|  |
| --- |
|  APPLICATION FOR CREDIT ACCOUNT |
| **BUSINESS/S TRADING WITH** □AWF □ FLOWER HQ □ QPF □ LYNCH GROUP |

**CUSTOMER DETAILS**

|  |  |
| --- | --- |
| Registered Company Name: | ABN: |
| Trading Name: |
| Trading Address: |
| Postal Address: |
| Phone: |
| E-mail: |
| Accounts Contact: | Phone: |
| Accounts E-mail: |
| Telephone No.: |

**DIRECTOR(S)/PARTNER(S)/INDIVIDUAL(S) DETAILS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Full Name** | **Address** | **Years in Business** | **Phone No.** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**TRADE REFERENCES**

|  |  |  |  |
| --- | --- | --- | --- |
| **Business Name** | **Address** | **Years in Business** | **Phone No.** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**CREDIT TERMS**

1. General
	* 1. These Credit Terms apply to any supply of goods and/or services by the Lynch entity named in the attached application form (**Lynch**) to the Customer named in the attached application form (**Customer**) on credit.
		2. The Customer acknowledges and agrees that the terms and conditions applying to the supply of goods and/or services will be separately agreed between the parties at the time of the sale (**Purchase Terms**). The Purchase Terms are deemed to be amended by these Credit Terms to the extent required to give effect to the commercial credit arrangement between the parties.
		3. If the Customer is a trust, the Customer must give Lynch a copy of the trust deed upon request.
2. Provision of credit
	* 1. The Customer acknowledges that:
			1. by signing the Credit Application, the Customer is applying for credit from Lynch up to the authorised limit (as determined solely by Lynch);
			2. signing the Credit Application and these Credit Terms does not give the Customer any entitlement to the extension of any credit unless, in Lynch’s sole and absolute discretion, Lynch has provided written notice to the Customer:
				1. agreeing to extend credit to the Customer; and
				2. informing the Customer of the amount of credit available; and
			3. the extension of credit does not in any way derogate from, alter or limit the Customer’s obligations to make payments to Lynch in accordance with clause 3.
		2. The extension of credit by Lynch to the Customer does not in any way prevent Lynch from being able to refuse to sell or supply the goods to the Customer (including for any reason set out in the applicable Purchase Terms.
		3. In relation to goods supplied by Lynch, any claims relating to defects, quality, delivery errors, or return of goods must be resolved at time of delivery in accordance with the relevant Purchase Terms.
		4. If the Customer fails to comply with these Credit Terms or the applicable Purchase Terms, or otherwise an Insolvency Event occurs in respect of the Customer or any Guarantor, then all moneys outstanding under these Credit Terms or the applicable Purchase Terms, together with all interest accrued thereon, by the Customer on any account to Lynch, will immediately become due and payable.
3. Payment terms
	* 1. At Lynch’s sole discretion, a deposit may be required prior to any supply of goods to the Customer.
		2. The Customer must pay all amounts for each purchase, in full and with no deduction or set-off, no more than 30 days from the date the goods and/or services are supplied, unless otherwise specified in writing prior to delivery.
		3. In the event of a dispute, the complete undisputed portion of the amount owing must be paid by the Customer to Lynch in accordance with these Credit Terms.
		4. Interest on overdue amounts will accrue daily from the date when payment becomes due, until the date of payment at a rate equal to the then current cash rate set by the Reserve Bank of Australia. the Customer will be liable for, and expressly undertakes to pay, all such interest.
4. Retention of title

Notwithstanding any provision to the contrary in the Purchase Terms, the Customer agrees that property and title in any goods supplied by Lynch in connection with these Credit Terms will not pass to the Customer unless and until full payment is received by Lynch and Lynch retains the legal and equitable title in those goods until such time.

