

CONFIDENTIAL

# HORIZON

## ELECTRONICS COMPANY

### Application for Credit Terms of Trade Privacy Consent

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Horizon Electronics Company Pty Ltd  
ABN 36 007 302 801

### 1. Definitions

In these conditions:

- "**Agreement**" means any agreement or contract entered into for the provision of goods by Horizon to the Customer;
- "**Customer**" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods from Horizon;
- "**goods**" means goods supplied by Horizon to the Customer;
- "**GST**" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- "**Horizon**" means Horizon Electronic Components Pty Ltd (ABN 36 007 302 801); and
- "**Terms**" means these Terms and Conditions of Trade.

### 2. Basis of Agreement

- 2.1 Unless otherwise agreed by Horizon in writing, the Terms apply exclusively to every contract for the sale of goods by Horizon to the Customer and cannot be varied or supplanted by any other condition, including the Customer's terms and conditions of purchase (if any).
- 2.2 Any written quotation provided by Horizon to the Customer concerning the proposed supply of goods is:
  - (a) valid for 30 days;
  - (b) an invitation to treat only;
  - (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.
- 2.3 The Terms may include additional terms in Horizon's quotation, which are not inconsistent with the Terms.
- 2.4 The Agreement is accepted by Horizon when Horizon confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the goods.
- 2.5 Horizon in its absolute discretion may refuse to accept any offer.
- 2.6 It is the Customer's responsibility to provide Horizon with its specific requirements in relation to the goods.
- 2.7 Horizon may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

### 3. Pricing

- 3.1 Prices quoted for the supply of goods exclude GST and any other taxes or duties imposed on or in relation to the goods. In addition to payment of the price of goods, the Customer must pay any GST and any other taxes or duties imposed on the goods.
- 3.2 Prices for goods are set in accordance with Horizon's prevailing price list, which is subject to change from time to time and the price payable for goods is the price applicable at the date of delivery of goods contained in the written quotation.
- 3.3 If the Customer requests any variation to the Agreement, Horizon may increase the price to account for the variation.
- 3.4 Where there is any change in the costs incurred by Horizon in relation to the goods, Horizon may vary its price for the goods in order to take account of any such change, by notifying the Customer.

### 4. Payment

- 4.1 Unless otherwise agreed in writing:
  - (a) Payment for the goods must be made Nett within 30 days of the invoice date.
  - (b) Horizon reserves the right to require payment in full on delivery of the goods.
- 4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 4.3 Payment terms may be revoked or amended at the sole discretion of Horizon immediately upon giving written notice to the Customer.

### 5. Payment Default

- 5.1 If the Customer defaults in payment by the due date of any amount payable to Horizon, then all money which would become payable by the Customer to Horizon at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Horizon may, without prejudice to any other remedy available to it:
  - (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;
  - (b) charge the Customer for, and the Customer must indemnify Horizon 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 Terms or to recover any goods;
  - (c) cease or suspend for such period as Horizon thinks fit, supply of any further goods to the Customer;
  - (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Horizon; without effect on the accrued rights of Horizon under any contract.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of Horizon:
  - (a) where the Customer is an individual 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, provisional liquidator, administrator, receiver or receiver and manager appointed, 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.

### 6. Passing of Property

- 6.1 Until full payment in cleared funds is received by Horizon for all goods supplied by it to the Customer, as well as all other amounts owing to Horizon by the Customer:
  - (a) title and property in all goods remain vested in Horizon and do not pass to the Customer;
  - (b) the Customer must hold the goods as fiduciary bailee and agent for Horizon;
  - (c) the Customer must keep the goods separate from its goods and maintain the labeling and packaging of Horizon;
  - (d) the Customer is required to hold the proceeds of any sale of the goods on trust for Horizon in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
  - (e) Horizon may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Horizon, and for this purpose the Customer irrevocably licenses Horizon to enter such premises and also indemnifies Horizon from and against all costs, claims, demands or actions by any party arising from such action.

### 7. Risk and Insurance

- 7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on delivery of the goods to the premises nominated by the Customer.
- 7.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

- 7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by Horizon, whether such goods are used singularly, or in combination with other goods, substances, or any process.

## **8 Acknowledgments**

8.1 The Customer acknowledges that :

- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by Horizon in relation to the goods, their use or application.
- (b) it has the sole responsibility of satisfying itself that the goods are suitable for the use or any contemplated use, of the Customer whether or not such use is known by Horizon.
- (c) any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

## **9. Performance of Agreement**

9.1 Any period or date for delivery of goods stated by Horizon is intended as an estimate only and is not a contractual commitment. Horizon will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

## **10. Delivery**

10.1 Horizon will arrange for delivery of the goods unless otherwise detailed in any written quotation from Horizon.

10.2 Late delivery or supply will not entitle the Customer to vary or cancel the Agreement, or claim damages as a result.

10.3 Unless otherwise agreed in writing by Horizon, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

10.4 The Customer must provide reasonable and proper access to the location specified for delivery.

10.5 The Customer authorises Horizon to subcontract delivery in its absolute discretion.

10.6 The Customer indemnifies Horizon against any loss or damage suffered by Horizon, its sub-contractors or employees as a result of delivery, except where caused by the negligence of Horizon.

