

Terms and Conditions of Trade for Maxim Filing Systems Branded Products

– as sold by Fielden & Sons Ltd

1. Interpretation

In these Terms unless the context otherwise requires:

“Customer” means the person which buys Goods from the Seller.

“Seller” means Fielden & Sons Ltd, its successors or assigns.

The goods supplied by the Seller to the Customer are herein described as the “Goods”.

Any contract between the Seller and the Customer for the sale and purchase of Goods is herein described as a “Contract”.

“Seller’s Price” in respect of Goods at any time means:

(a) if Seller has not provided a quotation in writing to Customer in respect of those Goods, the price specified in the most recent price list produced or published by Seller at that time, or, if there is no such price list, or it does not specify the price of the Goods in question, the price certified by Seller as being its standard price at that time for those Goods; or

(b) if Seller has provided a quotation in writing to Customer in respect of those Goods, the price specified in that quotation.

2. Acceptance of Terms and Conditions

Any of the following actions by the Customer are deemed to be acceptance of the Terms and Conditions contained herein:

(a) Application for a debtors account to be opened with the Seller; or

(b) Acceptance of any tender provided by the Seller; or

(c) Order from the Customer for the supply of any Goods by the Seller; or

(d) Acceptance of delivery from the Seller,

And such terms and conditions shall constitute the only terms and conditions to be contained in any Contract, and these Terms and Conditions shall override and negate the Customer’s terms and conditions of purchase or contract unless agreed to in writing by the Seller.

Where there is a conflict between: (a) the Seller’s confirmation of order and these Terms and Conditions, the confirmation of order shall prevail; and (b) a purchase order and these Terms and Conditions, these Terms and Conditions shall prevail; and (c) a quote and a purchase order, the quote shall prevail.

None of the Seller’s agents or representatives are authorised to make any representations, statements, warranties or conditions not expressly set out herein, and the Seller is in no way bound by such statements unless such statement is given in writing by the Seller, in which case such statement shall only apply to the particular transaction, dealing or matter.

The Seller reserves the right to amend or replace these Terms and Conditions from time to time by notice in writing to the Customer.

3. Pricing

Pricing: Customer shall pay to Seller in respect of all Goods supplied by Seller to the Customer the Seller’s Price for those Goods in accordance with these terms and conditions.

Freight and taxes, etc: Except where agreed by quote, or otherwise in writing, all prices are exclusive of:

(a) Freight, insurance, installation, customs duty, and any other costs; and

(b) All applicable taxes (including any goods and services tax) assessed or levied in connection with the supply of the Goods (other than any final income tax liability of Seller) and where the payment of such taxes or duties is the responsibility of Seller, the price shall be increased by the amount of such taxes or duties.

4. Payment

Where no other terms of payment have been advised in writing by the Seller, payment without deduction or set-off is due on or before the 20th of the month following the month in which the Goods were despatched from the Seller’s premises.

All payments shall be made in New Zealand dollars. Payment shall be made in cleared funds. Overdue accounts shall incur interest charged at 5% per annum above Seller’s bank indicator lending rate from time to time calculated on a daily basis until the Seller’s Price and interest have been paid in full.

The Seller shall not be bound to perform or comply with any further obligation to the Customer should any amount owing by the Customer be overdue.

The Customer will, in addition to paying interest as set out above, pay and reimburse the Seller for all costs and expenses (including without limitation lawyer’s costs on a solicitor to client basis) which the Seller may incur as a result of the Customer’s failure to pay all monies due and payable under any Contract.

5. Ordering Procedures

Orders: The following provisions apply to orders for Goods:

Orders must be placed in accordance with procedures from time to time laid down by Seller.

Orders shall be deemed accepted by Seller when accepted in writing or, in the absence of written acceptance, upon dispatch of the Goods by Seller. Orders for Goods may be accepted by Seller in whole or part. Acceptance of orders is at Seller’s sole discretion.

Status of order: The placement of an order with Seller constitutes an offer by Customer to trade with Seller and does not constitute acceptance of any offer by Seller. Receipt of an order by Seller from Customer does not constitute acceptance by Seller of that order.

Status of quotation: If a quotation is provided by Seller, that quotation is an invitation for Customer to trade with Seller, but does not constitute an offer by Seller.