1. Security
	* 1. The Customer charges, and grants a security interest, in favour of Lynch over all its present and after-acquired property and undertaking as a security for payment of all monies owing by the Customer to Lynch.
		2. The Customer consents to Lynch effecting a registration on the Personal Property Securities Register (**PPSR**) in relation to any security interest arising under or in connection with these Credit Terms.
		3. The Customer acknowledges that each security interest over goods (or their proceeds) arising under these Credit Terms is a purchase money security interest under the PPSA to the extent that it secures payment of the amounts owing in relation to those particular goods. The security interests arising under these Credit Terms attach to the goods when the Customer obtains possession of the goods.
		4. The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement in relation to any registration event) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.
		5. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with Lynch and do any other act or thing that Lynch requires.
		6. The Customer agrees that until title in and to the goods passes to the Customer in accordance with clause 4, it holds the goods as bailee of Lynch.
		7. The Customer acknowledges that if it sells, leases or otherwise deals with the goods before title in and to the goods has passed to the Customer in accordance with these Credit Terms, it will hold the proceeds of sale or such other dealing on trust for Lynch in a separate account.
		8. The parties agree that the following provisions of the PPSA will not apply to the enforcement of a security interest arising under these Credit Terms: section 95 (notice of removal of accession), to the extent that it requires Lynch to give a notice to the Customer; subsection 121(4) (enforcement of liquid assets - notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires Lynch to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); and section 143 (reinstatement of security agreement).
2. Guarantee and Indemnity
	* 1. The Customer warrants that the following persons (as applicable) will enter into a guarantee and indemnity with Lynch as attached to these Credit Terms in relation to the Customer’s obligation to Lynch:
			1. if the Customer is a corporation, all of its directors.
			2. if the Customer is a trust, the trustee in its personal capacity; and
			3. if the Customer is a partnership, all of the partners.
		2. To the extent that the Customer is required to make a notification to Lynch under clause 9, the Customer acknowledges and agrees that Lynch may require new guarantees and indemnities to be given in connection with any such event occurring.
3. Cancellation of credit
	* 1. Lynch may withdraw the credit provided under these Credit Terms immediately by providing the Customer with written notice if the Customer defaults in any of its material obligations under these Credit Terms.
		2. Lynch may withdraw the credit provided under these Credit Terms without cause at any time by providing the Customer with reasonable prior written notice.
		3. Upon cancellation in accordance with:
			1. clause 7(a), all liabilities owing by the Customer become immediately due and payable to Lynch, or
			2. clause 7(b), all liabilities owing by the Customer become due and payable to Lynch upon expiry of the notice period.
4. Trust

If the Customer is the trustee of a trust (whether disclosed to Lynch or not), the Customer warrants to Lynch that:

* + 1. the Customer enters into these Commercial Credit Terms in both its capacity as trustee and in its personal capacity.
		2. the Customer has the right to be indemnified out of trust assets, and the trust deed does not limit the Customer’s indemnity against the trust.
		3. the Customer has the power under the trust deed to enter into, and perform its obligations under, these Commercial Credit Terms in its own right and in its capacity as trustee of the trust.
		4. the trust has sufficient assets to meet the Customer’s liabilities and indemnities incurred by under these Commercial Credit Terms.
		5. during the term of these Commercial Credit Terms and for a period of 7 years after expiry or termination, the assets of the trust will not be reduced to a level materially below that which is sufficient to meet the Customer’s liabilities and indemnities incurred by it under these Commercial Credit Terms.
		6. the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Lynch; and
		7. the Customer and each of its successors as trustee of the trust will be liable under these Commercial Credit Terms in its own right and as trustee of the trust, and nothing releases such party from any liability in its personal capacity.
1. Changes in Customer

The Customer must notify Lynch if any of the following events occur with respect to the Customer as soon as reasonably practicable and in any event, within 30 days of such event occurring:

