



**AVALON INTERNATIONAL LIMITED & Subsidiaries** (The Company or Avalon)

**APPLICATION FOR TRADING AND CREDIT ACCOUNT/TERMS & CONDITIONS OF TRADE**

The Buyer requests that Avalon International Ltd (The Company) supply goods upon credit on the terms detailed below. The Buyer acknowledges that if The Company accepts the application and agrees to sell goods to The Buyer on any basis other than full payment in advance, that in consideration for The Company granting monthly credit terms, all sales will be subject to the Terms and Conditions of Trade set out on attachments to this form. In completing and signing this application, The Buyer confirms they have read and accept The Company's Terms and Conditions of Trade.

**Definitions of terms used in this form:**

**Avalon** means Avalon International Ltd or any of its subsidiaries

**The Company** means Avalon International Ltd or any of its subsidiaries

**The Seller** means Avalon International Ltd or any of its subsidiaries

**The Buyer** means the person, organisation or entity on whose behalf this form is completed

**DETAILS RELATING TO APPLICATION FOR CREDIT ACCOUNT**

Business Full Name			
Trading Name			
Postal Address		Post Code	
Delivery Address		Post Code	

Buying Contact Name			
Buying Contact No.s	Office:	Mob:	Fax:
Buying Contact E-Mail			
Company Website			

Invoices and Statements will be emailed to you to save paperwork and opening mail

Billing Contact Name			
Billing Contact No.	Office:	Mob:	Fax:
Billing Contact E-Mail			
Special Invoice Needs?	<input type="checkbox"/> Avalon CSV Format <input type="checkbox"/> Avalon PDF Format		

**Business Type:**     Limited liability     Sole Trader     Government Dept     Other \_\_\_\_\_

Directors'/Proprietors' Names	Address	Date of Birth (required for credit check)
1		/ /
2		/ /
3		/ /

Trade Credit References	Phone Number
1	
2	
3	
Credit Limit Required	\$ _____ I am interested in Direct Debits (Circle one)    Yes    No

The Buyer's acknowledges that their application for monthly credit can only be accepted, subject to all sales are made under the Terms and Conditions of Trade set out on the attached **Terms & Conditions of Trade Version 1.122 dated 01/08/2018**.

**Signature of (duly authorized agent of) the Buyer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Avalon Bank Account Details: **06 0153 0127272 00** (Please use your Trading Name for Particulars, Account No. for Code)

# **TERMS & CONDITIONS OF TRADE**

## **PAYMENT**

1. **UNLESS** otherwise agreed to in writing, all goods will be paid for on or before the 20<sup>th</sup> of the month following supply.
2. **IF** The Buyer makes default in payment, then without prejudice to The Company's right to recover the money owing by the Buyer to The Company the Buyer will pay interest on any sum due and unpaid at the rate of 2.5% per month calculated daily from the due date for payment until actual payment is received by the Seller.
3. **NOTHING** in these terms and conditions will oblige the Company to extend credit to The Buyer in any circumstances where The Company in its uncontrolled and unfettered discretion considers the account is not being maintained to an acceptable standard.
4. **IF** The Buyer shall commit any act of insolvency or bankruptcy The Company may at its option suspend or terminate supply and payment for all goods delivered up until the date of suspension or termination including costs thereof and other monies payable hereunder shall immediately become due and payable.
5. **THE BUYER** agrees to pay to The Company on a solicitor/client basis all legal fees, debt collection costs and expenses incurred in collecting any monies due for payment under these Terms and Conditions of Trade that are overdue for payment.
6. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment in clause 1. Payment of disputed amount may be withheld provided the Company is advised immediately the matter is discovered and letter outlining details of dispute is sent with seven days of dispute arising.
7. Avalon reserves the right to recharge credit card charges.

## **CUSTOMER ACKNOWLEDGEMENT**

8. **THE** Buyer acknowledges that the goods supplied by The Company, whether supplied directly by The Company or as a result of supply from any other source whatsoever are supplied for the business purposes of The Buyer and are not goods of the kind ordinarily required for personal domestic or household use or consumption. The Buyer accepts that the provisions of the Consumer Guarantees Act 1993 have no application in respect of the provisions of goods supplied under this contract. In the event that the Buyer is a consumer as defined in the Consumer Guarantees Act 1993 the provisions of this clause will not apply.

