

## **Terms and Conditions**

### **1. Contract**

1.1 These standard terms and conditions form part of our contract with you other than to the extent that they are inconsistent with specific terms contained in your engagement letter or the services and fees document which accompanied your engagement letter, in which case the specific terms will prevail.

### **2. Services**

2.1 The services we will provide, including their nature and scope are set out in the services and fees document which accompanied your engagement letter.

2.2 Additional services provided at your request will also be subject to the terms of this contract unless separate terms have been agreed.

2.3 Services means the services described in your engagement letter, the services and fees document which accompanied your engagement letter and any additional services provided at your request (unless separate terms have been agreed), together with the product of those services including any reports, documents, advice, opinions, emails, notes or other deliverables, whether in draft or final form or provided in writing or orally, that we prepare either alone or in conjunction with you or provide to you as a result of this contract.

### **3. Fees**

3.1 The services and fees document which accompanied your engagement letter may have included details of the fees payable in respect of this contract, either by way of a fixed monthly fee or by reference to the hourly charge rates to be applied. The following sets out additional detail in respect of our fees.

3.2 If the services and fees document which accompanied your engagement letter did not include details of fees payable in respect of the contract or any services provided under the contract they will be payable by reference to hourly charge rates based on the type of work and experience of persons involved in providing the services. Our current hourly charge rates are as follows:

Specialist Advisor:-	\$750
Director:-	\$450
Manager:-	\$300
Senior Accountant:-	\$175
Bookkeepers/Management Accountants:-	\$100 – \$150

3.3 If the services and fees document which accompanied your engagement letter included an estimate of fees for services the actual fee for the services may vary from the estimate for numerous reasons including but not limited to additional transactions' due to change of business or investments, time delays beyond our control, the level of co-operation of third parties and the quality of information supplied. We will advise you of any anticipated increase.

3.4 We may review our fees where there are delays in the provision of the services that are beyond our control or were not reasonably foreseeable by us at the date of this contract.

3.5 Unless stated otherwise our fees exclude GST. You agree to pay any GST imposed on us in relation to this contract. Where GST is payable on any taxable supply made under this contract you agree that the fee payable for the supply will be increased by an amount equivalent to the GST payable by us in respect of the supply.

3.6 We will charge you for actual out of pocket expenses we incur providing our services to

you, including Xero subscription fees.

3.7 Unless agreed otherwise, invoices for our fees may be rendered at our discretion as follows:

(a) For such part of the services which have been performed on a monthly in arrears basis;

(b) For services that include a monthly recurring subscription charge, Lotus Accountants (via Ezydebit) will charge your nominated account on the first business day of each subsequent month after the first months' service payment. Alternatively, you are required to establish a monthly direct debit.

(c) Upon completion of the services.

3.8 You agree to pay our invoice in full within 14 days of receiving it unless you have raised a dispute in relation to the invoice within that 14 day period.

3.9 It is your responsibility to ensure there are sufficient funds available in the nominated account to meet pre-approved direct debits. Further, you should advise us if the nominated account is transferred or closed, your credit card has expired or the accounting details change. Should you not advise us of any changes that have occurred to your account and we incur fees as a result, we reserve the right to on-charge those fees to your account.

3.10 If you dispute an invoice you agree to pay any undisputed portions of the invoice within 14 days of receiving it and email [contact@lotusaccountants.com.au](mailto:contact@lotusaccountants.com.au) explaining the amount disputed so it can be properly documented and resolved. If the problem cannot be resolved, the parties agree to enter into mediation, or some other form of alternative dispute resolution, before commencing legal proceedings (refer paragraph 21).

3.11 Where amounts remain due and unpaid we may charge you interest at an annual rate being the Indicator Lending Rates – Small business variable overdraft rate last published by the Reserve Bank of Australia on the date payment is due.

3.12 Without in any way limiting our rights we are entitled to suspend or terminate, in whole or in part, the services or to retain information we may hold if you do not pay our invoices on time.

#### **4. Term**

4.1 Our contract commences on the earlier of the date you sign and return the engagement letter to us or when we first start work on the services for you and, unless terminated earlier, will terminate when we have completed providing the services (noting that under paragraph 2 the services will include additional services provided at your request from time to time) and you have paid our fees.

