

CREDIT ACCOUNT APPLICATION

AVOCA LIME COMPANY (2010) LIMITED
PO Box 1053, Whangarei 0110



Please complete all sections and read the Terms and Conditions of Sale attached

Customer's Trade Name _____

Customer's Full or Legal Name _____

Phone _____ Mobile _____ Email _____

Billing Address _____

Physical Address _____

Date Established _____ Company Number _____ Name of Accountant _____

Accounts Contact _____ Email _____

Estimated amount of monthly purchases/credit required \$ _____

Details of Directors or Owner

Full Name _____ DOB _____

Home Address _____

Private Phone Number _____ Mobile Number _____

Full Name _____ DOB _____

Home Address _____

Private Phone Number _____ Mobile Number _____

TRADE REFERENCES

1. Name _____ Phone _____

2. Name _____ Phone _____

3. Name _____ Phone _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE of Avoca Lime Company (2010) Limited (attached) which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed the Privacy Act clause.

Signed _____ Print Name _____

Designation _____ Date _____

Please complete and return by email to donna@avocagroup.co.nz

TERMS and CONDITIONS OF SALE

1. ACCEPTANCE AND CONTRACT

- i. The Seller shall only supply the Goods to the Buyer on the basis that these terms and conditions shall be the conditions of the Contract, together with any terms and conditions contained in any quotation by the Seller or in the Seller's confirmation of order, as the case may be, to the exclusion of all other terms. The Seller's confirmation of order or quotation and these terms and conditions shall prevail over any terms and conditions of the Buyer.
- ii. All indent orders are subject to final acceptance by the Seller and the Seller's suppliers.
- iii. Any quotation by the Seller, unless expressly provided otherwise, is only valid for acceptance by the Buyer for 21 days from the date the quotation was made.

2. PRICE, TAXES AND DUTIES, PAYMENT INTEREST

- i. The price specified in the Contract or quotation shall increase by the amount of any increase in the cost of materials, transport, labour, customs duty, insurance, port charges, demurrage, freight and other rates and cost or any other factors affecting the cost of supply, production and/or delivery of the Goods due to circumstances beyond the control of the Seller between the Contract date and the delivery date.
- ii. The Seller shall be under no liability whatsoever for any failure to meet any regulations, bylaws, codes and standards other than those specified in the Contract. The Buyer shall meet any additional costs of complying with any change in regulations, bylaws, codes or standards with which the Seller is obliged to comply after the Contract Date.
- iii. Goods and Services Tax and other taxes and duties assessed or levied in connection with the supply of the Goods to the Buyer are not included in the price and shall be the responsibility of the Buyer. Where the payment of such taxes or duties is the responsibility of the Seller at law, the price shall be increased by the amount of such taxes or duties.
- iv. Payments shall be made by the due date specified in the Seller's invoice. The Buyer shall not withhold payment nor make any deductions from the Contract price.
- v. If it considers the credit of the Buyer to be unsatisfactory, the Seller may require security for payment and may suspend performance of its obligations under the Contract until such security is provided. All costs and expenses of or incurred by the Seller as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
- vi. Interest at a rate equal to the 90 day Bank Bill rate on the date payment is due plus a penalty of 2.5% per month, calculated on a monthly basis shall be payable on any moneys outstanding under the Contract from the date payment is due until the date payment is received by the Seller, but without prejudice to the Seller's other rights or remedies in respect of such default.
- vii. The Buyer shall pay all of the Seller's costs and expenses (including legal costs) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.

3. DELIVERY

- i. Delivery shall be made at the place indicated in the Contract or, if no place is indicated, at the Seller's premises.
- ii. The Seller may deliver the Goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main Contract. Failure to deliver or making defective delivery of one or more instalments does not entitle the Buyer to repudiate the main Contract. However, where the Buyer rejects one instalment, the Seller shall have the option of cancelling the balance of the main Contract without incurring any liability whatsoever to the Buyer for such cancellation.
- iii. Any delivery time shall be approximate only and shall not be deemed to be of the essence of the Contract.

- iv. Any claims by the Buyer in relation to the Goods must be made within 48 hours of delivery of those Goods. The Seller accepts no liability whatsoever for any claims made after this period

4. OWNERSHIP AND RISK

- i. The risk in the Goods shall pass to the Buyer upon delivery of the Goods and the Buyer will ensure that all Goods which are at the Buyer's risk but title of which has not passed, are insured to their fullest replacement value.
- ii. The Seller retains a purchase money security interest in the Goods to secure payment of the purchase price of those Goods and all other Goods supplied by the Seller and the Seller has the right to call for or recover the Goods at its option (for which purpose its employees or agents may enter the Buyer's premises or the premises where the Goods are stored). The Seller's security interest in the Goods extends to any proceeds, book debts and accounts receivable arising from the Buyer selling the Goods.
- iii. The Buyer waives any right to receive verification that the security interest in the Goods has been registered on the Personal Property Securities Register.
- iv. While the ownership and title in the Goods remain with the Seller, the Buyer is authorised to process or incorporate the Goods with any other goods or property on the condition that
 - a. *The product of such process or incorporation shall be stored and marked so as to identify the product as incorporating the Goods, and the amount of the Goods used in that product;*
 - b. *The proceeds of any sale of the product are to be held in trust for the Seller, held separately from any other moneys and clearly identified as the Seller's money to the extent of the Buyer's indebtedness to the Seller;*
 - c. *The Buyer shall immediately account to the Seller on receipt of the proceeds of sale referred to in this subclause to the extent necessary to pay for the Goods in full*

