

# LOTUS COMMERCIAL PTY LTD TERMS AND CONDITIONS

These Terms and Conditions ("Terms") are incorporated into every supply of goods and/or services to the Customer by Lotus Commercial Pty Ltd ACN 002 694 608. By receiving any goods or services from Lotus Commercial after being given access to or receiving a copy of these Terms (or after receiving a document into which these Terms are incorporated by reference), the Customer agrees to be bound by these Terms.

## IMPORTANT NOTES:

While risks (including of fire) may be reduced by Lotus Commercial providing Goods or Services, the Customer acknowledges that: (i) such risks cannot be prevented or eliminated; and (ii) despite any Goods or Services provided by Lotus Commercial, the Customer must at all times continue to identify and address any risks, and carry out ongoing cleaning and maintenance, at every Service Address in between the provision of any Goods or Services.

For example, the Customer acknowledges that it must continue to monitor the Services Address(es) in accordance with these Terms, the AIRAH Best Practice Guide, and all other applicable laws, regulations, codes, standards, guides, specifications and other similar publications.

These Terms include important terms such as **automatic renewal**, **indemnities** and **limitations of liability**.

## DEFINITIONS

**AIRAH Best Practice Guide** means the AIRAH Commercial Kitchen Exhaust Management Best Practice Guide, as updated by AIRAH from time to time, a copy of which can be accessed on request from Lotus Commercial, or via the AIRAH website [www.airah.org.au](http://www.airah.org.au).

**Authorised Person** means the individual(s) listed in the Quotation or Services Agreement (if applicable), authorised by the Customer to request changes or amendments to the agreed Services and Quotation (or any other representative of the Customer agreed by Lotus Commercial).

**Claim** means any cost, expense, action, proceeding, claim, demand, remedy, damage or loss.

**Credit Account** and **Credit Limit** are defined in clause 9.

**Customer** means the individual or entity referred to in the Quotation, or the Services Agreement.

**Customer Obligations** is defined at clause 5(a).

**Excluded Breach** means a breach by the Customer of: clauses 4(b)(4)(c), 5(a), 5(b), 7(b) or 7(d), or any requirements in the boxed "Important Notes" above.

**Further Term** is defined in clause 2(b).

**Goods** means all goods supplied by Lotus Commercial to the Customer, including any goods set out in the Quotation or Service Agreement (and including any Lotus Commercial Pool Filters and Non-Pool Filters).

**Induction and Compliance Requirements** means the requirements of the Customer with which Lotus Commercial personnel or representatives must comply in order to gain access to the Service Address/es.

**Initial Term** means 12 months, unless otherwise stated in: (i) the Quotation; or (ii) the Services Agreement.

**Lotus Commercial** means Lotus Commercial Pty Ltd ACN 002 694 608.

**Lotus Commercial Pool Filter** means any exchange filter supplied by Lotus Commercial, as described in the Quotation.

**Non-Pool Filters** is defined in clause 8(c).

**Proof of Service Report** means a record provided by Lotus Commercial for the attendance on any Service Address in accordance with these Terms.

**Quotation** means any quotation provided by Lotus Commercial to the Customer (subject to clause 1(d) below).

**Service Address** means each address of the Customer listed in: (i) the Quotation or (ii) the Services Agreement.

**Service Frequency** means the service frequency set out in: (i) the Quotation; or (ii) the Services Agreement.

**Services** means all services provided by Lotus Commercial to the Customer, including any services described in the Quotation or the Services Agreement.

**Services Agreement** means the Services Agreement, if any, entered into by Lotus Commercial and the Customer.

**Term** means the Initial Term and any Renewal Term(s).

**Terms** means these Terms and Conditions, together with the Quotation(s) (if any), as may be amended from time to time by Lotus Commercial.

## 1. QUOTATIONS

- (a) All Quotations are made on and subject to these Terms.
- (b) A Quotation expires on the expiry date specified in the Quotation (or if no expiry date is specified, 21 days after the date of the Quotation).
- (c) Without limiting clause (b) above, Lotus Commercial may withdraw or vary a Quotation at any time before the Customer accepts the Quotation in writing.
- (d) If Lotus Commercial provides any updated Quotation to the customer before the Customer's acceptance of any previous Quotations, the updated Quotation will supersede all previous Quotations (which may then only be accepted by the Customer with Lotus Commercial's confirmation in writing).
- (e) In providing any Quotation to, or entering into a Services Agreement with, the Customer, Lotus Commercial relies on the accuracy and completeness of all information provided by the Customer. If any such information is or becomes inaccurate or incomplete, or otherwise changes, Lotus Commercial reserves the right to vary any applicable Quotation or Services Agreement, and the Customer agrees to be bound by any such variation.

