

Terms and Conditions

1.0 Definitions

1.1 In these Terms:

- (a) "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act* 2010 (Cth) and its associated Regulations as amended;
- (b) "Agreement" means the agreement for the provision of Goods and/or Services by the Supplier to the Customer resulting from the Customer accepting these Terms;
- (c) "Customer" means the applicant in the attached application for Credit and if more than one party means those applicants jointly and severally;
- (d) "Goods" means any goods supplied by the Supplier to the Customer;
- (e) "GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) and its associated Regulations as amended;
- (f) "PPSA" means the *Personal Property Securities Act* 2009 (Cth) and its associated Regulations as amended;
- (g) "Services" means services supplied by the Supplier to the Customer;
- (h) "Supplier" means Lindsay Australia Limited ABN 81 061 642 733 and its branches, Lindsay Rural Pty Ltd ACN 090 821 300 (if the Customer opens a rural supply account) and/or Lindsay Transport Pty Ltd ACN 055 792 919 (if the Customer opens a transport account) and/or Lindsay Fresh Logistics ACN 600 103 242 as the case may be (depending on which account/s is opened now or in the future) including any "related entity" as that term is defined in the *Corporations Act 2001*; and
- (i) "Terms" means these Terms and Conditions.

2.0 Terms

2.1 Any quotation provided by the Supplier to the Customer for the proposed supply of Goods or Services is:

- (a) valid for 30 days; and
- (b) only valid if in writing.

2.2 The Supplier's quotation may include additional terms provided they are not inconsistent with these Terms.

2.3 An Agreement results from the acceptance by the Supplier, in writing or electronic means, of an application from the Customer or the Supplier provides the Customer with the Goods or Services.

2.4 The Supplier has discretion to refuse to accept any application.

2.5 The granting of credit terms for new or existing accounts is entirely at the discretion of the Supplier and the Supplier may withdraw or vary credit terms at any time with 7 days written notice.

2.6 The Supplier may vary or amend these Terms by 7 days written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date. If the Customer does not agree with the amendments, they must notify the Supplier within 14 days and the Agreement and the credit terms comprised in the application will be immediately cancelled.

2.7 If the Customer is or becomes a trustee for a trust ("the Trust") during the currency of the Agreement, then the following covenants shall have effect:

- (a) the Customer shall be liable for the performance of all covenants and obligations contained in or implied by these Terms and nothing contained in these Terms shall restrict or negative such personal liability;
- (b) the Customer has full complete and valid authority pursuant to the Trust to enter into this Agreement and to grant security over any Trust property to which these Terms extend;
- (c) the Customer hereby charges the performance of the obligations of the Customer under this Agreement with all rights of indemnity which the Customer has or will have from time to time against the Trust fund or Trust property and the interest of the Customer as trustee in the Trust fund or Trust property arising from such rights of indemnity and that the Customer will not release or otherwise prejudice such rights of indemnity;
- (e) the Customer as trustee or trustees of the Trust shall not be altered (save upon the death of a trustee) without the prior written consent of the Supplier;
- (f) none of the following powers shall be exercised by the Customer as trustee or any other person in relation to the Trust without the prior written consent of the Supplier:
 - (i) any power to alter or vary the trustee or trustees of the Trust whether by resignation removal appointment or otherwise;
 - (ii) any power to advance or distribute capital;
 - (iii) any power to vary the terms of the Trust;
 - (iv) any power to resettle the Trust property to which this Agreement or any equitable charge in this Agreement extends;
 - (v) any power to add any beneficiaries or class of beneficiaries to the Trust;
- (g) any breach of Trust by the Customer as trustee shall entitle the Supplier to exercise all such rights and remedies upon default as are contained in this Agreement;
- (h) all persons of full capacity whose consent or covenants would be necessary to ensure the effectiveness of the covenants of this clause are parties to this Agreement.

3.0 Pricing

3.1 Prices quoted for the supply of Goods and Services include GST and any other taxes or duties imposed on or in relation to the Goods and Services.

3.2 If the Customer requests any variation to the Agreement, the Supplier may increase the price to account for the variation with 48 hours' written notice to the Customer.

3.3 Where there is any change in the costs incurred by the Supplier in relation to Goods or Services, the Supplier may vary its price to take account of any such change, with 48 hours' notice to the Customer.