6. Delivery/Freight

Unless agreed otherwise in writing, the carriage of Goods within New Zealand will be arranged by the Seller and paid by the Customer on invoice from the Seller in addition to the Seller’s Prices unless otherwise agreed in writing by the Seller.

The Seller shall have the right to select the means of transportation and carrier.

If a Customer requests a means of transport or carrier other than that selected by the Seller, all costs incurred shall also be paid by the Customer.

The Seller reserves the right to deliver the Goods by instalments suitable to it in its discretion.

If the Customer fails or refuses or indicates to the Seller that it will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Seller was willing to deliver them, and the Customer will meet any costs incurred if Goods have been turned away and returned.

Should the Seller fail to deliver or make defective delivery of one or more instalments this shall not entitle the Customer to cancel any Contract.

The Seller shall not be liable to Customer for delay in delivery.

7. Return of Goods

Goods may only be returned to the Seller with the prior agreement of the Seller and on the following terms and conditions:

(a) The Customer is to pay the cost of returning the Goods (including without limitation transportation and packing); and

(b) The Goods are to be returned within 30 days of the date of despatch to the Customer; and

(c) The Customer is to enclose documents with the Goods identifying the Customer, the quantity and description of the Goods and the Seller’s invoice or packing slip number and date of that document; and

(d) The Seller will not accept the return of any Goods where the Goods have been used or modified; and

(e) The Seller will not accept the return of any Goods that are incorrectly packed or carried.

(f) Any return of Goods to Seller is at Customer’s own risk. Seller is not responsible for unauthorised returns. Seller may dispose of, on such basis as Seller sees fit and without liability to Customer, any goods returned otherwise than in accordance with the above.

8. Quotations and Tenders

Unless otherwise provided, quotations and tenders are open for acceptance for 30 days from the date of written quotation tender after which time they will lapse. The Seller may withdraw or amend any quotation or tender at any time prior to acceptance.

Acceptance of quotations or tenders must be in writing and accompanied by sufficient information to enable the order to be proceeded with.

9. Seller’s Warranty

Maxim products are fully warranted to the original purchaser against defects in materials and workmanship for the lifetime of the product. If a product ever fails due to a manufacturing defect, Maxim will repair the product, without charge, or replace it, at our discretion. This warranty does not cover damage caused by accident, improper care, negligence or normal wear and tear over extended time and use. Any freight costs will be the customer’s responsibility and may be required to be prepaid.

Warranty will be void if;

If any attempt to repair the Goods is made by any person or persons not authorised by Seller to effect those repairs;

If the Goods have been dismantled or modified without the approval of Seller; or

If the Goods have not been stored, maintained or used in a proper manner.

Seller shall not be obliged to carry out any work nor be under any liability under this clause for so long as Customer is in default in relation to any payment or in the performance of any obligation under any Contract.

Place of repairs: Any repairs to the Goods shall be effected at such place as Seller may specify. Customer shall be responsible for, and bear the costs of, transporting to Seller any Goods to be repaired or made good.

This clause does not apply to Goods which are not manufactured by Seller.

Contracts Privy: If Customer on-sells any goods purchased from Seller to a third party, that third party shall have no claim against the Seller.

10. Indemnity

The Customer hereby indemnifies the Seller for any loss, costs, damages, expenses and injury to property or persons (including but not limited to legal expenses, loss of profits, business or other direct, indirect, special, consequential or incidental damages) ("the Losses") resulting from, arising out of or in connection with the Goods supplied by the Seller under any Contract.

For the avoidance of doubt, the Customer shall be liable for any costs and expenses incurred on the Customer's behalf in relation to the Goods.

11. Personal Property Securities Act 1990 ("PPSA")

Capitalised expressions in this clause have the meaning prescribed to them in the PPSA.

As security for payment of the price of the Goods and payment of any other amount owed by the Customer to the Seller from time to time and as security for the performance by the Customer of the obligations set out in these Terms and Conditions the Customer grants the Seller a Security Interest in the Goods.

The Seller reserves the right to register a Financing Statement in the Personal Property Securities Register to perfect its Security Interest in the Goods.

All costs of registering a Financing Statement or a Financing Change Statement may, at the Seller's discretion, be debited against the Customer's account with the Seller.