#### **5. Your disclosure and record keeping obligations**

5.1 You are required by law to keep full and accurate records relating to your tax and business affairs.

5.2 It is your obligation to provide us with all information that you reasonably expect will be necessary to allow us to perform the services contemplated under this engagement within a timely manner or as requested. This includes providing accurate and complete responses to questions asked of you by us within a reasonable timeframe. Inaccurate, incomplete or late information may have a material effect on our services and/or our conclusions and may result in additional fees. We will not verify the underlying accuracy or completeness of information you provide to us.

5.3 You are also required to advise us on a timely basis if there are any changes to your circumstances that may be relevant to the performance of our services. Specifically, if any subsequent event results in the information you provided to us being inaccurate, incomplete or misleading, then you are obliged to advise us as soon as possible. We take no

responsibility to the extent that our services or the product of our services is inaccurate, incomplete or misleading because it is based on inaccurate, incomplete or misleading information being provided to us.

5.4 By accepting the terms of this contract, you will be taken to have agreed that the performance of our services is dependent on the performance of your obligations relating to disclosure and record keeping.

5.5 The Taxation Administration Act 1953 contains specific provisions that may provide you with “safe harbours” from administrative penalties for incorrect or late lodgement of returns if, amongst other things, you give us “all relevant taxation information” in a timely manner. Accordingly, it is to your advantage that all relevant information is disclosed to us as any failure by you to provide this information may affect your ability to rely on the “safe harbour” provisions and will be taken into account in determining the extent to which we have discharged our obligations to you.

5.6 You are also required to advise us if you become aware of any conflict of interest or potential conflict of interest. Generally, a conflict of interest is any event which may result in us becoming unable to remain objective in the performance of our services to you.

## **6. Access conditions**

6.1 You must ensure that all usernames and passwords required are kept secure and confidential. You are responsible for all use of your usernames and passwords, and liable for any loss or damage that we suffer, caused by misuse of your usernames and passwords. We are not liable for any loss or damage that you suffer, caused by misuse of your usernames and passwords. You must immediately notify Lotus Accountants of any unauthorised use of your passwords or any other breach of security. Lotus Accountants will then notify the software provider in question who will reset your password and you must take all other actions that Lotus Accountants and the software provider reasonably deems necessary to maintain or enhance the security of Lotus Accountants’s/the Software Provider’s computing systems and networks and your access to the Services.

6.2 As a condition of these Terms and Conditions, when accessing and using the online services, you must:

- (a) not attempt to undermine the security or integrity of Lotus Accountants’s or the software provider’s computing systems or networks or, where the Services are hosted by a third party, that third party’s computing systems and networks;
- (b) Not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website, including not attempt to or tamper with, hinder or modify the Website, attempt to or knowingly transmit viruses or other disabling features, or damage or interfere with the Website in any way including but not limited to the use of trojan horses, viruses, or piracy or programming routines that may damage or interfere with the Website;
- (c) Not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Services are hosted;
- (d) Not transmit, or input, any: files that may damage any other person’s computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which you do not have the right to use);

(e) Not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services except as is strictly necessary to use either of them for normal operation, and

(f) Not facilitate or assist another person to do any of the above acts.

## **7. Use of software**

7.1 You agree to the Terms & Conditions of "Xero". You understand that Lotus Accountants may sign-up and agree to the "Terms & Conditions" of "Xero" on your behalf, unless clearly requested by you before engaging the services of Lotus Accountants.

7.2 You agree to the Terms & Conditions of other software used by Lotus Accountants that you are required to access in the provision of Services to you. This includes cloud based software accessed by you the Client, as instructed or made available by Lotus Accountants.

7.3 Lotus Accountants may also use or develop software, including spreadsheets, databases and other electronic tools ("Tools") in providing the Services. If we provide these Tools to you, you acknowledge that (except where these Tools are a specific deliverable under our Agreement with you) they are not your property, were developed for our purposes and without consideration of any purposes for which you might use them, are made available on an "as is" basis for your use only and must not be distributed to or shared with any third party. To the full extent permitted by law, we make no representations or warranties as to the sufficiency or appropriateness of the Tools for any purpose for which you or a third party may use them.

