

## Credit Account Application Form

LEGAL NAME \_\_\_\_\_

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 \_\_\_\_\_

TOTAL DEBTS OF OTHER CREDITORS/BANK \_\_\_\_\_

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 \_\_\_\_\_

**AV SUPPLY GROUP PTY LTD - TERMS OF TRADE**  
**AV SUPPLY GROUP TERMS AND CONDITIONS OF SALE**

**1. Application of these Terms and Conditions**

- (a) These terms and conditions of sale issued 1<sup>ST</sup> December 2015 replace any previous terms and conditions of sale published, issued or used by AV Supply Group PTY Limited (ABN 58 609 717 455) or any Australian division or subsidiary of AV Supply Group PTY Limited ("AVSG").
- (b) All tenders and quotations issued by, all orders placed with, and all arrangements entered into by AVSG for the supply, provision and/or delivery of goods and/or services are subject to these Terms and Conditions unless specified in writing between AVSG and other party being a person, firm or company who or which is seeking to purchase from AVSG or to whom or to which AVSG's quotation is addressed ("Purchaser").
- (c) An agreement between Purchaser and AVSG for supply of and payment for goods and/or services ("Agreement") will be upon these Terms and Conditions to the exclusion of all other terms and conditions and all prior oral or written representations.
- (d) Each order or acceptance of quotation for goods or services will be deemed to be an offer by the Purchaser for goods or services under these Terms and Conditions.
- (e) Agreement is made when an order is accepted by AVSG. No order or offer shall be binding on AVSG, and no Agreement formed, until accepted by AVSG in writing or in such manner as AVSG in its sole discretion determines.
- (f) Unless previously withdrawn all quotations are valid for thirty (30) days from the date shown thereon, but are not to be construed as an obligation to sell and no Agreement or contractual relationship arises there from until the Purchaser's order has been accepted by AVSG.

**2. Prices**

- (a) Prices quoted by AVSG for the supply of goods & services:
  - (i) are ex AVSG warehouse Sydney. Unless specifically stated otherwise in writing all freight and delivery charges to the Purchaser's premises or other address specified by the Purchaser are for the account of the Purchaser;
  - (ii) exclude goods and services tax ("GST") except where otherwise stated and AVSG will invoice Purchaser, and Purchaser must pay to AVSG, the valid GST amount.
  - (iii) unless otherwise stated are in Australian (AUD) dollars.
- (b) Any increases in the costs to AVSG of the supply of goods and/or services as a result of
  - (i) changes in ruling award wages, charges by AVSG's suppliers, rates for freight, ordinary marine insurance, customs duties, landing, clearing and delivery charges and other taxes (including the rate of GST) and duties in respect of the goods;
  - (ii) the Purchaser requiring installation or other services work or any part thereof to be carried out outside normal working hours;
  - (iii) changes in requirements for conformance with any relevant legislation, court orders, regulations or bylaws;
  - (iv) delays caused by the failure of the Purchaser or contractors for whom the Purchaser is responsible to meet their respective obligations;
  - (v) variation in exchange rates

occurring between the date of AVSG's relevant quotation or tender or, where there is no such quotation or tender, from the date of AVSG's acceptance of the Purchaser's order, as the case may be, and the date of supply of the relevant goods and/or services shall be borne by the Purchaser.

### **3. Variation of supply**

Any request by the Purchaser for variation of an Agreement must be made to AVSG in writing showing full and detailed information thereof, and AVSG will advise promptly prices and terms and conditions for the variations concerned. No variation work will be commenced unless and until AVSG receives a signed acceptance from the Purchaser of the terms and conditions and price of such variations. AVSG reserves the right to refuse any such request for variations.

### **4. Delivery and Completion Period**

- (a) Where goods are to be delivered to a nominated address AVSG shall be deemed to have delivered the goods in accordance with the contract if it obtains a receipt or signed delivery docket for the goods from any person at that address.
- (b) If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be dispatched for any reason beyond AVSG's control, AVSG may store the goods at the Purchaser's risk and expense or take such other steps as AVSG considers in its sole discretion to be appropriate.
- (c) AVSG shall not be responsible for unloading goods at the point of delivery.
- (d) The risk of loss or damage to goods shall pass to the Purchaser at the time of delivery or when the Purchaser is notified that the goods are available for dispatch, as the case may be.
- (e) If any delivery or completion period is quoted by AVSG it shall be deemed to be given on the following basis:
  - (i) In the case of standard goods, the delivery or completion period stated in any quotation, tender or Agreement is subject to prior sale and/or confirmation of availability of by AVSG's supplier;
  - (ii) In the case of goods which are in whole or in part subject to special design, manufacture or other non-standard requirements, the delivery or completion period stated in any quotation, tender or Agreement is subject to the Purchaser having given AVSG full final and adequate instructions and/or drawings and having fulfilled any other requirement specified by AVSG to enable AVSG to proceed uninterruptedly with the supply and/or manufacture of the goods.
  - (iii) Where AVSG is required to install and/or commission the goods, the delivery or completion period stated in any quotation, tender or Agreement is subject to the Purchaser having fulfilled all requirements referred to in (ii) above and further is subject to site availability acceptable to AVSG and completion of all activities necessary to enable AVSG to install and/or commission the goods. In all cases, AVSG will use its best endeavours to meet the time quoted for delivery of goods or completion of the installation of goods. However the time so quoted is an indication only and shall not be considered a binding commitment upon AVSG. AVSG shall not be liable for any loss or damage suffered by the Purchaser or otherwise arising out of the AVSG's failure to meet the times quoted.