## 2. TERM

- (a) These Terms will commence on:
  - (i) the date that Lotus Commercial agrees to and commences to provide the Goods and/or Services referred to in a Quotation; or
  - (ii) the commencement date set out in the Services Agreement (if applicable), and will continue for the Initial Term and any Further Term(s), unless otherwise terminated in accordance with these Terms or the Services Agreement.
- (b) At the end of the Term and any further term, these Terms will automatically renew for successive 12 month terms (each, a Further Term) until terminated in accordance with clause 13 of these Terms (including under clause 13(a) which allows for termination on 30 days' notice during any Further Term).

## 3. LOTUS COMMERCIAL OBLIGATIONS

- (a) Lotus Commercial will, during the Term, provide the Goods and Services in a proper and workmanlike manner at each Service Address.
- (b) Lotus Commercial will use its reasonable endeavours to provide the Goods and Services in accordance with the Service Frequency.

## 4. CUSTOMER'S OBLIGATIONS

- (a) The Customer must provide Lotus Commercial, its employees, agents and contractors with full access to every Service Address and the relevant equipment for which the Goods and Services are to be provided: (i) at the time(s) set out in the Quotation or the Services Agreement; or (ii) at any other time(s) advised by Lotus Commercial.
- (b) The Customer must provide Lotus Commercial with complete and accurate documentation and information regarding the type and frequency of activities carried out at each Service Address. The Customer acknowledges that Lotus Commercial will rely on this documentation and information in recommending a Service Frequency, and the Customer indemnifies and releases Lotus Commercial from any Claim arising out of or in connection with any such documentation or information being incorrect.
- (c) While Lotus Commercial may recommend a frequency for the provision of Goods and Services, and send reminders and other notifications to the Customer from time to time, the Customer is solely responsible to arrange times for the provision of Goods and Services and to determine its obligations pursuant to all occupational health and safety, food handling, fire safety and any other regulatory requirements.
- (d) The Customer, and the Customer's agents, employees, or contractors must, on request by Lotus Commercial, sign any document to verify that Lotus Commercial has attended a Service Address on any date.
- (e) The Customer agrees to pay for any call out fee charged by Lotus Commercial due to Lotus Commercial not having access at any Service Address to provide any of the Goods or Services.

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## 5. MONITORING AND AIRAH BEST PRACTICE GUIDE

- (a) The Customer acknowledges that it must, at all times comply with:
  - (i) the AIRAH Best Practice Guide including, without limitation, sections 4.2.2 and 5.11 (including in order to check that the Service Frequency remains at all times appropriate for each Service Address); and
  - (ii) all other applicable laws, regulations, standards and codes in relation to the Service Address(es).  
("Customer Obligations")
- (b) The Customer will immediately notify Lotus Commercial: (i) of any excessive or increased deposits of grease or other combustible material at any Service Address (and the Customer accepts all liability in relation to any failure to do so); and (ii) if the Customer has any reason to believe that any Service Frequency may need to be increased.
- (c) The Customer indemnifies and releases Lotus Commercial in relation to any Claim arising because of or in relation any failure by the Customer to: (i) comply with any Customer Obligations; or (ii) notify Lotus Commercial in compliance with clause 5(b) above.

