

CONDITIONS OF SALE

1. In these conditions ("these Conditions") unless the context otherwise requires:
 - (a) 'Avon' means Avon Automotive UK Holdings Ltd and its subsidiaries, (company number 5831934) whose registered office is at 5, Westpoint Business Park Bumpers Farm, Chippenham, Wiltshire, SN14 6RB, England.
 - (b) 'the Customer' means the person, firm or company accepting a quotation (or similar document) of Avon for the sale/supply of Goods/Services or whose order for Goods/Services 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) which Avon is to supply in accordance with these Conditions and which are specified in the Proposal;
 - (d) 'Services' means the services to be supplied by Avon in accordance with these Conditions and specified in the Proposal;
 - (e) 'Specification' means the specification of the goods and/or services set out in the Proposal or as otherwise agreed in writing between Avon and the Customer which shall include:
 - (i) any sample which has been approved in writing by the Customer in accordance with the automotive production part approval process; and
 - (ii) any design drawings provided by the Customer which the Customer has specified in writing shall form part of the Specification;
 - (f) 'Proposal' means a quotation (or similar document) of Avon for the supply of goods and/or services which is accepted by the Customer;
 - (g) 'Contract' means together the Proposal and these Conditions;
 - (h) references to the singular shall include the plural and vice versa, references to the masculine shall include the feminine and neuter and vice versa, references to a "person" shall include any firm, company or other person (natural or legal), and references to any statute shall include any amended or replacement legislation from time to time.
2. Avon shall supply and the Customer shall purchase the quantity of Goods and/or the Services in accordance with the Specification and the Proposal, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (including but not limited to any Customer's global purchasing terms and conditions). In the event of inconsistency between these Conditions and any special conditions contained in the Proposal, such special conditions shall prevail. No conduct by Avon shall be deemed to constitute acceptance of any terms put forward by the Customer (including but not limited to any Customer's global purchasing terms and conditions).
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 email or other written communication to the Customer specifically indicating acceptance (as opposed to receipt) of the Customer's order. In the case of any written quotation submitted by Avon, authorisation to proceed with the delivery or acceptance of delivery of the Goods or the supply of Services whether verbal or in writing or by conduct, shall constitute the Customer's acceptance of such quotation and these Conditions.
4. The Customer shall:
 - (a) make a full disclosure to Avon of all information and material that Avon reasonably requires in order to perform its obligations under the Contract;
 - (b) ensure that such information and material is true, accurate and complete in all respects, is free from any defamatory or unlawful content, 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; and
 - (c) indemnify Avon (and keep it indemnified) against all costs, claims, losses, expenses and other liabilities arising out of or in connection with any breach by the Customer of its obligations in this clause.
5. 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 with any applicable safety or other statutory requirements and/or which do not materially affect their quality or performance.
6. Other than the Specification, all samples, drawings, descriptive matter, specifications and advertising issued by Avon and any descriptions or illustrations contained in Avon's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract.
7. No order which has been accepted by Avon may be cancelled by the Customer except with the agreement in writing of Avon and on terms that the Customer shall indemnify Avon in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges, interest and expenses incurred by Avon as a result of cancellation.