## **WARRANTIES**

9. The Company accepts full responsibility to deliver the goods in an undamaged condition. (please see your responsibilities in **Signing for Goods Received** Section)
10. Other than the warranties given in this section, no other warranties are implied by this contract.
11. Without limiting the generality of the above, the parties are agreed that all terms, conditions and warranties otherwise implied by the Sale of Goods Act 1908 shall not apply.

## **RISK, DELIVERY, MINIMUM ORDER AND FREIGHT**

12. All goods shall be at the risk of The Buyer as soon as they are delivered by The Company.
13. For the purposes of this agreement, delivery shall occur as soon as the goods are placed on a transport vehicle for shipment from The Company's warehouse to the address nominated by The Buyer.
14. The Company requires a minimum order of \$300 excluding GST for each delivery. Exceptions, at The Company's discretion, will incur an additional freight & processing fee charged to The Buyer of \$10 for **North Island** and \$15 for **South Island**
15. The Company will pay the freight on all goods supplied for delivery within the **North Island** to a minimum value of \$300 per delivery. The Company will share the cost of freight for delivery in the South Island on a 50/50 basis with The Buyer PROVIDED that the maximum contribution towards freight from The Company under this clause shall be 3% of the invoice value (net of GST)

## **PROPERTY IN GOODS**

16. **ALL** goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as The Buyer shall have paid to The Company the agreed price and all other debts including, but not limited to, all freight and insurance charges associated with and all GST payable in respect of such goods ("the liabilities").
17. **CHEQUES** or other negotiable securities given by The Buyer or any other person on behalf of The Buyer to The Company shall not be deemed to be cash payment until they become cleared funds in The Company's bank account.
18. **THE** Buyer acknowledges that The Buyer is in possession of the goods solely as bailee for The Company until such time as all liabilities are paid to The Company or the goods are sold in accordance with clause 20(b) hereof.
19. **PENDING** the passing of the property in the goods to The Buyer, The Buyer shall: -
  - (a) Store the goods in such a way as they are separately identifiable;
  - (b) Keep full and complete records of the physical location of the goods from time to time and record the ownership of The Company in respect thereof.

## **REALE OF THE GOODS**

20. **"SUBSEQUENT purchases"** shall be any person or Company to whom The Buyer sells the goods pursuant to the clause. Notwithstanding that the property of the goods remain with The Company The Buyer may resell the goods in the ordinary course of business prior to The Company receiving full payment. If The Buyer sells the goods as aforesaid then:
  - (a) As between The Buyer and the subsequent purchasers, The Buyer shall be principal and not the agent of The Company;
  - (b) The Buyer shall account to The Company for that part of the proceeds of sale as is equal to the liabilities payable by The Buyer to The Company in respect of such goods.
  - (c) Until The Buyer pays The Company the price payable for the goods, the proceeds of such resale shall be maintained by The Buyer in a separate identifiable account;
  - (d) If The Buyer has not received the proceeds of any such sale from a subsequent purchase The Buyer will, if called upon to do so by The Company, within seven days thereof assign to The Company all rights against the subsequent purchaser to whom The Buyer has supplied any of the goods.

## **TERMINATION OF BUYERS RIGHTS TO POSSESSION**

21. **THE BUYER** being a Company does anything or fails to do anything which would entitle a receiver to possession of any assets or which would entitle any person or Company to present a petition for winding up.
22. **IF** payment by The Buyer to The Company is overdue The Company may recover and resell any or all of the goods.
23. **THE** Company or its agent may for the purpose of recovery of the goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess any goods in which property is not passed to The Buyer.
24. **THE** exercise by The Company of any right contained in clauses 17 to 24 hereof shall be without prejudice to any rights or remedies which it may have against The Buyer or other party in respect of the goods and shall not constitute an election or waiver so as to disentitle The Company from exercising any other rights that may be available to it.

## **PRIVACY ACT 1993**

25. The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
  - (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
  - (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
26. Where the Buyer is an individual the authorities under (clause 26) are authorities or consents for the purposes of the Privacy Act 1993.
27. The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller

## **PRICE, TAXES, DUTIES, INSPECTIONS AND EXPORT**

28. **UNLESS** otherwise indicated all prices quoted or submitted are exclusive of GST and other taxes or duties. The Company shall add to each invoice all such GST taxes and/or duties at the ruling rate.
  29. **THE** prices quoted are based on rates and conditions ruling at the date of delivery.
  30. If The Buyer requests delivery outside of New Zealand, the Buyer is responsible for all costs of crossing the borders in N.Z. and country of import. Including all Freight, Taxes, Duties and Inspections.
  31. The Buyer warrants that the goods purchased are not prohibited imports in country of delivery.
- ## **SUPPLIER**
32. **THE** Company shall use its best efforts to supply the goods by the dates requested from time to time in writing by The Buyer. The Company shall not be liable for delays resulting directly or indirectly from hostility, strikes or lock-outs, labour disputes, acts of God, force majeure, sanctions, regulations of any government, breakdown of machinery or transportation, or any other cause of any nature beyond the control of The Company.