## 6. GOODS AND SERVICES

- (a) Lotus Commercial is entitled, acting reasonably, to refuse to provide any Goods or Services if: (i) Lotus Commercial cannot gain access to provide any Goods or Services; or (ii) the Customer, its representatives or any other party denies or delays permission for Lotus Commercial to provide any Goods or Services; or (iii) Lotus Commercial, or its employees, agents or contractors, decide, that it would be unsafe to provide any Goods or Services.
- (b) If Lotus Commercial refuses to provide any Goods or Services under clause 6(a) above, the Customer must, without any, set off, credit or reduction, make payment to Lotus Commercial in accordance with the Quotation or any Services Agreement for such Goods or Services.
- (c) If the Customer wishes to re-schedule the service date for Lotus Commercial to provide any Goods or Services, then an Authorised Person must provide Lotus Commercial with not less than 2 Business Days' prior notice in writing of the proposed change. If the Customer does not provide Lotus Commercial with at least 2 Business Days' prior notice in writing, the Customer must pay Lotus Commercial in accordance with the Quotation or Services Agreement for such Goods and Services, without any, setoff, credit or reduction.
- (d) The Customer acknowledges that the Services do not include any obligation by or on behalf of Lotus Commercial to provide any Goods or Services at any location, or any equipment, fitout or other installation, that is deemed by Lotus Commercial to be inaccessible, obstructed, hazardous, unsafe or otherwise not reasonably capable of being accessed or serviced.
- (e) The Services Frequency does not constitute a promise or representation by Lotus Commercial as to intervals at which Lotus Commercial will provide any Goods or Services to the Customer.
- (f) If the Customer wishes to increase or decrease the Service Frequency, an Authorised Person must submit a written request to Lotus Commercial.
- (g) If the Customer wishes to decrease the Service Frequency, and Lotus Commercial reasonably believes that such decrease may result in excessive soiling of the filters, Lotus Commercial may increase its rates for the Goods and Services. The Customer will not make any Claim against Lotus Commercial related to any matter resulting directly/or indirectly from a decrease to the Service Frequency at the Customer's request (except to the extent that Lotus Commercial has caused or contributed to such Claim).

## 7. CUSTOMER WARRANTIES

The Customer warrants that:

- (a) it has read and understood these Terms;
- (b) all information supplied by or on behalf of the Customer to Lotus Commercial in connection with the Goods and Services is true and accurate and not misleading (including, without limitation, in relation to the Induction and Compliance Requirements);
- (c) it has not relied on any representation or statement made by or on behalf of Lotus Commercial, unless expressly stated in these Terms; and

- (d) the supply of the Services by Lotus Commercial to the Customer in accordance with these Terms will not make Lotus Commercial liable to any Claim.

The Customer acknowledges that in entering into these Terms and the Services Agreement (if applicable), Lotus Commercial has relied on the above warranties and on all documentation and information supplied by or on behalf of the Customer to Lotus Commercial (any the Customer indemnifies Lotus Commercial in relation to any Claim due to any breach of any of the above warranties).

## 8. FILTERS

- (a) If the Customer requests supply of Lotus Commercial Pool Filters, the Customer acknowledges that any filters supplied by Lotus Commercial in exchange for the Customer's filters ("Customer Filters") need not be identical, and need only reasonably correspond with the classification, condition and number of the Customer Filters.
- (b) Upon exchange of any Lotus Commercial Pool Filter, the Customer shall retain ownership of any Lotus Commercial Pool Filter installed at the Service Address, and Lotus Commercial will retain ownership of any filters removed from the Service Premises.
- (c) If the condition of any of the Customer's filters is (initially, or at any time during the Term) below the minimum condition required by Lotus Commercial, Lotus Commercial may decline to offer supply of Lotus Commercial Pool Filters (in which case the Customer may purchase additional Lotus Commercial Pool Filters, or Non-Pool Filters).
- (d) If the Customer does not wish to participate in the Lotus Commercial Pool Filter exchange service, the Customer may instead purchase its own additional filters from Lotus Commercial, to be retained by Lotus Commercial and exchanged when required when Lotus Commercial attends the Service Address/es to provide Services ("Non-Pool Filters").

