

TERMS AND CONDITIONS OF TRADE

Following are the Terms and Conditions of Trade ("Trading Terms") for Lyndons Pty Ltd (ACN 010 583 721) including, but not limited to any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called "Lyndons")

1. Price

- 1.1. The price of the goods is that stated in any quote issued by Lyndons, and/or any invoice. In addition, the Customer is liable to pay any change in duty, taxes or freight invoiced by Lyndons.
- 1.2. All prices quoted are exclusive of GST.

2. Payment

- 2.1. The Customer must pay for all purchases on delivery, or (if Credit Terms have been extended or Lyndons otherwise agrees in writing prior to delivery) within 30 days from the end of the month in which the invoice is generated, or within any alternative credit period granted in writing by Lyndons. Amounts payable by the Customer under the Credit Terms must be paid in full without deduction, retention or set-off of any kind and for any reason.
- 2.2. Payment by AMEX credit card will incur a surcharge payable by the Customer of 1.6% plus GST of the total invoice amount.
- 2.3. In the event of any dishonoured or incomplete payment, a dishonour fee will be charged and is payable by the Customer immediately. In the event of dishonoured payment, the Customer will be liable for any fees or charges from Lyndons' financial institution (in addition to any charges by the Customer's financial institution or credit provider).

3. Interest and Administration fee

- 3.1. Lyndons is entitled to charge the Customer:
 - 3.1.1. interest on amounts not paid on delivery or within the credit period specified by Lyndons at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by Lyndons, in its discretion; and
 - 3.1.2. if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by Lyndons of the loss, costs and expenses which shall be incurred by reason of the Customer's default in payment and the recovery thereof.

4. GST

- 4.1. Each amount payable by the Customer under the Trading Terms in respect of a Taxable Supply by Lyndons is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999 (Cth).

5. Formation of Contract

- 5.1. Quotes issued by Lyndons will not be construed as an offer or obligation to supply in accordance with the quote.
- 5.2. Placement of an order by the Customer, its agent, employee or representative, whether verbally or in writing will form the basis of the agreement to supply between Lyndons and the Customer.
- 5.3. By placing any order for supply from Lyndons, the Customer acknowledges and agrees that these Trading Terms apply, and that any supply will be subject thereto.
- 5.4. All supply, whether the subject of a quote or otherwise is subject to availability. Lyndons gives no warranty as to certainty of supply unless expressly agreed in writing in advance. Any quote, order and/or indication of stock availability does not amount to an express warranty as to certainty of supply.
- 5.5. Lyndons has a continuing discretion to allocate available Products and/or supply, and is not required (notwithstanding any order, quote or other agreement) to allocate Products and/or supply for the benefit of the Customer or any other person.

6. Quotes

6.1. The Customer hereby acknowledges and agrees that:

- 6.1.1. all quotes must be in writing;
- 6.1.2. unless otherwise stated, quotes shall remain valid for 30 days;
- 6.1.3. all quotes are subject to availability;
- 6.1.4. Lyndons may, at its discretion, charge a fee for holding any Products the subject of any quote pending placement of an order, collection and/or delivery;
- 6.1.5. Lyndons shall not be bound by any quote if an order is placed outside of the period of validity or expiry noted on any quote, or after 30 days from the date of the quote;
- 6.1.6. prior to receipt of any order, Lyndons may amend any quote issued;
- 6.1.7. Lyndons will not be bound by any quote if:
 - 6.1.7.1. the supply the subject of the quote is no longer available or becomes unavailable;
 - 6.1.7.2. Lyndons forms the view that the subject matter of the quote is to form part of a larger transaction and/or a series of transactions with the Customer and/or the circumstances giving rise to the quote have materially changed;
 - 6.1.7.3. the Customer is in breach of any Credit Terms and/or these Trading Terms; or
 - 6.1.7.4. the Customer fails or refuses to pay any reasonable fee(s) or charge(s) imposed by Lyndons for the holding of Products the subject of the quote.

