

LIDA FACILITY MANAGEMENT

ABN: 64 490 337 646

TERMS AND CONDITIONS (CLEANING)

Contract Outline:

- A. The Client wishes Lida Facility Management to provide the Services at the location(s) from the commencement date.
- B. This is subject to the Client paying the charges, as set out in this agreement in Schedule 2 and subject to the terms and conditions of this agreement.

Operational Provisions

1 Definitions and interpretation

1.1 Definitions

In this agreement, the following words have the following meanings.

- Business Day:** means a day, other than a Saturday, Sunday or public or bank holiday, on which banks are open for business in the State or Territory of the location.
- Charges:** means the charges, specified in Item 4 of Schedule 2, that the Client will pay to Lida Facility Management, payable as per Section 5 of this agreement (Payment).
- Services:** means the services described in Schedule 1 attached to this agreement.
- Commencement Date:** means the date when Lida Facility Management will start providing the services, specified in Item 3 of Schedule 2.
- Consumables:** means the goods specified in Schedule 1, that are used up by the Consumer at the location and are replaced regularly during the services, including but not limited to bin liners, hand towels, toilet paper, liquid hand soap, dishwashing detergent and Glen20.
- Equipment:** means all chemicals (i.e., surface disinfectants) and equipment (i.e., vacuum cleaners, mops, brooms, cleaning cloths) used to perform the services as specified in Schedule 1, but excluding consumables
- Initial Term:** means the initial term of this agreement as set out in Item 1 of Schedule 2.
- Interest Rate:** means the rate specified in Clause 11.
- Lida Facility Management:** means the 'Lida Facility Management' entity identified within this agreement, its successors and assigns or any person acting on behalf of and with the authority of Lida Facility Management.
- Lida Facility Management Address:** means the address of Lida Facility Management as specified in Schedule 1.
- Location/s:** means the address/es where the services are to be provided, specified in Items 1 of Schedule 1.
- Non-Performance:** means the failure, neglect or refusal to perform any act stipulated under this agreement or as outlined in the services set out in Schedule 1.
- Parties:** means a party to this agreement which as at the date of this agreement is Lida Facility Management and the Client, and Party means either one of them.
- Proposal:** means the written proposal provided to the Client by Lida Facility Management to provide the services at the location(s).
- Restraint Area:** means the geographical boundary within which an individual or company is prohibited from engaging in similar business activities or offering the same services up to fifty (50) kilometres from the location.
- Restraint Period:** means the length of time an individual is prohibited from engaging in competing business activities after leaving the company which in this instance is four (4) months or 120 days.
- Service day(s):** means the day(s) the services will be provided at the location(s) as specified in Items 2 of Schedule 1.
- Service Time(s):** means the time(s) of day the services will be provided at the location(s), as specified in Items 3 of Schedule 1.
- Term:** means the period specified in Item 2 of Schedule 2.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses and schedules are references to the relevant clause in or schedule to this agreement;

- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to Include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses, schedules and paragraphs of this agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or by-law made under that enactment; and
- (i) where the word “including” / includes etc is used in this agreement, it will be understood as meaning “including without limitation”.

1.3 Agreement and Proposal

If there is any conflict or inconsistency between the terms, conditions and/or provisions of this agreement and the proposal: the terms, conditions and provisions of this agreement will prevail.

2 Provision of service

2.1 Services

- (a) The Client will pay the charges to Lida Facility Management.
- (b) Lida Facility Management will provide the services to the Client at the location(s); and on the service days at the service times, or some other days/times as agreed between the parties in writing.
- (c) Lida Facility Management will provide the services with reasonable skill and care and in accordance with these terms and conditions and Schedule 1.
- (d) Lida Facility Management will provide properly skilled workers (including adequate supervision), equipment and cleaning materials for such purpose.

3 Term

3.1 Initial Term

This agreement commences on the commencement date and continues for the initial term unless it is terminated in accordance with this agreement.

