

TERMS AND CONDITIONS OF PURCHASE



These Terms and Conditions of Purchase shall apply to the supply by the Supplier of all Goods and Services to Jackson Lift Services Limited or Jackson Lift Installations Limited, (referred to as Jackson herein) to the exclusion of all and any terms and conditions that may be put forward by the Supplier.

Interpretation

In these terms and conditions, the following words and expressions shall have the following meanings:

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| Contract | means the contract between Jackson and the Supplier for the purchase of Goods and Services which shall incorporate these Terms and Conditions and the Purchase Order. |
| Contracting Parties | means Jackson and the Supplier and "Contracting Party" shall be construed accordingly |
| Conditions | means the standard conditions for the purchase of the Goods and Services as set out in this document |
| Force Majeure | means any act of God, riots or insurrections, acts of terrorism, war (whether declared or not), civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, acts of destruction, failure of subcontractors, difficulties in obtaining labour or materials, breakdown of machinery, fire, flood or unavoidable accident but excluding strikes, lock outs or trade disputes (whether involving its own employees or those of any other person) or other industrial disturbances |
| Goods | means the goods to be supplied to Jackson by the Supplier as more particularly detailed in the Purchase Order |
| Intellectual Property Rights | means all and any intellectual property rights of any kind and rights of a like nature wherever and whenever arising and whether registered or unregistered and including, without limitation, any patents, copyright, registered design, design rights, database rights and rights in confidential information, trademarks, trade names or service marks |
| Price | means the price for the Goods and Services as detailed in the Purchase Order |
| Purchase Order | means the order or orders for the supply of Goods and/or Services provided to the Supplier by Jackson |
| Services | means the services to be provided to Jackson by the Supplier as more particularly detailed in the Purchase Order |
| Specification | means any specification provided by Jackson to the Supplier in the Purchase Order or as otherwise provided to the Supplier by Jackson from time to time |
| Supplier | means the party named on the Purchase Order or any subsidiary or associated party substituted by the original supplier named on the Purchase Order |
| Supplier Assessment | means any assessment by Jackson of the Supplier for any purpose to assess the performance of the Supplier |
| Tools | means any tools which are provided by Jackson or made by the Supplier for or on behalf of Jackson |

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- 1 The Parties to the Contract**

The Contract is established between the Supplier and Jackson.
- 2 Goods and Services to be delivered**

Jackson shall purchase and the Supplier shall supply the Goods and/or Services (as appropriate) in accordance with the Contract.
- 3 Basis of and alterations to the Contract**
 - 3.1 Alternate terms and conditions or similar documents submitted by either party shall not apply, save where agreed in writing by the Contracting Parties and signed in confirmation thereof.
 - 3.2 The Supplier shall notify Jackson within 24 hours of receipt of a Purchase Order if it is unable to accept that Purchase Order. If no such notification (in writing) is received, the Supplier shall be deemed to have accepted the Purchase Order.
 - 3.3 In the event of any conflict between these Conditions and any specific term or condition referred to in the Purchase Order, the relevant terms in the Purchase Order shall prevail (to the extent of the conflict or inconsistency only).
 - 3.4 Departures from these Conditions must be confirmed in writing by Jackson. Subsequent amendments and/or additions to the Purchase Order and/or Conditions are valid only to the extent that the Contracting Parties so agree in writing.
 - 3.5 Jackson enters into Contracts only on the basis of these Terms and Conditions and the Purchase Order
 - 3.6 Jackson shall be entitled to cancel a Purchase Order, in whole or in part, at any time, provided that reasonable notice is given in writing (and without notice if the Purchase Order has not been acknowledged by the Supplier), whereupon all work under the Purchase Order (or the cancelled part) shall be discontinued and Jackson shall pay to the Supplier such proportion of the Purchase Order as may be fair and reasonable having regard to the value of the Goods previously delivered and of Services performed under the Purchase Order and Jackson shall have no further liability whatsoever by reason of such cancellation.
- 4 Transfer of risk and title**
 - 4.1 Goods and Services shall be supplied to the delivery address specified in the Purchase Order. Delivery shall only be deemed to be completed once the Goods have been unloaded at the point of delivery.
 - 4.2 Risk of loss and/or damage shall pass to Jackson upon safe delivery of Goods to the specified delivery address.
 - 4.3 Any inspection obligations stipulated by law are waived so far as is legally possible. However, Jackson remains entitled to check the Goods or Services provided that any such checking shall not be deemed to waive any of Jacksons rights at law or under these conditions or be deemed to imply acceptance of the Goods or Services by Jackson.
 - 4.4 The title to the Goods or any part of the Goods shall pass upon the earlier of delivery or the time of any payment being made for them.
- 5 Delivery**
 - 5.1 The date of delivery of the Goods and Services shall be that specified in the Purchase Order unless agreed otherwise in writing between Jackson and the Supplier, all deliveries of the Goods and Services shall be made in one delivery on the date specified in the Purchase Order or such other dates and arrangements as are stated by Jackson.
 - 5.2 The agreed delivery date is binding and time shall be of the essence of the Contract. Delays in delivery shall be notified to Jackson in writing immediately, stating the reasons for the delay. In the event of delayed delivery, the Supplier shall remain obliged to perform the Contract provided that any failure by the Supplier to adhere to any provisions as to time contained in the Purchase Order shall entitle Jackson, at its option, to treat the Contract as repudiated in whole or in part. Jackson shall be entitled to exercise this option at any time unless a written extension of time has been given to the Supplier by a duly authorised representative of Jackson and the time of any extension has not lapsed.
Failure by Jackson to exercise its option in respect of any part of a Purchase Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Purchase Order and Jackson shall remain entitled in every case to pursue the remedies available to it under law.