## 9. CREDIT TERMS

- (a) This section 9 applies if Lotus Commercial agrees to supply any Goods or Services to the Customer on credit terms ("Credit Account"). Payment for any Goods or Services supplied under a Credit Account will be payable by the Customer in accordance with any payment due dates determined by Lotus Commercial. Lotus Commercial will not be liable for any refusal to supply or continue to supply Goods or Services on credit.
- (b) The Customer authorises Lotus Commercial to make enquiries to satisfy Lotus Commercial as to the creditworthiness of the Customer.
- (c) To qualify for a Credit Account, Lotus Commercial may place minimum thresholds on the value of Goods and Services to be supplied to the Customer per month and/or per year.
- (d) Lotus Commercial may set the maximum value of Goods and Services to be supplied to the Customer on credit ("Credit Limit"). Lotus Commercial may review and change the Credit Limit at any time. The balance of unpaid Goods and Services on the Credit Account must not exceed the Credit Limit. Upon request from Lotus Commercial, the Customer agrees to immediately pay for any Goods and Services supplied by Lotus Commercial on credit in excess of the Credit Limit.
- (e) The Customer will be liable for all Goods and Services supplied under its Credit Account. Lotus Commercial will not be under any obligation to confirm the authority of any person requesting any Goods or Services under the Credit Account, or to make any other similar or related enquiries. The Customer will be solely responsible for any unauthorised use of its Credit Account.
- (f) Lotus Commercial may in its discretion suspend or terminate the provision of Goods and Services if, in Lotus Commercial's opinion, the credit of the Customer becomes impaired, until Lotus Commercial receives payment in full or security to Lotus Commercial's satisfaction for previously supplied Goods and Services, and Lotus Commercial is satisfied as to the Customer's future credit worthiness.

## 10. PAYMENT & RATES

- (a) The Customer must pay for the Goods and Services and any other amount required to be paid under these Terms: (i) at the rates set out in the Quotation (or the Services Agreement, if applicable), and as otherwise required under these Terms; and (ii) in accordance

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with any payment terms specified in any invoice issued by Lotus Commercial.

- (b) If requested by the Customer, Lotus Commercial will provide the Customer with a cleaning service certificate within 7 days of receiving payment for the Goods and Services.
- (c) On or after the commencement of each Further Term, Lotus Commercial may increase the rates for Goods and Services in accordance with: (i) the CPI (Consumer Price Index) or WPI (Wage Price Index), as published by the Australia Bureau of Statistics for the quarter immediately preceding the commencement of the Further Term; or (ii) another percentage increase rate determined by Lotus Commercial.
- (d) If the cost to Lotus Commercial of complying with Induction and Compliance Requirements increases before or during provision of the Goods or Services, Lotus Commercial reserves the right to increase the cost of the Goods and Services on account of any such increase, and the Customer agrees to make payment for such increase.
- (e) If a direct debit or credit card payment is declined due to insufficient funds or other reasons beyond the control of Lotus Commercial, a fee will be applied to cover reasonable administrative and processing costs.

## 11. GST

- (a) On or after the provision of the Goods and Services, Lotus Commercial may issue the Customer with a tax invoice for the Goods and Services.
- (b) Each tax invoice must be in a form and substance that will constitute a tax invoice (as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth)).
- (c) If GST (as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth)) is imposed on any supply made under or in connection with these Terms (a taxable supply) the party obliged to pay for the taxable supply will pay additional consideration of an amount equal to the GST payable on or for the taxable supply.

## 12. DISPUTES

If any dispute arises in relation to these Terms, neither party may commence legal proceedings (except for urgent interlocutory relief) until the process described in this clause has been fully satisfied. If a dispute arises either party may give written notice to the other party claiming that a dispute has arisen, specifying the nature and details of the dispute, and requesting that a meeting be held of one duly authorised representative of each party within 10 Business Days ("**Meeting**"). Before the Meeting, the Customer must make payment to Lotus Commercial for all amounts owing under these Terms that are not in dispute. Each party must cause an authorised representative to attend at the Meeting and make a genuine attempt to solve the dispute. If the parties do not resolve the dispute within 10 Business Days of the Meeting, the dispute must be referred, by written notice from the parties, to mediation by: (i) a person agreed by the parties; or (ii) if agreement is not reached within 10 Business Days of the notice for referral to mediation, a mediator nominated by the President of the Law Institute of Victoria, or his or her equivalent in the relevant jurisdiction if the law of Victoria, Australia does not apply to these Terms. Each party must bear its own costs of complying with this clause 12 and the parties must bear the mediator's costs equally. If the dispute is not resolved within 30 days of appointment of the mediator, a party that has complied with this clause 12 may terminate the dispute resolution process by giving notice to the other party.