3.2 Automatic renewal

This agreement will automatically renew and continue to automatically renew on the date following the expiration of, in the first instance the initial term, and subsequently the term for a period(s) equal to the term unless the Client provides Lida Facility Management with prior written notice of termination in accordance with Clause 3.3. The charges payable for the services during the new term will be the price payable in the immediately preceding initial term or term (whichever is the later) plus an annual adjustment, pursuant to Clause 9.

3.3 Notice to terminate term

Notwithstanding the provisions in 3.1 and 3.2 above, this agreement may be terminated by either party at any time during the initial term or term by giving at least ninety (90) days written notice of termination to the other party.

4 Termination

4.1 Termination for breach by Client

- (a) If the Client is in breach of this agreement for non-performance, Lida Facility Management must serve on the Client a written notice of non-performance:
 - (i) specifying in detail the breach; and
 - (ii) requiring the client to rectify the breach within fourteen (14) business days from the date of the written notice.
- (b) Lida Facility Management may terminate or suspend the provision of services under this agreement if after the expiry of the notice to the Client the Client has not rectified the non-performance specified in the notice.
- (c) If the non-performance involves a failure by the Client to pay an amount owing to Lida Facility Management under this agreement, then the notice of non-performance is not remedied until the amount owing is paid in full.

4.2 Termination for breach by Lida Facility Management

- (a) If Lida Facility Management is in breach of this agreement for non-performance, the Client must serve on Lida Facility Management a written notice of non-performance to Lida Facility Management's email address:
 - (i) specifying in detail the breach; and
 - (ii) requiring Lida Facility Management to rectify the breach within fourteen (14) business days from the date of the written notice.
- (b) The Client may terminate the agreement if after the expiry of the notice of non-performance, Lida Facility Management has not rectified the non-performance specified in the notice. Before termination is binding on Lida Facility Management, the Client must serve a written notice of termination on Lida Facility Management to Lida Facility Management's address or email address, within seven (7) business days of the notice of non-performance expiring. This agreement will terminate within fourteen (14) days from the date of the termination notice.

- (c) If the Client does not serve the notice of termination on Lida Facility Management within the specified time, then the non-performance by Lida Facility Management and the notice of non-performance will be deemed to have been rectified and the Client will have no right to terminate the agreement for the alleged non-performance.

4.3 Immediate termination

Either party may terminate this agreement without prior notice if the other:

- (a) makes any assignment of its business for the benefit of creditors;
- (b) has a receiver, administrative receiver or similar officer appointed of all or part of its property; or
- (c) becomes bankrupt or goes into liquidation.

4.4 Termination without notice

If the Client terminates this agreement without notice as required pursuant to Clause 3.3, or with less notice than is agreed, the Client agrees to compensate Lida Facility Management in full on demand for:

- (a) contractual pay in lieu of notice;
- (b) any statutory payments for which Lida Facility Management becomes liable as a result of the Client's termination;
- (c) any contractual obligations for which Lida Facility Management becomes liable as a result of the Client's termination.

5 Payment

- (a) The Client will pay all charges due under this agreement payable within seven (7) business days from date of invoice for the services rendered.
- (b) Payment may be made by direct debit from the Client's nominated bank account, electronic/on-line banking, or by any other method as agreed to between the Client and Lida Facility Management.
- (c) Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full.
- (d) Lida Facility Management may set off any amount owed by the Client to Lida Facility Management, against any amount owed by the Client.
- (e) If a service day falls on a public holiday and/or any shutdown period between Christmas to New Year, the Client agrees that it is not entitled to any credit on its account. Lida Facility Management has calculated the Client's charges for the location(s) to take into account the public holidays and/or any shutdown periods between Christmas, New Year's and Easter as outlined in Schedule 1.
- (f) If the Client defaults or fails to pay Lida Facility Management the charges for the services when due for payment, then Lida Facility Management may, without prejudice to other rights require the Client to pay upon demand legal costs on a solicitor and Client basis or any other expenses whatsoever incurred by Lida Facility Management in respect of the enforcement or attempted enforcement of Lida Facility Management's rights under this agreement (including but not limited to collection agent costs).
- (g) Ryszyn Technology Pty Ltd Trust trading as Lida Facility Management is responsible for collections of monies owing for all Lida Facility Management entities.

