



1. Definitions

"Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory).

"Customer" means the person to whom any quotation is made by Lotus Folding Walls & Doors Pty Ltd ("Lotus"), any person contracting with Lotus under this Contract and any person that purchases Goods under this Contract.

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating or loss of denial of opportunity.

"Consumer" has the meaning given to it in Section 3 of the Australian Consumer Law.

"Consumer Goods" means goods of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in Section 3 of the Australian Consumer Law.

"Consumer Guarantee" has the meaning given to it in Section 3 of the Australian Consumer Law.

"Contract" means all Goods supplied and services provided by Lotus are sold on these terms and conditions ("Terms");

"Credit application form" means the credit application form attached hereto and accepted by Lotus.

"Defect" means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the Goods by Lotus in the Technical Data Sheet prior to the date of purchase, or any use of the products outside the limitations or applications described in the Technical Data Sheet or any defect, flaw or imperfection that is trivial or insubstantial.

"Goods" means all products and services agreed to be supplied by Lotus to the Customer from time to time under this agreement.

"GST" means any goods and services tax and any replacement or similar tax.

"GST Law" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Invoice" means the invoice issued by Lotus to the Customer setting out the amount to be paid by the Customer.

"Order" means any order for Goods placed by the Customer with Lotus, in whatever form.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"PPSA Law" means:

- (a) the PPSA;
- (b) any regulation made at any time under the PPSA;
- (c) any provision of the PPSA or regulations referred to in (b) above;
- (d) any amendment to any of the above made at any time; or
- (e) any amendment made at any time to any other legislation as a consequence of a PPSA Law referred to in (a) to (d) above.

"Title Guarantee" means a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

"Trading Account Application Form" means the trading account application form submitted by the Customer and accepted by Lotus.

2. Delivery, Risk of Loss and Receipt of Goods

Risk of loss or damage to the Goods will pass to the Customer on delivery to the Customer's proposed destination.

3. Termination

Both Parties have the right to immediately terminate these Terms should an Event of Default occur.

4. Payment and Credit

Payment terms are subject to Lotus's credit approval. Lotus may require payment of a deposit before Lotus starts manufacture. The balance must be paid prior to despatch or installation unless the Customer has provided credit references that are satisfactory to Lotus, in which case the balance must be paid within 30 days.

5. Interest and costs

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Lotus may charge interest at the penalty interest rate fixed by the Attorney General from time to time under the *Penalty Interest Rates Act 1983* (Vic) plus 2% per annum on any outstanding amounts owed to it by the Customer. Lotus may also charge the Customer all enforcement costs (including legal costs and disbursements on a solicitor own client basis) incurred in connection with a breach of these Terms by the Customer.

6. Risk and title

- (a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Customer when the Goods are loaded at Lotus' warehouse for delivery to the Customer. Legal and equitable title in and to the Goods shall not pass to the Customer until payment in full for all Goods is made.
- (b) Lotus' rights under this clause 6 secure:
 - (i) Lotus' right to receive the price of the Goods at the times and in the manner specified in these Terms; and
 - (ii) all other amounts owing to Lotus under any other contract or any other accounts including GST and interest.
- (c) All payments received from the Customer must be applied by Lotus in accordance with section 14(6)(c) of the PPSA.
- (d) Until full payment in cleared funds is received by Lotus for all Goods supplied by it to the Customer, as well as all other amounts owing to Lotus by the Customer under any other Contract;
 - (i) legal title and property in all Goods supplied under this Contract remains vested in Lotus and does not pass to the Customer;
 - (ii) the Customer shall hold the Goods as Bailee for Lotus;
 - (iii) the Customer shall store the Goods separately and in such a manner that they are clearly defined as the property of Lotus and ensure that the Goods are properly stored, protected, readily identifiable and insured;
 - (iv) the Customer must not sell the Goods except in the ordinary course of the Customer's business;
 - (v) the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing of the Goods for Lotus in a separate bank account with a bank to which the Customer has not given any security;
 - (vi) in addition to any rights Lotus may have under Chapter 4 of the PPSA in the event of any breach of these Terms or termination of these Terms, Lotus shall be entitled at any time until title in and to the Goods passes to the Customer to demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer to enter any premises occupied by the Customer (or any other premises where the Customer is holding the Goods) in order to search for and remove the Goods and for this purpose the Customer irrevocably licenses Lotus to enter such premises and also indemnifies Lotus from and against all loss suffered or incurred by Lotus as a result of exercising its rights under this clause. If there is any inconsistency between Lotus' rights under this clause 6(d)(vi) and its rights under Chapter 4 of the PPSA, this clause 6(d)(vi) prevails;
 - (vii) the Customer acknowledges and warrants that Lotus has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in clause 6(d)(iv) until title passes to the Customer in accordance with this clause 6. The Customer must do anything reasonably required by Lotus to enable Lotus to register its security interest, with the priority that Lotus requires and to maintain that registration; and
 - (viii) the security interest arising under this clause 6 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 6 attaches at any later time. If title in and to the Goods has not passed to the Customer in accordance with this clause 6, the Customer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 6(d).

7. Confidentiality

Subject to section 275(7) of the PPS Act, neither party will disclose information of the kind mentioned in section 275(1) of the PPSA.