* + 1. Change in Control.
		2. if the Customer is a corporation, a change in the board composition.
		3. if the Customer is a trustee, a change in the trustee; or
		4. if the Customer is a partnership, a change in the partner composition.
1. Costs
	* 1. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Lynch relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on these Credit Terms (if any).
		2. The Customer will pay Lynch’s costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to Lynch irrespective of whether pursuit of the recovery action, claim or remedy is successful.
		3. The Customer acknowledges and agrees that payment by the Customer will be applied by Lynch as follows:
			1. firstly, in payment of any and all collection costs and legal costs incurred in accordance with clause 5, 10(a), or 10(b);
			2. secondly, in payment of any interest incurred in accordance with clause 3(d);
			3. thirdly, in payment of the outstanding invoices.
2. Set off
	* 1. All payments required to by made by the Customer under these Credit Terms will be made free of any set off or counterclaim and without deduction of withholding.
		2. Any amount due to Lynch from time to time may be deducted from any monies which may be or may become payable to the Customer by Lynch.
3. Credit checks
	* 1. Lynch may use any information provided by the Customer in connection with these Credit Terms to undertake credit worthiness and other reference checks in respect of the Customer.
		2. Lynch collects, uses and discloses credit-related information about individuals in accordance with its credit reporting policy which is available on its website at [About Us | Lynch Group Australia](https://www.lynchgroup.com.au/investor-centre/about-us) (as amended and published on Lynch’s website from time to time) (**Credit Reporting Policy**).
		3. Without limiting Lynch’s rights under this clause 12, its Credit Reporting Policy, and at law, if Lynch considers it relevant to the purposes set out in the Credit Reporting Policy, the Customer, and each individual covered by the Credit Reporting Policy:
			1. agrees to Lynch obtaining from a credit reporting body, credit-related information about each relevant individual in relation to the application for commercial credit made to Lynch;
			2. undertakes to comply with any request by Lynch to provide further information for the purpose of assessing the Customer’s and each relevant individual’s credit worthiness, including an updated credit application; and
			3. authorises Lynch to make inquiries into the banking and business/trade references that the Customer has supplied and the Customer’s financials.
		4. Without limiting Lynch’s rights under this clause 12, its Credit Reporting Policy, and at law, if Lynch considers it relevant to the purposes set out in the Credit Reporting Policy, the Customer, and each individual covered by the Credit Reporting Policy, agrees Lynch may disclose credit-related information about the relevant individual to:
			1. guarantors or proposed guarantors; and
			2. other Australian credit providers.
		5. The person signing these Credit Terms on behalf of the Customer warrants that they have authority to enter into clauses 12(c) and 12(d) on behalf of the individuals to whom those clauses apply.
4. Statement of Notifiable Matters under the Credit Reporting Privacy Code
	* 1. Lynch’s website includes information about credit reporting, including the credit reporting bodies to which Lynch is likely to disclose the Applicant’s credit information. Specifically, the information is available at [[Contact Us | Lynch Group Australia](https://www.lynchgroup.com.au/contact-us)].
		2. A statement of notifiable matters is set out in the Credit Reporting Policy. It provides that there are several ‘notifiable matters’ that Lynch is required to disclose at or before the time of collecting personal information about an individual, which may include the Applicant, including without limitation:
			1. if the Customer commits a serious credit infringement, Lynch may disclose this to a credit reporting body.
			2. the Customer has the right to access credit information Lynch holds about it, request that Lynch correct the information, and make a complaint, as set out further in the Credit Reporting Policy; and
			3. the Customer may request a credit reporting body not to use or disclose its credit reporting information if the Customer believes on reasonable grounds that it has been, or is likely to be, the victim of fraud.
		3. The Customer may request to have a copy of the statement of notifiable matters set out in the Credit Reporting Policy provided in a reasonable alternative form. Lynch will comply with such a request within a reasonable time.
5. Miscellaneous
	* 1. This document may only be amended by written agreement between all parties.
		2. This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
		3. A clause or part of a clause of these Credit Terms that is illegal or unenforceable may be severed from these Credit Terms and the remaining clauses or parts of the clause of these Credit Terms continue in force.
		4. A party must not assign or transfer, in whole or in part, any of its rights and obligations under these Credit Terms without the prior written consent of the other party (not to be unreasonably withheld or delayed).
		5. The laws of New South Wales govern these Credit Terms and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

I/We understand and accept that if credit is granted it will be subject to the above credit terms and conditions.