7. Placement of Orders

- 7.1. The Customer will be liable for all transactions and expenses involving the Customer's account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's account which is directly or indirectly caused or contributed to by the Customer's negligence.
- 7.2. Each order placed will be deemed to be a representation made by the Customer that at the time of making such an order it is solvent, and able to pay all of its debts as and when they fall due, and Lyndons confirms that it will rely on each such representation in the fulfilment and/or supply of any order from time to time.
- 7.3. Failure to pay any amount in accordance with any Credit Terms and/or these Trading Terms will be deemed to be conclusive evidence that the Customer had no grounds to make the representation referred to in paragraph 7.2 above, and that the making of such representations was unconscionable, misleading and/or deceptive.
- 7.4. At the time of placing any order, the Customer must inform Lyndons of any material facts which would or might reasonably affect the commercial decision by Lyndons to accept the order and/or grant credit in relation thereto. Any failure to do so will create and be deemed to create an inequality of bargaining position and will constitute and be deemed to constitute the taking of an unfair advantage of Lyndons and to be unconscionable, misleading and deceptive.

8. Charge over Customer's Property

- 8.1. As security for payment to Lyndons of all moneys payable by the Customer and for the Customer's obligations generally under these Trading Terms, the Customer charges in favour of Lyndons the whole of the Customer's undertaking, property and assets (including without limitation all of the Customer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer's attorney to do all things necessary to create and register each such charge. Upon demand by Lyndons, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Lyndons to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that Lyndons may execute such mortgage or other instrument as the Customer's attorney pursuant to the appointment of Lyndons as the Customer's attorney set out in these Trading Terms.

9. Cancellation or Variation of Orders

- 9.1. An order which has been accepted by Lyndons can only be cancelled or varied by the Customer if the Customer obtains Lyndons' prior consent in writing. Lyndons may, at its discretion, refuse such request (by act or omission), and variations requested will only be binding if they are accepted by Lyndons in writing.

- 9.2. In the event of any cancellation or variation of any order in accordance with clause 9.1 hereof, the Customer shall pay to Lyndons all costs, loss of profits and/or expenses incurred (or to be incurred) by Lyndons as a result thereof, whether or not those amounts were incurred prior to or after the date of the cancellation or variation.
- 9.3. The Customer will accept variation in quantities requested or ordered at plus or minus 5%, and will pay pro-rata for the actual quantity supplied and/or delivered. The internal records of Lyndons will be binding and conclusive evidence of what was supplied and/or delivered.
- 9.4. The Customer acknowledges and agrees that orders may be varied, added to or amended by Lyndons at its discretion by giving written notice of the same to the Customer.

10. **Suspension or Ceasing of Supply**

- 10.1. Lyndons may in Lyndons' complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
- 10.2. Without limiting clause 10.1 if an Event of Default occurs, Lyndons may, without prejudice to Lyndons' other rights, call up moneys owed to Lyndons by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.

