

# Avon Protection Terms and Conditions of Sale

## EXPORT TRADE COMPLIANCE

Avon products and associated technical information are controlled under U.S. and U.K. export laws and regulations and are subject to the International Traffic in Arms Regulations (ITAR) under the U.S. Department of State (DOS) Directorate of Defense Trade Controls (22 CFR 120-128 and 130), the Export Administration Regulations (EAR) under the U.S. Department of Commerce (DOC), Bureau of Industry and Security (22 CFR 730-774), and/or the Export Control Order (ECO) 2008 under the U.K. Department of International Trade (Export Control Organization). Prior authorization from the U.S. and/or the U.K. Government may be required for any export, re-export, transfer, or re-transfer.

1. With regards to these terms and conditions ("these Conditions") unless the context otherwise requires:
  - a. 'Avon' means in respect of Goods originating in the United States of America, Avon Protection Systems, Inc. and its subsidiaries, and in respect of Goods originating in the United Kingdom, Avon Polymer Products Limited and its subsidiaries;
  - b. 'the Customer' means the person or company accepting a Quotation from Avon for the sale/supply of Goods or whose order for Goods is accepted by Avon;
  - c. 'Goods' means the goods (including any instalment of the goods or any parts for them and any instruction manual or other documentation to be supplied with them) and/or services which Avon are to supply and which are specified in the Quotation;
  - d. 'Quotation' means a quotation, proposal, current published price list or similar document of Avon for the supply of Goods which is accepted by the Customer or an order for the supply of Goods which is accepted by Avon, and for the avoidance of doubt an "order" for these purposes includes an order completed over the telephone, via e-mail or online via Avon's website;
  - e. 'Contract' means together the Quotation and these Conditions.
2. Avon shall supply and the Customer shall purchase the Goods in accordance with the Quotation, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions. In the event of inconsistency between these Conditions and any special conditions contained in the Quotation, such special conditions shall prevail. No conduct by Avon shall be deemed to constitute acceptance of any terms put forward by the Customer.

## **ORDERS**

3. No order submitted by the Customer shall be deemed to have been accepted by Avon unless and until expressly confirmed in writing by Avon, such confirmation to be made by written communication to the Customer specifically indicating acceptance (as opposed to receipt) of the Customer's order ('the Order Acknowledgment'). Avon's acceptance of the Customer's order is conditional on the receipt of any export license or permit or other documentation that may be required by the relevant authorities. In the case of any Quotation, authorization to proceed with the delivery of the Goods in writing shall constitute the Customer's acceptance of such Quotation and these Conditions. There is a minimum order value of \$250/£200 total per order, unless paid for in advance.
4. Except for special orders, including customer specific customizations including finishes and markings, any order which has been accepted by Avon may be varied or cancelled by the Customer prior to order shipment with agreement in writing of Avon. Should the Customer cancel their order prior to shipment, the Customer consents to the imposition of a cancellation charge of 10% of the order value. For special orders, including any customer specific customizations, the Customer acknowledges Avon's right to require the Customer to indemnify Avon in full against all loss (including loss of profit), costs (including the costs of all labor and materials used), damages, charges, interest and expenses incurred by Avon as a result of such variation or cancellation. In addition, Avon reserves the right to also assess a 25% cancellation charge. Should the Customer want to cancel an order after delivery, it is Avon's sole discretion to accept the return of Goods and the Customer consents to the imposition of a 20% restocking charge. All returned Goods must be in new condition and resalable, which includes sufficient remaining shelf-life. Any returned Goods not in such condition shall require payment in full.