4.0 Payment

4.1 Unless otherwise agreed in writing:

- (a) Subject to 4.1(b), the price inclusive of GST for any Goods or Services supplied to the Customer will be debited to the account of the Customer on the date of supply. Full payment for the Goods or Services must be made within 30 days of that date or such other date as is agreed in writing.
- (b) the Supplier reserves the right to require payment in full on or before delivery of the Goods or completion of the Services and in such case, cleared funds must be received and verified by the Supplier prior to the Goods or Services being provided.

4.2 Payment terms may be revoked or amended by the Supplier upon giving the Customer 48 hours written notice. If the Customer disagrees with the amended payment terms, they must notify the Supplier within 48 hours of receiving the notice and this Agreement and the credit terms comprised in the application will be immediately closed.

4.3 The Supplier may set off against any amounts due by the Supplier to the Customer against any amounts due by the Customer to the Supplier under this Agreement.

5.0 Default

5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money owed by the Customer to the Supplier, will at the discretion of the Supplier, become immediately due and payable and the Supplier may:

- (a) reverse the amount of any discounts allowed;
- (b) charge the Customer interest on any amount due and unpaid at the rate of 10% per annum, payable from the due date until the date of payment in full;
- (c) charge the Customer for all costs and expenses (including without limitation all legal costs and expenses) incurred by the Supplier resulting from the default or in taking action to enforce compliance with the Agreement (including any mercantile agent fees) or to recover any Goods;
- (d) cease or suspend supply of any further Goods or Services to the Customer;
- (e) by 48 hours' written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 All money which is or may become payable by the Customer to the Supplier on any account, may at the discretion of the Supplier, become immediately due and payable and the Supplier immediately cancel or suspend the Agreement and the credit terms comprised in the application:

- (a) where the Customer breaches any provision of these Terms other than as applies to clause 5.1;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors (other than as specified in the amendments to the *Corporations Act 2001* (Cth) enacted by Part 2 of the *Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth)); or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- (d) where a Customer has an account with another branch of the Supplier or a related party (as that term is defined in the *Corporations Act 2001*) of the Customer has an account with the Supplier and the Customer breaches the terms of the other branch Agreement or the related party breaches the terms of its Agreement with the Supplier.

6.0 Title

6.1 The Supplier and the Customer agree that ownership of the Goods and Services shall not pass until:

- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
- (b) the Customer has met all of its other obligations to the Supplier.

6.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 6.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request and the remainder of this clause 6.3 shall apply;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods and Services on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods and Services being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other Goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier;
- (g) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred; and
- (h) the Supplier may commence proceedings to recover the price of the Goods and Services sold notwithstanding that ownership of the Goods and Services has not passed to the Customer.

7 Security and Charge

7.1 In consideration of the Supplier agreeing to supply the Goods to the Customer or perform the Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or personal assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions including, but not limited to, the payment of any money.

7.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause 7.

7.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 7 including, but not limited to, signing any document on the Customer's behalf.

8 Personal Property Securities Act

8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.

8.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;
- (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

8.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

8.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 The Customer must unconditionally ratify any actions taken by the Supplier pursuant to this clause 8.

8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

9 Risk and Insurance

9.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being delivered to the Customer or taken from the Supplier's premises.

9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods (provided that full payment has not been made for the Goods by the Customer to the Supplier). To the extent that it is possible, the Supplier will make further enquires in relation to the Goods that are damaged or destroyed before requesting insurance proceeds from the Customer's insurer. These Terms may be produced as sufficient evidence that the Supplier is entitled to receive insurance proceeds

9.3 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, installation or possession of any of the Goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

10 Delivery

10.1 Any period or date for delivery of Goods or provision of Services stated by the Supplier is an estimate only and not a contractual commitment.

10.2 The Supplier will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or performance of the Services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10.3 If the Supplier cannot complete the Services or deliver the Goods by any estimated date, it will complete the Services or deliver the Goods within a reasonable time.

10.4 Delivery of the Goods shall take place, unless agreed in writing by the Supplier, when:

- (a) the Customer takes possession of the Goods at the Supplier's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

10.5 The costs of delivery are in addition to the stated price.

10.6 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.

10.7 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.

10.8 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms.

