
General Terms

General Terms of Straumann Australia P/L regarding the ordering and delivery of Straumann products via the Straumann internet portal

The internet portal on the websites www.straumann.com/eshop, www.strauman.com.au/portal, www.straumann.com.au/eshop, www.straumann.com.au/sns, www.straumann.co.nz/portal, www.straumann.co.nz/eshop, www.straumann.co.nz/sns, <https://dr.clearcorrect.com> ("Internet Portal") is directed at persons ("Customers") in Australia and New Zealand authorised based on their professional qualification (dentists, dental practitioners, dental laboratories etc.). Customers can order products from Straumann Australia P/L ("Products") via the Internet Portal. The Agreement regarding the delivery of Products is concluded between Straumann Australia P/L ("Straumann") and the Customer.

1. Scope of General Terms

For the orders of Customers from Straumann over the Internet Portal the following General Terms exclusively apply in the version valid at the time of the order. General Terms to the contrary or differing General Terms of Customers shall not apply, unless Straumann explicitly approves their use in writing.

2. Registration as User

2.1. To be able to order via the Internet Portal prior registration is required. The registration enables Straumann and its affiliates to collect the information necessary for a fast and smooth processing of the order. The pages of the Internet Portal concerning the ordering of Products are only available for registered users of the Internet Portal.

2.2 Only professionally and commercially qualified persons (dental laboratories etc.) who commercially deal with Products are authorised to register themselves.

2.3 The user name and the password cannot be transferred to third parties.

3. Conclusion of Contract, Right to Modify

3.1 Customer places an order with Straumann by entering the required data into the order form and by clicking the order button, respectively by sending off the information to the internet portal. The order of Customer is binding. Customer will receive an electronic confirmation of the receipt of his order. Straumann thereafter verifies whether the information transmitted by Customer is complete and appropriate for the processing of the order. If the verification is positive, Straumann will accept the order and deliver the ordered Products to Customer. Otherwise Customer will receive an invitation to place a new order with the missing or correct information. The information provided in the order form by Customer has to be true and complete.

3.2 Offers of Straumann on the Internet Portal are subject to confirmation and made without engagement. Straumann reserves the right to change constructions and materials if the usual and contractually agreed use of Products is not materially or adversely impaired and the change is reasonable.

4. Prices and Payment Conditions, Default of Customer, Retention Right, Set-off

4.1 Unless otherwise explicitly agreed, the prices are determined according to the price list of Straumann valid at the time of the order. The price list of Straumann is published on the Internet Portal, respectively contained on the order form pages. All prices are given in Australian Dollar for Australia and in New Zealand Dollars for New Zealand, plus VAT. Unless otherwise explicitly agreed, the prices do not include transport costs, packing costs, insurance, custom charges and duties, etc., respectively are calculated EXWORKS.

4.2 Unless otherwise explicitly agreed, the invoices from Straumann are due immediately and have to be paid within 30 days from the date of invoice without any deductions.

4.3 In case of default of acceptance by Customer, Straumann may - if legally required - set the Customer a period of grace and thereafter, without an obligation to deposit the product, waive the acceptance and instead claim damages in the amount of the agreed purchase price. Straumann is free to claim additional damages.

4.4 Bills of exchange, cheques and similar payment methods are only accepted on account of performance and are only valid after a payment is unconditionally credited to Straumann. All related costs are on Customer's account.

4.5 Claims by Straumann may only be set-off by Customer against his own undisputed or legally ascertained claims deriving from the same contractual relationship.

5. Partial Performance, Delivery Period, Force Majeure, Self-Delivery, Default of Delivery, Bearing of Risks, Shipment, Transport Insurance

5.1 Straumann is entitled to partial delivery in as far as this is reasonable for Customer.

5.2 Delivery periods, respectively delivery dates, are only binding if they have been explicitly agreed in writing upon conclusion of the contract. General information on the Internet Portal does not constitute a representation of delivery periods or dates. Delivery periods, respectively delivery dates, are deemed to be observed if the product has left the factory or the storehouse of Straumann at the time of their expiration or if Customer has been informed of the readiness for shipment of Products.

5.3 In the event of occurrence of force majeure circumstances or other circumstances beyond the reasonable control of Straumann, e. g. breakdown, strike, lockouts, war, bans on import or export, shortage of energy or raw material, governmental acts, etc., which temporarily prevent Straumann from delivering Products within the agreed periods and deadlines, the periods/deadlines are extended for the duration of these circumstances and interferences. This also applies in cases of default in delivery. If these circumstances and interferences continue for more than three months both parties may withdraw from the contract.