## PRICE

5. The price of the Goods shall be the price stated in the Quotation (including the current published price list where applicable). All prices stated in any Quotation, but not yet accepted in writing by the Customer, are valid for 30 days only, except where a different validity period is stated. After thirty days or the stated validity period, the quotation has expired and a new quote, potentially with new pricing, may be required and should be requested by the Customer before placing any resulting orders.
6. Unless otherwise agreed in writing, all prices are quoted on a "F.O.B. Origin Prepaid and Add" basis per American Foreign Trade Definition (AFTD) for deliveries in North America and for all other orders on a "free carrier" (FCA) Avon facility basis under Incoterms 2010 and do not include the cost of obtaining export clearance (where applicable), any special packaging, shipping, insurance, bonds, import duties, import taxes, VAT or other applicable sales tax, all of which will be invoiced in addition to the price of the Goods. All prices do not include any federal, state or local taxes that may be applicable to the Goods. When Avon has the legal obligation to collect such taxes, the appropriate amount shall be added to Customer's invoice and paid by Customer, unless Customer provides Avon with a valid tax exemption certificate authorized by the appropriate taxing authority.

## DELIVERY

7. Delivery of the Goods shall be by carrier nominated by the Customer, but acceptable to Avon, with non-US delivery arrangements to be made by Avon, unless otherwise agreed to by the parties. Except where agreed otherwise delivery of the Goods shall be on a "F.O.B. Origin Prepaid and Add" basis per American Foreign Trade Definition (AFTD) for deliveries in North America and for all other orders on a "free carrier" (FCA) Avon facility basis under Incoterms 2010 and shall occur on release of the Goods by Avon to the carrier at Avon's facility.
8. All delivery times stated in any Quotation are estimates only and are based upon conditions ruling at the date of such Quotation. The time of delivery is not of the essence; and while reasonable efforts are made by Avon to deliver within any time specified in the Contract, Avon shall be under no liability whatsoever for any loss suffered by the Customer whether directly or indirectly as a result of delay in delivery whatsoever.
9. In relation to sales of Goods to customers located outside Avon's country of origin, release of the Goods to the nominated carrier is subject to receipt by Avon of government authorization for the associated export and/or import. Delivery times are dependent on and conditioned on receipt of said authorization(s). Avon shall be responsible for obtaining clearance for all export shipments and, subject to Avon using its reasonable endeavors to obtain export clearance, it shall not be liable for any delay or failure to do so. The Customer shall be responsible for requesting and receiving any authorizations for import into the final destination country. If Customer intends to export or re-export any item after receipt from Avon (including deemed exports), Customer shall request and obtain all necessary licenses for the use and/or export of the Goods.
10. The Customer shall make full disclosure to Avon of all information and material that Avon reasonably requires in order to make the necessary applications for export clearance and more generally to perform its obligations under the Contract. Additionally, the Customer will complete or have completed any requested forms and/or certificates. In making such disclosures or in providing such documentation, the Customer will ensure that such information and material is true, accurate and complete in all respects, does not infringe any rights of any third party and is provided within sufficient time to enable Avon to perform its obligations under the Contract. Avon shall not be liable for any delay in the delivery of the Goods which is caused as a result of the Customer's failure to comply with its obligations under this clause.
11. When requested by the Customer, Avon shall provide a certificate of conformance stating that the Goods conform to the requirements of the Contract and that records substantiating conformance are retained by Avon and are available for review upon reasonable request. The certificate shall be issued by Avon's quality assurance representative and shall include the order and Contract number, part numbers and description, Avon specification number, quantities, lot numbers and serial numbers, where applicable. A copy of the certificate of conformance shall be included with the shipping documents for each shipment.
12. If at any time the Customer requests a change in delivery dates, quantities or specifications for the Goods, or Avon suffers any delay caused by any instructions of the Customer or failure of the Customer to give Avon adequate information or instructions, then Avon may accordingly increase the price payable for the Goods or extend the time for their delivery.