10.9 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

- (a) such discrepancy in quantity shall not exceed five percent (5%);

- (b) the price shall be adjusted pro rata to the discrepancy.
- 10.10** The Supplier shall not be liable for freight costs on any Goods returned to it by the Customer where a Return Authorisation Number (RA No.) has not been arranged with the Supplier prior to return.
- 10.11** The Supplier is not responsible to the Customer or for any loss or damage to Goods during transit caused by any event of any kind by any person (whether or not the Supplier is legally responsible for the person who caused or contributed to that loss or damage), except where the Customer is a consumer and the Supplier has not used due care and skill. The Supplier may provide the Customer with such assistance as may be necessary to press claims on carriers provided that the Customer:
 - (a) has notified the Supplier and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - (b) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

11 Liability

- 11.1** Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms (Non-Excluded Guarantees).
- 11.2** The Supplier acknowledges that nothing in these Terms purports to modify or exclude the Non- Excluded Guarantees.
- 11.3** Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.4** If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.5** If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.
- 11.6** If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.7** Notwithstanding clauses 11.1 to 11.6 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 11.8** The Supplier 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, except to the extent of any liability imposed by the ACL.
- 11.9** The Customer acknowledges that:
 - (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or Services or their use or application.
 - (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the Goods or Services and it has the sole responsibility of satisfying itself that the Goods or Services are suitable for the use of the Customer.

12 Cancellation

- 12.1** The following shall apply in relation to the cancellation of orders for Goods or Services:
 - (a) orders placed with the Supplier by the Customer for Goods shall not be cancelled without prior written approval of the Supplier;
 - (b) a request for cancellation will not be considered unless made in writing by the Customer to the Supplier and received by the Supplier within a reasonable time prior to the scheduled delivery date of Goods or performance of Services (reasonableness will be at the discretion of the Supplier);
 - (c) Goods that are Special Make-Up Orders and Custom Product Orders may not be cancelled, unless authorised in writing by the Supplier; and
 - (d) In the event that the Supplier accepts the cancellation of an order for Goods or Services, the Supplier shall be entitled to charge (and may charge) any reasonable fees for the cost of work and materials and/or any administration costs incurred by the Supplier in preparing the order or preparing to perform the Services.

13 Shortages, Exchanges and Other Claims

- 13.1** Unless otherwise provided by this clause, the Supplier will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies the Supplier with full details and description within fourteen (14) days (time to be of the essence) of delivery and allows the Supplier a reasonable opportunity to inspect the Goods within a reasonable time after delivery, otherwise the Customer is deemed to have accepted the Goods.
- 13.2** The Supplier reserves the right to forward Goods to their suppliers for assessment and approval of any claim.
- 13.3** Subject to clause 13.4, the following rules apply in order for any Customer returns or claims in respect of Goods to be accepted:
 - (a) the return of Goods will not be accepted without prior authorisation from the Supplier or its authorised representative and for this to occur the Supplier Return Authorisation Number (RANo.) must be obtained before returning any Goods (including faulty product) by contacting the Customer Service Department of the Supplier on any number advised from

- time to time;
- (b) in the event that the Supplier authorises a return of Goods, no claim for the same shall be considered unless:
- (i) the Goods are returned in the original packaging and in good order and condition;
 - (ii) all price stickers, security devices or other non-Supplier labelling must be removed otherwise returns will not be accepted or a charge for removal will apply;
 - (iii) the Goods are accompanied by documentation showing:
 - the Customer's name, address and account number/code;
 - the respective Supplier invoice number;
 - reason for return; and
 - the Supplier Return Authorisation Number (RA No.);
 - unauthorised or unacceptable returns may be returned to the Customer at the Customer's expense;
 - customers must return Goods only by the Supplier's nominated carriers, otherwise freight will not be paid by the Supplier;
 - all returned Goods shall be subject to an inspection by the Supplier or an authorised agent of the Supplier, before any claim will be considered;
 - acceptance of the returned Goods by the Supplier shall not constitute any acceptance of any claim; and
 - the Supplier reserves the right to (and may) raise credits at the lowest invoiced prices if original invoice details are not provided.