|  |
| --- |
| **Signatures** |
|  |  |
| **NAME:** | **NAME:** |
| **TITLE:** | **TITLE:** |
| **DATE:** | **DATE:** |

|  |
| --- |
| **Lynch Office Use Only (Not to be completed by Customer)** |
| **Head Office (Name & Code) or Single Site** |  |
| Store Number (If a head office store): | Delivery Run: |
|  |  |
| Recommended Credit Limit: |
| Discount Structure: | Store Contact: |
| **Representative Contact** |
| Name: |
| Address: |
| City: | State: | ZIP Code: |
| **Authorised By:** |
| **Signature:** |
| Name: | Limit Authorized  |

|  |
| --- |
| **PERSONAL GUARANTEE and INDEMNITY** |

To: LYNCH GROUP AUSTRALIA PTY LTD A.B.N: 32 001 695 665 (**the Supplier**), in consideration of the Supplier supplying goods or services to the Customer and entering into the Credit Terms with the Customer, the Guarantor(s) set out below hereby guarantee and indemnify to the Supplier due and punctual payment by the Customer of all monies which are now payable or may in the future become payable by the Customer to the Supplier for goods or services or both supplied from time to time by the Supplier to the Customer, and all damages payable by the Customer to the Supplier under the Credit Terms, (the **secured moneys**).

AND it is hereby further agreed as follows:

1. The secured moneys shall include collection fees and legal costs incurred by the Supplier in connection with the default by the Customer.

2. The Supplier is at liberty without notice to the Guarantor(s) at any time and without in any way discharging us from any liability, hereunder to grant time, waiver, release, or other indulgence to the Customer and to accept from the Customer payment in cash, cheque, EFT or otherwise.

3. Nothing in this Guarantee and Indemnity is binding or conditional upon the Supplier continuing to supply goods or services or both to the Customer.

4. That the Supplier may exercise its rights under this Guarantee and Indemnity at any time and the Guarantor(s) shall pay the amount of any indebtedness of the Customer account to the date of any demand, forthwith upon receipt of a written demand, or its delivery to the last known address of each or all Guarantor(s). It shall not be a condition precedent to the issue of any such demand that the Supplier shall have exercised or exhausted its legal rights against the Customer.

5. The Guarantor(s) hereby guarantee and indemnify the Supplier against any losses or expenses whatsoever directly or indirectly arising from or by virtue of any default whatsoever on the part of the Customer with respect to the secured moneys.

6. This Guarantee and Indemnity shall not be considered wholly or partially discharged by the payment at any time hereafter of any of the secured moneys or by any settlement of account and shall apply to the present and any future balance of the secured moneys.

7. This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity to the Supplier for all debts whatsoever and wheresoever contracted with the Customer in respect of the goods or services or both supplied or to be supplied to the Customer under the Credit Terms.

8. The Guarantor(s) may revoke this Guarantee and Indemnity at any time. Such revocation shall be effective only upon its delivery to the Secretary of the Supplier at its registered address and shall become effective at the time of written acknowledgment by the Secretary of its receipt. Such notice of revocation shall only operate to discharge the Guarantor(s) from liability as to future dealing by the Customer with the Supplier after the said date of written acknowledgment.

9. That the Supplier shall be entitled at any time to assign its rights under this Guarantee and Indemnity to its successors, nominated transferees or assigns, (including but not limited to the principal contract), and further vary the Credit Terms originally attached to the Credit Application of the Customer nominated below, without notice to the Guarantor(s) and that this Guarantee and Indemnity shall not be in any way affected or discharged pursuant to such assignment or variation.

10. That the terms of this Guarantee and Indemnity are binding (if more than one) jointly on each Guarantor(s) and severally on each Guarantor(s) and shall not be affected not withstanding that one or more of the intended co-guarantor(s) have not executed this Guarantee and Indemnity or that the Guarantee and Indemnity has been held to be ineffective or unenforceable against one or more of the Guarantor(s) and Indemnifier(s)

11. That in the event that the Customer is a company, and the Guarantor(s) are not directors then the Guarantor(s) certify that they have obtained independent commercial financial & legal advice prior to signing this personal Guarantee and Indemnity.

