

# APPLICATION FOR SUPPLY OF GOODS AND/OR SERVICES ON CREDIT BY AVON ENGINEERING & MECHANICAL LIMITED

**Option A:** Please print your full name and date of birth below if an individual:

First Name	Middle Name(s)	Surname	Date of Birth

**Option B:** If Customer is not an individual please print the name of the company, trust or partnership below. If a company, please also print the company's incorporation number:

Name	Incorporation Number	Type of Organisation

Name traded under (if different from above) .....

Full Names and Residential Addresses of Directors/Trustees/Partners of Entity (circle one)

First Name	Middle Name(s)	Surname	Date of Birth

## Contact Details

Physical Address: .....  
 Postal Address: .....  
 Email Address: .....  
 Phone Number(s): ..... Fax Number: .....  
 Account contact person: .....

## Credit References

Name	Postal Address	Phone Number	Email Address

By signing below, the Customer agrees to be bound by the attached Terms of Trade.

If the Customer is a company all Directors must sign and give personal guarantees on the form following.  
 The Customer authorises the Seller to contact the persons listed above as credit references and agrees that those persons may release information in connection with the credit inquiry. The Customer also authorises the Seller to obtain a credit check on the Customer.

**Executed** on behalf of Avon )  
 Engineering & Mechanical )  
 Limited as Seller: ) \_\_\_\_\_

**Executed** by the )  
 Customer )  
 ) \_\_\_\_\_

Dated this

day of

202

# GUARANTEE

Guarantors: .....

.....

.....

In consideration of the Seller agreeing to supply goods and/or services on terms of credit to the Customer referred to in the application for credit accompanying this Guarantee:

1. I/we hereby jointly and severally guarantee the payment to the Seller of all amounts owing in respect of goods and/or services supplied by the Seller to the Customer and the performance, fulfilment and observance of all the obligations of the customer to the Seller as per the Seller's Terms of Trade, a copy of which is attached.
2. I/we acknowledge having received, read and understood the Terms of Trade.
3. I/we acknowledge that no indulgence, granting of time, waiver or forbearance to sue, or winding up or bankruptcy, or failure by any named Guarantor to properly execute this Deed will release me/us from liability under this Guarantee.

This Guarantee shall be a continuing guarantee to the Seller for all debts and obligations of the Customer to the Seller in respect of goods and/or services supplied, and this guarantee shall remain in force until all money secured by it is repaid in full and the Customer requests a release of the Guarantee.

Executed as a Deed this                      day of                      202

Signed: .....

Name: .....

Position: .....

Signed in the presence of:	.....	Signature
	.....	Name
	.....	Occupation
	.....	Address

Signed: .....

Name: .....

Position: .....

Signed in the presence of:	.....	Signature
	.....	Name
	.....	Occupation
	.....	Address

Signed: .....

Name: .....

Position: .....

Signed in the presence of:	.....	Signature
	.....	Name
	.....	Occupation
	.....	Address

# AVON ENGINEERING & MECHANICAL LIMITED

## TERMS OF TRADE

Avon Engineering & Mechanical Limited ("the Seller") has supplied, or agreed to supply, goods and/or services on credit to ..... ("the Customer") and may from time to time, in its sole discretion, supply further goods on credit, for or at the request of the Customer. "Goods" and "Services" as used in these Terms of Trade (whether together or apart) refers to all products and/or all services supplied by the Seller to the Customer from time to time and as described in invoices. The terms below will apply to all such supply of goods and/or services by the Seller unless amended in writing.

### 1. Prices

- 1.1 The price charged for goods and/or services supplied are based on the price applicable at the date of order.
- 1.2 The Seller reserves the right to change the price for any future orders made by the Customer.
- 1.3 Prices for any goods and/or services supplied are GST exclusive unless shown as GST inclusive.

### 2. Orders

- 2.1 Orders cannot be modified or cancelled after acceptance except with the Seller's written consent.
- 2.2 The Seller will use its best endeavours to fulfil any orders but may cancel any order relating to any goods and/or services which in its opinion is impractical or uneconomical to produce or supply.

### 3. Delivery

- 3.1 Delivery of the goods and/or services shall be at the Seller's place of business.
- 3.2 The Customer may request the goods to be delivered to its address at its expense. If so, then:
  - (a) delivery of the goods to a carrier (named by the Customer or failing such naming to a carrier at the discretion of the Seller) is deemed to be a delivery of the goods to the Customer; and
  - (b) the Customer shall be responsible for insuring goods during carrying against loss due to any cause or deterioration.

### 4. Return of goods to Seller

The Customer is deemed to have accepted the goods unless it immediately gives written notice to the Seller of the refusal and forthwith returns the goods to the Seller who shall be liable for the reasonable costs of such return, but without prejudice to the rights of either party to claim against the other for breach of these Terms of Trade.

