

Terms & Conditions of Sale

DEFINITIONS

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;
"Agreement" means any agreement for the provision of goods or services by Avantage Australia Pty Ltd to the Customer;
"Avantage Australia Pty Ltd" means Avantage Australia Pty Ltd (ABN: 17 650 943 409) and includes its subsidiaries, divisions, affiliates, associated companies and related entities;
"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;
"Customer" means the person, jointly and severally if more than one, acquiring goods or services from Avantage Australia Pty Ltd;
"goods" means goods supplied by Avantage Australia Pty Ltd to the Customer and includes any goods supplied in the course of providing the services;
"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 and its associated Regulations as amended;
"PPSA" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended; and
"Terms" means these Terms and Conditions of Trade.

1. Basis of Agreement

- 1.1 Unless otherwise agreed by Avantage Australia Pty Ltd in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).
- 1.2 Any quotation provided by Avantage Australia Pty Ltd to the Customer for the proposed supply of goods or services is valid for 30 days, is an invitation to treat only; and is only valid if in writing.
- 1.3 An Agreement is accepted by Avantage Australia Pty Ltd when Avantage Australia Pty Ltd accepts, in writing or electronic means an offer from the Customer or provides the Customer with the goods or performs the services.
- 1.4 Avantage Australia Pty Ltd has absolute discretion to refuse to accept any offer.

2. Pricing

- 2.1 Unless specified otherwise, prices quoted for the supply of goods and performance of services exclude GST, any other taxes or duties imposed on or in relation to the goods or services, and any freight and delivery costs. In addition to payment of the price of goods and performance of the services, the Customer must pay any GST and any other taxes or duties imposed on the goods or services.
- 2.2 If the Customer requests any variation to an Agreement, Avantage Australia Pty Ltd may increase the price to account for the variation.
- 2.3 Where there is any change in the costs incurred by Avantage Australia Pty Ltd in relation to goods or services, Avantage Australia Pty Ltd may vary its price to take account of any such change, by notifying the Customer.

3. Payment

- 3.1 Unless otherwise agreed in writing payment for the goods or services must be made prior to delivery.
- 3.2 Avantage Australia Pty Ltd may grant a trade Customers a limited credit arrangement. Where such credit is approved, payment for goods and services must be made within 30 days of the invoice date.
- 3.3 Avantage Australia Pty Ltd reserves the right to require the Customer:
 - (i) to pay a deposit and progress payments; or
 - (ii) provide an irrevocable bank guarantee upon order if specified in the quotation.
- 3.4 Any payment terms may be revoked or amended at Avantage Australia Pty Ltd sole discretion immediately upon giving the Customer written notice.
- 3.5 The time for payment is of the essence.

4. Payment Default

- 4.1 If the Customer defaults in payment by the due date of any amount payable to Avantage Australia Pty Ltd, then all money which would become payable by the Customer to Avantage Australia Pty Ltd at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Avantage Australia Pty Ltd may, without prejudice to any of its other accrued or contingent rights:
 - (a) charge the Customer interest on any sum due at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after and before any judgment;
 - (b) charge the Customer for, and the Customer must indemnify Avantage Australia Pty Ltd from, all costs and expenses (including without limitation all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - (c) cease or suspend supply of any further goods or services to the Customer;
 - (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 4.2 Clauses 4.1(b) and (c) may also be relied upon, at Avantage Australia Pty Ltd option:
 - (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or similar functionary appointed, in respect of its assets or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5. On-Site Conditions

- 5.1 If on-site attendance is necessary or is part of the delivery of goods and services, the Customer agrees to provide safe and secure conditions and comply with any occupational health and safety laws for Avantage Australia Pty Ltd or its sub-contractors, employees or agents to provide any such on-site services.
- 5.2 Avantage Australia Pty Ltd may, at its absolute discretion, opt not to provide the services if the conditions are, in its reasonable opinion, not work safe. Avantage Australia Pty Ltd will not be liable to the Customer in those circumstances.

6. Passing of Property

- 6.1 Until Avantage Australia Pty Ltd receives full payment in cleared funds for all goods and services provided by it to the Customer, as well as all other amounts owing to Avantage Australia Pty Ltd by the Customer:
 - (a) title and property in all goods remain vested in Avantage Australia Pty Ltd and do not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary bailee and agent for Avantage Australia Pty Ltd;
 - (c) the Customer must keep the goods separate from its goods and maintain Avantage Australia Pty Ltd' labelling and packaging;
 - (d) the Customer must hold the proceeds of any sale of the goods on trust for Avantage Australia Pty Ltd in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligations as trustee;
 - (e) in addition to its rights under the PPSA, Avantage Australia Pty Ltd may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Avantage Australia Pty Ltd, and for this purpose the Customer irrevocably licenses Avantage Australia Pty Ltd to enter such premises and also indemnifies Avantage Australia Pty Ltd from and against all costs, claims, demands or actions by any party arising from such action.