13.4 For any other claim in relation to Goods, no claim for the same shall be considered unless the following rules are followed by the Customer:

- (a) short delivery claims (where product is short delivered within the carton/s to the invoiced quantity) must be fully documented quoting the respective Supplier invoice number and forwarded to the Supplier Customer Service Department within 14 days from the date of delivery of Goods to the Customer by the Supplier failing which all short delivery claims will not be accepted.
- (b) non delivery claims (when a full or part consignment has not been delivered to the invoiced quantity) must be fully documented quoting the respective Supplier invoice number and forwarded to the Supplier Customer Service Department within 45 days from the date of invoice.
- (c) incorrect pricing claims relating to either price, freight or administration charges, the Customer must advise the Supplier of any such claims within 45 days of the invoice date in order for these claims to be considered.
- (d) all claims will be subject to investigation before a decision is made and any rejections by the Supplier will be communicated to the Customer as soon as possible and the reasons for rejection provided.

14 General

- 14.1** The Supplier is not liable to perform its obligations under the Agreement where it is prevented from doing so by events beyond its reasonable control including industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event beyond the Supplier's reasonable control occurs, the Supplier may suspend or terminate the Agreement by 24 hours' written notice to the Customer.
- 14.2** The Customer shall give written notice to the Supplier within seven (7) days of any change of ownership or control of the Customer. The Customer hereby agrees to indemnify and keep indemnified the Supplier against any loss, damage, cost or expense incurred by the Supplier as a result of the Customer's failure to notify the Supplier of any such change of ownership and/or control. The Supplier reserves the right to vary any Customer order, hold or discount entitlements upon any change of ownership or control of the Customer.
- 14.3** A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received within 4 business days from the date of the notice. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 14.4** If any provision of these Terms is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.5** The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.
- 14.6** The Supplier may licence, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Supplier is fully discharged from its obligations to the Customer.
- 14.7** This Agreement is personal to the Customer and the Customer may not assign its interest in or obligations under the Agreement without the Supplier's written consent.
- 14.8** The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this Agreement creates binding and valid legal obligations on it.
- 14.9** The Supplier's Privacy Policy forms part of these Terms and Conditions and is available at www.lindsayaustralia.com.au

Terms of Carriage

Definitions

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"Agreement" means the contract of cartage resulting from the acceptance by the Carrier, in writing or electronic means, of an application from the Customer or the Carrier otherwise provides the Customer with the Services.

"Carrier" means Lindsay Australia Limited ABN 81 061 642 733 and its branches, Lindsay Rural Pty Ltd ACN 090 821 300 (if the Customer opens a rural supply account) and/or Lindsay Transport Pty Ltd ACN 055 792 919 (if the Customer opens a transport account) and/or Lindsay Fresh Logistics ACN 600 103 242 as the case may be (depending on which account/s is opened now or in the future) including any "related entity" as that term is defined in the *Corporations Act 2001* and includes the servants, agents and subcontractors of Lindsay Transport Pty Ltd ACN 055 792 919;

"Customer" means the applicant in the attached application for Credit and if more than one party means those parties jointly and severally;

"Goods" means Goods and any relevant container, packaging or pallets in respect of which the Carrier provides Services;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

"PPSR" means the *Personal Property Securities Register*.

"Terms" means these terms and conditions and the application form attached.

"Services" shall mean all services agreed to be undertaken by the Carrier to the Customer from time to time which may include transport services, warehousing and distribution services.

1 Terms and Conditions

1.1 Any quotation provided by the Carrier to the Customer for the proposed carriage of Goods is:

- (a) valid for 30 days;
- (b) only valid if in writing; and
- (c) must be in response to a consignment note completed and issued by the Customer.

1.2 The Carrier's quotation may include additional terms provided they are not inconsistent with these Terms.

1.3 The granting of credit terms for new or existing accounts is entirely at the discretion of the Carrier and the Carrier may withdraw or vary credit terms at any time with 7 days written notice.

1.4 The Carrier may vary or amend these Terms by 7 days written notice to the Customer at any time. Any variations or amendments will apply to carriage orders placed after the notice date. If the Customer does not agree with the amendments, they must notify the Carrier within 14 days and the Agreement and the credit terms comprised in the application will be immediately cancelled.

1.5 Prices quoted for the supply of Services includes GST and any other taxes or duties imposed on or in relation to the Services.

1.6 If the Customer requests any variation to the Agreement, the Carrier may increase the price to account for the variation with 48 hours' written notice to the Customer.

1.7 Unless otherwise agreed in writing, the Customer shall be liable to pay freight to the Carrier as soon as the Goods are loaded and dispatched and will not be subject to refund otherwise than in accordance with these Terms. Payment terms may be revoked or amended by the Carrier upon giving the Customer 48 hours written notice. If the Customer disagrees with the amended payment terms, they must notify the Carrier within 48 hours of receiving the notice and this Agreement and the credit terms comprised in the application will be immediately closed.