## INVOICING AND PAYMENT

13. Unless otherwise agreed in writing or for credit card orders for which payment is processed and received prior to shipment, Avon shall be entitled to invoice the Customer on or at any time after delivery/transfer of the Goods (or any installment of the Goods) to the nominated carrier.
14. Unless otherwise agreed in writing the Customer shall make payment of Avon's invoice in the currency specified in full and in cleared funds in accordance with the terms specified on the Order Acknowledgement. All such payments shall be made without set-off, counterclaim or deduction of any kind. If payment is to be by letter of credit, such letter of credit shall be a confirmed, irrevocable, sight letter in favor of Avon and must contain the statement: "All banking charges and commissions outside the country of origin are for the account of the opener." Time of payment is of the essence.
15. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Avon, Avon shall be entitled to:
  - a. terminate the Contract or suspend any further deliveries of Goods to the Customer; and/or
  - b. charge the Customer interest (both before and after any judgment) on the amount unpaid, such interest to accrue on a daily basis at the rate of 12 per cent per annum from the due date until the date of actual payment.

## RISK AND TITLE

16. In respect of Goods originating in the United States of America, the risk of damage to or loss of the Goods and legal title to the Goods shall pass to the Customer when the Goods are collected from Avon's premises by the nominated carrier.
17. In respect of Goods originating in the United Kingdom:
  - a. Risk of damage to or loss of the Goods shall pass to the Customer when the Goods are collected from Avon's premises by the nominated carrier.
  - b. Notwithstanding delivery and the passing of risk in the Goods or any other provision of the Contract, the legal title to the Goods shall not pass to the Customer until Avon has received in cleared funds payment in full of the price of the Goods and all other sums due to Avon from the Customer.
  - c. Until such time as the legal title to the Goods passes to the Customer, the Customer shall hold the Goods on a fiduciary basis as Avon's bailee; store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Avon's property; maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and give Avon such information relating to the Goods as Avon may require from time to time. The Customer shall be entitled to use the Goods in the ordinary course of its business to include sale to a bona fide third party purchaser acting in good faith.
  - d. Until such time as the legal title to the Goods passes to the Customer and without limiting any other right or remedy Avon may have, Avon shall be entitled at any time to require the Customer to deliver the Goods back to Avon and, if the Customer fails to do so, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

## WARRANTY

18. Avon's warranty details for individual products including the applicable warranty period ("Product Warranty Term") can be found at <https://www.avon-protection.com/other/warranty.htm>. Avon warrants to the Customer that on delivery and for the Product Warranty Period, except where stated differently in the Contract or any other mutually agreed delivery or product paperwork, the Goods will be free from defects in workmanship and materials, and will conform to the specifications, drawings, samples and performance requirements incorporated in the Contract. Avon has and will transfer to the Customer ownership and good title to the Goods delivered, free of all liens, encumbrances, and rights of third parties (except those created by Avon). The warranty period can be extended for some products, which if applicable will be stated in the Contract.
19. Unless otherwise specifically stated in the Contract, Avon does not warrant the design of the Goods or their fitness for any particular purpose. Avon shall be under no liability in respect of any non-conformity or defect in the Goods:-
  - a. which arises from fair wear and tear, willful damage, use by unauthorized or inexperienced personnel, negligence, abnormal working conditions, failure to follow Avon's instructions (whether oral or in writing), misuse, or alteration or repair of the Goods without Avon's approval; or

- b. which is not notified to Avon in writing within 30 days after such non-conformity or defect is discovered by or notified to the Customer.
20. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
  21. In respect of any breach by Avon of the warranties given by it under clause 18 and the detailed warranties referenced above, Avon's liability to the Customer shall be limited, and at Avon's sole discretion, to:
    - a. repair or replacement of the Goods (or any parts) in question; and/or
    - b. repayment of the price, or a proportion of the price, attributable to the Goods in question.
  22. Any Goods to be returned for any reason must be notified to Avon in advance for authorization. Avon will provide the Customer with a return authorization number which must be clearly marked on the shipping containers and reserves the right to levy a returns charge.
  23. Avon reserves the right, on giving prior notice to the Customer, to make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory requirements and which do not materially affect their quality or performance.
  24. If applicable, unless agreed otherwise, the Customer shall be responsible for arranging for testing and inspection of the Good at Avon's premises before shipment. Avon shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection but which is only discovered after shipment, or in respect of any damage during transit.
  25. The Customer shall ensure that the Goods shall only be used in accordance with the instruction manuals and any training supplied by Avon, together with any warning fitted to the Goods. The Customer shall ensure that Goods supplied for ultimate use by non-English speaking consumers shall only be supplied with both the warning fitted to the Goods and the instruction manual translated into the language that will be understood by any such user.