## 13. TERMINATION

- (a) Either party may terminate these Terms during any Further Term by giving the other party 30 days written notice.
- (b) Without limiting or otherwise prejudicing any other rights under these Terms or at law, the Customer may immediately terminate these Terms by notice in writing if:
  - (i) Lotus Commercial commits a material breach (other than a breach causing no material harm) of any material provision of these Terms and fails to remedy the breach within 30 days of receiving written notice do so; or
  - (ii) Lotus Commercial enters into liquidation or receivership, becomes subject to any form of external administration.
- (c) Without limiting or otherwise prejudicing any other rights under this Agreement or at law, Lotus Commercial may terminate these

Terms by notice in writing and refuse to supply any further Goods and Services to the Customer if any of the following occur:

- (i) the Customer commits a material breach (other than a breach causing no material harm) of any material provision of these Terms and fails to remedy the breach within 30 days of receiving written notice do so;
  - (ii) circumstances entitling Lotus Commercial to refuse to provide Goods or Services under clause 66(a) occur more than once;
  - (iii) any warranty given by the Customer is or becomes false or materially inaccurate;
  - (iv) Lotus Commercial does not accept any proposed changes to the Service Frequency requested by the Customer, and the Customer refuses to continue with the existing Service Frequency;
  - (v) a payment is rejected under any authority for direct debit or credit card payment provided by the Customer to Lotus Commercial;
  - (vi) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets;
  - (vii) the Customer is unable to, or states that it is unable, or fails to pay its debts as and when they fall due;
  - (viii) the Customer is a company and passes a resolution to be wound up or otherwise is the subject of a winding up application or liquidation or a receiver, manager, administrator is appointed over any of the buyer or its assets;
  - (ix) the Customer commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets; or
  - (x) Lotus Commercial believes, acting reasonably, that any of the above will, or is likely to, occur.
- (d) If a party provides notice of termination for any reason, the Customer acknowledges that these Terms continue until such relevant notice period has expired and agrees that Lotus Commercial is entitled to payment for the Services performed during that notice period or scheduled during that notice period but not performed through no fault of Lotus Commercial.
- (e) If the Customer requests that Lotus Commercial cease providing Goods and Services before the end of the Initial Term ("**Termination Date**"), other than due to an uncured material breach of these Terms by Lotus Commercial, the Customer must pay to Lotus Commercial liquidated damages equal to 20% of the total fees that would have been payable by the Customer under clause 10 above for the remainder of the Initial Term. The parties agree that this amount represents a genuine pre-estimate of Lotus Commercial's loss and is not a penalty. Payment under this clause is in addition to any amounts invoiced and unpaid (and any other amounts owing) as at the Termination Date.

## 14. INDEMNITY

- (a) Subject to clause 14(b), each party ("**Indemnifying Party**") will indemnify the other party and keep the other party indemnified ("**Indemnified Party**") against all Claims (including legal and any other expenses) directly related to any material breach of these Terms by the Indemnifying Party (including the requirements of the "Important Notes" in the boxed section above).
- (b) The amount of the indemnity under clause 14(a) will be reduced to the extent that Indemnified Party should have, as required by law, mitigated any loss or damage for which the Indemnified Party claims an indemnity, provided that the amount of the indemnity is also increased by the cost of the taking of any such steps in mitigation.
- (c) Without limiting the liability of the Indemnifying Party under the indemnity above, the Indemnified Party may at its sole discretion by itself or in conjunction with the Indemnifying Party defend, settle or compound any Claim brought or made against it by any person due to any breach of these Terms by the Indemnifying Party and the Indemnifying Party agrees that the indemnity extends to any reasonable cost or expense incurred by Indemnified Party in conducting that defence or in settling or compounding the Claim.
- (d) It is not necessary for any Claim to be paid before an indemnity is enforced under these Terms.

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## 15. LIMITATION OF LIABILITY

