

LOTUS FILTERS PTY LTD TERMS AND CONDITIONS

1. DEFINITIONS

In these terms and conditions:

“**Agreement**” means these terms and conditions, together with the Service Schedule, as may be amended from time to time by LF.

“**Agreement Date**” means the date specified in the Service Schedule.

“**Authorised Person**” means the individual or individuals as set out in the Service Schedule authorised to request changes or amendments to the agreed Services and Service Schedule.

“**Customer**” means the individual, company, business proprietor or partnership referred to in the Service Schedule.

“**Customer-owned Filters**” means any duplicate filters belonging to the Customer in possession of LF.

“**Direct Debit Request Service Agreement**” means the direct debit request service agreement entered into between the Customer and LF attached to the Quotation.

“**Direct Debit Dates**” means dates specified in the Service Schedule.

“**Failure Notice**” means the notice issued by LF to the Customer when the Services have been unable to be performed.

“**Proof of Service Report**” means the record kept by LF of the attendance on any Service Address in accordance with this Agreement.

“**LF**” means Lotus Filters Pty Ltd ABN 83 002 694 608.

“**LF Pool Filter**” means any filters supplied by LF as described in the Service Schedule being a substitute filter exchanged by operation of this Agreement.

“**Quotation**” means the exhaust cleaning authorisation/quotation provided by LF to the Customer prior to execution of the Service Schedule.

“**Services**” means all services provided by LF to the Customer, including without limitation, any services described in the Quotation or the Service Schedule.

“**Service Address**” means the address of the premises in which the Services will be performed as stated in the Service Schedule.

“**Service Schedule**” means the service agreement/s and/or customer account application as applicable to which these terms and conditions are attached and which form part of this Agreement.

“**Term**” means the term stated in the Service Schedule, if the Service Schedule is silent on this matter the Term is 12 months.

2. GENERAL

- (a) This Agreement:
 - (i) supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Services; and
 - (ii) prevails over any agreement, quotes or invoices, accepted or modified arrangements and the Customer's terms and conditions (if any) exchanged between the parties whether or not such documents expressly provide that they override this Agreement.
- (b) Unless otherwise agreed in writing, this Agreement is the entire agreement between LF and the Customer for the supply of the Services by LF.
- (c) LF and the Customer agree that a scanned/pdf copy of the Service Schedule bearing the signature of the Customer attached to an email from the Customer to LF is evidence of the Customer's consent to this Agreement.

3. TERM

- (a) This Agreement will commence from the Agreement Date for the Term unless otherwise terminated in accordance with this Agreement.
- (b) Upon the expiry of the Term, this Agreement will continue on until terminated by either party providing the other with 30 days' notice in accordance with clause 15 of this Agreement.

4. LF' OBLIGATIONS

LF will provide the Services in a proper and workmanlike manner at the agreed Service Address. LF will use its reasonable endeavours to ensure that the Services take place in accordance with the service frequency specified in the Service Schedule.

5. CUSTOMER'S OBLIGATIONS

The Customer acknowledges and agrees that:

- (a) the parties' relationship is:
 - (i) of principal and independent contractor, not employer and employee, principal and agent or partnership; and
 - (ii) subject to this Agreement, LF and its employees, agents and contractors are not subject to the Customer's direction and control as to the manner in which LF completes the Services;
- (b) LF may delegate the performance of the work necessary to complete the Services by engaging or appointing employees or contractors suitably qualified to perform the Services;
- (c) the Customer must provide LF, its employees, agents or contractors with unfettered access to the Service Address and the relevant equipment upon which the Services will be performed at the time set out in the Service Schedule so as to allow LF to perform the Services in a safe, timely and legal fashion;
- (d) if access to the Service Address is unavailable at the time set out in the Service Schedule or denied, and/or permission to perform the Services is denied or unreasonably delayed by employees, agents or contractors of the Customer, LF will have no responsibility to perform the Services;

