

# ADVANCED ENGINEERING GROUP LIMITED



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## Section 1

### Credit Application Form

Company Name: \_\_\_\_\_

Company Postal Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ P/Code: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

\_\_\_\_\_ Post Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Position: \_\_\_\_\_

Accounts Person: \_\_\_\_\_ Email: \_\_\_\_\_  
(statements will be e-mailed unless advised)

Accountant: \_\_\_\_\_ Solicitor: \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Expected Average Monthly Purchase: \$ \_\_\_\_\_

Product(s) Required: \_\_\_\_\_

No. of Staff: \_\_\_\_\_

Type of Business: Limited Liability Company / Sole Trader / Partnership / Trust  
(Please circle one)

#### LIMITED COMPANY:

Paid Up Capital \$ \_\_\_\_\_

Registered Date: \_\_\_\_\_

Registered Office: \_\_\_\_\_

\_\_\_\_\_

Directors: \_\_\_\_\_

\_\_\_\_\_

SOLE TRADER/ PARTNERSHIP:

Owner (s) Name: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date Trading Commenced: \_\_\_\_\_

TRADE REFERENCES

	Company Name	City	Contact Phone & Person
(1)	_____	_____	_____
(2)	_____	_____	_____
(3)	_____	_____	_____

Has the applicant or any of its Directors ever been refused credit or any extension of credit?

Yes       No

If yes, please give details: \_\_\_\_\_

I, the applicant, agree that we will abide by the terms and conditions of sale listed with this form.

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_**

**Signed \_\_\_\_\_ (P/P/D)**

Office Use

Credit Details Checked and Authorised By: \_\_\_\_\_  
[On behalf of Advanced Engineering Group Ltd]

Sales Representative: \_\_\_\_\_ Sales Area: \_\_\_\_\_

Letter Sent: \_\_\_\_\_ Date: \_\_\_\_\_ GM: \_\_\_\_\_

## Section 2

### Terms & Conditions of Sale

Effective as at 25<sup>th</sup> August 2009

These terms and conditions of sale contain the sole terms and conditions of the contract of supply between ADVANCED ENGINEERING GROUP LIMITED and the buyer and shall supersede all other terms and agreements between the parties.

#### 1. Interpretation

Interpretation in this agreement and in any contract of supply to which this agreement applies:-

- (a) "The buyer" means the person or corporation who buys or has agreed to buy the Goods.
- (b) "The company" means ADVANCED ENGINEERING GROUP LIMITED.
- (c) "Credit Application Form" means the credit application form attached to these Terms which is completed by the buyer and shall form part of and be read and construed with these Terms.
- (d) "Goods" means any items of whatsoever nature, which are sold by the company;
- (e) "Terms" means these Terms and Conditions of Sale and any amendments or variations agreed to in writing by the company. These Terms may be subject to change without notice.
- (f) Words importing the singular shall include the plural and vice versa.
- (g) Words importing the male gender shall include the female gender and mutual gender and vice versa.
- (h) All headings are provided for convenience only and shall have no effect on the interpretation of this agreement.

#### 2. General

2.1 These Terms shall apply to every sale or agreement for sale made by the company and the buyer after the date hereof and no variation of these Terms shall be effective unless it is evidenced in writing and signed on behalf of the company.

2.2 The company will only deal on these Terms unless otherwise accepted by the company in writing.

2.3 An order for purchase of goods from the company made by the buyer will be taken to be an offer to the company incorporating these Terms.

2.4 No contract shall come into existence until the buyer's order has been accepted by the company.

2.5 The buyer cannot cancel a contract after an order has been accepted by the company and is bound to pay the quoted price.

2.6 The buyer acknowledges that neither the placing nor acceptance of an order guarantees the supply of the goods ordered. The company will use its best endeavours to source all goods quoted or ordered.

2.7 Restocking Fee - I, the buyer, agree to accept a restocking fee equal to 20% of the invoice price on goods returned, other than defective goods, as well as return freight paid.

#### 3. Payment

3.1 All prices are subject to change without notice and unless advised will be those applicable at the date of sale.

3.2 Unless otherwise agreed in writing, the buyer must pay for the Goods by no later than the 20<sup>th</sup> day of the month following the date of the invoice ("Due Date");

3.3 Time for payment of the price of the Goods shall be of the essence and if the buyer fails to pay the price upon the Due Date the company may, without prejudice to its other rights and remedies at law, do any of the following things:-

- (a) Cancel or suspend delivery of the Goods or of any other Goods agreed to be sold by the company to the buyer, and the company will not be liable for any loss from whatever cause, caused to the buyer by such cancellation or suspension.
- (b) Charge the buyer interest on the amount of the price unpaid from the due date for payment down to the date of payment at a rate equal to 2.5% per month with interest accruing after, as well as before, any judgement which the company may obtain against the buyer.
- (c) All expenses, costs (including actual legal costs), fees and disbursements incurred by the buyer in recovering the money and or any other amounts payable under these Terms shall be recoverable from the buyer. The buyer agrees that it will, upon demand by the company, pay all costs incurred by the company in registering and maintaining a financing statement (including financing change statements) on the Personal Properties Securities Register ("PPSR") and or enforcing or attempting to enforce the security interest created by these conditions of sale, including subordination agreements. The buyer agrees that it will be responsible for the full costs incurred by the company (including actual legal fees and disbursements on a solicitor and client basis) of the company obtaining an order pursuant to Section 167 of the PPSA should the company consider that it needs to.
- (d) The buyer may not set off against the price payable for the Goods any claims which the buyer might have against the company.
- (e) The company may accept and apply payments from the buyer in respect of any indebtedness and the company will not be bound by any conditions or qualifications attaching to such payments.