- (a) Any representation, warranty, condition or undertaking that would be implied in these Terms by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.
- (b) If any statute implies any term, condition or warranty, and that statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included. However, the liability of Lotus Commercial for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of Lotus Commercial, to any one or more of the following:
  - (i) if the breach relates to goods:
    - (A) replacing the goods, supplying equivalent goods or repairing the goods; or
    - (B) to the extent required by the relevant statute, paying the cost of replacing the goods, acquiring equivalent goods or having the goods repaired; and
  - (ii) if the breach relates to Services:
    - (A) re-supplying the Services; or
    - (B) to the extent required by the relevant statute, paying the cost of re-supplying the services.
- (c) The Customer is solely responsible for determining the appropriate frequency of Services required at the Service Address/es, and Lotus Commercial will not be liable to the Customer for any loss or damage suffered because or in relation to the Service Frequency.
- (d) Subject to this clause 15, a party will not be liable to the other party for:
  - (i) any losses or damages of any kind caused by or resulting from any wrongful, wilful or negligent act or omission of the other party, or any of its officers, employees, agents or contractors; or
  - (ii) any indirect, incidental, special or consequential damages, including loss of profits or anticipated loss.
- (e) Subject to this clause 15, but only to the maximum extent permitted by law, the maximum aggregate liability of either party to the other for all Claims or other liabilities arising under or in relation to these Terms, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to Lotus Commercial under these Terms in the 12 month period before such liability arises. However this limitation of liability will not apply (to the extent permitted by law) to any liability of the Customer in relation to a Claim against Lotus Commercial due to any Excluded Breach.

## 16. CONSUMER GUARANTEES

- (a) This section 16 applies only if the Customer qualifies as a **"Consumer"** under the Australian Consumer Law (in which case, this section 16 overrides any inconsistent provision of these Terms).
- (b) Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
  - (i) to cancel your service contract with us; and
  - (ii) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods.

If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

## 17. MODIFICATIONS

Lotus Commercial may amend, modify or replace these Terms from time to time (**"Amendment"**). If Lotus Commercial makes any material Amendment to these Terms, Lotus Commercial will provide the Customer with reasonable prior notice before the Amendment takes effect (such as by posting on our website) of not less than 30 days. The Customer's continued receipt of any Goods and Services after such notice will constitute acceptance of the Terms as amended. The Customer is responsible for regularly checking the Lotus Commercial website for any amendments. If there is a dispute as to any Amendment to these Terms that causes or will cause any material financial or other detriment to the Customer, the parties will seek to resolve any such dispute in good faith pursuant to clause 12 of these Terms.

## 18. GENERAL

- (a) (**Whole Agreement**) These Terms (and any Services Agreement) are the entire agreement in relation to the Goods and Services, and supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods or Services (including, without limitation, any terms and conditions of trade, purchase order, invoice or any other document of the Customer whether or not any inconsistency arises).
- (b) (**Delegation and Subcontracting**) Lotus Commercial may delegate the performance of the work necessary to supply any Goods or Services by engaging or appointing employees, contractors or other personnel.
- (c) (**Privacy**) The Customer consents to the terms of the Privacy Policy of Lotus Commercial available at [www.lotuscommercial.com.au](http://www.lotuscommercial.com.au).
- (d) (**Survival**) The following clauses will survive after these Terms expire, are terminated or otherwise ends: 4(b), 4(d), 4(e), 5(c), 6(b), 6(g), 7, 12, 13(e), 14, 17 and any other clause which by its nature is intended to survive after these Terms expire, are terminated or otherwise end.
- (e) (**Notices**) All notices and consents will be given in writing by personal service, post, facsimile transmission or email at the addresses of the parties as set out in the Quotation or Services Agreement, or to such other address as a party may designate by written notice.
- (f) (**Assignment**) These Terms are binding upon and for the benefit of the successors in title of the parties but must not be assigned by the Customer without the prior written consent of Lotus Commercial. Lotus Commercial may assign its rights and obligations under these Terms at its sole discretion.
- (g) (**Force Majeure**) The Supplier will not be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused or contributed to by any event beyond its reasonable control, including without limitation: acts of God, natural disasters, fire, flood, storm, earthquake, explosion, epidemic or pandemic, war, terrorism, riots, civil commotion, strikes, industrial action or lockouts, shortages of labour or materials, utility or communication failures, or breakdowns, malfunctions or unavailability of equipment or machinery not caused by the Supplier (**"Force Majeure Event"**). The Supplier's obligations under these Terms will be suspended for the duration of the Force Majeure Event and the time for performance extended accordingly.
- (h) (**Governing Law**) These Terms are governed and construed in accordance with the laws for the time being in force in the state in which the Goods and Services are provided and the parties agree to the jurisdiction of the Courts and Tribunals of that State.
- (i) (**Severance**) To the extent that any provision of these Terms is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision will be deemed not to be a part of these Terms, it will not affect the enforceability of the remainder of these Terms nor will it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.