1.8 The Carrier may set off against any amounts due by the Carrier to the Customer against any amounts due by the Customer to the Carrier under this Agreement.

1.9 If the Customer is or becomes a trustee for a trust ("the Trust") during the currency of the Agreement, then the following covenants shall have effect:

- (a) the Customer shall be liable for the performance of all covenants and obligations contained in or implied by these Terms and nothing contained in these Terms shall restrict or negative such personal liability;
- (b) the Customer has full complete and valid authority pursuant to the Trust to enter into this Agreement and to grant security over any Trust property to which these Terms extend;
- (c) the Customer hereby charges the performance of the obligations of the Customer under this Agreement with all rights of indemnity which the Customer has or will have from time to time against the Trust fund or Trust property and the interest of the Customer as trustee in the Trust fund or Trust property arising from such rights of indemnity and that the Customer will not release or otherwise prejudice such rights of indemnity;
- (e) the Customer as trustee or trustees of the Trust shall not be altered (save upon the death of a trustee) without the prior written consent of the Carrier;
- (f) none of the following powers shall be exercised by the Customer as trustee or any other person in relation to the Trust without the prior written consent of the Carrier:
 - (i) any power to alter or vary the trustee or trustees of the Trust whether by resignation removal appointment or otherwise;
 - (ii) any power to advance or distribute capital;
 - (iii) any power to vary the terms of the Trust;
 - (iv) any power to resettle the Trust property to which this Agreement or any equitable charge in this Agreement extends;
 - (v) any power to add any beneficiaries or class of beneficiaries to the Trust;
- (g) any breach of Trust by the Customer as trustee shall entitle the Carrier to exercise all such rights and remedies upon default as are contained in this Agreement;
- (h) all persons of full capacity whose consent or covenants would be necessary to ensure the effectiveness of the covenants of this clause are parties to this Agreement.

2 Carrier Not a Common Carrier

2.1 The Carrier is not a common carrier and will not accept liability as such. The Carrier reserves the right to accept or refuse the

carriage, transport, storage or custody of any Goods for any person or entity, at its discretion, without giving any reason for so doing.

3 Cancellation

3.1 The following shall apply in relation to the cancellation of orders for Goods or Services:

- (a) orders placed with the Carrier by the Customer for Goods shall not be cancelled without prior written approval of the Carrier;
- (b) a request for cancellation will not be considered unless made in writing by the Customer to the Carrier and received by the Carrier within a reasonable time prior to the scheduled date for performance of Services (reasonableness will be at the discretion of the Carrier);
- (c) Goods that are Special Make-Up Orders and Custom Product Orders may not be cancelled, unless authorised in writing by the Carrier; and
- (d) In the event that the Carrier accepts the cancellation of an order for Services, the Carrier shall be entitled to charge (and may charge) any reasonable fees for the cost of work and materials and/or any administration costs incurred by the Carrier in preparing the order or preparing to perform the Services.

4 Compliance

- 4.1 All Goods are carried or transported, and all storage or custody and other Services are performed by the Carrier subject to these Terms.
- 4.2 The Customer has complied with all applicable laws (including where necessary the Australian Code for the Transport of Dangerous Goods by Road and Rail, Air Navigation Orders Pt 33 and the International Maritime Dangerous Goods Code), or the Heavy Vehicle National Law including the Chain of Responsibility relating to the notification, description (on the consignment note or separately) consigning and packaging of the Goods and the expenses and charges of the Carrier in complying with any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Customer. Additional charges shall be paid on such Goods if deemed necessary by the Carrier.
- 4.3 The Customer warrants that it has fully and adequately described the Goods on the consignment note.
- 4.4 The Carrier is entitled to open any document wrapping package or other container in which the Goods are placed or carried to inspect the Goods to determine either their nature or condition or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.

