



TERMS AND CONDITIONS OF SALE

1. General

- 1.1. These terms and conditions of sale ("Terms") apply to the sale of goods by Sealite Pty Ltd, ("us") to the person or entity who enters into a contract with us for the purchase of goods ("you").
- 1.2. These Terms supersede all previous terms and conditions and represent the entire agreement between us and you. These Terms cannot be varied by any other terms, including your terms and conditions of purchase (if any).
- 1.3. When you place an order with us, you have accepted these Terms.
- 1.4. The application of the United Nations Convention on Contracts for the International Sale of Goods or Services (Vienna Convention) is expressly excluded.

2. Quotes provided by Sealite Pty Ltd

- 2.1. All quotes made by us are for any period specified in the quote. If no such period is specified, the quote is valid for a period of thirty (30) days from the date on the quote.
- 2.2. Unless otherwise agreed, the price of the goods is operative as at the date of the quote.
- 2.3. Any price concession or discount we provide you is conditional on your full compliance with any resulting agreement and these Terms.
- 2.4. We reserve the right to amend the quote at any time, by notice to you.
- 2.5. Any quote we provide is an invitation to treat only and is only valid if in writing.

3. GST

- 3.1. Prices quoted are exclusive of GST and any other taxes or duties imposed on or in relation to the goods.
- 3.2. All Australian customers must pay the amount for GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the price for the goods (or the first part of the total amount due, if we agree to you paying the total amount via instalments.)

4. Pricing

- 4.1. If you request any variation to the agreement for the sale of goods, we may increase the price to account for the variation.
- 4.2. Where there is any change in the costs incurred by us in relation to the goods, we may vary the price to take account of any such change, by notifying you.

5. Payment

- 5.1. We reserve the right to require payment in full immediately on delivery of the goods.
- 5.2. Unless otherwise agreed:
 - 5.2.1. Where a credit account is offered, payment is due within 30 days from the date of our invoice.
 - 5.2.2. if you are outside Australia, payment is either by telegraphic transfer prior to shipment, or Letter of Credit, or other terms as negotiated.
- 5.3. Payment terms may be revoked or amended at our sole discretion immediately upon giving you written notice.
- 5.4. The time for payment is of the essence.
- 5.5. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 5.6. If any of the following occurs:
 - 5.6.1. we reasonably consider that your creditworthiness has become unsatisfactory;

- 5.6.2. an order is made, or a resolution is passed, to bankrupt you or to wind you up, a meeting is called to consider a resolution to bankrupt you, wind you up or a provisional liquidator is appointed;
- 5.6.3. a receiver or receiver and manager is appointed over the whole or part of your business or assets;
- 5.6.4. you enter into any arrangement or composition with any of your creditors;
- 5.6.5. you are placed under administration or a meeting is called or some other step taken to place you under administration;
- 5.6.6. you cannot pay your debts as they fall due; or
- 5.6.7. you do not comply with these Terms,

then all money which would become payable by you to us at a later date on any account, becomes immediately due and payable without the requirement of any notice to you, and we may, without prejudice to any of our other accrued or contingent rights:

- 5.6.8. charge you for, and you must indemnify us from, all costs and expenses (including without limitation all legal costs and expenses) incurred by us resulting from your default or in taking action to enforce compliance with these Terms or to recover any goods;
 - 5.6.9. cease or suspend supply of any further goods to you;
 - 5.6.10. by written notice to you, terminate any uncompleted contract with you.
- 5.7. We may charge you interest if full payment of any amount is not made by the due date. Interest will be charged at the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic) from time to time, from the due date until full payment is received.

6. Delivery

- 6.1. Any delivery time we give you is a genuine estimate only. We are not liable to you for any loss or damage you suffer or incur as a result of late delivery.
- 6.2. You must still accept and pay for the goods even if we deliver late.
- 6.3. You indemnify us against any loss or damage suffered by us, our sub-contractors or employees as a result of delivery, except where you are a consumer for the purposes of any mandatory consumer laws, and we have not used the requisite degree of care and skill.
- 6.4. Unless we agree in writing, delivery takes place when we notify you that the goods are available for dispatch from our premises.
- 6.5. If agreed that you will collect the goods, you must do so within 14 days of being advised that the goods are ready. If you do not collect the goods within this time, you are deemed to have taken delivery of the goods and may be liable for storage charges payable monthly on demand. Goods stored on your behalf are at your risk.
- 6.6. If delivery is attempted and is unable to be completed, you are deemed to have taken delivery of the goods. You may be liable for storage charges payable monthly on demand.
- 6.7. We may make part delivery of the goods, and may invoice you for the goods provided.
- 6.8. You are responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to you to the point of delivery.