7.4 You agree that Lotus Accountants does not accept any liability for the content or performance of any third party website accessed through this website, not endorse or approve the contents of any such site. Lotus Accountants does not give any warranty that this website is free from viruses or anything else which may have a harmful effect on any technology.

## **8. Electronic communications**

8.1 We will communicate with you electronically, including sending you Commercial Electronic Messages (as that term is defined in the SPAM Act 2003). You consent to us sending Electronic Communications to you.

8.2 Electronically transmitted information cannot be guaranteed to be secure or virus or error free and consequently such information may be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We will not be liable to you in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication of information to you.

## **9. Your rights and obligations under the taxation laws**

9.1 You have certain rights under the Australian taxation laws, including the right to seek a private ruling from the Australian Taxation Office (ATO) or to appeal or object against a decision made by the Commissioner. As relevant, we will provide further information to you concerning your rights under the Australian taxation laws during the conduct of the engagement contemplated by this letter.

9.2 You also have certain obligations under the Australian taxation laws, such as the obligation to keep proper records and the obligation to lodge returns by the due date.

9.3 Unless otherwise stated, any opinion provided is based on the Australian taxation law in force at the date of the provision of the advice and/or service. It is your responsibility to seek updated advice if you intend to rely on our advice at a later stage. We note that Australian taxation laws are often subject to frequent change and our advice will not be

updated unless specifically requested by you at the time of the change in law or announced change in law.

#### **10. Trust account**

10.1 We maintain a separate trust account held with National Australia Bank for dealing with all money and property received from you or on your behalf, except for amounts received from you in payment of our fees. We may apply these funds in payment of our fees with your written authorisation.

#### **11. Our obligation to comply with the law**

11.1 We have a duty to act in your best interests. However, the duty to act in your best interests is subject to an overriding obligation to comply with the law even if that may require us to act in a manner that may be contrary to your interests. For example, we would not lodge a Business Activity Statement for you that we knew to be false in a material respect.

11.2 We also have an obligation to ensure that we manage conflicts of interest as they arise. In this regard, we have arrangements in place to ensure that we manage potential or actual conflicts of interest. The effective operation of these arrangements depends, in part, on you complying with your obligation to disclose any potential conflicts of interest to us (see paragraph 5.6 above).

11.3 Our services will be based on Australian taxation law (including the practice of the Australian Taxation Office) in force at the date of the provision of the services. It is your responsibility to seek updated advice if you intend to rely on our advice at a later stage. We note that Australian taxation laws are often subject to frequent change and our advice will not be updated unless specifically requested by you at the time of the change in law or announced change in law.

#### **12. Confidentiality**

12.1 For the purpose of this Agreement, "Confidential Information" means all non-public information or documents which either party receives or produces in connection with the Services and includes Lotus Accountants's working papers, information and methodologies, but does not include any information which is:

- (a) or becomes generally available to the public other than as a result of a breach of this clause;
- (b) known to either party prior to Lotus Accountants commencing the Services;
- (c) received from a third party who owes no obligation of confidence in respect of the information; or
- (d) developed by either party independently of the Services to which this Agreement relates.

12.2 Neither Lotus Accountants nor the Client may disclose confidential information about or belonging to the other without the other's consent.

12.3 Notwithstanding the above, Lotus Accountants may disclose confidential information to Contractors in relation to the provision of the Services, to assist in quality assurance reviews or for its business purposes and either party may disclose Confidential Information to:

- (a) its insurers or legal advisors, provided that the Confidential Information remains confidential;
- (b) if required to do so by law or by a regulatory authority including under subpoena; or
- (c) if required for the proper performance of the Services.

#### **13. Limitation of Liability**

13.1 Where the law requires it our liability to you will not be limited. In all other cases, our aggregate liability to you is limited as set out below:

(a) Where a scheme approved under Professional Standards Legislation applies, in the manner provided by that scheme. Further information on the scheme is available from the Professional Standards Council – [www.professionalstandardscouncil.gov.au](http://www.professionalstandardscouncil.gov.au); or

(b) Where a scheme approved under Professional Standards Legislation does not apply, to the amount that is the lesser of ten times the fee payable in respect of this contract and \$5 million.

13.2 In either case, we will be liable to you only for that proportion of the total loss that we have caused or to which we have contributed.