8. Subject to Condition 11 the price of the Goods shall be the price stated in the Proposal or as otherwise agreed in writing between the parties. All prices stated in any quotation given by Avon, but not yet agreed by the Customer, are valid for 30 days only (provided Avon has not previously withdrawn it), after which time they may be altered or withdrawn by Avon without giving notice to the Customer.
9. Subject to Condition 11, the prices payable in respect of the supply of the Services shall be those specified in the Proposal or as otherwise agreed in writing from time to time with Avon.
10. Unless otherwise agreed in writing, all prices are quoted on an Ex-Works basis (INCOTERMS 2000) and exclude VAT or other applicable sales tax, which if applicable will be added to the sum in question.
11. Avon shall use all reasonable endeavours to maintain the prices quoted but it reserves the right to vary such prices at any time prior to delivery in accordance with any variation in its costs of supply, such as (but not limited to) the cost of raw materials, overheads and/or labour. In the event of prices being increased for this reason the Customer shall be entitled to cancel any undelivered portion of the Contract, but excluding any work or materials in the course of production at the time of cancellation. In the event of the Customer exercising its right to cancel, any materials or equipment purchased by Avon especially for the execution of the Contract shall be invoiced to the Customer at cost price.
12. If at any time the Customer requests a change in delivery dates, quantities or the Specification for the Goods or Services, 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/Services or extend the time for their delivery.
13. Re-useable packaging items sent with the goods will be charged and invoiced to the Customer at their replacement cost (plus any VAT or other applicable sales tax, which if applicable will be added to the sum in question) if such packaging is not returned carriage paid and in good useable condition to the return address specified by Avon, within three months from delivery of the Goods which the packaging relates to.
14. Unless otherwise agreed in writing, Avon shall be entitled to invoice the Customer:-
 - (a) for the price of the Goods on or at any time after dispatch of the Goods (or any instalment of the Goods), unless the Goods are to be collected by the Customer, in which event Avon shall be entitled to invoice the Customer for the price at any time after Avon has notified the Customer that the Goods are ready for collection; and/or
 - (b) for the price of the Services on the dates specified in the Proposal, or where no such dates are specified, on completion of the Services or monthly in arrears, whichever is the earlier.
15. The Customer shall pay the price of the Goods and/or Services (together with any delivery and/or packaging charges or other expenses), in all cases, unless other payment terms have been agreed in writing with Avon within 30 days of the date of the relevant invoice, notwithstanding (in the case of the supply of Goods) that delivery may not have taken place, and all such payments shall in any event be made without set-off, counterclaim or deduction of any kind.
16. Time for payment will be of the essence and 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 and/or the provision of any further Services 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 then current statutory rate under the Late Payment of Commercial Debts (Interest) Act 1998, from time to time from the due date until the date of actual payment.
17. Unless otherwise agreed in writing, delivery of the Goods shall be made:
 - (a) once the Goods have been loaded onto the vehicle by the Customer, Ex-Works (INCOTERMS 2000) at Avon's premises which have been specified by Avon from time to time;
 - (b) at the time after Avon has notified the Customer that the Goods are ready for collection.
 - (c) The Services shall be provided either at the locality specified in the Proposal or at Avon's premises if such location is not specified expressly in this Proposal.
18. Where Avon agrees to deliver the Goods otherwise than at Avon's premises, Avon shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.
19. Any Contract may be cancelled by Avon if a notice of cancellation is given to the Customer not less than 90 days before the: (i) the delivery date; or (ii) the delivery of the first instalment where delivery is by instalments; or (iii) the date specified in the Proposal for the commencement of the provision of Services, as the case may be.

20. Time for delivery shall not be of the essence. The Goods may be delivered by Avon in advance of the quoted delivery date upon giving reasonable notice to the Customer.
21. Avon may deliver the Goods in instalments and each such delivery shall constitute a separate contract and failure by Avon to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
22. If the Customer fails to take delivery of the Goods or fails to give Avon adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Avon's fault) then, without prejudice to any other right or remedy available to Avon, Avon may:
 - (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
23. Notwithstanding the agreed basis of delivery of the Goods risk of damage to or loss of the Goods shall pass to the Customer:
 - (a) in the case of Goods to be collected from Avon's premises, at the time when Avon notifies the Customer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered, at the time of commencing loading of the Goods for delivery or, if the Customer wrongfully fails to collect the Goods, the time when Avon has tendered delivery of the Goods.
24. 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 or until the Goods are re-sold by the Customer to a bona fide customer for value without notice of Avon's rights, whichever occurs first.
25. Until such time as the legal title to the Goods passes to the Customer, the Customer shall hold the Goods as Avon's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Avon's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.
26. Until such time as the legal title to the Goods passes to the Customer (and provided the Goods are still in existence), Avon shall be entitled at any time to require the Customer to deliver up the Goods to Avon and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
27. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Avon, but if the Customer does so all moneys owing by the Customer to Avon shall (without prejudice to any other right or remedy of Avon) forthwith become due and payable.
28. Avon shall be entitled to maintain an action for the price of the Goods, notwithstanding that the legal title to them has not passed to the Customer.
29. Avon shall in respect of any unpaid debt due from the Customer under this or any other contract have a general lien over all goods and property of the Customer in its possession (although such goods or some of them may have been paid for) and shall after the expiration of 14 day's notice to the Customer be entitled to dispose of such goods and property (as it deems fit) and apply the proceeds towards such debts.
30. Subject to Condition 33 Avon warrants that the Goods will, at the time of delivery to the Customer correspond with the Specification (subject to Condition 5) and not be damaged or defective due to defects in material, workmanship, or design (other than a design made, furnished or specified by the Customer).
31. Subject to Condition 33 and provided that the Customer has complied with the remainder of this clause, Avon will, within a period of 12 months from the date of delivery of Goods to the Customer, for any Goods which are proved to the reasonable satisfaction of Avon to be in breach of the warranty in Condition 30 at Avon's option:
 - (a) repair or replace the Goods (or any parts thereof) in question; and/or
 - (b) repay the price, or a proportion of the price, attributable to the Goods in question which shall be the Customer's sole remedy for any breach of the warranty contained in Condition 30 by Avon.