7. Risk

- 7.1. Risk of damage to, or loss of, and all insurance responsibility for theft, damage or otherwise in relation to the goods passes to you immediately at the time of dispatch from our premises. We are not liable to you for loss or damage or deterioration of the goods after they are dispatched.
- 7.2. You assume all risk and liability for loss, damage or injury to persons or to property belonging to you or third parties arising out of the use, installation, possession or re-sale of any of the goods sold by us, unless recoverable from us on the failure of a non-excludable statutory or consumer guarantee.
- 7.3. The goods are sold to you on the basis that you have obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8. Title

- 8.1. Until we have received payment in cleared funds for all goods supplied by us to you, as well as any other amounts owing to us by you (and all cheques or negotiable instruments have been honoured):

- 8.1.1. title and property in all goods remains vested in us and does not pass to you;
 - 8.1.2. you must hold the goods as fiduciary bailee and agent for us;
 - 8.1.3. you must return the goods to us if requested;
 - 8.1.4. you must keep the goods separate from your own goods and maintain our labelling and packaging;
 - 8.1.5. you must hold the proceeds of any sale of the goods on trust for us in a separate account with a bank to whom you have not given security, however failure to do so will not affect your obligation as trustee; and
 - 8.1.6. in addition to our rights under the *Personal Property Securities Act 2009* (Cth) ("PPSA") or similar legislative regime, we may, without notice, enter any premises at a date and time at our discretion, where we suspect the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of us, and for this purpose you irrevocably license us to enter such premises and also indemnifies us from and against all costs, claims, demands or actions by any party arising from such action.
 - 8.2. We can retake possession of any goods in your possession if anything in clause 5.6 occurs.
 - 8.3. You must take out and pay for insurance sufficient to cover your interest in the goods. You must produce a certificate of insurance to show that you have taken out this insurance if we ask you to do so.
9. Personal Property Securities Act
- 9.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms if you are in Australia.
 - 9.2. For the purposes of the PPSA:
 - 9.2.1. terms used in this clause that are defined in the PPSA have the same meaning;
 - 9.2.2. these Terms are a security agreement and we have a Purchase Money Security Interest in all present and future goods supplied by us to you and the proceeds of the goods; and
 - 9.2.3. the security interest is a continuing interest irrespective of whether there are monies or obligations owing by you at any particular time.
 - 9.3. Where permitted by the PPSA, you waive any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
 - 9.4. We agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
 - 9.5. To the extent permitted by the PPSA, you agree that:
 - 9.5.1. the provisions of Chapter 4 of the PPSA which are for your benefit or which place obligations on us will apply only to the extent that they are mandatory or we agree to their application in writing; and
 - 9.5.2. where we have rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
 - 9.6. If you are outside of Australia, you acknowledge that another security regime may apply to the sale of the goods to you. If another security regime applies, you agree to do all things and execute all documentation necessary to enable us to validly register our security interest under that prevailing regime.
10. Quantity discrepancy
- 10.1. If the quantity of goods delivered is less than the amount you ordered, you must notify us in writing of the shortfall within 7 days of delivery. If you do not notify us of any shortfall as required, you will be deemed to have accepted the goods and will be required to pay for the goods in full despite the shortfall.
 - 10.2. When any shortages or claim for damaged goods is accepted by us, we may, at our option, replace the goods, or refund the price of the goods.
 - 10.3. Subject to clause 10.7, we will not under any circumstances accept goods for return that:
 - 10.3.1. have been specifically produced, imported or acquired to fulfil your order;