13.3 We will not be liable for any loss or failure to provide the services which is caused by any delays in the provision of the services that are beyond our control or were not reasonably foreseeable by us at the date of this contractor which arises as a result of us relying on any false, misleading or incomplete information.

13.4 We will not be liable for any loss or damage which is consequential, special, punitive, exemplary or incidental, including any loss of profit, revenue, anticipated savings or business opportunity or damage to goodwill, however caused or arising.

#### **14. Ownership of documents**

14.1 All original documents obtained from you arising from this engagement will remain your property. However, we reserve the right to make a reasonable number of copies of the original documents for our records.

14.2 Where our engagement results in the production of documents being the intended final product of the engagement, for example income tax returns or financial statements, ownership of these documents will vest in you. All other documents produced by us in respect of this engagement will remain our property.

14.3 We have a policy of exploring a legal right of lien over any of your documents in our possession in the event of a dispute between us.

#### **15. Personal information and privacy**

15.1 In performing the Services, we agree to comply with the legal requirements of the Australian Privacy Principles as set out in the Privacy Act 1988 (Cth) (“Privacy Act”) and any other applicable legislation or privacy guidelines, as set out in our Privacy Policy which is available on our website at: [www.lotusaccountants.com.au](http://www.lotusaccountants.com.au) (“Website”).

15.2 If the performance of the Services requires a third party to this Agreement to supply personal information to us on your request, it is your obligation to ensure that the third party has satisfied the requirements of the Privacy Act and is permitted by the Privacy Act to disclose such personal information to us.

15.3 If the Services require Lotus Accountants to collect personal information from a third party, you will ensure that such collection of personal information complies with the Privacy Act, and do and be responsible for, all things necessary (including obtaining appropriate consents) for Lotus Accountants to collect such personal information.

15.4 If information is disclosed to us in the course of our engagement, it will be treated in accordance with the Privacy Act and the terms of our privacy policy.

#### **16. Intellectual property**

16.1 We retain ownership of the intellectual property produced in the performance of the services, however we give you a royalty free, non-exclusive, perpetual, world-wide license to use it for the purposes for which it was provided to you under this contract.

#### **17. Reliance on services**

17.1 Our services and any product of those services is for your exclusive use and must be used by you only for the purposes for which the services have been provided.

17.2 Unless we consent in writing, and subject to any conditions imposed in relation to the consent:

(a) The services or any product of those services must not be used or disclosed for any other purposes or made available to any other person except your professional advisers (which for the purposes of this contract includes your lawyers, accountants or financial planners) and auditor on the terms discussed at paragraph 17.3;

(b) The services and any product of those services may not be relied upon by anyone other than you;

(c) You must not name us or refer to us, the services or any product of those services in any written materials (other than to your professional advisers and auditor), or any publicly filed documents, except as required by law.

17.3 You may provide a copy of any product of the services to your professional advisers and auditor provided that they each:

(a) Are aware of the limits placed on its use by this contract, including that they may not rely upon it;

(b) Use it only to advise you in relation to the services or to conduct the audit;

(c) Treat it as confidential and do not disclose or use it in a manner that is not expressly permitted by this contract.

17.4 You may provide a copy of any product of the services to any other person who is acceptable to us if we consent in writing and subject to any conditions imposed in relation to the consent.

17.5 We are not responsible to anyone who is provided with or obtains a copy of any product of the services without your consent.

17.6 Where the product of our services is in draft or oral form it should not be relied upon and we will not be responsible if you or anyone else relies upon it in that form.

17.7 Where our services have been completed and circumstances subsequently change, we will not update our services or the product of our services without you requesting us to do so.

17.8 You acknowledge that any use or reliance on our services or the product of our services that is contrary to this contract may expose us to a claim or action by a third party with whom we have no relationship or whose interests have not been considered in providing the services and accordingly, you agree to indemnify us against any losses, liabilities, claims, damages, costs or expenses, interest, judgments or orders and any loss or damage which is consequential, special, punitive, exemplary or incidental, including any loss of profit, revenue, anticipated savings or business opportunity or damage to goodwill, however caused or arising, we may suffer or incur in respect of a claim by a third party that arises as a result of any use of, distribution of, or reliance on our services or the product of our services that is contrary to the terms of this contract, a written consent we have provided or any access to our services or the product of our services by any of your professional advisers or auditor.

