

TERMS AND CONDITIONS OF SALE

1. General

- 1.1. These terms apply to the sale of goods by Avlite ("us") to the person or entity who enters into a contract with us for the purchase of goods, ("you").
- 1.2. These terms supersede all previous terms and conditions and represent the entire agreement between us.
- 1.3. When you place an order with us, you have accepted these Terms and Conditions.

2. Quotes provided by Avlite

- 2.1. All quotes made by us are for any period specified in the quote. If no such period is specified, the quote is valid for a period of thirty (30) days from the date on the quote.
- 2.2. Unless otherwise agreed, the price of the goods is operative as at the date of the quote.
- 2.3. Any price concession or discount we provide you is conditional on your full compliance with any resulting agreement.
- 2.4. We reserve the right to amend the quote at any time.

3. GST

- 3.1. Prices quoted are exclusive of GST.
- 3.2. All Australian customers must pay the amount for GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the price (or the first part of the total amount due, if we agree to your paying the total amount via instalments.)

4. Payment

- 4.1. Unless otherwise agreed, payment is to be made within thirty (30) days after the end of the month of the date on the invoice.
- 4.2. Unless otherwise agreed, if you are outside Australia, payment is either by telegraphic transfer prior to shipment, or Letter of Credit, or other terms as negotiated.
- 4.3. We may require immediate payment of all unpaid monies (whether or not actually due and payable by you) if any of the following occurs:
 - 4.3.1. We reasonably consider that your creditworthiness has become unsatisfactory;
 - 4.3.2. An order is made, or a resolution is passed, to bankrupt you, to wind you up, a meeting is called to consider a resolution to bankrupt you, wind you up or a provisional liquidator is appointed;
 - 4.3.3. A receiver or receiver and manager is appointed over the whole or part of your business or assets;
 - 4.3.4. You enter into any arrangement or composition with any of your creditors;
 - 4.3.5. You are placed under administration or a meeting is called or some other step taken to place you under administration;
 - 4.3.6. You cannot pay your debts as they fall due; or
 - 4.3.7. You do not comply with this document.

4.4. We may charge you interest if full payment is not made by the due date. Interest will be charged at a rate in line with the *Penalty Interest Rates Act 1983*, from the due date until full payment is made.

4.5. You must pay all expenses incurred by us in enforcing our rights under this document.

5. Delivery

5.1. Any delivery time we give you is a genuine estimate. We are not liable to you for any loss or damage you suffer or incur as a result of late delivery.

5.2. You must still accept and pay for the goods even if we deliver late.

5.3. Unless we agree in writing, delivery takes place when we notify you that the goods are available for dispatch from our premises.

5.4. We may deliver the goods in instalments.

5.5. You are responsible for the cost of delivery.

6. Risk

6.1. Risk of damage to, or loss of, the goods passes to you at the time of dispatch from our premises. We are not liable to you for loss or damage or deterioration of the goods after they are dispatched.

7. Title

7.1. We retain title to and ownership of the goods until you have paid all monies you owe us for them, (and all cheques or negotiable instruments have been honoured.)

7.2. Until title passes to you, you hold the goods on our behalf. You must return the goods to us if we ask you to do so. We can retake possession of any goods in your possession if anything in clause 4.3.1 to 4.3.7 inclusive occurs. You must take out and pay for insurance in both our names sufficient to cover both our interests in the goods. You must produce a certificate of insurance to show that you have taken out this insurance if we ask you to do so.

7.3. This clause relates to consignment stock and sale on extended payment terms.

7.3.1. Within 7 days after the end of each month, you must give us a statement showing the quantity and type of goods we have sold to you which you have used or sold in that month and the quantity and type of goods we have sold to you which are still in your possession.

7.3.2. You must keep accurate records to support the monthly statements. You must allow us to look at and copy your records to verify the monthly statements.

7.4. You must allow us to enter any premises that are under your control where the goods are kept at a date and time that is at our discretion.

8. Quantity discrepancy

8.1. If the quantity of goods delivered is less than the amount you ordered, you must notify us in writing of the shortfall within 7 days of delivery. If you do not, you will be required to pay for the goods in full despite the shortfall.

8.2. If the quantity of goods delivered is more than the amount you ordered, you must immediately notify us in writing and we are entitled to charge you for the excess or recover the excess from you.