5 Limitation of Liability

- 5.1 The liability of the Carrier to the Customer or the owner or to any other person shall be limited in accordance with these Terms in respect of the Goods or any part of the Goods.
- 5.2 Without restricting the generality of clause 5.1, the maximum liability of the Carrier whether in contract, tort or otherwise shall be limited to the direct resupply of equivalent services, or full value of the invoice. In no circumstances does the Carrier accept liability for indirect or consequential loss, including but not limited to loss of revenue, loss of profit, loss of production, loss of data, loss of contracts, loss of business, damage to reputation or loss of goodwill and any other loss not reasonably considered to arise naturally, in the ordinary course of things, from the relevant breach, act or omission.
- 5.3 The limitation of liability in clause 5.2 shall apply irrespective of the manner in which or the time at which or the place at which or the reason whereby any such loss, mis-delivery, damage or injury or delay may have occurred notwithstanding that the same may have been due or occasioned by, or may have arisen as a result of or as incidental to any negligence, act or omission by the Carrier, and includes the following circumstances:
 - (a) any loss or non-delivery or mis-delivery of the Goods or any part of the Goods; or
 - (b) any damage or injury to or any delay in the delivery of the Goods or part of the Goods; or
 - (c) any damage directly or indirectly caused by or which may arise out of any such loss, non-delivery, mis-delivery, incorrect description, damage, injury or delay; or
 - (d) any damage including deterioration of chilled, frozen, refrigerated or perishable Goods.
 - (e) any damage, loss or injury arising after transit has ceased.
- 5.4 The description, quantity and value of the Goods shown in the consignment note or the quotation relating to the Goods (as the case may be) were represented to the Carrier by the Customer and the Carrier does not admit to the accuracy of that information and shall require, in the case of any claim, proof of the information provided in relation to the Goods. The Customer or other party who may claim against the Carrier, shall be responsible to provide that evidence.
- 5.5 The limitation of liability in this clause 5 extends to include not only loss of or damage to itemised Goods but also to loss, damage or injury to any person, property or thing damaged during the carriage of the Goods and to include any loss consequentially or otherwise arising from any loss damage or injury howsoever caused including but not limited to any negligence or breach by the Carrier.
- 5.6 When the Carrier is, without prior arrangement with the Customer, called upon to load or unload Goods requiring special appliances for loading or unloading the Carrier will provide reasonable assistance to the Customer however the Carrier makes no warranty to the Customer, and shall be under no liability whatsoever to the Customer or other owner of the Goods for any damage, however caused, arising out of such loading or unloading and the Customer's indemnity shall apply in relation to all claims and demands whatsoever in connection with such loading and unloading Services.

6 Rights of Indemnity

- 6.1 The Customer shall indemnify the Carrier against all consequences, loss, damage or injury arising out of any fraud, error, act, omission, misstatement, breach of any applicable law or regulation or misrepresentation by the Customer or other owner of the Goods and against the consequences of insufficient or improper packaging, labelling or addressing of the Goods and including:
 - (a) all claims and demands whatsoever by whoever made in excess of the liability of the Carrier under these Terms.
 - (b) all losses or damage suffered by and claims made against the Carrier caused by or arising out of the carriage by the Carrier of dangerous Goods whether or not declared by the Customer as dangerous Goods.
 - (c) all customs and/or excise duties, costs, fines or penalties which the Carrier becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations.
- 6.2 The Carrier shall indemnify the Customer against all losses, claims, of demands whatsoever arising directly from the

Carrier's fraud or wilful default.

6.3 The parties each acknowledge and agree to use reasonable endeavours to mitigate and limit its loss or damage.

7 Authority of Customer

7.1 It is agreed that the person delivering any Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Customer.

7.2 The Customer expressly warrants with the Carrier that the Customer is either the owner or the authorised agent of the owner of any Goods or property the subject of the Agreement under these Terms and by entering into this Agreement the Customer accepts these Terms for the consignee as well as for all other persons on whose behalf the Customer is acting.

8 Dangerous or Damaging Goods

8.1 The Customer or its authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous or damaging Goods whatsoever without presenting a full description of those Goods and in default of so doing shall be liable for all loss and damage caused.

9 Containers

9.1 These Terms shall apply to the container or containers or other packaging containing the Goods and to any pallet or pallets delivered with the Goods to the Carrier. The Customer shall be responsible for the conformity of such containers packaging and pallets with any requirements of the consignee and for any expenses incurred by the Carrier arising from any failure so to conform.

10 Charges

10.1 Where there are special instructions by the Customer to the effect that charges shall be paid by a third party other than the Customer, and that third party does not pay the said charges within seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of provision of the Services, then the Customer shall be obliged to pay the said charges within the provisions contained in these Terms.