#### 4. Risk and Ownership

4.1 All risk in the Goods will pass to the buyer upon delivery.

Until the buyer has paid for the Goods in full:

- (a) The buyer holds the Goods as fiduciary for the company and will deal with them as agent for and on behalf of the company (but will not hold itself out as the company's agent to any third parties).
- (b) If directed by the company, the buyer will store the Goods so that they can be clearly recognised as the property of the company.
- (c) Failure by the buyer, either to store the Goods as required in Clause 4.1(b) or to separately account for sale proceeds under Clause 5.6(b) will not prejudice the company's claim to the Goods or the sale proceeds.

#### 5. Ownership/Personal Property Securities Act 1999

5.1 Any Goods and materials supplied by the company shall remain the property of the company until paid for in full and/or while any money is due and owing to the company.

5.2 If any money due and owing by the buyer to the company remains unpaid or if the buyer is in breach of any obligation to the company, then the company, its agent or other authorised representative are authorised by the buyer to enter the buyer's premises to recover and resell any or all of those Goods and materials.

5.3 Possession of the Goods is transferred to the buyer on the basis that the company may retain a purchase money security interest (pursuant to the Personal Property Securities Act 1999) ("PPSA") in the Goods and to that end the company may require the facilitation of a registered Finance Statement under the PPSA. The buyer will at the company's request execute any documents, provide all necessary information and do anything else required by the company to ensure that the security interest constitutes a "Perfected Security Interest" (as that term is defined by the PPSA) and which will have priority over all other security interests in the Goods.

5.4 The buyer will, upon demand, pay all the company's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by these Terms or

obtaining an audit under section 167 of the PPSA or the repossession of the Goods or the exercise, enforcement or preservation of any right or interest under these Terms or any other contract with the buyer.

5.5 The parties agree that any Goods supplied by the company to the buyer are inventory as that term is defined in the PPSA.

5.6 For the avoidance of doubt and without prejudice to the company's rights under the PPSA:

(a) The buyer may process the Goods supplied by the company to the buyer and commingle them with other property in which case the company will have a security interest in any processed and commingled Goods including the Goods; and

(b) The buyer may sell the Goods to its customers and if it does so, then the company will have a security interest in the proceeds of sale.

5.7 The buyer agrees to the extent permitted by law, that the buyer shall have no rights under the following provisions of Part 9 of the PPSA to:

(a) Receive a notice under Section 114(1) (a);

(b) Receive a statement of account under Section 116;

(c) Surplus distributed under Section 117;

(d) Recover any surplus under Section 119;

(e) Receive notice of any proposal for the company to retain collateral under Section 120(2);

(f) Object to any proposal of the company to retain collateral under Section 121;

(g) Receive notice of the removal of an accession under Section 129;

(h) Apply to the Court for an order concerning the removal of an accession under Section 131;

(i) Redeem collateral under Section 132; and

(j) Reinstate the agreement under Section 133.

5.8 The buyer further agrees that where the company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

5.9 The buyer waives its right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).

The provisions of Clauses 5.1 to 5.10 will survive the termination of these terms or any other agreement for the sale of the Goods for whatever reason and in particular but without limitation, termination of any agreement for the sale of the Goods by the buyer by the acceptance of any repudiation of these Terms by any buyer.

## 6. Delivery of the Goods

6.1 A clean receipt by the company in the form of a Carrier's Bill of Lading, Consignment Note etc, shall be evidence of delivery of the Goods and of despatched quantity.

6.2. The company will use its best endeavours to deliver the buyer's order by the quoted delivery date but the company will not be liable for delays, shortages or non-delivery arising from circumstances beyond its reasonable control. Deliveries from stock are offered subject to being unsold on receipt of order.

6.3. The company reserves the right to refuse cancellation of any order.

6.4. All wire goods are subject to the usual trade tolerances over and under in respect of weight, dimensions, shearing and cutting.

## 7. Consumer Guarantees Act 1993

7.1 The acquisition of the Goods by the customer shall be deemed to be for the purpose of business in terms of section 43[2] of the Consumer Guarantees Act 1993 ("Act") and accordingly the Consumer Guarantees Act shall not apply to any supply of Goods from the company to the buyer. All warranties, descriptions, representations and conditions as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether of a like nature or not and whether expressed or implied by law, trade custom or representations, statements, warranties, conditions or agreements not expressly set forth in these Terms and the company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form part of any contract with the company collateral to the contract.