At Avon's request the Customer shall return at its own cost and risk to premises notified to the Customer by Avon any Goods which are alleged by the Customer to be defective. Where such Goods have been returned to Avon in accordance with this clause and the Goods are proved to the reasonable satisfaction of Avon to be in breach of the

warranty in Condition 30 then in addition to the remedies referred to earlier in this clause Avon shall refund to the Customer the reasonable costs of returning such Goods to Avon.

32. Any Goods which have been replaced will belong to Avon. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in Condition 31 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods.
33. Avon shall be under no liability in respect of any non-conformity or defect in the Goods:-
 - (a) which arises from any drawing, design or specification supplied by the Customer or (at any time after delivery to the Customer) from use after the "use by" or other expiry date, fair wear and tear, wilful damage, use by unauthorised 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 and in any event within 3 months from the date of delivery of the Goods.
34. Avon warrants to the Customer that it shall provide the Services using all reasonable care and skill and, as far as reasonably possible, in accordance with any Specification provided:
 - (a) that Avon shall not be liable to the Customer for any loss, damage, costs, expenses or other claims for compensation arising out of or in connection with any breach by the Customer of its obligations under the Contract; and
 - (b) any claim in respect of a breach of such warranty shall be made within twelve (12) months of the date on which the provision of the Services was completed, failing which all liability in respect of such claim shall be excluded.
35. Avon will within a period of 12 months from the date of the provision of the Services to the Customer which are proved to the reasonable satisfaction of Avon to be in breach of the warranty in Condition 34 at its option:
 - (a) re perform the Services; and/or
 - (b) repay the price, or a proportion of the price, attributable to the Services in question which shall be the Customer's sole remedy for any breach of the warranty contained in Condition 34 by Avon.
36. Subject as expressly provided in these Conditions, Avon hereby excludes to the fullest extent permissible in law all warranties, conditions, stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
37. Avon does not exclude its liability (if any) to the Customer:
 - (a) for breach of Avon's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
 - (b) for personal injury or death resulting from Avon's negligence;
 - (c) under section 2(3) Consumer Protection Act 1987;
 - (d) for any matter for which it would be illegal for the Avon to exclude or to attempt to exclude its liability; or
 - (e) for fraud.
38. Subject to Condition 37 Avon shall be under no liability to the Customer whatsoever (whether in contract, tort (including negligence) breach of statutory duty, restitution, by reason of any representation (unless fraudulent), or any implied warranty, condition or other term) 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 loss or damage, 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.
39. Subject to Conditions 37 and 38 Avon's aggregate liability under the Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution by reason of any representation (unless fraudulent), or otherwise) for any injury, death, damage or direct loss howsoever caused will be limited to the price payable under the Contract by the Customer. In the event of any breach of Avon's express obligations under the Contract the remedies of the Customer will be limited to damages.
40. Subject to Condition 37 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, malicious damage 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, labour, fuel, parts, parts of machinery, power failure or machinery breakdown.

