



TERMS AND CONDITIONS OF SALE

STAEDTLER (Pacific) Pty Ltd ABN 24 000 023 692

Address: Level 3, 18 Aquatic Drive
Frenchs Forest NSW 2086
Australia

Telephone: 02 9971 3500

Facsimile: 02 9971 3599

Website: www.staedtler.com/au

Email: General.au@staedtler.com

Sales Telephone: 1300 366 555

Sales Facsimile: 1300 366 444

All Staedtler account holders are subject to the attached conditions

1. GENERAL

1.1 **Application:** These Terms and Conditions apply to the sale of all Goods manufactured or sold by us, subject to clauses 1.2 below.

1.2 **New Terms and Conditions:** If we adopt new terms and conditions for the sale of Goods from time to time :

1.2.1 you will be given notice of any new terms and conditions; and

1.2.2 any such amended terms and conditions shall apply to the sale of Goods after the effective date of those new terms and conditions.

2. ACCEPTANCE

Your acceptance of these Terms and Conditions will occur when:

2.1 you submit an Order;

2.2 you accept delivery of, or any part of, an Order; or

2.3 you make full or partial payment for any Goods provided by us.

3. DELIVERY CHARGES

3.1 There is no delivery charge for deliveries into capital city stores in Australia by our nominated carrier.

3.2 There may be a delivery charge on Goods delivered to areas outside capital cities in Australia.

4. QUOTES AND ORDERS

4.1 **Minimum Order:** We will not accept Orders below \$250.00 (excl GST).

4.2 **Back Orders:** If all the Goods specified in your Order are not available at the time of Delivery. No Back Orders will be accepted below \$50.00 (excl. GST)

4.3 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods.

4.4 **Providing a Quote:** We may provide a Quote relating to the supply of Goods to you, which may include any express terms relating to that Order. These Terms and Conditions take precedence where conflicting.

4.5 **Placing an Order:** If the Quote is acceptable to you, you may place an Order for supply of Goods, subject to clause 4.6.

4.6 Any Quote made by us is not an offer to sell and no Order given following any Quote will bind us unless and until the Order is accepted in writing by us. All Quotes are subject to withdrawal or variation by us at any time prior to acceptance of the Order except where agreed otherwise in writing by us.

4.7 **Price Variation:** We reserve the right to amend a Quote prior to completion of Order, with any increase in price being directly proportionate to the increase in cost if:

4.7.1 there is any movement in the cost of supplying the Goods in the Order; or

4.7.2 if the Goods specified in your Order are varied from the Goods specified in our Quote

4.8 **Displays and Fixtures:** STAEDTLER remains the sole owner of the STAEDTLER Brand Shop and associated parts. Only STAEDTLER branded product is to be displayed. STAEDTLER retains the right to remove displays if the customer is deemed in breach of this agreement.

5. PRICES

5.1 **Price at Date of Acceptance of Order:** Unless otherwise agreed to in writing by us or by our authorised representative, the price charged and payable for the Goods shall be the price in Australian dollars set out in your current price list at the date of acceptance of the Order, together with any applicable taxes, charges and delivery costs in relation to the Goods.

5.2 **Changes to Price:** All prices quoted are subject to alteration without notice. However, it is our normal practice to give a minimum of 30 days' notice of impending price changes.

6. PAYMENTS

6.1 **Invoice on Delivery:** An Invoice will ordinarily be issued upon the shipping of the Goods specified in the Order accepted by us.

6.2 **Payment within 30 days:** All Payments for Goods must be made in full within 30 days from the date of the Invoice.

6.3 **Payment by Instalments:** We may agree in writing (in our absolute discretion) to accept Payments for Goods in instalments.

6.4 **Revocation of Credit:** Without limiting the terms of credit granted to you by us under clause 8 (**Credit**), we reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

6.5 **Account Keeping Fee:** We may in our discretion in the event of your failure to make a Payment in accordance with this clause 6 (**Payments**) charge an Account Keeping Fee at the rate of 2% per month on a cumulative basis calculated on a day to day basis on any monies due but unpaid to us, such amounts to be computed from the due date for payment. The parties agree that such amounts are not a penalty but are a true measure of damages incurred by us. Payments received from you will be credited first against any Account Keeping Fees and all such fees will be payable on demand.

6.6 **Application of Payments:** Any payments tendered by you to us shall be applied:

6.6.1 Firstly, as reimbursement for any costs (including debt collection and legal costs) incurred by us;

6.6.2 Secondly, in payment of any interest charged to you on any overdue account;

6.6.3 Thirdly, in relation to obligations that are not secured under the PPSA, in the order in which those obligations were incurred;

6.6.4 Fourthly, in relation to obligations that are secured, but not by PMSIs (as defined in the PPSA), in the order in which those obligations were incurred; then.