- 10.3.2. are discontinued goods or no longer stocked by us;
 - 10.3.3. have been altered in any way;
 - 10.3.4. have been used; or
 - 10.3.5. are not in their original condition and packaging.
- 10.4. If the quantity of goods delivered is more than the amount you ordered, you must immediately notify us in writing and we are entitled to charge you for the excess or recover the excess from you.
- 10.5. Unless otherwise stated, dimensions and masses quoted are approximate and subject to commercial tolerances and may be subject to change without notice.
- 10.6. Where goods are delivered by a carrier nominated by you, then a receipt from the carrier shall be considered adequate proof of delivery and our liability for delivery shall cease.
- 10.7. If you are a consumer for the purposes of any mandatory consumer laws, nothing in this clause 10 limits any remedy available for a failure of such statutory protection.
11. Force Majeure
- 11.1. We are not liable for failure to comply with this document if the failure (directly or indirectly) arises out of any circumstances beyond our reasonable control. If such circumstances occur, we may delay or cancel delivery of the goods or reduce the quantity to be delivered.
- 11.2. The following are examples of circumstances beyond our reasonable control: strike, lock-outs, accidents, war, fire, flood, explosions, shortage of power, breakdowns of plant or machinery, shortage of raw or other materials from normal sources of supply, act of God, and any order or direction of any Local, State or Federal Government, Government authority or institute (within the Commonwealth of Australia or elsewhere).
12. Orders and Cancellation
- 12.1. An agreement to sell the goods to you is formed when we accept, in writing or electronic means, an offer from you or provide you with the goods.
- 12.2. We may refuse to accept any offer.
- 12.3. You must provide us with your specific requirements, if any, in relation to the goods.
- 12.4. You cannot cancel any order or contract or return any goods unless we first agree in writing. We will not agree to any cancellation or return unless you indemnify us for all loss or damage we suffer or incur as a result of the cancellation or return. We may cancel any order or contract if we consider we may be unable to supply you the goods.
- 12.5. If anything in clause 5.6 occurs or if the goods remain uncollected after 14 days from when we tell you that they are ready for collection, we may cancel the whole or part of an order or contract by giving you notice. If we cancel in these circumstances, you must pay us for any loss, liability, cost or expense we incur as a result of the cancellation and a reasonable cancellation fee set by us.
- 12.6. You have no claim against us and we are not liable to you for any loss, liability cost or expense which you may incur as a result of a cancellation under this clause.
- 12.7. Freight costs for returns due to purchase error shall be your responsibility.
- 12.8. A restocking fee may be charged for returns due to purchase error.
- 12.9. Goods made specifically to your specifications or requirements, must be paid for before production will commence and shall not be refundable for credit.
13. Limitation of liability
- 13.1. Except as these Terms specifically state, or as contained in our Warranty Terms and Conditions, this agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or any contractual remedy for their failure.
- 13.2. You acknowledge that:
- 13.2.1. you have not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by us in relation to the goods or their application and use; and

- 13.2.2. you have not made known, either expressly or by implication, to us any purpose for which you require the goods and you have the sole responsibility of satisfying yourself that the goods are suitable for your use.
- 13.3. We limit our liability to you to the maximum extent permitted by law. Unless otherwise required by applicable non-excludable statutory and consumer regimes:
- 13.3.1. Other than as stated in these Terms or any Warranty Terms and Conditions we are not liable to you in any way arising under or in connection with the sale, installation, use of, storage, re-sale or any other dealings with the goods by you or any third party.
- 13.3.2. We are not liable for any indirect or consequential losses or expenses suffered by you or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 13.3.3. We will not be liable to you for any liabilities, losses, damages, costs or expenses suffered or incurred by you as a result of any of the following:
- (a) the goods being used or handled other than in accordance with the instructions in the owner's manual and any other information or instructions provided to you by us;
 - (b) the goods being deliberately abused, or misused, damaged by accident or neglect or in being transported;
 - (c) the goods being repaired or tampered with by anyone other than us or repair personnel authorised by us;
 - (d) your failure to comply with laws relating to the use, storage, installation, sale, marketing or labelling of goods;
 - (e) any statement you make about the goods without our written approval; or
 - (f) any breach by you of the Warranty Terms and Conditions.
- 13.4. Nothing in these Terms is to be interpreted as excluding, restricting or modifying the application of any applicable statutory or consumer protection regimes which cannot be so excluded, restricted or modified.
14. Variation
- 14.1. We are entitled to vary these Terms at any time by giving you written notice. Any variations will apply to quotes or orders placed after the notice date.
15. Waiver
- 15.1. Even if we do not insist on strict performance of these Terms, we are not taken to have waived our right to later require strict performance. Even if we provide an express waiver, this is not to be taken as a waiver of a subsequent breach of these Terms.
16. Privacy Act
- 16.1. You agree that you will:
- 16.1.1. comply with the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles) in relation to any and all personal information that you may collect, receive, have access to, hold, use, store, disclose and destroy in connection with these Terms; and
- 16.1.2. indemnify us on demand from and against any liability incurred by us as a result of your breach of the Privacy Act.
17. Notices
- 17.1. Notices under these Terms must be in writing. A notice must be delivered personally or sent by facsimile or e-mail transmission or post to the other party at the last known address.
- 17.2. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
18. Severability
- 18.1. If any of these Terms is invalid or unenforceable in any jurisdiction, it must, if possible, be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down but can be severed to the extent of the invalidity or unenforceability, it must be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

19. Governing law and jurisdiction

19.1. The law in force in Victoria, Australia, governs these Terms.