIES ARE EXCLUSIVE. Except as warranted in this Section 12, THE ITEMS ARE SOLD HEREUNDER AS IS, NO OTHER WARRANTIES APPLY TO THESE GOODS OR SERVICES, AND NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WHETHER IN RELATION TO MERCHANTABILITY, HIDDEN DEFECTS, FITNESS FOR PARTICULAR PURPOSE, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, NONINFRINGEMENT OR OTHERWISE IS GIVEN BY SELLER TO BUYER OR ANY OTHER PARTY.** The exclusive remedy shall not be deemed to have failed its essential purpose so long as the Seller is willing and able to replace non-conforming Goods or issue a credit to the Buyer within a reasonable time after the Buyer proves to Seller that a non-conformity is involved.

13. Exclusion of Consequential Damages and Disclaimer of Liability. Seller's liability shall be limited as provided in this Agreement. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY; AND (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER ANY OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO. SELLER SHALL NOT UNDER ANY CIRCUMSTANCE BE RESPONSIBLE TO THE BUYER OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, INDIRECT, SPECIAL, ORDINARY, EXEMPLARY, CONSEQUENTIAL OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFIT OR USE OR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE), ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREUNDER. UNDER NO CIRCUMSTANCES SHALL SELLER'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY WARRANTY CLAIMS HEREUNDER), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER HEREUNDER (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION). Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities, or services, downtime, shut-down, or slowdown costs, spoilage of material, or for any other types of economic loss. If Buyer transfers title to, or leases the Goods sold hereunder to, or otherwise permits or suffers use by, any third party, Buyer shall obtain from such third party a provision affording Seller and its subcontractors and suppliers the protection of the preceding sentence. If Seller furnishes Buyer with advice or other assistance which concerns any Good supplied hereunder or any system or equipment in which any such Good may be installed and which is not required by the terms of this instrument or pursuant to any agreement resulting herefrom, the furnishing of such advice or assistance shall not subject Seller to any liability, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise.

14. Safety and Indemnification. Buyer shall employ and maintain any and all safety guards, devices, warning signs, and features, and provide all warnings and instructions, which are required by law. Buyer in its use of the Goods shall comply with all present and future statutes, laws, ordinances, regulations and/or guidelines of any applicable jurisdiction or agency, including without limitation, the Occupational Safety and Health Act of 1970, as amended. Buyer shall ensure that its personnel are, at all times, educated and trained in the proper use and/or operation of the Good(s) and that the Good(s) are used in accordance with any and all applicable manuals, documentation, and instructions. Buyer shall indemnify, defend and hold Seller harmless from and against all claims, liabilities, causes of action, damages, losses, judgments, fees, expenses and costs, including attorneys' fees, as incurred, arising out of or resulting from Buyer's failure to comply with these Terms and Conditions.

15. Force Majeure. Neither party shall be liable for failure or delay in the performance of any of its obligations under this Agreement, except obligations for the payment of money, if such delay or failure is caused by circumstances of force majeure, including but not limited to any act of God, embargo or other governmental act (including failure to act), regulation or request, fire, accident, strike, slow-down, labor difficulty, war (declared or undeclared), riot, sabotage, epidemics, port congestion, delay in transportation, delayed delivery by suppliers, and inabilities due to causes beyond Seller's reasonable control to timely obtain either necessary and proper labor, materials, components, facilities, energy, fuel, transportation, governmental authorizations or instructions, material or information required from the Buyer. The foregoing shall apply even though any of such causes exists at the time of the order or occurs after Seller's performance of its obligations is delayed for other causes. Notwithstanding the foregoing, in the event that any delay or failure identified in this Section 15 continues for sixty (60) consecutive

days, the party adversely affected by such delay may cancel this Agreement upon written notice to the other party. In the event of termination of this Agreement, Buyer shall be obligated to pay for all Goods already provided or delivered. In the event Seller elects to so cancel the order, Seller shall be released from all liability for failure to deliver the Goods, including, but not limited to, any and all claims on behalf of the Buyer for lost profits, or for any other claim of any nature that the Buyer may have. Should any event of force majeure occur, Seller, at its option, may cancel the Buyer's order with respect to any undelivered Goods or extend the delivery date for a period equal to the time lost because of delay. Notice of such election shall be given promptly to the Buyer.