### 5. Payment

- 5.1 The Seller reserves the right to require a deposit to be paid in advance.
- 5.2 Payment shall be made in full by the Customer upon delivery or within seven days following the issue of an invoice by the Seller ("the Due Date") unless alternative arrangements have been agreed to in writing by the Seller. All payments must be made in full without deduction.
- 5.3 The Seller may allocate any payment received from the Customer against any debt owed by the Customer in any way the Seller decides, notwithstanding any purported allocation by the Customer.
- 5.4 Payment will only be accepted in one of the following forms:
  - (a) cash;
  - (b) internet bank deposit;
  - (c) eftpos.

### 6. Interest

Interest will be charged, without prejudice to the Seller's other rights and remedies, on any amount outstanding after the Due Date at the rate of 2% per month or part thereof from the Due Date until the date of payment in full.

### 7. Costs

If invoices are not paid in full on or before the Due Date, the Customer will pay all collection and legal fees and any other costs incurred by the Seller in connection with and incidental to the recovery of sums outstanding and of enforcing any of the powers conferred on it under these Terms of Trade. Such fees may include additional fees or commissions charged by debt collecting firms and actual legal costs and disbursements charged on a solicitor-client basis.

### 8. Quality or fitness description or sample

The Seller does not undertake as to quality, fitness, description or sample, except:

- 8.1 to the extent that the Customer has set forth the requirements of the Customer on the order;
- 8.2 where the Customer makes known to the Seller in writing the particular purpose for which the goods are required so as to show that the Customer relies on the Seller's skill or judgment, and the goods are of a description which is in the course of the Seller's business to supply (whether the Seller is the manufacturer or not);
- 8.3 in the event that the Customer requires quality or fitness for a particular purpose according to the usage of trade and the Customer has set forth the Customer's requirements as to such quality or fitness for such particular purpose in writing.

### 9. Risk

- 9.1 Excepting that the Seller shall take reasonable precautions to preserve the goods, the risk of the goods shall be that of the Customer from the time the goods leave the premises of the Seller but when title passes to the Customer the goods are at the Customer's risk whether the goods have left the Seller's premises or not.

- 9.2 Where delivery has been delayed through the fault of either party the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

## **10. Retention of title**

- 10.1 The Seller retains title to all goods supplied to the Customer until payment for the goods and/or services is made in full.
- 10.2 The Customer authorises the Seller or its agents to enter any premises to recover goods owned by the Seller upon default or where the Seller believes default is likely. If the premises belong to a third party the Seller or its agent may enter and recover the goods as the Customer's agent.
- 10.3 If the Customer on-sells any goods before transfer of title, the proceeds of such sale shall be held by the Customer in trust for the Seller and the Customer.

## **11. Security Interest**

- 11.1 The Customer agrees that the Seller may register a purchase money security interest over all goods supplied (including those goods supplied in the future) to the Customer on the Personal Property Securities Register.
- 11.2 The Customer waives its right to receive a copy of the verification statement following the registration of this security interest.
- 11.3 This security shall be deemed to be a running and continuing security irrespective of any sums which may from time to time be paid to the credit of any account of the Customer with the Seller and notwithstanding that any such account may appear at any time to be in credit.
- 11.4 Notwithstanding any settlement of account or any other matter or thing whatsoever this security shall remain in full force and effect and shall not be deemed to have been released or discharged or in any way vacated until a Memorandum of Satisfaction shall have been executed by the Seller.

## **12. Enforcement**

Upon or at any time after the occurrence of a Default, the Seller may (but is not obliged to do so), without prejudice to any right, power or remedy it may have sell, lease, assign, transfer or otherwise dispose of the goods on such terms as the Seller considers desirable in its absolute discretion.

## **13. Rights of unpaid Seller**

Irrespective of:

- (a) whether title in the goods has passed to the Customer or not;
- (b) the delivery of the goods to the Customer;
- (c) the possession and use of the goods by the Customer;

until the Seller has received payment for the goods it may hold or obtain possession of them and sell or resell them at the prevailing market price at the time of sale.

## **14. Unpaid Seller's rights of disposal when payment of price is due**

In the event that:

- (a) the Seller retains possession or control of the goods; and
- (b) payment is due to the Seller; and
- (c) the Seller has made demand in writing of the Customer for payment for the goods in terms of these Terms of Trade; and
- (d) the Seller has not received payment for the goods;

then, whether the title in the goods has passed to the Customer or not, the Seller may dispose of the goods and claim from the Customer the loss to the Seller on such disposal.