12. CAVEATABLE INTEREST CLAUSE. In the event of default by the Customer, and the Supplier exercises its rights under this Guarantee and Indemnity then the Guarantor(s) hereby charge all their property(ies) owned/partly owned, or may be acquired in the future, solely or jointly by the Guarantor(s) in favor of the Supplier, to better secure any or all monies owing to the Supplier as of the date of the default by the Customer, with the due & punctual observances and performances of all of the obligations of the Guarantor(s) and Indemnifier(s) hereunder. The Guarantor(s) acknowledges that the Supplier will at its discretion register a caveat on such property in respect of the interest conferred on it under this clause. The Guarantor(s) further grant the Supplier the right to appoint a Receiver to sell the property(ies).

13. The Guarantor(s) agree that the Supplier collects, uses and disclosed credit-related information about individuals in accordance with its credit reporting policy which is available on its website at [About Us | Lynch Group Australia](https://www.lynchgroup.com.au/investor-centre/about-us) (**Credit Reporting Policy**). Without limiting the Supplier’s rights under this clause 14, its Credit Reporting Policy, and at law, if the Supplier considers it relevant to the purposes set out in the Credit Reporting Policy, the Guarantor(s):

(a) agrees to the Supplier seeking from a credit reporting body, a credit report containing personal information about the Guarantor(s) in relation to the application for commercial credit made by the Customer.

(b) undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Guarantor’s credit worthiness, including an updated credit application; and

(c) authorises the Supplier to make enquiries into the banking and business/trade references that the Guarantor has supplied and the Guarantor’s financials.

14. Without limiting the Supplier’s right under clause 14, its Credit Reporting Policy, and at law, if the Supplier considers it relevant to the purposes set out in the Credit Reporting Policy, the Guarantor(s) agrees the Supplier may disclose credit-related information about the Guarantor(s) to other guarantors or proposed guarantors, and other Australian credit providers.

15. The Supplier’s website includes information about credit reporting, including the credit reporting bodies to which the Supplier is likely to disclose the Guarantor(s) credit information. Specifically, the information is available at [About Us | Lynch Group Australia](https://www.lynchgroup.com.au/investor-centre/about-us). A statement of notifiable matters is set out in the Credit Reporting Policy. It provides that there are several ‘notifiable matters’ that the Supplier is required to disclose at or before the time of collecting personal information about an individual, such as the Guarantor(s) and Indemnifier(s), including without limitation:

(a) if the Guarantor(s) commit a serious credit infringement, Supplier may disclose this to a credit reporting body.

(b) the Guarantor(s) has the right to access credit information the Supplier hold about it, request that the Supplier correct the information, and make a complaint, as set out further in the Credit Reporting Policy; and

(c) the Guarantor(s) may request a credit reporting body not to use or disclose its credit reporting information if the Guarantor(s) believes on reasonable grounds that it has been, or is likely to be, the victim of fraud.

16. The Guarantor(s) agree that if the Supplier approves the Customer's application for Commercial Credit, the Supplier’s right to seek credit reports from time to time remains in force until the commercial credit facility covered by the Customer's application ceases.

17. The laws of Queensland, Australia apply to this Guarantee and Indemnity and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.

|  |
| --- |
| **This is to Certify that I/We have read, understood and accept the terms and conditions of this Personal Guarantee and indemnity and without undue pressure or unfair tactic append my/our Signature here unto. I/We acknowledge having received a copy of this said Personal Guarantee and Indemnity.** |
| **Customer NAME:** |
| Executed as a Deed This  |
| Name of Guarantor:Title of Guarantor:Date: |
| Name of Guarantor:Title of Guarantor:Date: |
| Name of Guarantor:Title of Guarantor:Date: |

[***Drafting Note:*** Each Guarantor is required to sign where a guarantee and indemnity is being provided by multiple individuals]