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- 5.3 Save where otherwise agreed in writing between the Contracting Parties, the Supplier is not entitled to carry out delivery at a time earlier than that agreed and Jackson shall be entitled to reject any early delivery or, in the case of Goods, charge the Supplier for the cost of insurance and storage of the Goods until the contractual date of delivery.
- 5.4 Unless an extension of time has been agreed by Jackson in accordance with the above provisions, the Suppliers failure to deliver on the dates or date specified shall entitle Jackson to purchase substitute goods or services and to hold the Supplier accountable for all losses and/or additional costs incurred as a result.
- 5.5 In the event of late delivery by reason of the occurrence of an event of Force Majeure Jackson may cancel the Contract without liability or, at its own discretion, extend the period for performance.

6 Payment terms

- 6.1 Payments by Jackson shall only be made on receipt of a valid invoice, submitted in accordance with the Terms and Conditions and containing at least the following information:
- (a) Order date
 - (b) Order number
 - (c) The designation of the goods/services delivered
- 6.2 Unless otherwise agreed by Jackson in writing invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods and performance of all of the Services which are the subject of the Purchase Order.
- 6.3 Payment shall be made within 30 days of end of month of date of invoice.
- 6.4 Jackson specifically reserves the right to deduct from any monies due or to become due to the Supplier any monies due to Jackson from the Supplier. Jackson shall also be entitled to withhold any amounts expressed to be due under an invoice which it disputes are properly due to the Supplier.
- 6.5 Jackson shall not be responsible for the payment of any charges for Goods supplied or Services performed in excess of the Goods or Services required by the Purchase Order or any variation to it unless authorised in writing by a further Purchase Order.
- 6.6 The Supplier shall be entitled to charge interest on any undisputed amounts properly due to the Supplier which remain unpaid on the due date for payment at the rate of 2% above the base lending rate of Barclays Bank plc.

7 Packaging Material

- 7.1 The Supplier shall provide packaging materials which shall afford sufficient protection and shall be suitable for the intended mode of transport being utilised to deliver the Goods to Jackson.
- 7.2 Cost of suitable packaging materials shall be included within the cost of the Goods and Services provided. The Supplier shall, wherever possible, use recyclable packaging materials.
- 7.3 At the request of Jackson, the Supplier must take back the packaging material free of charge. Any damage caused by inadequate and/or inappropriate packaging shall be the responsibility of the Supplier.