## **15. Remedies and Waivers**

- 15.1 Time shall be of the essence of these Terms of Trade but no failure to exercise, and no delay in exercising, any right or remedy of the Seller under these Terms of Trade, any Security or any document which creates or evidences the Secured Money or the Secured Obligations shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other nor further exercise thereof or the exercise of any other right or remedy.
- 15.2 The rights and remedies of the Seller under these Terms of Trade, any Security or any document which creates or evidences the Secured Money or the Secured Obligations are cumulative and not exclusive of any rights or remedies provided by law. If any provisions of these Terms of Trade (or any part of those provisions) are held to be invalid, illegal or unenforceable, this shall not affect any other provisions of this document.

## **16. Default**

- 16.1 Each of the following events amounts to default by the Purchaser:

- (a) failure by the Customer to pay the amount of any invoice on or before the Due Date;
- (b) seizure of the goods by any other creditor of the Customer or any other creditor indicating that it intends to carry out such a seizure;
- (c) material damage to the goods in the Customer's possession while amounts remain unpaid;
- (d) a material adverse change in the Customer's financial position.
- (e) the Customer having execution issued against its property under a judgment in any Court;

- (f) the Customer being declared bankrupt or making an assignment to or composition with its creditors, or if a corporate body a resolution being passed or a petition filed for its winding up (other than for the purpose of reconstruction or amalgamation) or a receiver is appointed in respect of the Customer.
- 16.2 In the event of default, the Seller may immediately, or at any time thereafter, without giving any notice to the Customer, enter upon any land or premises where the chattel may be situated and:
  - (a) retake possession of the goods; and
  - (b) terminate this agreement, but without releasing the Customer from any liability in respect of any breach or non-observance of any of the provisions contained or implied in these Terms of Trade; and without prejudice to the Seller's right to retain all money paid to the Seller pursuant to these Terms of Trade and the Seller's right to claim damages.
- 16.3 If these Terms of Trade are terminated for any reason other than due fulfilment by the Customer or other than with the express consent of the Seller in writing, then without prejudice to its other rights at law or in equity, the Seller may, at any time thereafter, demand immediate payment of all or any of the following:
  - (a) all arrears of payment then due and payable by the Customer under these Terms of Trade;
  - (b) the costs of repossession of the goods;
  - (c) the Seller's loss to be notified by the Seller to the Customer;
  - (d) all costs and expenses incurred by the Seller in enforcing these Terms of Trade; and
  - (e) interest on all money payable under this provision from the date of termination to the date of payment at the rate of 2% per month or part thereof.

## **17. Discharge**

When all Secured Money is paid or repaid and all Secured Obligations are fulfilled and satisfied (such that the Customer is under no further liability, contingent or otherwise to the Seller) and no money is outstanding by the Customer to the Seller and the Seller being satisfied that any repayment cannot be avoided at law, the Seller will, at the request and cost of the Customer provide the Customer with a discharge of the security created by these Terms of Trade.

## **18. Dispute Resolution**

Any difference or dispute arising between the parties regarding their respective rights or liabilities under these Terms of Trade may be referred by either party to the determination of a single arbitrator in case the parties agree upon one, otherwise to two arbitrators one to be appointed by each party or their umpire in manner provided by the Arbitration Act 1996 or any Statutory modification or re-enactment thereof.

## **19. Governing law**

The law of New Zealand including the Sale of Goods Act 1908 and its amendments shall apply to this agreement except to the extent expressly negated or varied by these Terms of Trade.

## **20. Force Majeure**

The Seller shall not be responsible for any failure or delay to perform any obligation to the Customer due to circumstances beyond its control.

## **21. Warranties and Undertakings**

21.1 The Customer represents and warrants that:

- (a) apart from the security conferred pursuant to these Terms of Trade, no security interest or encumbrance exists over or affects the goods;
- (b) it has power to enter into these arrangements.

21.2 The Customer undertakes:

- (a) to duly and faithfully observe and perform all its obligations under or in respect of the goods;
- (b) not to create, incur, assume, or suffer to exist any mortgage, charge, pledge, lien, encumbrance, trust arrangement, security assignment or any other form of security interest over or affecting any of the goods or enter into any agreement or arrangement the intention being to create any of the foregoing;
- (c) not to do or omit to do anything affecting the goods which might or which may cause or contribute to a deterioration in the value of the security of the Seller under this Deed or which may adversely affect the Seller's security under these Terms of Trade or any other Security the Seller has from time to time over the goods.

## **22. Information**

You agree we can collect, hold and, use information (including but not limited to obtaining a credit check) about you that we think we need to help us manage our relationship with you and any guarantor of your obligations. That includes any of your guarantors, beneficial owners and directors. If we can, we will get the information from you direct, but we may also obtain information from others.