### **5. Consignment/Loan Stock**

From time to time AVSG may lend the Purchaser equipment for demonstration and evaluation purposes prior to the Purchaser issuing a firm order for same. In such case the following clauses apply in addition to others herein:

- (a) The Purchaser shall be responsible for ensuring the prompt return of the goods to AVSG within 7 (seven) days (or alternative period of time specifically agreed in writing).
- (b) The Purchaser shall be responsible for all damage to the goods incurred while the goods are in the Purchaser's possession, and undertakes to reimburse AVSG for the goods replacement costs or repair costs at AVSG's discretion.

### **6. Payment**

- (a) Except as otherwise agreed in writing by AVSG, payment for products or services shall be made in full, including freight, handling, packaging and insurance charges, before physical delivery of the goods or services.

- (b) Where delivery of goods or services to Purchaser is effected before full payment is received, AVSG will invoice due amounts on shipment, and except as otherwise agreed in writing Purchaser must settle all amounts due within 30 days of date of invoice.
- (c) Notwithstanding any previously agreed credit account and payment arrangement, if AVSG considers in its sole discretion that the financial condition of the Purchaser so warrants, it may decline to deliver or install goods or carry out the work unless the Purchaser provides a satisfactory security for the purchase price. Should the Purchaser fail to comply with this provision AVSG may cease deliveries and/or leave the site with any re-establishment or other costs thereby incurred to be borne entirely by the Purchaser.
- (d) Should the Purchaser intend to arrange lease or hire purchase finance for the purchase of the goods or any part thereof, the Purchaser shall notify AVSG of such intention and shall arrange for the lease or hire purchase documentation to be completed in sufficient time to permit settlement to be effected by the finance company on or before the date of delivery or installation.
- (e) If the Purchaser fails to pay amounts properly invoiced pursuant to these Terms, AVSG shall be entitled (without prejudice to any other right hereunder or at law):
  - (i) to charge interest on amounts due from the date when due until payment is received by AVSG at the rate of 2½% per cent per month.
  - (ii) where AVSG still retains title, to retake possession of the goods and to give the Purchaser written notice that AVSG intends to resell the goods after the expiry of seven (7) days from the date of the notice and if the Purchaser fails within that period to pay the purchase price with interest thereon then AVSG shall be released from all obligations under the Agreement or other contract with Purchaser.
  - (iii) to commence legal proceedings without notice and the Purchaser shall pay all AVSG's legal and other costs incurred by AVSG in seeking collection of the due amount.

## **7. Return of Equipment**

- (a) No goods shall be returned to AVSG without the prior authorization (RMA) from AVSG.
- (b) Such authorization will be at the sole discretion of AVSG, and on the basis that Purchaser agrees that:
  - (i) Where in the opinion of AVSG goods are not returned in the condition in which they were supplied ("as supplied condition") any costs incurred by AVSG in restoring goods to "as supplied condition" are for the account of the purchaser;
  - (ii) AVSG may impose a special fee to be determined by AVSG at its sole discretion to cover among other things, restocking charges and any loss AVSG may incur in reselling such returned goods;
  - (iii) AVSG may apply such other conditions as it may deem necessary.

## **8. Installation & Maintenance**

- (a) Where AVSG is not contracted to install the goods, AVSG representatives may, if so required by the Purchaser, provide advice on the siting, installation (if appropriate) and operation of the goods. In providing this advice the representatives of AVSG are expressing personal views derived from their experience in the industry but except as provided in clause 11, AVSG shall have no liability whatsoever to the Purchaser in respect of any such advice given by any representative.
- (b) Where specified by AVSG in relation to goods being supplied and or to services including installation service, the Purchaser shall at its own expense provide power of appropriate quality and at the required locations. AVSG shall be under no liability whatsoever should any loss be incurred and/or damage suffered including consequential loss or damage as a result of the required power not being continually available.
- (c) If any repairs to or maintenance of the goods (other than those covered by AVSG's normal warranty provisions) are to be carried out by AVSG, and the Purchaser does not have a current Maintenance Agreement with AVSG, then the cost of such work shall be charged to the Purchaser at AVSG normal rates for such work.