17.9 The indemnity in clause 17.8 does not apply to the extent that we are defending a claim or action by a third party:

(a) That results from any wilful misconduct or fraudulent act or omission by us;

(b) Where that third party has signed an agreement with us that provided that it can place reliance on our services or the product of our services; or

(c) Where we have agreed in writing that our services or the product of our services may be included in publicly available documents.

### **18. Unexpected delays**

18.1 We are not responsible to you or anyone else for any failure in providing the services that is caused by circumstances that are beyond our control or were not reasonably foreseeable by us at the date of this contract.

18.2 In circumstances where you are not the cause of the delay, we will make reasonable endeavours to notify you if there is a delay that will affect the services, the cause of the delay (if known) and the impact which the delay is likely to have on timing of completion of the services.

18.3 As noted at paragraph 3, delays may give rise to fee variations.

### **19. Termination**

19.1 Either of us may terminate this contract at any time by giving the other party 30 days written notice.

19.2 Either of us may terminate this contract immediately if the other party suffers an insolvency event, cannot pay their debts as and when they become due and payable, suspends payment of their debts or otherwise ceases to carry on business.

19.3 Either of us may terminate this contract immediately if the other party commits a material breach of this contract that is not remedied within 14 days of receipt of a notice requiring the breach to be remedied or which is not capable of being remedied.

19.4 We may terminate this contract if you fail to meet your obligations under this contract, including your obligation to pay our fees within the time specified.

19. Termination (continued)

19.5 We may terminate this contract if there is a change of circumstances beyond our reasonable control that prevents us from providing the services to you.

19.6 If this contract is terminated:

(a) You agree to pay us the fees for services provided and out of pocket expenses incurred up to the date of termination;

(b) Each of us will return to the other any documents or property of the other, however we may retain a copy of all documents to allow us to satisfy our professional and record keeping obligations;

(c) The termination does not affect any accrued rights of either of us or any provision of this contract that survives termination (refer paragraph 20).

### **20. Survival**

20.1 The provisions of this contract that survive termination include those relating to paragraph 3 (Fees), paragraph 11 (Our obligation to comply with the law), paragraph 12 (Confidentiality), paragraph 13 (Limitation of Liability), paragraph 14 (Ownership of documents), paragraph 15 (Personal information and privacy), paragraph 16 (Intellectual property), paragraph 17 (Reliance on services), this paragraph 20 (Survival), paragraph 21 (Dispute resolution), paragraph 24 (Severability) and paragraph 28 (Governing law and jurisdiction).

### **21. Dispute resolution**

21.1 Each of us agrees to use reasonable endeavours to resolve any dispute that arises in connection with this contract by mediation before bringing a legal claim or starting legal proceedings against the other, however either of us may seek equitable relief in relation to our rights under this contract.

### **22. Relationship between the parties**



22.1 We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. Neither of us will act or represent ourselves, directly or by implication, as an agent of the other or in any manner assume or create an obligation on behalf of, or in the name of, the other. This contract is not intended to and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.

### **23. Entire agreement**

23.1 This contract forms the entire agreement between us for the services and supersedes all prior communications, negotiations, arrangements and agreements, whether written or oral, between us.

### **24. Severability**

24.1 If any of the terms of this contract are not legally enforceable then that term or the relevant part of it will be either amended as appropriate to make it enforceable or ignored, but in all other respects this contract will have full effect.

### **25. Assignment**

25.1 Neither of us may transfer, assign or novate this contract without the written consent of the other.

### **26. Insurance**

26.1 We maintain appropriate insurance, including professional indemnity insurance, in relation to the services and will continue to do so for a period of not less than seven years after the contract is terminated.

### **27. General**

27.1 A waiver by one of us of a breach by the other party of any term of this contract does not operate as a waiver of another term or a continuing breach by the other party of the same of any other term of the contract.

27.2 To the extent permitted by law we disclaim all warranties, either express or implied, in relation to the services other than any written warranty made in this contract.

27.3 The rights and remedies in this contract are cumulative and not exclusive of any rights or remedies provided by law.

### **28. Governing Law and Jurisdiction**

28.1 This contract is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of New South Wales.