



# LYNCH'S WINDOW FASHIONS

## STANDARD TERMS AND CONDITIONS

These terms apply to the attached Quote. When these terms refer to "us" "we" or "our", this means Lynch's Window Fashions Pty Ltd (ABN 78 869 876 936). And "you" are you!

### 1. QUOTE, GOODS AND SERVICES

(a) These standard terms and conditions (**terms**) will apply to all your dealings with us, including being incorporated into all agreements, quotations or orders under which you receive goods or services from us (each a **Quote**).

(b) A Quote is valid for 30 days. Any Quotes accepted after the 30 day period may be subject to price increases.

(c) You will be taken to have accepted these terms if you sign them or otherwise indicate your acceptance of them, or if you order, accept or pay for any goods or services provided by us, or continue to instruct us, after receiving or becoming aware of these terms.

(d) In the event of any inconsistency between these terms and any Quote, the clauses of these terms will prevail to the extent of such inconsistency.

(e) In consideration for the payment of the fees set out in the Quote (**Fees**), we will provide you with the goods set out in the Quote (**Goods**) and install the Goods (**Services**) at the site set out in the Quote (**Site**).

(f) We shall only provide the Services as set out in the Quote. Any additional services that are not included in the Quote are expressly excluded, including but not limited to electrical works, scaffolding, structural works or access equipment.

(g) In preparing your Quote, we have relied on the information gathered from you and collected by us during our inspection of the installation space. If you provide us with measurements, we will act in reliance on those measurements.

(h) Unless otherwise agreed, you acknowledge and agree that:

(i) we will not process any order on the Goods until you have paid any deposit required by us, being 50% of the total amount set out in the Quote or as otherwise agreed in writing (Deposit); and

(ii) the balance of the total Fees is payable when we notify you that the Goods are ready for installation.

(i) You are responsible for confirming that your Quote accurately specifies (if applicable):

(i) the description, quantity and specifications of the Goods and/or Services required;

(ii) the agreed Fees;

(iii) the space in which the Goods are to be installed.

(j) You acknowledge and agree that:

(i) subject to clause 4(c), your Quote cannot be changed by you after it has been signed or otherwise accepted in accordance with clause 1(c);

(ii) by accepting a Quote, you are committing to paying the total amount payable under these terms and conditions in accordance with clause 2.

(k) We reserve the right to alter the specifications, in order to maximise, in our professional opinion, the utility and effectiveness of the Goods and we may do so without your prior approval and without an obligation of reperformance.

(l) We endeavour to ensure that the descriptions and specifications in relation to the Goods on our website, in catalogues, in swatches or otherwise provided to you are accurate. However, photographs, drawings, illustrations, weights, dimensions, fabrics and any other particulars accompanying, associated with or given in a Quote, descriptive literature or a catalogue are based on information provided by manufacturers and suppliers and, as such we do not guarantee that those descriptions and specifications are accurate or free from errors or omissions, except to the extent required by applicable law. We reserve the right to make any necessary corrections to the descriptions or specifications without notice.

(m) We endeavour to ensure that the Goods will be substantially the same as the Goods displayed on our website, catalogues, colour swatches or as otherwise agreed with you in writing prior to you placing your order. However, there may be minor variations in the Goods, including in colour and pattern, due to screen display, colour and brightness, and/or image quality and, as such we do not guarantee that Goods will exactly match the image on our website, catalogues or colour swatches.

### 2. PAYMENT TERMS

(a) (**Fees**) You must pay the Fees (including any Deposit) in the amounts and at the times set out in the Quote, by invoice or as otherwise agreed in writing.

(b) (**Time for payment**) Unless otherwise agreed, the



time for payment is as follows:

(i) First Payment: 50% of the total Fees is payable on acceptance of these terms;

(ii) Second Payment: the balance of the total Fees is payable when we notify you that the Goods are ready for installation.

(c) **(Payment method)** You must pay the Fees using the fee payment method specified in the invoice or as otherwise agreed in writing.

(d) **(Service variations)** We reserve the right to vary the Fees in a Quote if additional work is required to provide or install the Goods.

(e) **(Card surcharges)** We reserve the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

(f) **(Failure to Pay)** If you do not pay an amount due under this agreement on or before the date that it is due:

(i) interest will accrue on the unpaid amount at a rate of 10% per month calculated on a daily basis;

(ii) we may seek to recover the amount due by referring the matter to debt collectors; and

(iii) you must reimburse us for any costs we incur, including any legal costs, in recovering the amount due or enforcing any of its rights under these terms.

(g) **(GST)** Unless otherwise indicated, amounts stated by us do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.

(h) **(Termination)** We may terminate these terms and any Quote by written notice to you if you are in breach of any obligation to pay money and you fail to pay the money within 7 days of the payment due date.