## **9. Property and Risk in Goods**

- (a) Property in each unit of the goods does not pass until such time as payment in full for the goods has been made and the Purchaser does not owe any other money to AVSG on any account whatever and whether or not such other money has become due for payment. Until such time, the Purchaser will hold all the goods supplied as bailee for AVSG and must keep the goods separate from other goods in the Purchaser's possession and store them in a manner that identifies them as belonging to AVSG.
- (b) The Purchaser may resell the goods, but only as fiduciary agent and trustee for AVSG, by way of bona fide sale at full market value and in the ordinary course of its business
- (c) The Purchaser must not combine the goods with any other goods unless the goods can be easily extricated from such combination at any time.
- (d) The Purchaser grants a licence to AVSG to:
  - (i) dismantle any such combination and to enter any place where the goods or other goods are located in order to extricate the goods; and
  - (ii) enter any place where the goods may be located so AVSG can retake possession of the goods.
- (e) If the Purchaser is unable to grant AVSG any such licence the Purchaser, on being requested by AVSG so to do, shall immediately dismantle such combination, extricate the goods and deliver them to AVSG. AVSG shall not be liable and is hereby indemnified by the Purchaser for any damage caused by or costs incurred in dismantling the goods.
- (f) Until the debts have been paid in full the Purchaser must hold such part of the money it receives from:
  - (i) any sub-sale of the goods under the immediately preceding subclause; and
  - (ii) the proceeds of any sale of any products into which the goods have been mixed or converted by any processas equals the amount of the debts at the time the money is received ('the Proceeds') as bailee, fiduciary agent and trustee for AVSG.
- (g) The Purchaser expressly acknowledges that it is bound by such fiduciary obligation and acknowledges that:
  - (i) it must hold the Proceeds on trust for AVSG.
  - (ii) it must place the whole of the Proceeds in an account separate from its own moneys ('the Proceeds Account').
  - (iii) it must maintain the Proceeds Account separate from its own moneys at all times.
  - (iv) it must maintain proper records for the Proceeds Account.
  - (v) it must not assign or encumber the Proceeds or do any other act in derogation of AVSG's legal or beneficial interests.
  - (vi) it must account to AVSG on demand for all moneys standing to the credit of such account;
  - (vii) AVSG may appropriate payments to such goods and accounts as it thinks fit, notwithstanding any contrary appropriation by the Purchaser;
  - (viii) for the purposes of identification of different consignments of the goods purchased from AVSG and receipt of Proceeds, the Purchaser agrees that the principle of "Last In, First Out" shall be applied to any items which cannot be distinguished.
  - (ix) receipt by the Purchaser of payment for the sale of any products into which the goods have been mixed or converted by any process shall be treated as evidence that it has received Proceeds; and
  - (x) AVSG trace the Proceeds in equity.

## **10. Personal Property Securities Act 2009 ("PPSA")**

- (a) The Purchaser acknowledges and agrees that:
  - (i) The application for commercial credit, as read with these Terms and Conditions of Sale constitute a security agreement for the purposes of Sec 20 of the PPSA;
  - (ii) A security interest exists in the goods supplied by AVSG to the Purchaser (and their proceeds) and in all goods to be supplied by AVSG to the Purchaser in the future (and their proceeds);