8.3. Unless otherwise stated, dimensions and masses quoted are approximate and subject to commercial tolerances and may be subject to change without notice.

8.4. Where goods are delivered by a carrier nominated by you, then a receipt from the carrier shall be considered adequate proof of delivery and our liability for delivery shall cease.

9. Force Majeure

- 9.1. We are not liable for failure to comply with this document if the failure (directly or indirectly) arises out of any circumstances beyond our reasonable control. If such circumstances occur, we may delay or cancel delivery of the goods or reduce the quantity to be delivered.
- 9.2. The following are examples of circumstances beyond our reasonable control: strike, lock-outs, accidents, war, fire, flood, explosions, shortage of power, breakdowns of plant or machinery, shortage of raw or other materials from normal sources of supply, act of God, and any order or direction of any Local, State or Federal Government, Government authority or instrumentally (within the Commonwealth of Australia or elsewhere).

10. Cancellation

- 10.1. You cannot cancel any order or contract or return any goods unless we first agree in writing. We will not agree to any cancellation or return unless you indemnify us for all loss or damage we suffer or incur as a result of the cancellation or return. We may cancel any order or contract if we consider we may be unable to supply you the goods.
- 10.2. If anything in clauses 4.3.1 to 4.3.7 inclusive occurs or if the goods remain uncollected after 14 days from when we tell you that they are ready for collection, we may cancel the whole or part of an order or contract by giving you notice. If we cancel in these circumstances, you must pay us for any loss, liability, cost or expense we incur as a result of the cancellation and a reasonable cancellation fee set by us.
- 10.3. You have no claim against us and we are not liable to you for any loss, liability cost or expense which you may incur as a result of a cancellation under this clause.
- 10.4. Freight costs for returns due to purchase error shall be the customer's responsibility.
- 10.5. A restocking fee maybe charged for returns due to purchase error.
- 10.6. Goods made specifically to your specifications or requirements, must be paid for before production will commence and shall not be refundable for credit.

11. Limitation of liability

- 11.1. Except to the extent that we have made express representations in writing, you shall be responsible for determining the suitability of goods sold or hired by us for the purpose for which they are intended and acknowledge that we are not necessarily aware of that purpose and that you have not relied on our advice.
- 11.2. Our liability for a breach or any written warranty we provide to you is limited at our option, to that specified in our Warranty Terms and Conditions.
- 11.3. You indemnify us for all liabilities, losses, damages, costs or expenses suffered or incurred by you as a result of any of the following:
 - 11.3.1. If the product has been used or handled other than in accordance with the instructions in the owner's manual and any other information or instructions provided to you by us;
 - 11.3.2. The goods have been deliberately abused, or misused, damaged by accident or neglect or in being transported;
 - 11.3.3. The defect is due to the product being repaired or tampered with by anyone other than us or repair personnel authorised by us;
 - 11.3.4. Failure to comply with laws relating to the use, sale, marketing or labelling of goods;
 - 11.3.5. Any statement you make about the goods without our written approval; or
 - 11.3.6. Any breach by you of the Warranty Terms and Conditions.

11.4. You agree that:

- 11.4.1. The goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- 11.4.2. You are acquiring the goods for resupply or for using them up or transforming them in the course of a process of production or manufacture in your business.

12. Storage and Handling

- 12.1. We may charge you for storage if you do not collect the goods or provide adequate delivery instructions within 14 days after we tell you that the goods are ready for collection. You must pay the charges we specify when we ask you. Goods we store on your behalf are at your risk.

13. Variation

- 13.1. We are entitled to vary these terms at any time by giving you written notice.

14. Waiver

- 14.1. Even if we do not insist on strict performance of this document, we are not taken to have waived our right to later require strict performance. Even if we provide an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition.

15. Notices

- 15.1. Notices under this document must be in writing. A notice must be delivered personally or sent by facsimile or e-mail transmission or post to the other party at the last known address.

16. Severability

- 16.1. If any of these terms and conditions is invalid or unenforceable in any jurisdiction, it must, if possible, be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down but can be severed to the extent of the invalidity or unenforceability, it must be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

17. Governing law and jurisdiction

- 17.1. The law in force in Victoria, Australia, governs these terms and conditions.