6 Overpayment

If the Client makes an overpayment of the charges, Lida Facility Management will apply the overpaid amount as a credit to the Client's account balance. If this results in a positive balance of the account, upon written request by the Client, Lida Facility Management will refund the overpaid amount to the Client's nominated bank account within fifteen (15) business days.

7 Cancellation and Rescheduling

If the Client's services are provided on three (3) days per week or less and a service cannot be provided on a service day (i.e., if the service day falls on a public holiday), then Lida Facility Management agrees to arrange for alternative services on a suitable day/time as agreed to between the parties.

8 Tax Invoices & GST

- (a) Lida Facility Management will issue a tax invoice to the Client on the first day of each month for the services provided to the Client by Lida Facility Management during the preceding month.
- (b) All fees are exclusive of any GST that may be charged by Lida Facility Management to the Client, and therefore, Lida Facility Management will be entitled to add on GST.

9 Increasing Charges

- (a) The charges under this agreement (or any amended or updated price under this agreement) shall, effective from twelve (12) months after the commencement date of this agreement, and thereafter annually, be increased by the annual increase of the Consumer Price Index - All Groups CPI - Weighted Average of Eight Capital Cities ("CPI"), as published by the Australian Bureau of Statistics for the last quarter before each anniversary date.

- (b) The charges can also be increased if there are increases to the superannuation guarantee, worker's compensation and wage increases under a Federal or State/Territory Award relevant to the cleaning industry. These increases will be passed on to the Client, to the extent that such increases have not been included in any CPI amendments to the Charges. Lida Facility Management will notify the Client of such increases and when they commence to apply.

10 No set off

The Client must pay all money due under this agreement without any discount, deduction, set off or counterclaim regardless of any claim or dispute which the Client has or alleges it has against Lida Facility Management unless Lida Facility Management is in breach of the agreement itself or the claim relates to loss or damage caused by Lida Facility Management wilful acts, omissions or negligence.

11 Interest on late payment

If the Client fails to pay any sum due on the due date of payment in accordance with this agreement, the Client must pay to Lida Facility Management interest on the overdue amounts at ten percent (10%) per annum interest rate until payment is made in full.

12 Suspension of performance

- (a) Failure by the Client to pay the charges pursuant to Clause 5(a), will constitute sufficient cause for Lida Facility Management to suspend or terminate service under the agreement until the charges and all interest on them have been received in full by Lida Facility Management and the Client's other obligations have been complied with in full.
- (b) Failure by the Client to comply with any of its material obligations under this agreement will constitute sufficient cause for Lida Facility Management to suspend or terminate service including suspension or termination of any associated new charges under the agreement until the Client's other obligations have been complied with in full.

13 Selection of Lida Facility Management's workers

- (a) Lida Facility Management will use reasonable endeavours to provide workers to carry out the services.
- (b) Lida Facility Management will ensure that all Lida Facility Management at the location(s) have an up to date Working With Children or police check.

14 Uniforms

Lida Facility Management will ensure employees wear suitable garments to perform the services and have identification.

15 Site Security

- (a) The Client must keep Lida Facility Management informed of all security procedures in operation at the location(s) with which it reasonably requires Lida Facility Management's workers to comply.
- (b) Lida Facility Management will ensure that its workers working at the location(s) under the agreement are made fully aware of and comply with such Client's security procedures.

16 Equipment and Consumables

- (a) Lida Facility Management will provide all equipment for the services at the location(s).
- (b) Lida Facility Management will maintain the equipment regularly in line with applicable work health and safety and any other applicable laws, regulations and governmental guidelines and provide replacements when break-downs occur or any such equipment required for the provision of the services ceases to work effectively.
- (c) The Client will provide all consumables for the services at the location(s), unless otherwise agreed as provided by Lida Facility Management and outlined within Schedule 1.