11. **Delivery/ Collection**

- 11.1. Lyndons accepts no responsibility for delivery, but may elect to arrange delivery, at its discretion. Despite the foregoing, Lyndons will not be liable to the Customer or any other person in respect of any such delivery, and the Customer must pay for all costs, fees, charges and/or other amounts associated therewith.
- 11.2. The Customer authorises Lyndons to deliver Products to the place nominated by the Customer ("**the Premises**"), and to leave the Products at the Premises, whether or not any person is present to accept delivery.
- 11.3. Lyndons shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the Premises.
- 11.4. Dates or periods for delivery stated in any order and/or invoice are approximate only and are not binding on Lyndons.
- 11.5. Lyndons shall not be liable for any failure to deliver or for any delay in deliver of Products or provision of services occasioned by any cause whatsoever, whether or not beyond the control of Lyndons.
- 11.6. The Customer will be deemed to have accepted delivery and liability for the Products upon the earlier of Lyndons notifying the Customer that the Products are available for collection, or when they are delivered to a carrier for delivery, or when they are delivered to the Customer's Premises (whether or not any person is present to accept delivery).
- 11.7. Delivery may be affected by instalments (whether requested by the Customer or not), and from time to time (whether at the request of the Customer or as a result of stock availability), orders may be placed for delivery at specified time(s) in the future. In such an event, the Customer hereby agrees and acknowledges that each delivery by instalment shall be deemed to be sold under a separate invoice and shall be paid for separately.
- 11.8. Any default, delay or omission by Lyndons in respect of any part delivery or instalment shall not entitle the Customer to treat any order (or any part thereof) as repudiated, cancelled or varied.
- 11.9. If the Customer does not take delivery of the Products as and when delivered/notified by Lyndons the Products are available for collection, the Customer must pay all storage charges and all associated fees, costs and expenses, payable on demand by Lyndons. Any such storage will be at the Customer's risk.
- 11.10. If time spent delivering exceeds 30 minutes or requires more than one attempt, the Customer must pay all costs, fees, charges and/or expenses relating thereto, plus a loading of 10% thereon to cover administration costs.

12. **Claims and/or Disputes**

- 12.1. If any dispute arises concerning any order (including, but not limited to any measurement, quality, quantity, identity or authority, on any order, whether made in person, by telephone, by facsimile, email or computer generated order), the internal records of Lyndons will be binding and conclusive evidence of what was ordered and/or supplied.
- 12.2. The Customer must inspect all Products delivered to the Customer or its nominated agent within 7 days (or such other time period notified by Lyndons from time to time) of delivery and/or must inspect all Products collected from Lyndons immediately upon collection ("**Inspection Period**") in order to ensure that Products delivered are as ordered by the Customer and are not delivered or invoiced as a shortfall or in a damaged

state. The Customer must notify Lyndons within the Inspection Period if Products are found to be other than as ordered by the Customer or as invoiced by Lyndons, and/or have been delivered in a damaged state.

- 12.3. Subject to clause 12.2 if the Customer has not notified Lyndons within the Inspection Period that Products delivered were not as ordered by the Customer, or that Products were delivered in a damaged state, then the Products will be deemed to have been delivered in good condition and as ordered by the Customer.
- 12.4. Notwithstanding any claim made by the Customer under this section, the Customer must make payment in accordance with these Trading Terms without deduction, retention or set-off of any kind for any reason.

13. Returns on Ordinary Stock Items

- 13.1. Products ordinarily sold by Lyndons as stock Products will not be returnable (other than in accordance with these Trading Terms) to Lyndons for credit to the Customer's account after the Inspection Period has elapsed unless Notice has been given in accordance with clause 12 of these Trading Terms.
- 13.2. For the avoidance of doubt, Lyndons shall not be required to accept the return of Products under any circumstances and will only, at its election, accept the return of Products which are undamaged and in a good and saleable condition, and which are not special orders referred to in clause 14 of these Trading Terms.
- 13.3. Any Products which are accepted by Lyndons for return and/or which have been accepted by Lyndons as defective or returnable as a result of notification within the Inspection Period will be returnable in accordance with clause 15.3 of these Trading Terms.
- 13.4. Lyndons may, in its discretion and subject to clause 15 of these Trading Terms, accept the return of Products after the Inspection Period, in which instance the Customer agrees and acknowledges that:
 - 13.4.1. a restocking fee of not less than 15% of the price of those Products will be administered on the price of those Products to cover the restocking, repacking and other related charges. The Customer agrees and acknowledges that the restocking fee is a genuine pre-estimate of Lyndons of the loss, costs and expenses that will be incurred by Lyndons in connection with the return;
 - 13.4.2. all Products returned to Lyndons shall be accompanied by the original invoice number; and
 - 13.4.3. all Products returned to Lyndons must be in as new and saleable condition, and must comply with any terms of return specified by Lyndons prior to or upon acceptance of the return, or at any time thereafter.

