

Credit Account Application Form

LEGAL NAME _____

COMPANY NUMBER _____

TRADING NAME (if different) _____

STREET ADDRESS _____

POSTAL ADDRESS _____

REGISTERED OFFICE (if different) _____

PHONE # _____ MOBILE # _____ FAX # _____

EMAIL ADDRESS _____

CONTACT(S) FOR PAYING ACCOUNTS _____

BANK _____ BRANCH _____ FULL ACCOUNT NUMBER _____

TYPE OF ENTITY Limited Liability Company/Partnership/Sole Trader/Other (Please specify)

PAID UP CAPITAL OF COMPANY \$ _____ DATE ESTABLISHED _____

ESTIMATED AVERAGE MONTHLY PURCHASES _____

NAMES OF DIRECTORS/PRIVATE ADDRESSES/PHONE NUMBERS

1 _____

2 _____

3 _____

NOMINATE THREE COMPANIES WITH WHOM A TRADING ACCOUNT HAS BEEN ESTABLISHED FOR A MINIMUM PERIOD OF THREE MONTHS

NAME/ADDRESS

CONTACT

PHONE #

1 _____

2 _____

3 _____

I/We authorize you to make enquiries of the above trade references to establish creditworthiness, and to supply credit history information to any person authorised by me/us to make such enquiry.
I/We understand that all transactions are subject to the TERMS OF TRADE attached to this application.
The purchasing company acknowledges: a) that goods may be reclaimed by AV Supply Group Ltd if not paid for; and b) it has received a copy of this document.

SIGNED _____ TITLE _____ DATE _____

Please ensure that all of the sections of this application have been completed, then post immediately to AV Supply Group Ltd, P.O.Box 259201, Botany, Auckland, email to accounts@avsupply.co.nz or fax to us on 09 2748363

AV SUPPLY GROUP LTD - TERMS OF TRADE

1. DEFINITIONS

- 1.1 "we", "us" and "our" shall mean and refer to AV Supply Group Limited, or any agents or employees thereof.
- 1.2 "you" and "your" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from us.
- 1.3 "goods" shall mean all goods, chattels, or services, provided by us to you, and shall include without limitation insurance charges, or any fee or charge associated with the supply of goods by us to you.
- 1.4 "price" shall mean the cost of the goods or such as agreed between us and you subject to clause 4 of these Terms of Trade.
- 1.5 "GST" means Goods and Services Tax.
- 1.6 "PPSA" means the Personal Property Securities Act 1999

2. ACCEPTANCE

- 2.1 Any instructions received by us from you for the supply of goods shall constitute acceptance of the terms and conditions contained herein. These terms and conditions shall apply to future orders you make with us and any terms or conditions to the contrary of these terms and conditions shall not apply unless agreed in writing by us.
- 2.2 None of our agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by us in writing nor are we in any way bound by any such unauthorised statements.

3. COLLECTION AND USE OF INFORMATION

- 3.1 You authorise us to collect, retain and use any information about you for the purpose of assessing your credit worthiness, enforcing any rights under these Terms of Trade, or marketing any goods and services provided by us to any other party.
- 3.2 You authorise us to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where you are a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 All prices are exclusive of GST, freight costs, installation and any other applicable taxes and duties unless otherwise stated in writing and such items are payable in addition to the price.
- 4.2 Where no price is stated in writing or agreed to verbally the goods shall be deemed to be sold at the current price as such goods are sold by us at the time of the sale agreement.
- 4.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of us between the date of the contract and delivery of the goods.
- 4.4 Where there are any variations to the specification or quantities of any order placed by the customer made by either us or you, you agree to pay any increase in the price as a result of any such variation(s).

5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full without any deduction, whether by way of set-off, counterclaim, or any other equitable or legal claim on or before the 20th day of the month following the date of the invoice (hereinafter "the due date") unless otherwise stated in writing.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 1.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms of Trade shall be paid by the Customer, including any reasonable solicitors' fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by us it:
 - a) is valid for 30 days from the date of issue; and
 - b) shall be exclusive of GST unless specifically stated to the contrary;
 - c) is based on rates and costs as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and charges;
 - d) may be revised or withdrawn at any time prior to written acceptance based on it;
 - e) shall be subject to correction for clerical errors or omissions whether in computation or otherwise.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.
- 6.3 Where a quotation is accepted by the Customer it will apply only if the products and services are delivered within ninety (90) days of the quotation being accepted.