7. Acknowledgments

- 7.1 The Customer acknowledges that:
 - (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information, or assistance provided by Avantage Australia Pty Ltd in relation to the goods, their use or application.
 - (b) it has not made known, either expressly or by implication, to Avantage Australia Pty Ltd any purpose for which it requires the goods or services, and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

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8. Performance of Agreement

- 8.1 Any period or date for delivery of goods or performance of services stated by Avantage Australia Pty Ltd is an estimate only and is not a contractual commitment.
- 8.2 Avantage Australia Pty Ltd will use its reasonable endeavors to meet any estimated dates for delivery of the goods or performance of services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 8.3 If Avantage Australia Pty Ltd cannot complete the services by any estimated date, it will complete the services within a reasonable time.

9. Liability

- 9.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition, or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 9.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Avantage Australia Pty Ltd for failure of a statutory guarantee under the ACL.
- 9.3 If the Customer on-supplies the goods to a consumer and:
- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A (1) of the ACL is the absolute limit of Avantage Australia Pty Ltd' liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Avantage Australia Pty Ltd' liability to the Customer; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 9.4 If clause 9.2 or 9.3 do not apply, then other than as stated in the Terms or any written warranty statement Avantage Australia Pty Ltd is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 9.5 Avantage Australia Pty Ltd is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 9.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting, or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be excluded, restricted or modified.

10. Order Cancellation

- 10.1 If Avantage Australia Pty Ltd is unable to deliver (where applicable) or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 10.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Avantage Australia Pty Ltd once that order has been accepted.
- 10.3 If Avantage Australia Pty Ltd agrees to accept a cancellation of an order, then:
- (a) a 15% restocking fee is payable on the same terms as the order;
- (b) manufacturing of made-to-order products has been commenced the purchaser shall be liable for the full cost of the order to that day; and
- (c) any made to order goods are non-returnable and have no refunds available.

11. Specifications

- 11.1 All specifications, drawings, illustrations descriptive matter and particulars contained in Avantage Australia Pty Ltd' catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.
- 11.2 All drawings, descriptive matter and particulars supplied, remain Avantage Australia Pty Ltd' property and are to be returned to Avantage Australia Pty Ltd on demand. The Customer must not publish or communicate to any person or publish or permit them to be copied or communicate them to any other person without Avantage Australia Pty Ltd' prior consent in writing.
- 11.3 It is the purchasers' responsibilities to ensure that all quotes, orders and order confirmations meet the specification. Avantage Australia Pty Ltd does not guarantee that any equipment offered will meet the specifications.

12. Returns and Exchanges

- 12.1 Avantage Australia Pty Ltd will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless:
- (a) the Customer delivers a written complaint to Avantage Australia Pty Ltd with full details within 10 days of inspection of goods specifying the shortage or defect; and
- (b) Avantage Australia Pty Ltd is, upon receipt of the complaint, given an opportunity to inspect the goods and investigate the complaint before any further dealing with the goods.
- 12.1 When any shortages, claim for damage or non-compliance with the Agreement is accepted by Avantage Australia Pty Ltd, Avantage Australia Pty Ltd may, at its option, replace the goods or refund the price of the goods or re-supply the services.
- 12.2 Subject to clause 15.2 Avantage Australia Pty Ltd will not under any circumstances accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement or special Customer order;
- (b) have been altered in any way;
- (c) have been used;
- (d) are discontinued goods no longer stocked by Avantage Australia Pty Ltd;
- (e) 1 month or more has elapsed from delivery; or
- (f) are not in their original condition and packaging.
- 12.3 The Customer must:
- (a) obtain Avantage Australia Pty Ltd' prior written approval for return of goods;
- (b) pay to Avantage Australia Pty Ltd a re-stocking fee equal to 15% of the original invoice cost; and
- (c) pay all freight charges incurred in the return of goods.
- 12.4 If the Customer is a Consumer, nothing in this clause limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

13. Force Majeure

- 13.1 Avantage Australia Pty Ltd is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Avantage Australia Pty Ltd may suspend or terminate the Agreement by written notice to the Customer.

14. Miscellaneous

- 14.1 The law of Victoria from time to time governs the Terms. The parties agree to the nonexclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 14.2 Avantage Australia Pty Ltd failure to enforce any of these Terms shall not be construed as a waiver of any of Avantage Australia Pty Ltd rights.
- 14.3 If a clause is unenforceable, it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.
- 14.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

15 Privacy

- 15.1 Avantage Australia Pty Ltd is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Avantage Australia Pty Ltd in accordance with the Privacy Act.
- 15.2 Avantage Australia Pty Ltd requires that the Customer comply with the National Privacy Principle in connection with any personal information supplied to it in connection with this Agreement.