14. Special Orders

- 14.1. The Customer warrants and agrees that all drawings and specifications and other design information provided to Lyndons for the manufacture of special orders are accurate and correct in all respects.
- 14.2. All Products manufactured to the Customer's special order and not sold ordinarily by Lyndons as stock Products shall not be returnable to Lyndons, and nor shall the Customer be entitled to any rebate, reduction, refund, discount or set-off in respect of such Products.

15. Liability

- 15.1. Lyndons will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Lyndons, its employees, contractors or agents.
- 15.2. Lyndons will not be liable for any claim or amount arising after the delivery or collection of Products (or at all once goods have been unpacked, modified, on-sold or otherwise used or applied) after which the Customer acknowledges and agrees that it will be deemed to have unconditionally accepted the same.
- 15.3. The Products are deemed to be defective if any Products:
 - 15.3.1. are not of merchantable quality;
 - 15.3.2. are not fit for any purpose for which they are acquired by Customer;
 - 15.3.3. do not conform to any sample, specification or other description given to Lyndons by the Customer in relation to the Products;
 - 15.3.4. being in the nature of services, are not of a reasonable standard, quality, value or grade; or
 - 15.3.5. do not comply with any consumer guarantee or implied warranty applicable to the supply of the Products which cannot be excluded (including pursuant to the *Competition and Consumer Act 2010* ("CCA")).
- 15.4. Where Products are defective (as defined in clause 15.3) Lyndons may, at its discretion, and subject to the

- Customer first restoring the unencumbered ownership and possession of the Products to Lyndons, elect to:
- 15.4.1. replace the Products; or
 - 15.4.2. repair the Products or reimburse the Customer for the cost of repairing the Products; or
 - 15.4.3. in the case of Products being in the nature of services, re-supply the services; or
 - 15.4.4. if payment of the purchase price for the Products has not been made by the Customer - release the Customer from any obligation to pay the purchase price; or
 - 15.4.5. if payment of the purchase price for the Products has been made by the Customer - refund the purchase price to the Customer and/or credit the Customer's account for the amount of the purchase price for the Products.
- 15.5. In the event of any return of Products, the Customer will be liable for the labour, transport and/or material costs, arising in connection with the return.
- 15.6. To the extent permitted by law, Lyndons will not accept the return of Products unless:
- 15.6.1. prior authorisation has been given (which will not be unreasonably withheld);
 - 15.6.2. the claim is supported by the relevant invoice;
 - 15.6.3. the Products are in the same condition as at the date of supply;
 - 15.6.4. the Products are returned via Lyndons' nominated carrier and at Lyndons' designated rates; and
 - 15.6.5. in the case of Products delivered in a damaged state or Products delivered other than in accordance with the Customer's order, Lyndons was given notice in accordance with clause 12.3.
- 15.7. The Customer agrees and acknowledges that no employee or other representative of Lyndons is authorised to provide advice, recommendation, information or representation in relation to any Products or services supplied.
- 15.8. Other than any remedies the Customer may have under the CCA, the sole remedies of the Customer under or in relation to the dealings between Lyndons and the Customer, whether in contract, in tort, under statute or otherwise are only as specified in these Trading Terms and are subject to the limitations set out in these Trading Terms and the following limitations:
- 15.8.1. Lyndons, and Lyndons' officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Customer, arising out of, or in any way directly or indirectly connected with, the matters referred to in this clause except to comply with its obligations (subject to the other provisions and limitations in this clause 15 under clause 15.3.
 - 15.8.2. all conditions, warranties and other terms pertaining to the condition or quality of Products are excluded to the extent permitted by law (including the CCA);
 - 15.8.3. the Customer warrants and represents that it is relying upon its own skill and judgment in relation to the quality of Products, and their fitness for any purpose that may be required, and not upon any conduct or representation of Lyndons, or any of Lyndons' officers, employees or agents; and
 - 15.8.4. the Customer must not make any claim or demand, or take any action or other proceeding against Lyndons, or any of Lyndons' officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill OR any indirect, special or consequential loss of whatever nature including of any loss of a type described in this sub-clause, whether or not reasonably foreseeable, reasonably contemplatable or actually contemplated by the parties at the time of placing any orders with Lyndons (or otherwise), arising out of, or in any way directly or indirectly relating to these Trading Terms including in relation to any of the matters referred to in clause 15.
- 15.9. Subject to the remainder of this clause 15, the Customer:
- 15.9.1. releases and forever discharges Lyndons, and each of Lyndons' officers, employees and agents, from all claims under or in relation to the supply of Products and/or these Trading Terms; and