8. Enforcement of security interest

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Customer agrees that the following provisions of the PPSA will not apply:

- (a) section 95 (notice of removal of accession), to the extent that it requires Lotus to give a notice to the Customer;
- (b) section 121(4) (enforcement of liquid assets – notice to Grantor);
- (c) section 130 (notice of disposal), to the extent that it requires Lotus to give a notice to the Customer;



- (d) section 132(3)(d) (contents of statement of account after disposal);
- (e) section 132(4) (statement of account if no disposal);
- (f) section 135 (notice of retention);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).

9. Notices under the PPS Act

Lotus does not need to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

10. Solvency

The Customer must, forthwith upon the happening of any of the following relevant events, notify Lotus of any:

- (a) Statutory Demand under section 459(E) of the Corporations Act 2001 in respect of the Customer;
- (b) application to wind up the Customer whether on a voluntary or involuntary basis;
- (c) proposed resolution to wind up the Customer;
- (d) proposal to appoint an administrator to or to execute a Deed of Company Arrangement in respect of the Customer;
- (e) issue of a Bankruptcy Notice under section 41 of the Bankruptcy Act 1966 in respect of the Customer;
- (f) application for a Sequestration Order under Division 2 of the Bankruptcy Act 1966 against the Customer;
- (g) presentation of a Debtors Petition under Division 3 of the Bankruptcy Act 1966 by the Customer whether alone or jointly with another person or persons.

11. Warranty

Subject to clause 12 of these Terms, Lotus warrants that the Goods will conform to the Specifications and will be properly installed. If there is a defect in installation (the "Services") or non-conformance with the Specifications or non-compliance with a Consumer Guarantee of which Lotus receives notification from the Customer within twelve months of installation, Lotus will at its discretion do one or more of the following:

- (a) replace the affected Goods or supply equivalent Goods or Goods of an identical type;
- (b) repair the affected Goods or pay the cost of having the affected Goods repaired;
- (c) pay the cost of replacing the affected Goods or acquiring equivalent Goods; or
- (d) refund to the Customer any money paid by the Customer for the affected Goods and an amount equal to the value of any other consideration provided by the Customer for the affected Goods supply the Services again or pay for the reasonable cost of supplying the Services again.

Lotus does not guarantee that facilities for the repair of and parts for the Goods will be available after twelve months of installation. The twelve month warranty period may be extended at Lotus' sole discretion if the Goods are serviced annually by Lotus (service costs are available on request). The Australian Consumer Law confers a number of mandatory Consumer Guarantees and provides a number of remedies in relation to non-compliances with Consumer Guarantees ("Consumer Remedies"). Nothing in this clause 11 excludes or limits the application of any Consumer Guarantee or Consumer Remedy where to do so:

- (a) would contravene the Australian Consumer Law or any other law of a relevant jurisdiction; or
- (b) cause any part of this clause to be void.

Subject to the above, the Customer hereby waives and Lotus disclaims, all other guarantees and warranties, whether written or oral, express or implied.

12. Limitation of Liability and Remedies

Lotus's liability is limited to the extent described in clause 11 above. Notwithstanding clause 11 above in no event will Lotus be liable for any of the following: actual loss or direct damage that is not listed in clause 11 above, damage for loss relating to the Customer's procurement of substitute products, incidental, special, economic or consequential damages. Unless the Goods are Consumer Goods



and/or the Customer is a Consumer in which case this limitation of liability shall not apply to consequential loss as defined in the Australian Consumer Law.

13. Termination

Lotus may immediately terminate these Terms if an Event of Default occurs. An Event of Default occurs if:

- (a) the Customer fails to pay any monies due and that failure is not remedied within 14 days after receiving a notice from Lotus requesting the breach to be remedied; or
- (b) the Customer breaches any other Term and does not remedy that breach within 14 days after receiving a notice from the non-defaulting party requesting the breach to be remedied; or
- (c) the Customer becomes insolvent or bankrupt; or
- (d) a notice of deregistration of defaulting party under section 601AA(5) or 601AB(5) of the Corporations Act is given to or in respect of a party; or
- (e) a petition has been presented against the Customer, an order made, a resolution passed or a meeting summoned or convened to consider a resolution for its winding up.

In the event that the Customer purports to terminate an Order after acceptance of Lotus' Quote, Lotus shall be entitled to accept that purported termination as a repudiation of the Order and shall be entitled to retain or charge to the Customer twenty five percent (25%) of the purchase price being a reasonable pre-estimate of its loss and damage **plus** a reasonable amount for work already undertaken.

14. Acceleration of Payment

All money which the Customer owes Lotus for Goods (including amounts which would not otherwise be payable until a later date) will become immediately due and payable if the Customer, is a company and an application is made to wind up the Customer or a Receiver, Receiver and Manager, Official Manager, Agent for Mortgagee or an Administrator is appointed in respect of any part of the Customer's property, or an Inspector is appointed to investigate any of its affairs; or makes an arrangement or composition with its creditors or proposes to do so; or is unable to pay its debts as they fall due; or ceases or threatens to cease to carry on its business; or has execution levied against any of its assets; or has a mortgagee enter, or seek to enter into possession of any of its assets.

15. Severance

If any provision of this Contract shall be held to be invalid or in any way unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired and this Contract shall be construed so as to most nearly give effect to the parties' intention when it was originally executed.

16. Jurisdiction

These Terms will be governed by, take effect and be construed in accordance with the laws in force in the State of Victoria, and the parties submit to the exclusive jurisdiction of the Courts of that State.