### 3. INSTALLATION

If the Quote includes us providing installation services, this clause 3 applies.

(a) We will install the Goods on a date agreed with you **(Installation Date)**, provided you have paid the Fees.

(b) **(Installation date)** The Installation Date may be changed:

(i) by either party, by giving the other party 1 days' notice; or

(ii) by us on the date of the installation, if weather conditions, lack of access or other circumstances beyond our control, do not permit the Services to be carried out.

(c) **(Installation requirements)** On the Installation Date, you must:

(i) if reasonably requested by us, be present at

the Site and remain there while the installation is being carried out;

(ii) ensure that the Site is clean and ready for our personnel to carry out the Services at the agreed time, including by moving any furniture where the Goods are to be installed. For the avoidance of doubt, we do not provide any disposal service for existing window furnishings. If we are required to undertake this, an additional fee will apply;

(iii) ensure that the Site complies with Occupational Health and Safety standards and is otherwise in a suitable condition for our personnel to perform the Installation; and

(iv) ensure that all necessary council permits (if any) are obtained prior to the Installation Date.

(d) **(Call-out fee)** if you have not complied with the requirements in clause 3(c) by the Installation Date, we may refuse to install the Goods on the Installation Date and charge you a call-out fee of \$100.00 (plus GST) for the costs of our attendance at the Site.

### 4. CHANGES TO YOUR ORDER & TERMINATION

(a) **(Cancellation by us)** We reserve the right to cancel your order at any stage and for any reason, including where initial measurements taken or materials offered are later determined to be unsuitable. If we cancel your order, we will notify you as soon as possible. Where payment has already been debited, the full amount will be credited back to your original method of payment.

(b) **(Termination by us)** We may terminate these terms for convenience at any time by providing 14 days written notice to you.

(c) **(Cancellation by you)** Once you have paid your Deposit, no changes can be made to your order unless otherwise agreed by us in our absolute discretion. If you wish to change your order after payment of the Deposit, please contact us in writing and we will use reasonable endeavours to accommodate your request. You acknowledge and agree that additional fees may apply to any changes to your order.

### 5. FAULTS, REPLACEMENTS AND RETURNS

(a) **(Change of mind return)** We do not accept returns for change of mind.

(b) **(Faulty products)** The following process applies to any Goods you believe to be faulty:

(i) If you believe your Goods are faulty, please email us with a full description of the fault (including images if possible) within 14 days from the Installation Date.

(ii) If we determine that your Goods may be faulty, we will request that you make the Site available to us for further inspection. We reserve the right to further inspection before deeming Goods faulty.

(iii) If we determine in our reasonable opinion



that the Goods are not faulty, or are faulty due to fair wear and tear, misuse, failure to use in accordance with the manufacturer's instructions, or failure to take reasonable care, we will refuse your return.

## 6. DELIVERY, TITLE AND RISK

Until the price of goods is paid in full, title in those goods is retained by us. Risk in the goods will pass on delivery to you. Delivery may not be refused by you.

## 7. LIABILITY

(a) **(Limitation of liability)** To the maximum extent permitted by applicable law, we exclude completely all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to these terms or any goods or services provided by us.

(b) Where any law (including the Competition and Consumer Act 2010 (Cth)) implies a condition, warranty or guarantee into these terms which may not lawfully be excluded, then to the maximum extent permitted by applicable law, our liability for breach of that non-excludable condition, warranty or guarantee will, at our option, be limited to:

(i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and

(ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

(c) **(Indemnity)** You indemnify us, our employees and agents in respect of all liability for loss, damage or injury which may be suffered by any person arising from your or your representatives' use of any goods or services provided by us, including the Goods.

(d) **(Consequential loss)** To the maximum extent permitted under applicable law, under no circumstances will we be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with these terms or any goods or services provided by us.

## 8. FORCE MAJEURE

We will not be liable for any delay in performing its obligations or for a failure to perform its obligations under these terms if the delay or failure resulted from unforeseeable circumstances beyond its reasonable control including where third parties' goods or services are used in providing the Goods and they fail to deliver or are subject to delays or errors.

## 9. GENERAL INTERPRETATION

(a) **(Notice)** A notice or other communication to a party under these terms must be in writing and addressed to that party at the email address notified by that party to

the other party from time to time.

(b) **(Disputes)** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these terms without first meeting with the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).

(c) **(Subcontracting)** We may subcontract our obligations under these terms without obtaining your prior approval.

(d) **(Governing law)** This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

(e) **(Amendments)** This agreement may only be amended in accordance with a written agreement between the parties.

(f) **(Waiver)** No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

(g) **(Severance)** Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

(h) **(Entire Agreement)** This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.