#### **LIABILITY AND INDEMNITY**

26. Avon shall not be liable to the Customer by reason of any negligence or any other tortious action or any representation (unless fraudulent), or any implied warranty, condition or other term, or under the express terms of the Contract, for any loss of anticipated revenue or savings, loss of profits, loss of business opportunities, loss of goodwill or damage to reputation, or any indirect, special or consequential losses or damages, costs, expenses or other such claims for compensation whatsoever (whether caused by the negligence of Avon, its employees or agents or otherwise) which arises out of or in connection with the Contract, except as expressly provided in these Conditions.
27. The entire liability of Avon in respect of any and all claims made against it by the Customer under or in connection with the Contract shall not exceed the total price payable under the Contract, except as expressly provided in these Conditions.
28. Avon shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Avon's obligations under the Contract if the delay or failure was due to any circumstances beyond Avon's reasonable control, including (but not limited to) act of God, explosion, flood, tempest, fire, accident, terrorism, war or civil disturbance, governmental act or prohibition, import or export embargoes, strikes, lock-outs or other industrial action (whether involving employees of Avon or of a third party), difficulties in obtaining raw materials, labor, fuel, parts of machinery, power failure or machinery breakdown.
29. The Customer shall indemnify Avon against any damages, losses, costs, claims, expenses (including legal fees and disbursements) and other liabilities incurred by Avon as a direct or indirect result of the willful or negligent act or omission or misrepresentation of the Customer or a breach by the Customer of its obligations under the Contract.
30. THE CUSTOMER ACKNOWLEDGES THAT GOODS ORIGINATING IN THE UNITED STATES OF AMERICA MAY CONSTITUTE SIGNIFICANT MILITARY EQUIPMENT UNDER THE UNITED STATES MUNITIONS LIST, INTERNATIONAL TRAFFIC IN ARMS REGULATIONS, OR CONTROLLED UNDER THE EXPORT ADMINISTRATION REGULATIONS, AND THAT THEIR TRANSFER OUTSIDE

THE UNITED STATES OF AMERICA OR TO ANY NON-US PERSON IS NOT AUTHORIZED BY THE US GOVERNMENT UNLESS SPECIFICALLY LICENSED. THE CUSTOMER SHALL NOT, WITHOUT THE PRIOR WRITTEN APPROVAL OF AVON AND THE US DEPARTMENT OF STATE, DIRECTORATE OF DEFENSE TRADE CONTROLS, OR THE DEPARTMENT OF COMMERCE, WHICHEVER IS APPLICABLE, RESELL, DIVERT, TRANSFER, TRANS-SHIP OR OTHERWISE DISPOSE OF THE GOODS IN ANY OTHER COUNTRY, EITHER IN THEIR ORIGINAL FORM OR AFTER BEING INCORPORATED THROUGH AN INTERMEDIATE PROCESS INTO OTHER END ITEMS OR SYSTEMS.

31. AVON HAS A ZERO TOLERANCE APPROACH TO BRIBERY AND CORRUPTION AND IS COMMITTED TO ACTING PROFESSIONALLY, FAIRLY AND WITH INTEGRITY IN ALL BUSINESS DEALINGS AND RELATIONSHIPS. AVON IS COMMITTED TO COMPLYING WITH ALL RELEVANT ANTI-CORRUPTION LAW, INCLUDING THE US FOREIGN CORRUPT PRACTICES ACT AND THE UK BRIBERY ACT 2010. AVON EMPLOYEES ARE PROHIBITED BY AVON CODE OF CONDUCT GUIDELINES FROM REQUESTING OR ACCEPTING ANY OFFER OF FINANCIAL OR OTHER BENEFITS, GIFTS, SAMPLES OR ANY OTHER INDUCEMENT FROM CUSTOMERS, AND CUSTOMERS ARE PROHIBITED FROM OFFERING SUCH BENEFITS, GIFTS, SAMPLES OR INDUCEMENTS TO AVON EMPLOYEES.
32. In respect of Goods originating in the United Kingdom, nothing in these Conditions shall operate to limit or exclude Avon's liability to the Customer for death or personal injury caused by the negligence of Avon, its employees, agents or subcontractors or by fraud (including, but not limited to, fraudulent misrepresentation).