6.6.5 Fifthly, in relation to obligations that are secured by PMSIs, in the order in which those obligations were incurred.

6.7 You will not object to us reallocating the order of payments from time to time before or after the issue of a tax invoice.

7. GST

7.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

7.2 **GST payable in addition:** You must pay all GST in addition to any other amounts payable by you to us, for the Goods.

7.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

8. CREDIT

8.1 **Granting of Credit:** We may grant you credit (in our absolute discretion) upon such terms and conditions, (including requiring you to provide relevant documents and information and financial statements) as may be required by us from time to time.

8.2 The granting of credit does not oblige us to extend any particular amount of credit to you.

8.3 You must notify us in writing if there is or may be any change in your shareholding or ownership, or of any material change in your financial position.

8.4 In applying for a credit account with us, you:

8.4.1 consent to us conducting appropriate personal and financial checks for credit worthiness, including personal information, financial information and reports from any referees provided, credit reporting agencies and financial institutions and banks, provided that all personal information provided will be collected, used and disclosed in accordance with this consent, these Terms and Conditions and the *Privacy Act 1988* (Cth);

8.4.2 acknowledge that we may, in our absolute discretion, withdraw any credit facilities provided to you including, without limitation, if we have not received payment from you within 30 days of the date of an Invoice;

8.4.3 irrevocably authorise us and our authorised representatives to make such enquiries as we deem necessary to investigate your credit worthiness from time to time including, inter alia, the making of enquiries with Information Sources;

8.4.4 authorise the Information Sources to disclose to us such information concerning you which is within their possession and which is required by us; and

8.4.5 agree that your information provided maybe be disclosed by us to a credit reporting agency.

9. DELIVERY AND RISK

9.1 **Delivery:** Our delivery obligation is discharged on arrival of the Goods at your nominated delivery destination, agent or nominee or to a carrier commissioned on your behalf

9.2 You will unload the Goods upon delivery, provided that if you are unable or unwilling to accept physical delivery of the Goods, we will be entitled to charge a fee for any delay experienced or for the storage of the Goods at your risk and cost. We may, at our discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions

9.3 **No Liability for Delay:** Without limiting clause 14 (**Exclusions and Limitations**), we shall not be liable for late delivery or delay in delivery. The Customer shall accept and pay for the Goods notwithstanding late delivery.

9.4 **Risk Passes on Delivery:** The risk in the Goods shall pass to you upon delivery of the Goods. A signed Proof of Delivery is confirmation of receipt of full delivery unless otherwise noted on Proof of Delivery document

9.5 **Title:** We will retain absolute title over the Goods until we have received Payment in full in respect of the Goods.

10. ERRORS, SHORTAGES AND FAULTY GOODS

10.1 This clause 10 is subject to clause 11 (**Returned Goods**) and clause 14 (**Exclusions and Limitations**). Goods returned under this clause 10 are subject to our prior agreement for return.

10.2 You will examine the Goods immediately after delivery and we will not be liable for any mis delivery, shortage, defect or damage unless our Customer Service team receives details as set out in clause 10.3.1 and within seven (7) calendar days of the date of delivery of the Products.

10.3 **Notification:** Notification of errors, shortages or faulty Goods must be:

10.3.1 given to our Customer Service team email: Sales.AU@staedtler.com

10.3.2 include the original Invoice details; and

10.3.3 be accompanied by a Return Authorisation Number from us.

10.4 **Payment of Freight Charges:** Freight charges for Goods returned under this clause 10 are payable:

10.4.1 if the error, shortage or fault is due to us, by us and to be transported by our nominated carrier; or

10.4.2 otherwise, by you.

10.1 Subject to our acceptance of your claim under this clause 10 we will replace the relevant Goods at no charge.

11. RETURNED GOODS

11.1 **No obligation: except as required by law** including the ACL. or these Terms and Conditions we will not be obliged to accept returned Goods, unless we agree to do so on terms acceptable to us (including inspecting the Goods).

11.2 Where we accept Goods for return, we may in our discretion charge a restocking fee of twenty dollars (\$20) to you.

11.3 **Expense:** Payment of freight charges will be in accordance with clause 10.4

12. SECURITY INTEREST AND TITLE

12.1 **Security Agreement:** This clause 12 sets out the Security Agreement between you and us.