7. DEALING WITH GOODS

- 7.1 Except as expressly provided in this clause, we retain a security interest in and title to all goods supplied by us to you until you have:
 - a) Paid all sums due to us from you in respect of all orders placed by you.
 - b) Met all other obligations that are due from you to us.
- 7.2 You shall not deal with the goods in a manner inconsistent with this clause and these Terms of Trade and without limiting the generality of the foregoing, you shall:
 - a) Not pledge, charge, sell or purport to pledge, charge or sell any and all goods in which we have a security interest, nor register or permit to be registered any financing statement in respect of goods in which we have a security interest in favour of any person other than us;
 - b) If required by us, forthwith disclose the names and addresses of all persons, corporations, organisations, or other bodies holding charges or security interests or purporting to hold charges or security interests over your property and you further agree that we may advise any such persons, corporations, organisations, or other bodies of this agreement and you agree that you shall have no claim or action against us whatsoever for any loss including financial or economic loss that may result, whether direct or indirect as a result of the action that we may take under this clause;

- c) If required by us, display and clearly label goods in respect of which we have a security interest and take all and any necessary steps to ensure that other parties are aware that any such goods are subject to a security interest in favour of us;
- 7.3 Unless clauses 7.4 and 7.5 apply, you shall have the right to sell goods in respect of which we have a security interest subject to the following;
- a) Your rights of sale will only apply to bona fide sales in your ordinary course of business;
 - b) You are empowered to pass title for and on behalf of us when you have complied with the obligation in clause 7.1 above or where we give you written consent to do so or where you have complied with the requirement in sub clause (d) below;
 - c) Any such sale by you shall be on behalf of both you and us to the extent of our respective interests in the goods so sold with those respective interests determined in accordance with this agreement;
 - d) The total proceeds of all goods in respect of which we have a security interest but which are sold by the customer in accordance with the terms herein shall be our property and;
 - i) you shall be liable to account to us for the entire proceeds of any such sales; and
 - ii) you shall hold all the proceeds of such sales in a separate account in trust for us whether we have granted you time to make payment for any goods sold by us to you; and
 - iii) you shall pay to us the total proceeds of sale without deduction or set off.
 - e) Until you comply with clause 7.1 (or where we give you written consent), all and any rights you may have against the purchaser of the goods sold by you in respect of which we have a security interest shall automatically be assigned to us to the extent necessary to realise all and any claims that we may have against you. You also agree to do all things necessary to join any such purchaser in any legal proceedings with or on behalf of us to give effect to such an assignment.
- 7.4 Any and all rights you may have arising from the effect of clause 7.3 above shall cease forthwith without further notice to you should any of the following occur whether we have received notice or not;
- a) Any event that would entitle any debenture holder to put you (if you are a company) into receivership;
 - b) The appointment of a receiver by you or any creditor or shareholder;
 - c) Service of a statutory demand pursuant to the Companies Act 1993 by any creditor;
 - d) Any event that would entitle a creditor to petition for your bankruptcy or, if you are a company, to commence proceedings and obtain an order for your winding up;
 - e) A resolution by your shareholders or directors for your winding up (except where the purpose of the resolution is to enable legitimate restructuring and the continuance of business);
 - f) Entering into or negotiating a compromise, scheme or factoring agreement between you and any of your creditors (including requests for forbearance or extensions of time for any reason).
- 7.5 Should any of the events in clause 7.4 above occur, we will be entitled forthwith to cancel any rights you may have under clause 7.3 should you fail to comply with any of the terms and conditions of these Terms of Trade whether it relates to a particular order or not or where we receive information that indicates to us that there is uncertainty as to your financial commitments.
- 7.6 Should any of the events in clause 7.4 occur, we will without prejudice to any other rights herein further be entitled to
- a) Enter on to your premises at any time and if necessary use reasonable force and recover possession of or impound all and any goods in respect of which we have a security interest, including and not limited to any processed goods either by removing the goods from your control or from your premises or by impounding the goods in any premises occupied by you or under your control;
 - b) Be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to sub clause a) above;
 - c) Employ and keep employed any persons to enter and remain on the premises occupied or controlled by you for the purpose of exercising any of the rights herein;
 - d) Give notice to any third party of our rights and remedies herein and exercise thereof and further be entitled to be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to this sub clause as a consequence of any such notice;
- 7.7 Upon termination of your rights under clauses 7.4 and 7.5 herein, or pursuant to any other right we may have, and without prejudice to any other rights we may have, you agree that we have the power to sell all and any goods full or partly owned by us and retain the entire proceeds of sale of those goods and you agree that we shall be under no obligation whatsoever to set off, account for or disclose any details of or the proceeds of any such sale except where the proceeds of any such sale exceed the total debt and all outstanding obligations due from you to us.