## **REFUSAL TO ACCEPT**

33. **WITHOUT** prejudice to any other rights and remedies which The Company may have if The Buyer fails or refuses to accept delivery of goods supplied by The Company at the request of The Buyer, The Buyer shall be liable to pay to The Company all resulting transportation charges and The Company shall be at liberty to charge the reasonable costs of storing the goods to The Buyer.

## **CLAIMS**

34. **THE** liability of The Company, whether in contract or in tort, for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement or repair of such defective or non complying goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of The Company as the case may be. The Company shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever, nor shall The Company be liable for any damage or loss caused by the Buyer's servants, agents, contractors, visitors, tenants, trespassers or other person(s) whomsoever. The Company may, at its discretion, remedy damage caused by any person other than The Company at the expense of The Buyer. The Buyer shall indemnify the Company against any claim by The Buyer's servants, agents, contractors, visitors, tenants, trespassers or any other person(s) whomsoever (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any defect or non-compliance of the goods supplied. No claim by The Buyer either for damages or for repudiation of the contract shall be effective or enforceable unless made in writing and received by The Company within 7 days after delivery of the goods to The Buyer. The Buyer shall not be entitled to withhold any payment or to make any deduction therefrom for any reason whatsoever. The application of this condition will not apply where the purchaser is deemed to be a consumer within the definition of the Consumer Guarantees Act.

## **SEVERANCE**

35. **IF** any clause and/or part of these terms and conditions is deemed at any time to be unenforceable or illegal, the status of such clause and/or part of these Terms and Conditions of Trade shall not affect the enforceability of the balance of the Terms and Conditions of Trade to the end and intent that such unenforceable or illegal clause or part may be severed from the balance of these Terms and Conditions of Trade.

## **INTELLECTUAL PROPERTY**

36. Any product that The Company has commissioned remains the Intellectual Property of Avalon International Ltd to be held in trust for the exclusive use of the Buyer. All future orders must be made through The Company unless with prior written approval from Avalon.
37. The Buyer warrants that it has full intellectual property design and ownership rights on any items given to Avalon to Quote on.
38. The Buyer warrants that it will not reproduce or purchase from any other source, unique items designed or sourced by Avalon for The Buyer. Avalon will offer a free quote for such items.

## **AGREE TO ACCEPT EMAIL AND PROMOTIONS FROM AVALON**

39. Avalon believes The Buyer will be serviced best by being kept up to date with the latest developments and opportunities. The buyer agrees to accept any promotional emails or letters from Avalon. The Buyer Reserves the right to later discontinue these updates if they are no longer required.

## **SIGNING FOR GOODS RECEIVED**

40. You must check goods received when they arrive for:
  - (a) Damage, crushing, theft and water damage. You must mark Consignment Note, Ticket, Electronic Device or Courier Run Sheet with notes of damage.
  - (b) No of cartons received – does it agree with what you are signing for?
  - (c) Only sign for goods without notes if you are happy to pay for the goods received. (If you sign for goods when damaged or short supplied then that is proof that you accept goods in that condition & courier will not pay for damages. The courier will hold you liable for those damages.)

## **GOVERNING LAW & FORCE MAJEURE**

41. Any court action must be under the jurisdiction of Courts of Auckland, New Zealand
42. If Avalon is prevented from carrying out any obligation in this agreement by reason of an act of god, act of state, riot, insurrection, civil commotion, strike, sanction, boycott, embargo or any other circumstance beyond our reasonable control, we will not be liable to you for a failure to perform, or delay in performing, any such obligation set out in this agreement.

## **VARIATION TO TERMS & CONDITIONS OF TRADE**

43. Avalon may from time to time and in its sole discretion amend, add to or delete any of the terms and conditions of trade with immediate effect by giving notice to the customer.

## **PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

44. Upon assenting to these terms and conditions in writing the Buyer acknowledges & agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.
45. The Buyer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
  - (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
46. The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
47. The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
48. Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
49. The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 44 to 48.