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- (e) if upon arrival to perform the Services, LF, or its employees, agents or contractors, decide, acting reasonably, that it would be unsafe to perform the Services then LF is entitled to refuse to perform the Services at its sole discretion;
- (f) if the circumstances referred to in clauses 5(d) or 5(e) above arise, the Customer agrees to pay LF in accordance with the Service Schedule for the costs and expenses already incurred in attempting to perform the Services and the Customer is not entitled to any, setoff, credit or reduction in the payment for the Services arising out of the operation of this clause;
- (g) if during the Term of this Agreement, the Customer wishes to re-schedule the service date for LF to perform the Services, then an Authorised Person must provide LF with not less than 48 hours notice of the proposed change in accordance with clause 15 of this Agreement. If the Customer fails to provide LF with not less than 48 hours' notice, the Customer agrees that it will be deemed to have received the Services on the service date and the Customer agrees to pay LF in accordance with the Service Schedule and is not entitled to any, setoff, credit or reduction in the payment for the Services arising out of the operation of this clause;
- (h) if during the Term of this Agreement, the Customer wish to increase or decrease the frequency of the Services, an Authorised Person must submit a written request to LF;
- (i) if the Customer wishes to decrease the frequency of the Services, and in the sole opinion of LF acting reasonably, such decrease results in unacceptable or unreasonable soiling of the filters, LF may increase its rates for the Services to reflect the increased soiling of filters at its sole discretion;
- (j) it is the Customer's responsibility to arrange for the Services and to determine its obligations and obligations in relation to the use of the equipment upon which the Services are being provided and that LF does not hold itself out and is not qualified to provide advice in relation to the adequacy of any filters or equipment or upon the frequency for which the services should be performed; and
- (k) the Customer, or the Customer's agent, employee, or contractor must, if requested to do so by LF, sign any document to verify that LF has attended the Customer's Service Address on any date.

6. CUSTOMER WARRANTIES

- (a) The Customer:
 - (i) warrants to LF that it has read and understood this Agreement;
 - (ii) warrants to LF that all information supplied by, or on behalf of it, to LF in connection with the supply of Services is true and accurate and not misleading;
 - (iii) warrants that it has not relied on any representation or statement made by or on behalf of LF in connection with the supply of Services that has not been clearly and expressly stated in this Agreement;
 - (iv) acknowledges that LF has relied on the information supplied by, or on behalf of, the Customer to it in supplying the Services; and
 - (v) warrants that the supply of the Services by LF to the Customer will not make LF liable to any prosecution, claim or other action under any applicable law.
- (b) The Customer agrees to indemnify LF (and keep LF indemnified) against all fines, penalties, damages, loss, costs or expenses (including legal and any other expenses) suffered or incurred by LF in connection with any breach of the warranties of the Customer set out in this Agreement.
- (c) Without limiting the liability of the Customer under the indemnity above, LF may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any action, suit, proceeding, claim or demand brought or made against it by any person in connection with any breach of the warranties given by the Customer under this Agreement and the Customer agrees that the indemnity extends to any cost or expense incurred by LF in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.
- (d) LF reserves the right to refuse to do or to omit to do anything, or to refuse to comply with any request or direction of the Customer, which in the reasonable opinion of LF would constitute or result in a breach of any warranty given by the Customer under this Agreement or otherwise constitute, or be likely to constitute, a breach of this Agreement.

7. FILTERS

- (a) Customers who are using LF Pool Filters agree that the classification, condition and number of the filters at the commencement of this Agreement will be exchanged with filters having the same or substantially the same classification and number and shall be of comparable condition to the filters contained in the Service Schedule.
- (b) Upon termination of this Agreement for any reason, the Customer shall retain ownership of any LF Pool Filter installed on the exchange immediately prior to termination.
- (c) If LF is holding any Customer-owned Filters all Customer-owned Filters shall be returned to the Customer as soon as reasonably practicable upon termination of this Agreement.

8. RECORDS AND NOTICES

- (a) LF shall provide the Customer with Proof of Service Reports upon request but subject to payment for Services being up-to-date.
- (b) LF shall issue a Failure Notice if LF has attended the Service Address and has been unable to perform the Services arising out of the operation of clauses 5(d) or 5(e) above. A Failure Notice setting out the reasons for the service failure shall be provided to the Authorised Person within seven days of attending the Service Address.

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- (c) LF shall provide to the Customer upon request with a cleaning service certificate within 7 days of receiving payment for the Services.

9. PAYMENT FOR THE SERVICES

- (a) LF agrees to provide the Services for the charges set out in the Service Schedule or as otherwise set out in any tax invoice provided by LF.
- (b) The Customer acknowledges and agrees that it must make the payments outlined in the Service Schedule by direct debit on the Direct Debit Dates in accordance with the terms and conditions contained in the Direct Debit Request Service Agreement or by any other means which are agreed by the parties.
- (c) LF is under no obligation and will not perform any Services under this Agreement until such time the Customer has completed and agreed to the terms of the Direct Debit Request Service Agreement.
- (d) The rights and obligations contained in the Direct Debit Request Service Agreement are binding on the Customer.
- (e) LF reserves the right to charge the Customer for reimbursement of all credit card charges, bank charges, merchant fees etc.