8 Price

- 8.1 The Price for the Goods and Services shall be the Price specified in the Purchase Order unless otherwise agreed in writing between the Contracting Parties. No other costs or charges shall be accepted by Jackson unless specifically indicated in the Purchase Order.
- 8.2 Any price reductions occurring between the time of the Purchase Order and the time of delivery must be passed on in full to Jackson. Save where expressly agreed otherwise, the Prices are quoted inclusive of all tax, levies, customs duties, charges, delivery and packaging. For the avoidance of doubt, although Prices are quoted inclusive of all tax, levies, customs duties, charges, delivery and packing, VAT elements must be shown separately on all invoices.

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9 Liability

- 9.1 The Supplier shall indemnify Jackson and keep Jackson fully and totally indemnified in respect of the following:-
- 9.1.1 all losses, costs, damages, expenses and claims suffered or incurred by Jackson as a result of any breach of the Contract by the Supplier including any direct or indirect, special or consequential losses or damages whatsoever, howsoever caused;
 - 9.1.2 any claims or allegations made against Jackson by a third party that the use or the sale of the Goods infringes any of the intellectual property rights of that third party (provided that this indemnity shall not apply in cases where the alleged infringement arises solely as a result of the Supplier manufacturing the Goods to the specifications, drawings or designs provided by Jackson);
 - 9.1.3 all claims in respect of royalties payable by the Supplier in respect of the Goods;
 - 9.1.4 all claims arising out of errors and omissions in drawings, calculations, packaging or other particulars supplied by the Supplier; and
 - 9.1.5 all claims made against Jackson arising out of the acts or omission of the Supplier, its employees, agents or sub contractors.
- 9.2 Except in relation to payment of the Price of Goods and/or Services properly delivered to Jackson in accordance with the terms of the Contract, Jackson shall have no liability whatsoever to the Supplier for any direct or indirect, special or consequential losses or damages whatsoever, howsoever caused provided that nothing in this Clause 9.2 shall be construed as excluding or limiting Jacksons liability for death or personal injury caused by Jacksons negligence.

10 Intellectual Property Rights

- 10.1 The Supplier shall assign to Jackson all the Intellectual Property Rights in the Goods and Services and shall execute all such documents as may be required to permit Jacksons ownership of such Intellectual Property Rights.
- 10.2 The Supplier undertakes to indemnify Jackson and keep Jackson fully and effectively indemnified in respect of all claims, losses, damages, liabilities, costs and expenses suffered or incurred by Jackson as a result of any claim or allegation by a third party that the Goods and/or Services infringe the Intellectual Property Rights of that third party.

11 Confidentiality

- 11.1 The Contracting Parties (as a "Receiving Party") hereby acknowledge that the other (the "Disclosing Party") has provided to the Receiving Party confidential information and in respect of all such confidential information, the Receiving Party will:
- 11.1.1 treat it as confidential;
 - 11.1.2 restrict its disclosure to such of its employees, agents and professional advisors as have a need to know and subject always to such employees and agents being under a similar duty of confidentiality; and
 - 11.1.3 not disclose it to any third party without the prior written consent of the Disclosing Party.
- 11.2 The requirements detailed above shall not apply to any confidential information which:
- 11.2.1 is or becomes common knowledge without breach of the obligations contained within this Clause 10 by the Receiving Party; or
 - 11.2.2 was in the Receiving Party's possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or
- 11.3 the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the

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Lifts • Escalators • Cradles

Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.

12 Insurance

12.1 The Supplier shall ensure that all Goods are adequately insured until they have been safely delivered in accordance with the Contract. Furthermore, the Supplier shall adequately insure any Materials from the point at which they leave Jackson's premises. For the avoidance of doubt, the cost of this insurance shall be included in the Price.

12.2 The Supplier shall obtain and maintain insurance cover sufficient to cover all of its potential liabilities to Jackson under the Contract.

13 Sub-Contractors

13.5.1 The Supplier shall not sub-contract any of its obligations under the Contract without giving Jackson prior written notice in good time, such notice to contain the name of the sub-contractor and their proposed activities in relation to the Contract. The Supplier shall not be entitled to appoint any sub-contractor until the aforementioned notice has been given and Jackson has consented to their appointment.