5. LIABILITY

- i. The Seller excludes all statutory or implied conditions and warranties to the fullest extent permitted by law. The Goods are only warranted to the extent expressly specified by the Seller in writing. The Seller shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Seller's obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Seller, its servants, agents or contractors nor shall the Seller be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer indemnifies the Seller against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- ii. Notwithstanding anything contained in this section 5 or elsewhere in the Contract, the liability of the Seller in respect of all claims for loss, damage or injury arising from breach of any of the Seller's obligations arising under or in connection with the Contract, from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Seller, its servants, agents or contractors shall not in aggregate exceed the Contract Price. The Seller limits its liability arising howsoever from the supply of (or failure to supply) the Goods, or the quality of the Goods to either the replacement or the reasonable cost of replacement of the Goods or the supply of equivalent goods.

- iii. The Buyer assumes all risks and liabilities for consequences arising from the use of all Goods whether singly or in combination with other products, or of damaged Goods, or for wrong deliveries or otherwise.

iv.

6. DEFAULT AND INDEMNITY

- i. If the Buyer defaults in the payment of any moneys payable to the Seller or in the performance of its obligations under this Contract or any other contract between the Buyer and the Seller, or commits any Act of Default, the Seller may, without prejudice to any other right it has at law or in equity, suspend or terminate the Contract. Payment for the Goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable. All costs and expenses of or incurred by the Seller as a result of any such action together with transportation and storage charges shall be payable by the Buyer upon demand. Any suspension of the Contract by the Seller shall not prevent it terminating the Contract during the period of suspension.

7. SUSPENSION/CANCELLATION

- i. The Seller reserves the right to suspend or cancel any or all Contracts where the Seller is unable to perform by reason of contingencies beyond the Seller's control including but not limited to Acts of God, Force Majeure, War, Acts of Terrorism, Strikes, Lock-out, Fires, Accidents, Breakdowns, Shortage of Labour, Loss of Vessel carrying Goods or raw materials for the Goods to the Seller, any hindrance or delay in carriage or shipping, failure to obtain any necessary import and/or export permit.

8. CONSUMER GUARANTEES ACT 1993

- i. The Buyer acknowledges that it is acquiring the Goods for business purposes, and that guarantees set out in the Consumer Guarantees Act 1993 do not apply to the Contract.
- ii. The Buyer shall not, in relation to the supply by the Buyer of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of the Seller, and the Buyer shall indemnify the Seller against any liability or cost incurred by the Seller as a result of any breach by the Buyer of this provision.
- iii. The Buyer shall, in relation to any supply of any of the Goods by the Buyer, contract out of the provisions of the Consumer Guarantees Act 1993 to the extent that the Buyer is entitled to do so under that Act and shall indemnify the Seller against any liability or cost incurred by the Seller under the Consumer Guarantees Act 1993 as a result of any breach by the Buyer of this provision.

9. USE OF INFORMATION

- i. The Buyer agrees that the Seller may obtain information about the Buyer from the Buyer or any other person (including any credit or debt collection agencies) in course of its business, and the Buyer consents to any person providing the Seller with such information. The Buyer agrees that the Seller may give any information it has about the Buyer relating to the Buyer's credit worthiness to any other person, including any credit or debt collection agency, for credit assessment and the debt collection purposes. Where the information held by the Seller is personal information, the person to whom the information relates may access and request the correction of that information.

10. GENERAL

- i. All the original rights, powers, exemptions and remedies of the Seller shall remain in full force notwithstanding any neglect, forbearance or delay in their enforcement. The Seller shall not be deemed to have waived any condition unless such waiver is in writing from the Seller and any such waiver shall apply to and operate only in a particular transaction, dealing or matter.

- ii. The Buyer is not entitled to assign all or any of his rights or obligations under the Contract without the prior written consent of the Seller.

- iii. The Contract shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand law.

- i. Any part of these conditions are severable and if any provision herein is held to be illegal or unenforceable for any reason, such illegality or unenforceability shall affect only that portion of these conditions which is in conflict and the remainder of these conditions shall remain in full force and effect.

- ii. In these conditions:

"**Act of Default**" means any act of bankruptcy, entering into any composition or arrangement with its creditors (in the case of a company), any act which would render it liable to be wound up, the passing of any resolution or commencement of any proceedings for its winding up or the appointment of a Receiver over all or any of its assets.

"**Buyer**" means the party buying the Goods from the Seller and its successors or assigns.

"**Contract**" means the contract between the Seller and the Buyer for the purchase of the Goods.

"**Contract Date**" means:

(a) where the Contract arises from an order placed by the Buyer, the date of acceptance of the order by the Seller;

(b) where the Contract arises from a quotation given by the Seller, the date upon where written notification of acceptance of the quotation is received by the Seller, or where no written notification of acceptance of the quotation is received by the Seller, the date of such other form of acceptance as the Seller in its discretion determines to treat as a valid acceptance.

"**Contract Price**" means the price of the Goods as agreed between the Seller and the Buyer, subject to any variation in accordance with these terms.

"**Goods**" means all goods, machinery or equipment supplied by the Seller to the Buyer including (but not limited to) goods supplied as inventory, goods described on various orders, quotations, invoices or similar documents between the Buyer and the Seller and goods bearing the label of the Seller.

"**Seller**" means Avoca Lime Company (2010) Limited