41. Subject to Condition 37 the Customer shall indemnify, keep indemnified and hold harmless Avon from and against all damages, losses, costs (including the costs of enforcement), claims, expenses (including legal fees and disbursements) and other liabilities incurred by Avon in respect of any claim brought against Avon by a third party:-
- (a) for any loss, injury or damage wholly or partly caused by a defect in the Goods, being a defect that did not exist at the time of delivery to the Customer; or
 - (b) without prejudice to the generality of (a) above, under the Consumer Protection Act 1987 (or any other legislation enacted in any part of the European Union to give effect to the EC Directive 85/374/EEC on product liability) in respect of a defect in the Goods, being a defect that did not exist at the time of delivery to the Customer;
- in either case except to the extent that the defect in question came into existence after delivery to the Customer due to the negligence of Avon.
42. Where Avon provides special moulds or tools for the production of the Customer's orders then unless agreed to the contrary, these moulds or tools will be charged at cost. The cost of refurbishment due to normal wear and tear, necessary to maintain specification of the end products, or replacement of the mould and tool at the end of its life, shall be the Customer's responsibility. Property and possession in these moulds and tools shall remain with Avon unless and until the Customer has paid Avon for the cost of such moulds and tools and the costs of repairing and/or replacing the same has been paid in full. Risk in the moulds and tools shall at all times lie with the Customer.
43. All copyright, patents, trade marks, design rights, know-how, utility models, rights to prevent passing off for unfair competition, database rights, topography rights and any other rights in any invention, discovery or process 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") on or subsisting in or in relation to the Goods and/or Services 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 licence to use or resell the Goods for the purposes contemplated by the Contract.
44. All Intellectual Property of whatever kind created or developed by Avon in the course of providing the Services ("the Works") shall remain the absolute property of Avon and no rights in the Works are granted to the Customer save for a non-exclusive licence to use such of the Works as are reasonably necessary for the purposes contemplated by the Contract.
45. If the Customer commits any material breach of this Contract or if any distress or execution is levied on the Customer's property or assets or if the Customer makes or offers to make any arrangement or composition with creditors or (being an individual) commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against him or (being a corporate body) any resolution or petition to wind up its business (other than for the purpose of solvent amalgamation or reconstruction) is passed or presented or the Customer enters administration, or if a receiver of the Customer's undertaking, property or assets or any part thereof is appointed or the Customer ceases or threatens to cease carrying on business or Avon reasonably anticipates that any of the foregoing events (or anything analogous to any of them under the laws of any jurisdiction) is about to occur, Avon shall be entitled immediately (but without prejudice to any other right or remedy available to it) by notice in writing served on the Customer to terminate the Contract or suspend any further deliveries of Goods or any further provision of Services and if any of the Goods have been delivered or any of the Services provided, but not paid for, the price payable by the Customer under the Contract shall become immediately due and payable.
46. The Customer will keep confidential all information in respect of the business of Avon including, but not limited to, know-how or other matters connected with the Goods or Services, and information concerning Avon's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Avon and of such persons and any other information which, if disclosed, will be liable to cause harm to Avon, that it may acquire ("Confidential Information").
47. The Customer will not use Confidential Information for any purpose other than to perform its obligations under the Contract. The Customer will ensure that its officers and employees comply with the provisions of this Condition 47.
48. The obligations on the Customer set out in Condition 46 and 47 will not apply to any information which:
- (a) is publicly available or becomes publicly available through no act or omission of the Customer; or
 - (b) the Customer is required to disclose by order of a court of competent jurisdiction.
49. 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 company which at the relevant time is its holding company or subsidiary (as defined by section 736 and 736A of the Companies Act 1985) or the subsidiary of any such holding company or any other person, and any act or omission of any such company or person shall for the purposes of the Contract be deemed to be the act or omission of Avon.

50. The Contract is personal to the Customer who shall not be entitled to assign or sub-contract or otherwise dispose of any of its rights or obligations under the Contract without the prior written consent of Avon.
51. 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.
52. 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 prior written or oral agreements, representations, or understandings between the parties. 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, promise, representation, warranty or undertaking (whether negligently or innocently made but not if fraudulently 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.
53. Save as set out in the Contract no variation to the Contract shall be effective unless made in writing and signed by a director of Avon and the Customer
53. Subject to Condition 49 nothing in the Contract is intended to confer on any person any right to enforce any term of the Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999. The parties to this contract reserve the right to vary this contract at any time without the requirements for consent from any third party.
54. 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.
55. Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.
56. The formation, existence, construction, validity and performance and all aspects 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 English Courts.
57. 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.