17 New Premises

- (a) If the Client moves to another Location or alters the premises at the location(s), the Client must give Lida Facility Management full details of the new or additional location or the premises as altered.
- (b) When the Client receives the details under Clause 17(a), Lida Facility Management will supply:
 - (i) a new or varied schedule specifying the services to be provided by Lida Facility Management and a quotation for a revised charge; and
 - (ii) if it is accepted by the Client, this agreement will continue in force as altered.

18 Safe premises

- (a) The Client warrants that the premises at the Location(s): are safe for work, comply with all work, health and safety legislation; and comply with any statutory requirements and other health and safety needs.
- (b) Lida Facility Management may refuse to permit its workers to work at the Location(s) if Lida Facility Management reasonably considers that they may be exposed to undue risk or danger.

19 Work health and safety policy

- (a) So far as it affects its workers who perform the cleaning services, Lida Facility Management undertakes with the Client that (without limiting its duties to them) It will:
 - (i) in accordance with applicable law.
 - (ii) comply with all work, health and safety legislation;
 - (iii) provide reasonable information, training and supervision in safe work practices and the need to work safely to safeguard the health, safety and welfare of its workers performing the services.
- (b) The Client agrees to bring to the notice of Lida Facility Management workers the Client's work, health and safety policy for the Location for Lida Facility Management workers who perform work on-site at the location(s).

20 Client complaints

- (a) Any complaint about the non-performance of the services must be made in writing specifying in detail the nature of the non-performance and sent to the Lida Facility Management email address, pursuant to Clause 4.2(a). Any complaints that are personally delivered to a Lida Facility Management employee or agent will not be considered given or served unless they are also delivered to the Lida Facility Management email address.
- (b) Lida Facility Management will take reasonable action, without cost to the Client, to investigate and (unless it reasonably considers that the complaint was not justified) take reasonable remedial action.
- (c) In the absence of complaint, it will be assumed that the Client is satisfied with Lida Facility Management's performance of the services.
- (d) Nothing in this Clause 20 will act so as to waive or limit any right or remedy either party may have under this agreement or as may be provided by applicable law.

21 No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of partnership or employer and employee between Lida Facility Management and the Client or between the Client and Lida Facility Management's employees and/or agents.
- (b) It is the express intention of the parties that any of the relationships referred to in Clause 21(a) are denied.

22 Insurance

Lida Facility Management must affect all insurance required to be affected by law including worker's compensation insurance as prescribed by law for Lida Facility Management and its employees and agents, and public liability insurance for a minimum amount of \$20,000,000.

23 Force majeure

- (a) Neither party has any liability under, or be deemed to be in breach of, this agreement, for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that party.
- (b) The party affected by such circumstances must promptly notify the other party in writing when such circumstances cause a delay or allure performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than six (6) months, either party may terminate this agreement by written notice to the other party.

24 Confidentiality

- (a) All information acquired by Lida Facility Management relating to the Client's business must be treated by Lida Facility Management as confidential. Lida Facility Management must not make any use or disclosure of it
- (b) Lida Facility Management requires its employees to enter into written undertakings as to confidentiality which are directly enforceable. This document can be viewed by the Client upon written request to Lida Facility Management's email address.
- (c) The obligations of this clause do not apply to any information which:
 - (i) was known or was in the possession of Lida Facility Management before it was acquired by Lida Facility Management from the Client;
 - (ii) is, or becomes, publicly available through no fault of Lida Facility Management;
 - (iii) is provided to Lida Facility Management without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

- (iv) was developed by any of Lida Facility Management's staff (or on Lida Facility Management's behalf) who had no direct access to, or use or knowledge of the confidential information acquired from the Client; or
 - (v) is required to be disclosed by order of a court of competent jurisdiction.
- (d) This clause survives termination of this agreement.

25 Restraint of employment

25.1 Restraint during Term

During the initial term and/or term the Client must not, without Lida Facility Management's prior written consent, engage or employ any person/s who was at any time engaged or employed by Lida Facility Management, to provide the Client with the same or similar services at the location(s).