15.9.2. indemnifies Lyndons and each of Lyndons' officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of, any claim.

15.9 To the extent permitted by law, Lyndons' total liability for any claim under or in relation to these Trading Terms and/or the supply of any Products (if any) is limited to the price paid by the Customer for the Products or services the subject of the claim.

15.10 The customer is not entitled to withhold payment of any amount payable to Lyndons because of or in connection with any claim (whether accepted or disputed), nor shall the Customer be entitled to set-off any amount payable to Lyndons unless Lyndons has provided its prior written agreement to the same.

15.11 For the avoidance of doubt, Lyndons will not be in default of any agreement or in breach of any dealing, and will not otherwise be liable as a result of any force majeure event, including but not limited to any loss and/or damage by flood, engulfment, fire, storm, tempest, lightning, explosion, theft, accident, malice, war, terrorism, mobilisation, riot, embargo, and/or civil commotion whether caused by an act or omission of the Customer, or any other person, act of God or other force majeure event.

16. Exclusions

16.1. To the extent permissible at law (including, but not limited to under the CCA), and without purporting to limit the obligations thereunder:

16.1.1. if Lyndons publishes materials about its Products and prices, any part which is incompatible with these Trading Terms is expressly excluded;

16.1.2. the Customer agrees and acknowledges that it will rely on its own knowledge and expertise in choosing any Product for any purpose, and does not rely on any advice, information or assistance given for or on behalf of Lyndons, for any reason; and

16.1.3. the order and/or supply of Products is the responsibility of the Customer alone, and is at the Customer's risk. Lyndons is not deemed to have given any advice and/or made any representation in respect of the sale and/or supply of the Products.

16.2. Except as expressly provided to the contrary in these Trading Terms, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied and all liabilities, statutory or otherwise, relating to the manufacture, hire, use or supply of the Products and/or the Customer's obligations under these Trading Terms are expressly excluded and Lyndons will not be liable for any claim for direct, indirect and/or consequential loss or damage arising out of or contributed to by the manufacture, hire, use, supply, storage (or otherwise) of the Products.

16.3. Except as expressly provided to the contrary in these Trading Terms, Lyndons is not bound by any warranty, and the Customer agrees not to make claim against Lyndons in relation to any warranty, in respect of the Products ordered and/or supplied.

17. Certification

17.1. A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer.

18. Notification of Change of Details

18.1. The Customer will provide written notice to Lyndons of any change in the Customer's structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.

19. Continuing Guarantee

19.1. All guarantees under or related to these Trading Terms will be continuing guarantees and will terminate only with Lyndons' written agreement.

20. Set-Off

20.1. Lyndons may at any time set-off amounts owed by Lyndons to the Customer against amounts owed by the Customer to Lyndons.

21. Property

21.1. Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to Lyndons in full. Risk in the Products passes to the Customer at the time of delivery.