5.4 If a supplier of Straumann does not deliver or does not deliver in time, Straumann shall not be in default vis-à-vis Customer, unless Straumann is responsible for the non-delivery, respectively the delay in delivery. Straumann is entitled to withdraw from the contract if the non-delivery or delayed delivery of his suppliers is not within its responsibility.

5.5 In case of default in delivery by Straumann, Customer is entitled to ask for delivery or, after the expiration of a reasonable grace period, withdraw from the contract. Customer may only ask for damages caused by the delay, respectively damages for non-performance, if the default in delivery is based on wilful misconduct or gross-negligence of Straumann. In cases of slight negligence of Straumann any liability is excluded.

5.6 Unless otherwise agreed, deliveries of Products are made at Customer's risk and expense. The risk is transferred to Customer as soon as Products have left the factory or the storehouse of Straumann or the factory or storehouse of the producer mandated by Straumann, respectively as soon as Products have been handed over by Straumann or the producer to the forwarding agent, carrier or any other person entrusted with the shipment of Products. If the shipment is delayed for reasons beyond Straumann's control or if Customer does not accept the Products in time, despite the Products being offered to him, the risk is transferred to Customer with the receipt by him of a notification of readiness to make delivery.

5.7 Straumann determines the mode and type of shipment as well as the consigner at its own discretion, unless no other agreement has been reached. Upon request of Customer, Straumann shall effect a transport insurance at Customer's cost. Transport damages have to be immediately notified to Straumann and the forwarding agent in writing, at the latest, however, within five days of delivery.

6. Notification of Defects, Liability for Defects

If the cause of the defect already existed at the time of the transfer of risk, Straumann shall be liable for defects only according to the following provisions:

6.1 Customer has to examine the Products immediately after receipt for quantitative and qualitative conformity with the order or for other defects. The examination has to be carried out before the further processing of Products. Obvious defects have to be immediately notified to Straumann in writing, at the latest, however, within seven days from delivery of Products. Hidden defects have also to be immediately notified to Straumann in writing, at the latest, however, within seven days from their discovery. If no notification is received within these time limits, the delivery is deemed to be faultless and accepted.

6.2 If Customer notifies a defect in time, Straumann has the right to either correct or eliminate the defect or to subsequently deliver a product free of defects (supplementary performance). Straumann may refuse certain types of supplementary performance or completely refuse any supplementary performance, if it involves unreasonable costs.

6.3 If the supplementary performance fails, Customer may, at his choice, either withdraw from the contract or ask for a reduction of the price. Customer has no claim for damages. The supplementary performance is deemed to be failed after three unsuccessful attempts of supplementary performance.

6.4 A Product is not deemed to be defective if Straumann has performed (frameworks etc.) in accordance with the information transmitted by Customer. Similarly, immaterial discrepancies are not regarded as a defect.

6.5 Customers cannot claim any expenses or costs in connection with the supplementary performance (e.g. transport, work, raw material costs, etc.). Expenses and costs of Customer in connection with the collection of Product, the processing of Product, etc., are not borne by Straumann; in particular, these costs are not borne by Straumann, if the measures triggering the costs are taken by Customer without prior consent of Straumann.

6.6 Customer is not entitled to any claims for a defect if and in as far as a defect results from improperly made changes to or from inappropriate processing of the delivered product by Customer or third parties mandated or instigated by him.

6.7 Claims for defects fall under the statute of limitation within twelve months from delivery of the product, unless the defect has been fraudulently concealed or concerns a durability guarantee.

6.8 Customer may only claim damages for defects in as far as the liability of Straumann is not excluded or limited according to the following or other provisions. Further claims or other claims regarding a defect of quality other than the ones set forth in this chapter are excluded.

7. Overall Liability

7.1 Straumann shall only be liable for wilful misconduct and gross negligence. Straumann shall in no way be liable for loss of profits, incidental, indirect, special, and consequential or other similar damages.

7.2 In case of initial impossibility of delivery, Straumann shall only be liable if the impediment of performance was known to Straumann or if the lack of knowledge is due to gross negligence on the part of Straumann.

7.3 The above exclusions of liability do not apply in case of fraudulent concealment of defects and in as far as the exclusion is legally possible.

7.4 Any exclusion or limitation of liability of Straumann in these General Terms also apply to the personal liability of the employees, staff, representatives, assignees and vicarious agents of Straumann.