- (iii) The security interest granted by the Purchaser to AVSG pursuant clause 9 of these Terms and Conditions of Sale shall constitute a purchase money security interest as defined in Sec 14 of the PPSA.
- (b) The Purchaser undertakes to execute all documents and do all such further acts as may be required by AVSG to facilitate and effect registration under the PPSA of the security interest(s) granted by the Purchaser to AVSG.
- (c) Until property in the goods passes as envisaged in clause 9(a) of these Terms and Conditions of Sale, the Purchaser irrevocably waives its rights under the following provision of Part 3 of the PPSA:
  - (i) to receive a notice of intention of removal of an accession (Sec 95 of the PPSA).
- (d) Until property in the goods passes as envisaged in clause 9(a) of these Terms and Conditions of Sale, the Purchaser irrevocably waives its rights under the following provision of Part 4 of the PPSA:
  - (i) obligations secured by interests in personal property and land (Sec 117 of the PPSA);
  - (ii) to receive notice that AVSG decides to enforce its security interest in accordance with land law (Sec 118 of PPSA)
  - (iii) to receive notice on enforcement action against liquid assets (Sec 121(4) of the PPSA);
  - (iv) obligation to dispose of or retain collateral (Sec 125 of the PPSA);
  - (v) to receive notice of disposal of goods by AVSG purchasing the goods (Sec 129 of the PPSA)
  - (vi) to receive notice of disposal of goods (Sec 130 of the PPSA);
  - (vii) to receive a statement of account following disposal of goods including details of payment to other creditors (Sec 132(3)(d) of the PPSA);
  - (viii) to receive statement of account if no disposal of goods for each 6 month period (Sec 132(4) of the PPSA);
  - (ix) to redeem the goods (Sec 142 of the PPSA);
  - (x) to reinstate the security agreement (Sec 142 of the PPSA).
- (e) The Purchaser further agrees that where AVSG has rights in addition to those under Part 4 of the PPSA, those rights will remain unaffected and will continue to apply.
- (f) Until property in the goods passes, the Purchaser must not give AVSG a written demand or allow any other person to give AVSG a written demand requiring AVSG to register a Financing Change Statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- (g) The Purchaser acknowledges that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest as defined in the PPSA granted to AVSG under these Terms and Conditions of Sale.
- (h) The Purchaser irrevocably grants to AVSG the right to enter upon the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if AVSG has cause to exercise any of AVSG's rights under Sec 123 of the PPSA, and the Purchaser shall indemnify AVSG from any claims made by any third party as a result of any such exercise.

## **11. Licenses and Consents**

If it is necessary for the lawful fulfillment of the Agreement or other contract:

- (a) For the Purchaser to hold or obtain import, export, currency or other licence, consent or authority, then the Purchaser shall be obliged to obtain the same.
- (b) For AVSG to hold or obtain any such licence consent or authority then AVSG shall apply for the same, but if the same is refused this Agreement or other contract shall forthwith come to an end, and neither AVSG nor the Purchaser shall be under any liability in respect thereof. Where required by AVSG, the Purchaser shall execute and deliver to AVSG prior to delivery of the goods, an end user operating system licence or other software licence in a form required by AVSG or the supplier of the goods to AVSG.

## **12. Warranty**

- (a) Except where the Purchaser is a "Consumer" for the purpose of the Competition & Consumer Act 2010 (the Act), and unless otherwise agreed in writing, AVSG
- (i) makes no warranty of any kind as to the goods supplied or to work done in respect of the installation of the goods pursuant to this Agreement and all terms, conditions and warranties and whether express or implied other than contained in this Agreement are hereby expressly negated and excluded,
  - (ii) shall not be liable to compensate the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or damage to person or property, or for death or injury caused by an act or omission of AVSG, its employees or agents including loss or damage arising out of the installation of the goods or from failure of the goods.
- (b) In connection with the supply by AVSG to the Purchaser of any goods or services within the meaning of the Act, other than goods or services of a kind ordinarily acquired for personal domestic or household use or consumption, the liability of AVSG in the event of a breach of a condition or warranty implied by the Act (other than a condition or warranty implied by Sch 2, Part 3-2) shall be limited to one of the following as determined by AVSG:
- (i) in the case of goods, to any one or more of the following:
    - (aa) the replacement of the goods or the supply of equivalent goods;
    - (bb) the repair of the goods;
    - (cc) payment of the cost of replacing the goods or acquiring equivalent goods;
    - (dd) the payment of the cost of having the goods repaired; or
  - (ii) in the case of services:
    - (aa) to the supplying of the services again;
    - (bb) to payment of the cost of having the services supplied again.

## **13. Force Majeure**

AVSG shall not be liable for failure to perform its obligations if the failure arises from circumstances beyond its reasonable control, including but not limited to fire, explosion, strikes, lock-outs or any other industrial disputes, failure or refusal of its supplier to supply the goods, inclement weather, acts of God, Governmental action. In no such event shall the Purchaser be entitled to damages of any kind for late performance or failure to perform.

## **14. Assignment**

The Purchaser shall not assign its obligations hereunder without AVSG's written consent.

## **15. Waiver & Variation**

A provision of or a right created under these terms in favour of AVSG may not be waived or varied except in writing signed by AVSG. AVSG may elect not to exercise its rights arising from a breach of any provision of these terms and such election, even if the breaches are continuous and multiple, shall not create any estoppel or presumption against AVSG.

## **16. Applicable Law**

A quotation, and any contract or Agreement of which it shall form the basis, shall be interpreted and enforced in accordance with the laws for the time being in force in the State of New South Wales and the Purchaser agrees to submit to the jurisdiction of the Courts therein.

## **17. Severance**

Should any term hereof be affected by any illegality, unenforceability or invalidity, that term shall be considered to the extent of such illegality, unenforceability or invalidity independently of and severable from any other term contained herein and shall not affect the enforceability of any other term hereof in any way whatsoever.