10.7 If Horizon does not receive forwarding instructions sufficient to enable it to dispatch the goods or the goods are not picked up by the Customer within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer will be liable for storage charges payable monthly on demand.

## **11. Liability**

11.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

11.2 Replacement or repair of the goods is the absolute limit of Horizon's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.

11.3 Any replacement of goods supplied to the Customer pursuant to clause 11.2 will not have the effect of extending the warranty period of the goods, which will be calculated from the date of the supply by Horizon of the original goods.

11.4 Horizon 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.

11.5 Horizon will not be liable for any loss or damage suffered by the Customer where Horizon has failed to deliver goods or fails meet any delivery date or cancels or suspends the supply of goods.

11.6 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.

## **12. Cancellation**

12.1 If, through circumstances beyond the control of Horizon, Horizon is unable to affect delivery or provision of goods, then Horizon may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Horizon after that order has been accepted.

12.3 Horizon, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

## **13. Specifications**

13.1 All specifications, drawings, illustrations descriptive matter and particulars contained in Horizon's 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.

13.2 All drawings, descriptive matter and particulars supplied, remain Horizon's property and are to be returned to Horizon on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without Horizon's prior consent in writing.

## **14. Returns and Exchanges**

14.1 Subject to clause 14.2, Horizon will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless:

- (a) the Customer delivers a written complaint to Horizon with full details within 7 days of inspection of goods specifying the shortage or defect; and
- (b) Horizon is, upon receipt of the complaint, given an opportunity to inspect the goods and investigate the complaint before any further dealing with the goods.

14.2 If the Customer fails to give the notice as required in clause 14.1, it is deemed to have accepted the goods and the Customer will be bound to pay for them.

14.3 When any defects, shortages, claim for damage or non-compliance with the Agreement specifications is accepted by Horizon, Horizon may, at its option, replace the goods, or refund the price of the goods.

14.4 Horizon will not under any circumstances accept goods for return that:

- (a) have been specifically produced, imported or acquired to fulfill any contract or special Customer order;
- (b) have been altered in any way;
- (c) have been used;
- (d) 12 months or more has elapsed from date of delivery; or
- (e) are not in their original condition and packaging.

14.5 The Customer must:

- (a) obtain Horizon's prior written approval for return of goods;
- (b) pay to Horizon a re-stocking fee equal to 10% of the original invoice cost, if Horizon so decides; and

(c) pay all freight changes associated with the return of goods.

**15. Force Majeure**

15.1 Horizon shall have no liability whatsoever under or in any way related to the sale and purchase of the goods or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfilment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. Should an event of force majeure occur Horizon may terminate the Agreement by giving the Customer written notice.

**16. Miscellaneous**

16.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

16.2 Failure by Horizon to enforce any of these Terms shall not be construed as a waiver of any of Horizon's rights.

16.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

16.4 A notice must be in writing and handed personally or sent by 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 are deemed received on the facsimile machine confirming transmission.

**17. Privacy**

17.1 Horizon 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 Horizon in accordance with the *Privacy Act*.

17.2 Horizon requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Horizon in connection with this Agreement.

**PRIVACY ACT 1988**

**PART 3: CUSTOMER AUTHORITY AND ACKNOWLEDGMENT**

**HORIZON ELECTRONIC COMPONENTS PTY LTD (ACN 007 302 801) of Unit 2, 71 Rushdale Street, Knoxfield, Victoria, 3180 ("HORIZON")**

**Credit information that may be provided to a credit reporting agency**

Horizon may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- \* to obtain a consumer credit report about me/us, and/or
- \* to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- \* identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers license number;
- \* my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount;
- \* the fact that Horizon is a current credit provider to me/us;
- \* loan repayments which are overdue by more than 60 days, and for which debt collection has started;
- \* advice that my/our loan repayments are no longer overdue in respect of any default that has been listed;
- \* information that, in the opinion of Horizon I/we have committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with my/our credit obligations;
- \* dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once

**Assessment of Commercial Credit Application**

I/we agree that Horizon may obtain a consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

**Disclosure to guarantor**

I/we agree that Horizon may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or Horizon keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

**Overdue payments**

I/we agree that Horizon may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

**Exchange of credit worthiness information**

I/we agree that Horizon may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency:

- \* to assess an application by me/us for credit
- \* to notify other credit providers of a default by me/us
- \* to exchange information with other credit providers as to the status of my/our credit facility with Horizon where I/we are in default with other credit providers
- \* to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Privacy Amendment (Private Sector) Act 2000**

I/we understand that under the requirements of the *Privacy Amendment (Private Sector) Act 2000*, Horizon will ensure that all credit and personal information obtained about me/us will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorised access, use, modification or disclosure and any other misuse. I/we also understand that such information will be made available for viewing or amendment by me/us upon request to Horizon.

**Signing to be signed by the Customer or all directors or partners of the Customer**

Dated:		
.....	.....	.....
Sole Trader	director/partner	director/partner
	.....	.....
	director/partner	director/partner