11 Additional Freight Charge

11.1 Subject to these Terms, the Carrier may charge for provision of the Services by weight, measurement or value, and if reasonably required at any time, re-weigh, re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional or less freight charges accordingly. If there is a material increase to the charges arising under this clause, the Carrier will promptly or as soon as practicable (including if possible prior to the completion of the Services), notify the Customer of the reason for the change and the revised charges allowing the Customer to amend its instructions to the Carrier accordingly.

12 Delay in Delivery

12.1 Should the Customer or the other party named in the consignment note ("the consignee") not be in attendance during normal trading hours or at the time specified, or if the Carrier arrives to effect delivery at the consignee's premises and is delayed in effecting prompt delivery at the premises for any reason whatsoever outside the Carrier's control, then the Carrier reserves the right to make an additional charge for every call made or for the amount of time of any delay until delivery is affected.

13 Method of Carrying Goods

13.1 If the Customer instructs the Carrier to carry the Goods by road, rail, sea or air the Carrier will give priority to the method designated, but if that method is not available or would cause undue delay, inconvenience or give rise to potential loss, the Customer agrees and authorises the Carrier to carry or have the Goods carried by alternate method or methods, and these terms and conditions shall apply equally regardless of the method adopted.

14 Carriage by Independent Contractor or Subcontractor

14.1 The Customer authorises the Carrier to arrange with any other person, firm or company (the 'Subcontractor') to undertake the carriage of Goods contracted for under these Terms in any such arrangement.

14.2 The Carrier shall be liable for the Subcontractor under pursuant to these Terms which shall apply to the same extent as if the Carrier were performing the Services and had not delegated the Services to the Subcontractor.

15 Lien

15.1 The Goods are accepted for provision of the Services subject to a general lien for all charges now due or which may become due to the Carrier by the Customer on any account.

15.2 If the Customer fails to pay charges due to the Carrier in respect of the Services on reasonable demand being made in accordance with these Terms, the Carrier may detain and sell all or any of the Goods of the Customer that are in the Carrier's possession and out of the money arising from the sale retain the charges outstanding together with all charges and expenses of the detention and sale (including legal fees if any). The surplus (if any) of the moneys arising from the sale of and those Goods as remain unsold will be made available to the Customer. Any such sale shall not prejudice or affect the right of the Carrier to recover from the Customer any such charges due or payable in respect of the Services or the detention and sale of the Goods.

15.3 From the time the Carrier, or its servants or agents, receive the Goods into its custody, the Goods and all of the Customer's present and future rights in relation to the Goods and any documents relating to those Goods, are subject to a continuing security interest in favour of the Carrier for the payment of all the amounts owed for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any at all debts, charges, expenses or any other sums due and owing by the Customer to the Carrier. Further, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction and legal and administration costs.

16 Default

16.1 Subject to the provisions of clause 15, if the Customer defaults in payment by the due date of any amount payable to the Carrier, then all money owed by the Customer to the Carrier, will at the discretion of the Carrier, become immediately due and payable and the Carrier may:

- (a) reverse the amount of any discounts allowed;
- (b) charge the Customer interest on any amount due and unpaid at the rate of 10% per annum, payable from the due date until the date of payment in full;
- (c) charge the Customer for all costs and expenses (including without limitation all legal costs and expenses) incurred by the Carrier resulting from the default or in taking action to enforce compliance with the Agreement (including any mercantile agent fees);
- (d) cease or suspend supply of any further Services to the Customer;

- (e) by 48 hours' written notice to the Customer, terminate any uncompleted contract with the Customer.
- 16.2 All money which is or may become payable by the Customer to the Carrier on any account, may at the discretion of the Carrier, become immediately due and payable and the Carrier immediately cancel or suspend the Agreement and the credit terms comprised in the application:
- (a) where the Customer breaches any provision of these Terms other than as applies to clause 16.1;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors (other than as specified in the amendments to the *Corporations Act 2001* (Cth) enacted by Part 2 of the *Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth)); or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
 - (d) where a Customer has an account with another branch of the Carrier or a related party (as that term is defined in the *Corporations Act 2001*) of the Customer has an account with the Carrier and the Customer breaches the terms of the other branch Agreement or the related party breaches the terms of its Agreement with the Carrier.

17 Risk and Insurance

17.1 Insurance of Goods will not be affected for the benefit of the Customer.

17.2 The risk in the Goods and all insurance responsibility for theft or otherwise will pass to the Customer immediately on the Services being completed.