8. Retention of Title

All Products delivered by Straumann remain the property of Straumann until the complete payment of the purchase price plus any interest and costs by Customer. If Customer defaults with a payment, Straumann is entitled – after reminding Customer – to register the retention of title at the expense of Customer in the corresponding retention of title register and/or to demand the return of the delivered Products and to claim all its rights granted for non-performance under this contract.

9. Special Provisions for Customized CAD/CAM Prosthetics

9.1 Scan Only

Straumann will manufacture the customized abutment or other prosthetic device ("Prosthetic Product") using only the design and dimensions of the wax-up model provided by the customer. The wax-up model provided must be new and not previously used. When the customer sends in a wax-up model the customer agrees that he/she has pre-approved the design and production of the Prosthetic Product. STRAUMANN IS NOT RESPONSIBLE FOR DEFICIENCIES IN THE DESIGN OR FIT OF THE PROSTHESIC PRODUCT. If the customer alters or reworks the Prosthetic Product received from Straumann any claims for defects shall be ineffective. Furthermore, the wax-up model shall be disinfected before delivering to Straumann and disinfection shall be confirmed in a disinfection declaration in writing. The packaging of the wax-up model shall comply with any current transportation or safety laws.

9.2 Scan & Shape

Straumann will shape and manufacture the Prosthetic Product using only the design parameters and dimensions provided by the customer on the Order Form or Website. Straumann does not alter the parameters of the dimensions or contours provided and approved by the customer. STRAUMANN IS NOT RESPONSIBLE FOR DEFICIENCIES IN THE DESIGN OR FIT OF THE PROSTHESIC PRODUCT. If the customer alters or reworks the Prosthetic Product received from Straumann any claims for defects shall be ineffective.

9.3. Wax-up model

Straumann will not send the wax-up model back to the customer. The customer recognizes that Straumann will destroy the wax-up model ninety (90) days after delivery of the Prosthetic Product.

If the customer claims that the design or the dimensions of the Prosthetic Product do not correspond to the design or dimensions of the wax-up model, the customer shall proceed in accordance with the rules for notification of and liability for defects in these general terms and conditions. At the latest by the end of the ninety (90) days the customer accepts that the design and the dimension of the Prosthetic Product correspond to the design and the dimensions of the wax-up model.

10. Applicable Law, Place of Delivery, Jurisdiction, Partial Nullity

10.1 AUSTRALIAN LAW SHALL EXCLUSIVELY APPLY. THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED.

10.2 Exclusive place of delivery for all delivery and payment obligations deriving from the contracts concluded with Straumann shall be the registered office of Straumann.

10.3 EXCLUSIVE PLACE OF JURISDICTION FOR ALL DISPUTES ARISING OUT OF ANY CONTRACTS WITH STRAUMANN SHALL BE THE REGISTERED OFFICE OF STRAUMANN. HOWEVER, STRAUMANN IS ENTITLED TO BRING AN ACTION AGAINST CUSTOMER BEFORE ANY OTHER STATUTORY PLACE OF JURISDICTION.

10.4 If any or several of the above provisions of these General Terms should be or become entirely or partially invalid, the remaining provisions shall continue to be effective. The invalid provision shall be replaced by the valid provision closest to the intended economical purpose of the invalid provisions. The same applies to an omission contained in the contract.

11. Special regulations for ordering ClearCorrect products

11.1. If the purchaser orders ClearCorrect products via the ClearCorrect portal <https://dr.clearcorrect.com>, the following regulations also apply:

10.1 The contract only enters into force if the purchaser approves the final treatment setup by clicking on the “confirmation button” in the portal. Ancillary agreements, verbal statements of employees and representatives and amendments to confirmed orders (including amendments to delivered items) require written confirmation from Straumann in order to be effective.

11.2. Neither ClearCorrect Operating, LLC. nor Straumann provide medical advice. A treatment setup, which is created and prepared based on the purchaser’s input, should only be seen as part of the technical and plan-related support for the purchaser and should not be interpreted as medical advice. The purchaser is solely responsible for prescribing and performing the treatment.

11.3. Neither ClearCorrect Operating, LLC. nor Straumann can guarantee the success of treatment with ClearCorrect products.

11.4. ClearCorrect products are manufactured and delivered based on ClearCorrect Operating, LLC.’s general terms and conditions which can be viewed at <https://dr.clearcorrect.com/download.pdf?source=document&fileid=terms-and-conditions>.

11.5. If provisions in ClearCorrect Operating, LLC.’s general terms and conditions contradict Straumann’s general terms and conditions, Straumann’s general terms and conditions shall take precedence.

September 2013, Straumann Australia P/L, 7 Gateway Crt, 3207 Melbourne, Australia
480.236-AU-en-00 (cc)