25.2 Restraint after Term

During the restraint period and within the restraint area, the Client must not, without the prior written consent of Lida Facility Management, directly or indirectly:

- (a) solicit, canvass, approach or accept any approach from any person who was at any time during the Initial Term and/or term, engaged or employed by Lida Facility Management or
- (b) solicit, interfere with or endeavour to entice away from Lida Facility Management or Lida Facility Management any employee, contractor or consultant of Lida Facility Management.

25.3 Separate and independent restraints

Each restraint in Clause 25.1 and 25.2 (resulting from the various combinations of the restraint periods and restraint areas) constitute and shall be construed as a separate, severable and independent provision from the other restraints (but cumulative in overall effect).

25.4 Reasonable and fair restraint

The Client acknowledges that:

- (a) each of the restraints in Clause 25.1 and 25.2 are reasonable in scope and duration and is reasonably necessary to protect the goodwill and legitimate business interests of Lida Facility Management and Lida Facility Management is relying upon this acknowledgment in entering into this agreement;
- (b) any breach of Clause 25.1 and 25.2 would cause irreparable harm and significant damage to Lida Facility Management and, accordingly that Lida Facility Management has the right to seek and obtain immediate injunctive relief in relation to any such breach; and
- (c) Lida Facility Management has recommended that the Client obtain independent legal advice about Clause 25.1 and 25.2, and the Client has had reasonable opportunity to do so.

26 Exclusion of liability

- (a) To the extent permitted by applicable law, Lida Facility Management disclaims all liability to the Client in connection with Lida Facility Management's performance under this agreement, including liability for loss of profits and other consequential losses.
- (b) Except in the case of death or personal injury caused by Lida Facility Management's acts, omissions or negligence, or breach of this agreement the liability of Lida Facility Management under or in connection with this agreement whether arising in contract, tort negligence, breach of statutory duty or otherwise howsoever will not exceed the charges paid for the services in the twelve (12) month period immediately preceding the date the claim arose.
- (c) Neither party will be liable to the other party in contract, tort, negligence, breach of statutory duty nor otherwise for any loss, damage, costs or expenses of any nature what-soever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

27 Variation

- (a) This agreement may only be amended in writing signed by duly authorised representatives of the parties
- (b) In the event any variation to the terms & conditions, and/or provisions of this agreement cannot be mutually agreed upon between the parties, terms, conditions, and/or provisions of this agreement will remain unchanged.

28 Waiver

- (a) No failure or delay by either party in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

29 Assignment

- (a) The Client may not without the prior written consent of Lida Facility Management assign or dispose of the agreement, part with any interest in it, or grant any lease or license or delegate any of the rights conferred by it.
- (b) Lida Facility Management may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business including but not limited to a Lida Facility Management employee.
- (c) Lida Facility Management may assign and reallocate all its rights and obligations under this agreement from Lida Facility Management to a contractor or employee in certain events.
- (d) Lida Facility Management will confirm to the Client in writing the name and contact details of the Lida Facility Management contractor or employee once a walk through to the Client's satisfaction has been conducted.

30 Severability and survival of covenants

- (a) If any provision of this agreement is, or at any time becomes, prohibited by or unlawful under any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this agreement. The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition continue in full force and effect.
- (b) Any prohibited, unlawful, void or unenforceable provision as envisaged in Clause 30(a) will be replaced immediately by an allowable, lawful effective and enforceable provision which so far as possible achieves the same economic benefit or burden for Lida Facility Management and the Client as the prohibited, unlawful, void or unenforceable provision was intended to achieve.
- (c) All obligations of the Client under this agreement will survive the expiration or termination of this agreement to the extent required for their full observance and performance.

31 Notices

- (a) A notice or other communication connected with this agreement has no legal effect unless it is in writing.
- (b) In addition to any other method of service provided by law, the notice may be sent by post to the address of the addressee as set out in this agreement, or sent by email to the email address of the addressee.

32 Law and jurisdiction

- (a) This agreement takes effect, is governed by, and construed in accordance with the laws from time to time in force in New South Wales, Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.