On request by the Seller the Customer will sign any documents and provide any information to enable the Seller to perfect its Security Interest in the Goods.

The Customer will not allow any other person to register a Financing Statement over the Goods without the prior written consent of the Seller.

The Customer waives its right to receive a copy of the Verification Statement, and all other rights it would otherwise have under the PPSA to receive any documents, make any objections or take any action of any kind whatsoever, to the greatest extent allowed by law.

12. General

Severability: If any provision of any Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality, validity or application of any other provision of the Contract.

Notice provisions: Any notice to be given by a party to the other shall be in writing and shall be given by:

- (a) Personal delivery;
- (b) Mailing by pre-paid post, and shall be deemed to be given two days after the date of mailing; or
- (c) Facsimile transmission, and shall be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice, to the address or facsimile number specified on the first page of these Terms or to such other address or number as is notified in writing by a party to the other.
- (d) Email attachment.

Force majeure: Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under a Contract if:

- (a) The failure or delay arises directly or indirectly from a cause reasonably beyond that party's control and not due to the default or insolvency, or an intentional act or omission, of that party;
- (b) That party, on becoming aware of the cause, promptly notifies the other party in writing of the nature and expected duration of, and the obligation affected by the cause; and
- (c) That party uses its reasonable endeavours to mitigate the effect of the cause on that party's obligations and to perform that party's obligations on time despite the cause, but nothing in this clause shall excuse a party from any obligation to make a payment when due under the Contract.

Amendment: Seller may vary these Terms at any time by notice in writing to Customer. Any such variation will take effect from acceptance of the first order for Goods following a notice of the variation being given to Customer.

Assignment: Customer may not assign all or any of its rights or obligations without the prior written consent of Seller.

Inconsistency: To the extent that these Terms are inconsistent with any other arrangement between the parties, these Terms will prevail unless otherwise agreed in writing between the parties.

Waiver: The rights, powers, exemptions and remedies of Seller shall remain in full force notwithstanding any neglect, forbearance or delay in their enforcement. Seller shall not be deemed to have waived any provision of a Contract unless such waiver is in writing signed by Seller or an authorised officer of Seller. Any such waiver, unless the contrary is expressly stated, shall apply to, and operate only in, a particular transaction, dealing or matter.

Confidentiality: To the extent that any confidential information is passed by a party to the other, the other party must keep that information confidential. Errors or omissions: Clerical errors or omissions, whether in compilation or otherwise in any order, quotation, acknowledgement, invoice or other such documentation, are subject to correction by Seller.

Privacy Act: Customer authorises Seller to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to Customer and Customer authorises each such source to provide to Seller any information about Customer. If Customer is a natural person the Privacy Act entitles Customer to have access to personal information held by Seller about Customer and to request correction of that personal information.

Relationships: Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent and principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.

Governing law: Each Contract is governed by New Zealand law and the parties submit to the nonexclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of any Contract.

UN Convention: The United Nations Convention on contracts for the international sale of goods does not apply.

Acknowledgement: The Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purposes of the PPSA, and that Seller may register a financing statement.

13. Termination

If the Customer defaults in the due payment of any monies payable to the Seller, whether under any Contract or otherwise, or if the Customer is otherwise in default in the performance of its obligations under the Contract or any other contract between the Seller and the Customer or if the Seller deems the credit of the Customer to be unsatisfactory, the Seller, without prejudice to any other right it may have, may suspend or terminate any Contract, and payment for all monies payable by the Customer shall immediately become due and payable.

The expiry or termination of any Contract is without prejudice to the rights and obligations of the parties accrued up to and including the date of expiry or termination.

14. Disputes

The parties will meet and discuss in good faith any disputes between them arising out of any Contract. If discussions between the parties fail to resolve the dispute the parties will endeavour to resolve the dispute by the use of mediation, without prejudice to any other rights held, prior to legal proceedings being commenced. Nothing in this clause shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.

15. No Partnership/Agency

Nothing contained in any Contract is deemed to constitute the parties partners nor, except as otherwise expressly provided in these Terms and Conditions constitute any party the agent or representative of another party. No party has authority to act or to assume any obligation or liability on behalf of any other party except as expressly provided in these Terms and Conditions.

16. Applicable Law & Jurisdiction

All Contracts shall be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.