- 21.2. The Customer holds the Products as fiduciary bailee and agent for Lyndons and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Lyndons until payment of all moneys owed by the Customer to Lyndons. If an Event of Default occurs, then without prejudice to Lyndons' other rights, Lyndons may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
- 21.3. If the Customer sells any of the Products supplied while money is owed to Lyndons, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- 21.4. If the Products are resold, or goods and/or services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Lyndons. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to Lyndons at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without Lyndons' prior written consent.
- 21.5. If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for Lyndons. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Lyndons and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.

22. Personal Property Securities Act (Cth) 2009 ("PPSA")

- 22.1. "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.
- 22.2. In consideration of Lyndons supplying the Products to the Customer at the request of the Customer, the Customer by signing these Trading Terms:
 - 22.2.1. grants to Lyndons a "Purchase Money Security Interest" ("PMSI") in all Products supplied by Lyndons to the Customer from time to time as security for payment of the purchase price of the Products;
 - 22.2.2. grants to Lyndons a "Security Interest" ("SI") in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) from time to time as security for payment of any amount owed by the Customer to Lyndons and as security for the performance by the Customer of the obligations set out in the Credit Terms and/or these Trading Terms;
 - 22.2.3. agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Trading Terms will come into existence subject to the PMSI and SI granted herein and these Trading Terms without the need for any further action or agreement by any party;
 - 22.2.4. acknowledges that the Customer has received valuable consideration from Lyndons and agrees that it is sufficient; and
 - 22.2.5. agrees that the PMSI and SI has attached to all Products supplied now or in the future by Lyndons to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- 22.3. Lyndons reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Trading Terms.
- 22.4. The costs of registering a financing statement or a financing change statement can be charged to the Customer by Lyndons at Lyndons' complete discretion, and may, where applicable, be charged to the customer's account with Lyndons.
- 22.5. The Customer must promptly, on request by Lyndons, execute all documents and do anything else reasonably required by Lyndons to ensure that the PMSI and SI created under these Trading Terms constitutes a perfected security interest.
- 22.6. The Customer must not agree to allow any person to register a financing statement over any of the Products in which Lyndons has any PMSI and/or SI without the prior written consent of Lyndons and will immediately notify Lyndons if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
- 22.7. The Customer must not allow the Products to become accessions or commingled with other goods unless Lyndons has first perfected any PMSI or SI that Lyndons has in relation to the Products.
- 22.8. If Lyndons perfects any PMSI and/or SI that Lyndons has in relation to the Products, the Customer must not do anything that results in Lyndons having less than the security or priority granted by the PPSA that Lyndons assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.

22.9 The Customer irrevocably grants to Lyndons the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Lyndons has cause to exercise any of Lyndons' rights under Chapter 4 of the PPSA, and the Customer will indemnify Lyndons for any claims made by any third party as a result of such exercise.

22.10 The Customer acknowledges and agrees that: -

22.10.1 nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Trading Terms; and

22.10.2 the Security Agreement created by these Trading Terms may only be reinstated on the terms considered appropriate by Lyndons at its complete discretion.

22.11 The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Trading Terms, and the Customer waives its right to: -

22.11.1 not have goods damaged or be inconvenienced any more than necessarily incidental if Lyndons removes an accession under s.92 PPSA;

22.11.2 to receive notice of any intention to remove an accession under s.95(1)(a);

22.11.3 to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to Lyndons for the retention of the accession under s.97 PPSA;

22.11.4 to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;

22.11.5 to receive notice of the enforcement of liquid assets under s.121(4) PPSA;

22.11.6 to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;

22.11.7 to receive a Statement of Account if no disposal under s.132(4) PPSA;

22.11.8 to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and

22.11.9 to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Trading Terms under s.157 PPSA.

23. Effect of Other Terms

23.1. These Trading Terms are supplemented by the Credit Terms on Lyndons' website at www.lyndons.com.au from time to time and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and Lyndons.

24. Expenses:

24.1. The Customer must pay to Lyndons any costs, charges, and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by Lyndons in connection with the entry into these Trading Terms, the exercise or attempted exercise of any power, right or remedy under these Trading Terms and/or the failure of the Customer to comply with these Trading Terms.