- 12.2 **Creation of PMSI:** You (**Grantor**) grant to us (**Secured Party**) a Purchase Money Security Interest (**PMSI**) in the Goods (**Collateral**) as security for all or part of the Payment for the Goods.
- 12.3 **Attachment:** Our security interest attaches to the Collateral by virtue of your possession of the Goods as bailee under clause 12.6 and by virtue of the PPSA.
- 12.4 **Registration:** We may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 12.
- 12.5 **Identification:** Until full title in the Goods has passed to you under clause 9.5, you will ensure that:
- 12.5.1 the Goods are identifiable and distinguishable from any other goods that may be in your possession; and
- 12.5.2 you maintain a record of our Goods supplied to you.
- 12.6 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.
- 12.7 **Seizure:** Until payment in full for the Goods has been received by us, we may, without notice, seize the Goods if:
- 12.7.1 a Default Event occurs; or
- 12.7.2 you are in breach of these Terms and Conditions.
- 12.8 **Entry into premises:** For the purposes of carrying out seizure under clause 12.7, we or our servants or our agents may without notice, enter any premises and seek all remedies provided under Chapter 4 of the PPSA, and any other remedies provided at law or in equity or otherwise.
- 12.9 **Permitted use and sale:** You may only sell all or any of the Goods in respect of which full Payment has not been received to a third party if:
- 12.9.1 we have not exercised our right to seize the Goods under clause 12.7;
- 12.9.2 the sale is a *bona fide* transaction at market value in the ordinary course of business; and
- 12.9.3 all proceeds of sale of those Goods are:
- A immediately paid to us; or
- B held on trust for us in a separate account, payable immediately on demand.
- 12.10 **Waiver of notice:** Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on us in your favour.
- 12.11 **Financing statement:** You agree to waive any right under the PPSA you have to receive from us notice in relation to registration events.
- 12.12 **Disclosure:** You agree with us not to disclose information of the kind specified in section 275(1) of the PPSA.
- 12.13 **Enforcement:** At our election to be exercised at any time in our absolute discretion, any section of the PPSA specified in section 115 will not apply to the extent permitted by section 115.
- 12.14 **Change of name:** You shall immediately notify us in writing of any change of name.
- 12.15 **Acknowledgement:** You acknowledge receipt of a copy or due notice of these Terms and Conditions and this Security Agreement.

13. FIXED CHARGE

- 13.1 **CHARGE:** For the purpose of securing payment to us of all monies owing by the Customer to us, the Customer hereby:
- 13.2 charges all of the Customer's beneficial interest in any real and personal property (including all property acquired after the date of these the Terms and Conditions) in favour of Staedtler
- 13.3 authorises and consents to Staedtler taking all actions necessary to give effect to this security including the lodgment of a caveat upon the title of the Customer's real property.
- 13.4 irrevocably appoints Staedtler and any person nominated by us severally the attorney of the Customer with power to execute, sign and deliver any document to give effect to this security.
- 13.5 **MORTGAGE:** For the purpose of securing payment to Staedtler of all monies owing by the Customer to us, and in addition to the charge granted under clause 13.1(a), the Customer hereby:
- 13.6 Charges all of the Customer's beneficial interest in any real property (including all property acquired after the date of these Terms and Conditions) in favour of Staedtler.

13.7 agrees to deliver to Staedtler within seven (7) days of written demand a mortgage in registrable form incorporating the covenants contained for the State relevant for the mortgage to be registered.

13.8 authorises and consents to Staedtler taking all actions necessary to give effect to this security including the lodgment of a caveat upon the title of the Customer's real property.

13.9 irrevocably appoints Staedtler and any person nominated by the Supplier severally the attorney of the Customer with power to execute, sign and deliver such mortgage or other document to give effect to this security.

13.10 **Trustee:** if you are a trustee, you represent to us that you have authority under the relevant trust instrument to trade with us and to give us a charge and security interest pursuant to this clause in your capacity as trustee.

14. EXCLUSIONS AND LIMITATIONS

14.1 Nothing in these Terms and Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any provisions of any Commonwealth, State or Territorial Law (including the ACL) into the Terms and Conditions, if such exclusion, restriction or modification would be void or prohibited by the legislation. To the extent that we breach any condition or warranty implied into the Terms and Conditions which cannot be excluded, or breach any condition or warranty expressly included in the Contract, then our liability is limited to, and completely discharged by at our option, either: (i) replacement of the Goods that are the subject of the breach, or supply of equivalent goods; (ii) payment of the cost of replacing the Goods or acquiring equivalent goods; (iii) repair of the Goods; or (iv) payment of the cost of having the Goods repaired. Subject to the above, we are not liable to you (or to any third party claiming through you) for any Loss caused by any act or omission of us, our employees or agents, and whether based on negligence or other tort, contract or otherwise. In no event shall we be liable for indirect or consequential losses (including loss of production, profit, goodwill or reputation).