## 8. Warranty

8.1 Subject to clause 9 the company warrants to the buyer that the company's Goods (excluding third party products) will be free from defects in materials and workmanship affecting normal use for a period of 12 months from the invoice date ("Standard Warranty"), unless otherwise specified.

8.2 During the Standard Warranty, the company will make good by repair or replacement (at the company's option) defects in Goods returned to the company.

8.3 The buyer shall contact the company to obtain a Returned Materials Authorisation ("RMA") prior to returning any Goods. The Standard Warranty will not apply if the buyer has not notified the company of the defect within seven days of the alleged defect first coming to the buyer's attention.

8.4 The buyer must prepay shipping and transportation charges, and insure the shipment or accept the risk of loss or damage during such shipment and transportation. The buyer must include proof of purchase.

## 9. Exclusion of Warranties and Liability

9.1 This Standard Warranty does not cover damage, fault, failure or malfunction due to:

(a) External causes, including accident, abuse, misuse and problems with electrical power;

(b) Any repairs, servicing or work on the Goods which is not authorised by the company;

(c) Usage, storage or installation not carried out in accordance with company and/or manufacturer's instructions;

(d) Failure to perform required preventative maintenance;

(e) normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; or

(f) Problems caused by use of parts and components not supplied by the company.

9.2 The Standard Warranty does not cover and third party components or materials that are purchased for or used in Goods for the buyer. The third party manufacturer's warranty shall be the sole warranty in respect of such components or materials.

9.3 To the full extent permitted by law, but subject to the express provisions of clause 8:

(a) the company gives no representation or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Goods in any contract or other document shall not import any such condition or warranty on the part of the company;

(b) All statutory and implied conditions and warranties except as to title are excluded; and

(c) It is the responsibility of the buyer to satisfy itself as to the condition, quality, suitability and fitness of the Goods for its purposes and the buyer accepts the Goods on this basis.

9.4 The company shall be under no liability whatsoever for any failure of the Goods to correspond with any description, including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transporting of the Goods.

9.5 The company shall, except to the extent expressly provided in clause 8, be under no liability to the buyer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Goods.

9.6 If, notwithstanding clause 9.5, the company is found to be liable to the buyer in any circumstances then, notwithstanding the provisions of clause 8, the maximum combined amount the company will be liable for to the buyer under any contract shall be an amount equal to the lesser of:

- (a) The purchase price of the Goods under the contract; or
- (b) The cost of replacement or repair of the Goods.

#### 10. Liability for and return of the Goods

10.1 The liability of the company whether in contract tort or otherwise for any loss, damage or inquiry arising directly or indirectly from any defect in non-compliance of the goods or from any other breach of the company's obligations hereunder shall not in any event exceed the amount equivalent to the purchase price of the Goods. 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, customers or other persons whatsoever.

10.2. Return of Goods will be accepted only by arrangement, and only if of standard manufacture and in good condition. All returns will incur a 20% restocking fee and will require return freight paid.

#### 11. Disputes

11.1 Disputes, if any, arising out of or relating to these Terms or their interpretation shall be governed by New Zealand law and if they cannot be settled by mutual agreement shall be settled by arbitration in accordance with the provisions of the Arbitration Act 1996 or any amendment thereto and the Award given in such arbitration shall be final and binding upon both parties.

#### 12. Specifications, Freight and improvements

12.1 Specifications are nominal specifications.

12.2 Freight Policy: All freight costs are payable by the buyer.

12.3 The company reserves the right to improve the design of any product comprising the Goods or part thereof without assuming any obligation to modify any product comprising the Goods or part thereof previously manufactured

**Section 3**

**Personal Guarantee**

**TO:    ADVANCED ENGINEERING GROUP LIMITED**

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**Print Full Name of Guarantor**

**IN CONSIDERATION** of your supplying and at my request agreeing to continue to supply Goods to

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**Registered Name of Company**

(hereinafter referred to as “**the principal debtor**”) **DO HEREBY GUARANTEE** you the due and punctual payment therefor and the payment of all monies and obligations now due or to become due by the principal debtor and agree to be answerable and liable to you therefor **AND** the following provisions shall be applicable to this guarantee:

- 1 This is a continuing guarantee.
- 2 No granting of credit extension of former credit or granting of time to the principal debtor or any waiver indulgence or neglect to sue on your part nor the release of any securities held by you nor a compromise with creditors or the winding up or bankruptcy of the principal debtor shall affect my liability to you hereunder and as between you and me I shall be deemed to be a principal debtor and shall be liable to you accordingly.
- 3 This guarantee shall continue in force notwithstanding that the principal debtor’s account with you may from time to time be in credit.
- 4 Within seven (7) days from receipt of notice in writing of any default on the part of the principal debtor I shall make payment to you of all sums in respect of which such default has been made and I agree to indemnify you in respect of all such amounts owing to you by the principal debtor including legal and any other associated costs arising out of the principal debtor’s default.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

SIGNED by the said: \_\_\_\_\_  
(Guarantor)

in the presence of : \_\_\_\_\_  
(Witness)

Print full name and residential address of witness : \_\_\_\_\_  
\_\_\_\_\_

(Witness not to be an employee of Advanced Engineering Group Limited)