25. Service of Notices and Documents

25.1. All notices or documents required to be given to Lyndons for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by Lyndons to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by Lyndons to the Customer by pre-paid ordinary post to any one of the following addresses: -

25.1.1. the last address for the Customer known to Lyndons.

25.1.2. if the Customer is a Company, the registered office or principal place of business; or

25.1.3. if the Customer trades under a registered business name, any address contained on a current business extract for that business name.

26. Application of Moneys Received

26.1. If Lyndons receives or recovers money in respect of a debt of the Customer, Lyndons may use the money to pay off whichever debt or part of a debt Lyndons chooses and is not compelled to apply the money as directed by the Customer or any other person.

27. Indemnity

27.1. The Customer will indemnify Lyndons (including, but not limited to, its employees, directors, contractors and/or agents) in relation to any direct or indirect loss, liability, costs (including legal costs on a full indemnity basis), expenses or damage suffered by Lyndons or any other person as a result of the Customer's negligence

or breach of these Trading Terms, and arising from any claim, demand, suit, action or proceeding against Lyndons (or its employees, directors, contractors and/or agents) arising out of or in connection with any breach of these Trading Terms and/or use of the Products.

27.2. Each indemnity is a continuing obligation, separate and independent from any other obligations of the Customer and survives termination, completion and expiration of any order, agreement, or arrangement between the Customer and Lyndons.

28. Trusts

28.1. These Trading Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.

29. Joint and Several

29.1. If the Customer consists of more than one person, the obligations of each person are joint and several.

30. Severance

30.1. Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

31. No Merger

31.1. Termination of any order, agreement, or arrangement between Lyndons and the Customer will not cause the cessation of the application of these Trading Terms and/or any Credit Terms. All obligations capable of surviving any termination will continue to apply.

32. Waiver

32.1. Any waiver by Lyndons must be in writing signed by Lyndons. In the event that Lyndons elects not to exercise any of Lyndons' rights arising in connection with these Trading Terms, Lyndons' election will not constitute a waiver of any rights relating to any other breach of these Trading Terms.

33. Amendments

33.1. These Trading Terms may only be amended with Lyndons' express written agreement.

34. Assignment

34.1. The Customer may not assign any agreement under these Trading Terms without Lyndons' prior written consent.

35. Application of Laws

35.1. These Trading Terms are governed by the laws of the state as determined by Lyndons in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by Lyndons in its sole discretion) having jurisdiction over these Trading Terms.

36. Definitions & interpretation In these Trading Terms unless the context requires otherwise:

36.1. **"Credit Terms"** means the General Credit Terms annexed to the Application for a Commercial Trading Account, as amended from time to time.

36.2. **"Credit-related information"** includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.

36.3. **"Customer"** means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities, or (if no Application for Commercial Trading Account has been completed) any person or entity who places an order for and/or receives Products supplied by Lyndons.

36.4. **"Event of Default"** means any of the following events:

- (i) the Customer fails to pay for any Products and Services in accordance with the Credit Terms and/or these Trading Terms, and/or the Customer otherwise breaches the Credit Terms and/or these Trading Terms;

- (ii) if the Customer is in breach of any obligations under the Credit Terms and/or these Trading Terms and/or any other agreement between the Customer and Lyndons.
- (iii) the Customer ceases or threatens to cease carrying on business; or
- (iv) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer goes into liquidation, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs.

36.5. **"Officer"** means each director, secretary, credit manager and authorised representative of Lyndons.

36.6. **"Privacy Act"** means the *Privacy Act 1988 (Cth)* as amended from time to time.

36.7. **"Products"** includes all Products and Services supplied by Lyndons to the Customer.

36.8. **"Trading Terms"** means these Terms and Conditions of Trade.

37. Interpretation

37.1. In these Trading Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.

37.2. No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.