14.2 **Warranties:** The Goods are warranted by us as manufacturers against defective workmanship. To the extent permissible by law all other warranties and implied terms and conditions are expressly excluded, and no warranties are given, and we will not be liable for:

14.3 alterations to Goods for which we are not responsible;

14.4 damage or failure caused by unusual or non-recommended use or application of the Goods; or

14.5 loss caused by any factors beyond our control.

15. INDEMNITY

15.1 **Indemnity:** Each Party (**Indemnifier**) indemnifies the other Party (**Indemnified Party**) against any contingent or actual Loss incurred by the Indemnified Party arising from or in connection with any breach of this agreement by, or the negligence of, the Indemnifier;

15.2 The Indemnifier's liability under clause 15.1 will be reduced by the extent to which any Loss arises out of the negligent act or omission of the Indemnified Party.

15.3 The indemnity in clause Error! Reference source not found. will continue to apply notwithstanding the termination or expiration of this agreement.

16. CANCELLATION

16.1 **Cancellation by Customer:** You may not cancel any Order or part of it without our written consent, which may not be unreasonably withheld.

16.2 Without prejudice to our right to refuse to allow cancellation of an Order as a condition of giving such consent, we may require that you pay all costs incurred by us allocated to fulfilling the portion of the Order up to the date of cancellation (together with our loss of profit resulting from the cancellation).

16.3 **Cancellation by Staedtler:** We will be entitled (without liability to you save as required by relevant laws) to cancel an Order or delivery of an Order if:

16.4 we reasonably form the opinion that you are insolvent or at material risk of insolvency;

16.5 you fail to pay any amount for the Goods on the due date; or

16.6 we reasonably form the opinion that supplying goods or services to you may have a negative impact upon our business or commercial reputation or image.

17. TERMINATION

If a Default Event occurs, we may, without limiting any other right we have under these Terms and Conditions, terminate any outstanding Order and any contract for the supply of Goods to you.

18. FORCE MAJEURE

We may totally or partially suspend deliveries during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to a Force Majeure Event.

19. SEVERABILITY

Each clause in these Terms and Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

20. WAIVER

No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

21. GOVERNING LAW

These Terms and Conditions shall be governed by the laws of the State of New South Wales and you submit to the jurisdiction of and agree to be bound by the Courts of the State of New South Wales.

22. DEFINITIONS

IN THESE TERMS AND CONDITIONS, UNLESS OTHERWISE PROVIDED, THE FOLLOWING TERMS SHALL HAVE THEIR MEANING AS SPECIFIED:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Collateral has the meaning given to it in the PPSA.

Staedtler, we, us or our means Staedtler (Pacific) Pty Ltd (ABN 24 000 023 692).

Customer, you or your means any person or entity that places an Order with us including any related company, related party, officer and authorised person of the relevant person and your successors, administrators and permitted assigns and your executors and permitted assigns, or being a company, its successors, administrators and permitted assigns.

Default Event means any one of the following events:

- (a) you fail to make any payment when due;
- (b) you commence Winding Up;
- (c) you appoint a receiver;
- (d) you become insolvent, bankrupt or commit an act of bankruptcy;
- (e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (d) above; or
- (f) a mortgagee or their agent enters into possession of your assets;
- (g) you part with possession of the Goods or any of them otherwise than by way of sale to a Customer in the ordinary course of business.

Force Majeure Event means circumstances beyond our reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, pandemics, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.

Goods means goods manufactured or sold by Staedtler from time to time, including drafting and writing instruments and associated stationery products.

GST means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Grantor has the meaning given to it in the PPSA.

Information Sources means, for the purposes of making enquiries under clause 8 (**Credit**), information sources of credit information of a Customer including the Customer's trade referees, bankers and any other credit provider or a credit reporting agency that possesses relevant credit information of the Customer.

Invoice means the invoice issued upon the shipping of the Goods specified in the Order accepted by us.

Order means an order for Goods.

Parties the parties subject to these Terms and Conditions.

Payment means payment of any amount relating to Goods, in full and on time.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended.

PMSI means a purchase money security interest as defined by section 14 of the PPSA.

Quote means a quotation by us for an Order of Goods, including all express and implied terms of the Quote.

Return Authorisation Number means, for the purposes of clause 10, the authorisation number provided by us that must be provided in relation to a notification of a return of Goods under clause 10.

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security agreement set out in clause 12 (**Security Interest and Title**).

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.



STAEDTLER (Pacific) Pty Ltd ABN 24 000 023 692

Address: Level 3, 18 Aquatic Drive
Frenchs Forest NSW 2086
Australia

Telephone: 02 9971 3500

Facsimile: 02 9971 3599

Website: www.staedtler.com/au

Email: General.au@staedtler.com

Sales Telephone: 1300 366 555

Sales Facsimile: 1300 366 444