8. SECURITY INTEREST

- 8.1 You grant to us a security interest in all present and future supplies of goods which we:
- a) Supply to you for you to use as inventory;
 - b) Supply to you for you to use as equipment in your business;
 - c) Supply to you for you to use primarily for personal, domestic or household purposes; and
- 8.2 You grant to us a security interest in all proceeds which you receive from selling goods supplied by us.
- 8.3 For the purposes of section 148 of the PPSA, you agree that we do not have to provide a verification statement to you when we register a financing statement in respect of any security interest created by this agreement.
- 8.4 For the avoidance of doubt, words or phrases used in clause 7 and 8 herein have the same meaning as that which is given to them in section 16 of the PPSA.
- 8.5 You agree that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to these terms and conditions
- 8.6 You agree that your rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these terms and conditions.
- 8.7 You shall reimburse us for all costs, expenses and other charges incurred, expended or payable by us in relation to the filing of a financing statement or financing change statement in connection with this agreement.
- 8.8 You shall supply us within two business days of written request copies of all documents granting security interests registered over your personal property. You authorise us as an agent to request any information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 8.9 You will immediately notify us in writing of any change in your name or other material identifying characteristics of either you or the goods purchased.
- 8.10 You acknowledge that these Terms of Trade constitutes a "security agreement" for the purposes of the PPSA.

9. RETURN OF GOODS

- 9.1 Requests for returns will be considered for non-specialised products that can be re-sold within a reasonable period and, if accepted, must be returned in good order and resaleable condition at your cost. Any other requests for return of products that fall outside of the previous category will be considered on a case by case basis.

10. CLAIMS

- 10.1 Claims must be advised in writing within 7 days of the receipt of the goods by you and an opportunity given to us to investigate any such claims.
- 10.2 Provided you are not in breach of your obligations to us we will remedy within a reasonable time any defects arising from faulty workmanship or materials at our sole option by either repairing or replacing the product or if it cannot be remedied we will refund you the price paid.
- 10.3 Except as otherwise provided by these Terms of Trade or by statute we shall not be liable for
- a) any loss or damage of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by us to you and without limiting the generality of the foregoing of this clause we shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
 - b) for any loss, damage, or injury beyond the value of the goods provided by us to you in contract, or in tort, or otherwise.
- 10.4 You shall indemnify us for any claims by consumers against us under the Consumers Guarantees Act 1993 or otherwise.

11. CONSUMER GUARANTEES ACT

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire goods or services from us for the purposes of a business in terms of section 2 and 43 of that Act.
- 11.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on us, our liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

12. WARRANTY

- 12.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in these Terms of Trade.
- 12.2 We do not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.
- 12.3 All products supplied by AV Supply Group Ltd are supplied with a limited manufacturer's warranty of which the terms may vary depending on the brand and/or product type. In all cases the limited manufacturer's warranty will only cover the product for any defects in materials and workmanship for the stated time period.

13. RISK

- 13.1 The goods remain at our risk until the delivery to you, but when title passes to you pursuant to clause 7 of these Terms of Trade the goods are at your risk whether delivery has been made or not.
- 13.2 Delivery shall be made at the place indicated by you and if no place shall be indicated then delivery shall be made at your premises. If you fail or refuse to take or accept delivery then the goods shall be deemed to be delivered when we were willing to deliver them or when 14 days have elapsed after the date of notification that the goods are ready for dispatch in accordance with these Terms of Trade.
- 13.3 The time agreed for delivery shall not be an essential term of these Terms of Trade unless you give written notice to us making time of the essence.

14. MISCELLANEOUS

- 14.1 You shall not assign all or any of your rights or obligations under these Terms of Trade without the written consent of us.
- 14.2 We shall not be liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.
- 14.3 Failure by us to enforce any of the terms and conditions contained in these Terms of Trade shall not be deemed to be a waiver of any of the rights or obligations we have under these Terms of Trade.
- 14.4 The law of New Zealand shall apply to these Terms of Trade except to the extent expressly negated or varied by these Terms of Trade.
- 14.5 Where the terms of these Terms of Trade are at variance with the order or instruction from you, these Terms of Trade shall prevail.
- 14.6 If you are a company or trust, the director(s) or trustee(s) signing these Terms of Trade jointly and severally guarantee to us the payment of the balance of your credit facility from time to time, and the payment of any and all other monies now or hereafter owed by you to us. Any personal guarantee made by any party shall not exclude you in any way whatsoever from the liabilities and obligations contained in these Terms of Trade. The guarantors and customer shall be jointly and severally liable under the terms and conditions of these Terms of Trade.
- 14.7 If any provision of these Terms of Trade shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.8 Any dispute or difference between us and you arising under or connected with the goods of these Terms of Trade shall be settled by Arbitration as provided in the Arbitration Act 1996 or any amendments thereto.