18 Authorisation of Carrier

18.1 The Customer authorises the Carrier (if the Carrier should think fit to do so) to contract either in the Carrier's name as principal or as agent for the carriage of the Goods, or for leasing or using any container in which the Goods may be placed or packed and to give any receipt for the Goods or any container whether subject to any terms and conditions or not. Any such contract will be made upon the terms and subject to the conditions of any bill of lading or other forms or terms or contract for carriage whether by sea, rail, road or air or of any lease agreement, equipment hand- over agreement, interchange receipt of any other document as the case may require.

19 Security and Charge

19.1 In consideration of the Carrier agreeing to perform the Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or personal assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms including, but not limited to, the payment of any money.

19.2 The Customer irrevocably appoints the Carrier and each director of the Carrier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Customer's behalf.

20 Personal Property Securities Act

20.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

20.2 Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that are the subject of the performance of the Services or will be the subject of the Services in the future.

20.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Carrier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Carrier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Carrier;
- (e) immediately advise the Carrier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

20.4 The Carrier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

20.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

20.7 Unless otherwise agreed to in writing by the Carrier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

20.8 The Customer must unconditionally ratify any actions taken by the Carrier pursuant to this clause 20.

20.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

21 Consigned Goods Policy

21.1 The Customer must comply with the following Consigned Goods Policy in respect of all consigned Goods:

- (a) all consigned Goods must be packed in appropriate packaging to ensure they arrive at the destination in the same condition they were presented to the Carrier.
- (b) all consigned Goods must be clearly marked with, type of product, sender and receivers details, the Customer's pallet, batch or carton identification numbers.

- (c) all consigned Goods and pallets must be in sound condition and free from dirt, wood, nails, vermin and any contamination.
- (d) all consigned Goods must be stabilised and appropriately secured and fit for road transport.
- (e) consigned Goods that are sensitive to temperature must be presented at the correct transit temperature for that product.
- (f) consigned Goods that are sensitive to temperature and are to be collected and pre-cooled on behalf of the sender, the Carrier must be notified with enough lead time prior to pick-up to enable the correct temperature to be obtained prior to dispatch. All consigned Goods must be ready for transport prior to the pick-up cut-off times for the destination.
- (g) all relevant paperwork including the Carrier's consignment note must be completed and ready to travel with the Goods.
- (h) all pallets must be on an exchange basis unless pallets are transferred direct from the Customer's pallet account.
- (i) all charges relating to any consigned Goods must be charged to an approved Carrier customer account.
- (j) all Carrier customer accounts must operate within the Carrier's stated credit terms.

21.2 The Carrier reserves the right to refuse to carry any consigned Goods presented outside these conditions.

21.3 The Carrier will not be held responsible for any claims for any consigned Goods presented in poor condition or outside the optimum transit temperature for that product where the Carrier is requested by the Customer to transport the Goods to meet time schedules.

22 General

22.1 The Carrier is not liable to perform its obligations under this Agreement where it is prevented from doing so by events beyond its reasonable control including industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event beyond the Carrier's reasonable control occurs, the Carrier may suspend or terminate the Agreement by 24 hours' written notice to the Customer.

22.2 The Customer shall give written notice to the Carrier within seven (7) days of any change of ownership or control of the Customer. The Customer hereby agrees to indemnify and keep indemnified the Carrier against any loss, damage, cost or expense incurred by the Carrier as a result of the Customer's failure to notify the Carrier of any such change of ownership and/or control. The Carrier reserves the right to vary any Customer order, hold or discount entitlements upon any change of ownership or control of the Customer.

22.3 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received within 4 business days from the date of the notice. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

22.4 If any provision of these Terms is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.5 The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.

22.6 The Carrier may licence, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Carrier is fully discharged from its obligations to the Customer.

22.7 This Agreement is personal to the Customer and the Customer may not assign its interest in or obligations under the Agreement without the Carrier's written consent which consent shall not be unreasonably withheld.

22.8 The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this Agreement creates binding and valid legal obligations on it.

22.9 All rights, immunities and limitations of liability in these Terms shall continue to have their full force and effect in all circumstances and notwithstanding any dispute, or breach or purported breach by any party.

22.10 The Carrier's Privacy Policy forms part of these Terms and Conditions and is available at www.lindsayaustralia.com.au