10. GST

- (a) On or after the provision of the Services, LF must issue the Customer with a tax invoice for the 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 and conditions (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.

11. DISPUTES

If a dispute arises in connection with the supply of any Services or otherwise, the Customer agrees to pay LF for the Services performed. Such amount is to be held by LF until resolution of the dispute. To the extent permitted by law, until complied with, the obligation to pay the fees for the Services amount will operate as an absolute bar to any defence, claim or action by the Customer.

12. TERMINATION

- (a) Either the Customer or LF may terminate this Agreement by giving the other 30 days written notice prior to the end of the Term.
- (b) LF can (without limiting or otherwise prejudicing any other rights it may have) at any time terminate this Agreement immediately by notice in writing and refuse to supply the Services to the Customer if any of the following occur:
 - (i) more than three Failure Notices have been issued pursuant to clause 8(b) in any three month period;
 - (ii) LF does not accept the proposed changes to service frequency requested by the Customer in accordance with clause 5(h);
 - (iii) the Customer takes any steps to cancel the direct debit payments established pursuant to this Agreement and the Direct Debit Request Service Agreement;
 - (iv) 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 other than in the ordinary course of business;
 - (v) the Customer is unable to, or states that it is unable, or fails to pay its debts as and when they fall due;
 - (vi) 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;
 - (vii) 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
 - (viii) LF is of the view, acting reasonably, that any of the above will, or are likely to, occur.
- (c) In the event that a party provides notice of termination for any reason, the Customer acknowledges that this Agreement continues until such relevant notice period has expired and agrees that LF is entitled to payment for the Services which were performed during that notice period or due to take place during that notice period but were not performed through no fault of LF.
- (d) Should the Customer provide notice to LF under clause 12 (a), prior to the end of the Term, LF is entitled to be reimbursed under the Agreement for Services for the balance of the Term.
- (e) The Customer agrees to indemnify LF (and keep LF indemnified) against loss, cost or expense and other liability (including legal and any other expenses), suffered or incurred by LF in connection with termination of Services under this clause by the Customer.

13. LIMITATION OF LIABILITY

- (a) Any representations, warranty, conditions or undertaking that would be implied in this Agreement 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 into an agreement between the parties, and that statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability

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under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included in the relevant agreement between the parties. However, the liability of LF for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of LF, to any one or more of the following:

- (i) if the breach relates to goods:
 - (A) the replacement of the goods, the supply of equivalent goods or the repair of the goods; or
 - (B) to the extent required by the relevant statute, the payment of the cost of replacing the goods or of acquiring equivalent goods or the cost of having the goods repaired; and
- (ii) if the breach relates to Services:
 - (A) the supplying of the Services again; or
 - (B) to the extent required by the relevant statute, the payment of the cost of having the services supplied again.
- (c) Subject to this clause 13, LF is not liable to the Customer or to any other person for:
 - (i) any losses or damages of any kind caused by or resulting from any wrongful, wilful or negligent act or omission of the Customer 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.
- (d) Subject to this clause 13, the maximum aggregate liability of LF for all proven losses, damages and claims arising out of this Agreement, 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 LF under this Agreement.

14. PRIVACY

- (a) The Customer hereby authorises LF to collect, retain, record, use and disclose consumer or commercial information about the Customer, in accordance with the *Privacy Act 1988* (Cth) to any solicitor or any other professional consultant engaged by LF, including, without limitation, a debt collector, credit reporting agency or any other individual or organisation which maintains credit references or default listings.
- (b) LF may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports or lodging consumer and commercial defaults on the Customer's credit file.

15. NOTICES

All notices and consents will be given in writing by personal service, post or facsimile transmission at the addresses of the parties as set out in the Service Schedule or to such other address as a party may designate by written notice.

16. ASSIGNMENT

- (a) This Agreement is 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 LF.
- (b) LF may assign its rights and obligations under this Agreement at its sole discretion.

17. COUNTERPARTS AND MULTIPLE ORIGINALS

This Agreement may be executed in any number of counterparts and all of those counterparts taken together will be deemed to constitute the same instrument.

18. GOVERNING LAW

This Agreement is to be governed and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia and the parties agree to the jurisdiction of the Courts and Tribunals of that State.

19. NO PARTNERSHIP

Nothing in this Agreement creates a partnership or joint venture between the parties and save as expressly provided in this Agreement neither party will enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.

20. SEVERENCE

To the extent that any provision of this Agreement 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 this Agreement, it will not affect the enforceability of the remainder of this Agreement nor will it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.