16. Confidential Information; Intellectual Property. Any sketches, drawings, specifications, diagrams, models, samples, designs, manuals and other written materials, trade secrets, proprietary information, processes and manufacturing information of Seller shall remain the property of Seller and shall be treated as "Confidential Information." As between Buyer and Seller, Seller reserves all right, title and interest in and to the Confidential Information and any patent, trademark or other intellectual property related to or associated with the Goods. No use whatsoever or disclosure of such Confidential Information shall be made or permitted by Buyer without the express prior written consent of the Seller. Buyer shall not reverse engineer, disassemble or otherwise similarly analyze the Goods. Buyer shall take all steps necessary to protect the security of and to prevent the disclosure of the Confidential Information, including without limitation such steps Buyer takes to protect the security of and to prevent the disclosure of its own confidential and proprietary information.

17. Buyer's Property. Any property of the Buyer placed in Seller's custody for performance of this contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder, or any accident beyond the reasonable control of the Seller.

18. Separability. If any provision or portion thereof of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. The remaining provisions shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of the Agreement. Buyer waives any governmental immunity, if applicable, to any and all causes of action.

19. Breach. In the event either party hereto should breach any of the material terms and conditions of this Agreement, the aggrieved party shall notify the other party in writing. The offending party shall thereafter have ten (10) business days to correct the identified breach; provided, however, in the event the subject breach is covered by the warranty provisions hereof, Seller shall have ninety (90) days within which to correct such breach. In the event such breach is not rectified to the reasonable satisfaction of the aggrieved party, then the aggrieved party shall be entitled to declare the Agreement null, void and of no further force and effect. In the event of the termination hereof for any reason, Buyer shall be obligated to pay Seller for all Goods already provided or delivered.

20. Training. Buyer represents, warrants and covenants to use the Goods only in accordance with such Goods' operation or instruction manual. Seller, at the request of Buyer, will train or arrange for the training of, Buyer's personnel on the use of the Goods in accordance with such operation or instruction manual. Such training will be conducted at Buyer's or Seller's place of business, at the discretion of Buyer. Buyer shall pay Seller for such training at a rate per hour, or flat fee, mutually agreed to by Buyer and Seller; additionally, Seller will invoice and Buyer shall promptly reimburse Seller

for all costs and expenses (including without limitation travel and lodging) incurred by Seller in providing such training.

21. Service; Repair. Seller shall have the exclusive right to perform, or cause to be performed, all service and repairs, including warranty and post-warranty service and repair, on the Goods. Warranty service and repairs performed by Seller shall be in accordance with this Agreement. Post-warranty service and repairs performed by Seller shall be provided by Buyer pursuant to a separate written service agreement between Seller and Buyer.

22. Miscellaneous.

(a) None of the provisions of this Agreement shall be deemed to have been waived by any act of or acquiescence on the part of Seller, its agents, subcontractors, or employees, but only by an instrument in writing signed by an authorized representative of Seller. No waiver by Seller of any provisions of this Agreement shall constitute a waiver of any other provision or of the same provision on another occasion.

(b) It is expressly declared that this Agreement and the relationship between the parties hereby established do not constitute a partnership, joint venture or agency arrangement between them.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Buyer may not assign its rights or obligations under this Agreement in any way without the prior written consent of Seller. Seller may use subcontractors to perform its obligations hereunder, as it deems necessary or appropriate.

(d) This Agreement may be amended only in writing signed by each of the parties hereto. Terms on the front side hereof or under separate cover attached supersede any conflicting provision contained in these Terms and Conditions.

(e) If the Buyer attempts to use, copy, disclose, or transfer any portion of the Confidential Information in a manner contrary to the terms of this Agreement or in derogation of Seller's rights, whether those rights are explicitly stated, determined by law, or otherwise, Seller shall have the right, in addition to any other legal remedies available, without the posting of a bond, to injunctive relief enjoining such acts, it being acknowledged by Buyer that all other remedies are inadequate and cumulative.

(f) All notices required to be given hereunder shall be in writing. Notices shall be considered delivered and effective upon receipt when sent by telecopy with proof of reception or by registered or certified mail postage pre-paid, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice to the other, may change the address to which future notices shall be sent.

(g) Buyer shall not, directly or indirectly, export or transmit any Goods covered by this Agreement to any country to which such export or transmission is restricted by applicable regulations or statutes of the United States or any agency thereof, without the prior written consent of the U.S. Department of Commerce, Washington, D.C. 20230 and of any other required governmental agency.

(h) Should any act or omission of Buyer cause delays and/or an increase in the cost of Seller's performance of this Agreement, an equitable adjustment to the timetable and/or amounts due under this Agreement shall be made. Upon its awareness of such act or omission affecting the schedule and/or costs, Seller shall notify the Buyer.