### **INTELLECTUAL PROPERTY**

33. All copyright, patents, trademarks, design rights, know-how and other industrial or intellectual property of any kind whatsoever whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights ("Intellectual Property") subsisting in or in relation to the Goods shall remain (as between Avon and the Customer) the absolute property of Avon and no rights in such property are granted to the Customer save for a non-exclusive license to use or resell the Goods for the purposes contemplated by the Contract.
34. Avon shall indemnify the Customer against any claim made against the Customer by reason that the Goods infringe any third party intellectual property rights subsisting at the date of such sale, provided that written notice is given by the Customer to Avon immediately any such claim is made and no admission is made by the Customer in respect of any alleged infringement. In relation to such claims, the Customer shall permit Avon to undertake sole conduct of any defense thereto and any negotiations for settlement thereof. This clause shall have no application to any claim in respect of an infringement or alleged infringement which has arisen by reason of compliance by Avon with any design or instruction furnished by the Customer, nor where the Customer has configured the Goods with third party products and services; and where any such claim is pursued against Avon, the Customer shall indemnify Avon against such claim and any cost or expenses incurred.

### **GENERAL**

35. If the Customer commits any material breach of this Contract or becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due, Avon shall be entitled (without prejudice to any other right or remedy available to it, immediately to terminate the Contract or suspend any further deliveries of Goods and if any of the Goods have been delivered but not paid for, the price payable by the Customer under the Contract shall become immediately due and payable.
36. Avon shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any Avon company which at the relevant time is its holding company or subsidiary or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of the Contract be deemed to be the act or omission of Avon.
37. The Customer shall not be entitled to assign or subcontract or otherwise dispose of any of its rights or obligations under the Contract without the prior written consent of Avon.
38. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No delay or failure on the part of any party in enforcing any provision in the Contract shall be

deemed to be a waiver or create a precedent or in any way prejudice any party's rights under the Contract. The rights and remedies provided in the Contract are cumulative and are not exclusive of any rights or remedies provided by law.

39. The Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and the terms of the Contract shall supersede any previous agreements. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy and waives all rights in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to the Contract or not) other than as expressly set out in the Contract as a warranty or representation. The only remedy available to it for breach of such warranties or representations shall be for breach of contract under the terms of the Contract.
40. No variation to the Contract shall be effective unless made in writing and signed by or on behalf of the parties.
41. Except for the ultimate end-user of the Goods, a person who is not a party to the Contract shall not have any rights under or in connection with it.
42. If any provision in the Contract is declared void or unenforceable by any court or other body of competent jurisdiction or is otherwise rendered so by any applicable law, such provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of the Contract not affected by such invalidity or unenforceability shall remain in full force and effect.
43. In respect of Goods originating in the United States of America, the construction, validity and performance of the Contract shall be governed by the laws of the State of Michigan, except its rules as to choice of law. Any controversy or claim arising out of or relating to the contract, not resolved between the parties by following an Alternative Dispute Resolution procedure, shall be settled by arbitration in accordance with the rules of the American Arbitration Association (location Detroit, MI), and judgment upon the award may be entered in any Court (state or federal) having jurisdiction thereof.
44. In respect of Goods originating in the United Kingdom, the construction, validity and performance of the Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.
45. If there is any conflict between the provisions of the English language version of these Conditions and any version translated into another language, the former shall prevail.