13.5.2 For the avoidance of doubt, the Supplier remains fully liable for all acts or omissions of sub-contractors.

14 Duty of Care and Product Recall

14.1 The Supplier is required to inform Jackson as soon as reasonably practicable in writing of any defects in the Goods or Services including, but not limited to, errors in documents made available by Jackson.

14.2 The Supplier agrees to provide Jackson with all assistance reasonably necessary to procure the recall of Goods if Jackson notifies the Supplier of any concern or defect affecting the Goods. For the avoidance of doubt, the Supplier shall be responsible for all costs incurred in the event of a valid product recall which arises as a result of the supply of defective Goods by the Supplier.

15 Termination for Bankruptcy, Insolvency or Material Breach

15.1 The Supplier is required to inform Jackson without delay if its financial circumstances may lead to insolvency or financial restructuring so that it is unable or could become unable to comply with its delivery obligations.

15.2 Without prejudice to any other rights or remedies to which it may be entitled, Jackson may terminate the Order forthwith and without liability in the event that:

15.2.1 the Supplier shall become bankrupt or, under Section 123 of the Insolvency Act 1986, be deemed to be unable to pay its debts or shall compound with its creditors or if a resolution shall be passed or proceedings commenced for the administration or liquidation of the Supplier (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager shall be appointed of all or any part of its assets or undertaking; or

15.2.2 the Supplier shall commit any material breach of its obligations under the Contract and fail to rectify such breach within seven days of receipt of written notice from Jackson specifying the breach and requiring it to be remedied.

16 Severance

In the event that any of the Conditions are held to be invalid or unenforceable, in whole or in part, then the unaffected provisions shall remain in full force and effect.

17 Written form

For the purposes of these Conditions, the written form includes documents signed by the Contracting Parties or forms of transmission which permit evidence by text, such as fax, e-mail or other forms of electronic transmission (but excluding SMS text messaging);

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18 **Contract (Rights of Third Parties) Act 1999**

A person who is not a party to this Contract (a "third party") shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 (the "Act") to enforce any terms of this Agreement. Any remedy or right of a third party which exists that is available apart from the Act is not affected.

19 **Assignment**

The Supplier shall not be entitled to assign a Contract or of any part of a Contract without the prior written consent of Jackson.

20 **Force Majeure**

Neither the Supplier nor Jackson shall be liable to the other for any default under this Contract where the same is due to an event of Force Majeure affecting the party in default provided that the party seeking to rely on this provision shall give written notice to the other containing full particulars of the act or matter which it claims has put the due performance of its obligations under the Contract beyond its control provided further that no such notice may be given once such act or matter has ceased to subsist.

Without prejudice to Jacksons rights of termination set out in these Conditions, if any act or matter relied upon by either the Supplier or Jackson for the purposes of the previous paragraph shall continue for more than 12 months, the other party shall be entitled to terminate this Contract by one month's notice in writing provided that no such notice may be given once such act or matter has ceased to subsist.

21 **Warranties**

21.1 The Supplier warrants that:

21.1.1 All Goods supplied will correspond to the Specifications, be fit for purpose and are free from defects in material, workmanship and title, and conform to all relevant UK and EC Standards, and laws and shall comply with all samples and descriptions provided by the Supplier.

21.1.2 All Services will be performed in a skilful and professional manner and in accordance with Jacksons requirements, the Specifications and all other representations made by the Supplier in relation to such Services. In relation to all Goods supplied, the warranty set out above shall be valid for a period of 12 months from the date of the Goods being used by an end user or 18 months from delivery, whichever shall be the shorter.

21.1.3 The Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and Services prior to the Purchase Order. Nothing contained in these conditions shall in any way detract from the Suppliers obligations under common law or statute or any express warranty or condition contained in the Purchase Order.

21.1.4 Without prejudice to any other rights that Jackson may have, in the event of any breach of the above warranties, the Supplier shall either (at Jacksons option) immediately repair or replace the defective Goods/Services or shall credit Jackson with an amount equal to the Price paid by Jackson for the defective Goods/Services in question.

21.2 Without prejudice to the warranties given by the Supplier set out above, the Supplier assigns to Jackson all warranties and guarantees applicable to the Goods which have been given to it by any third party manufacturer or supplier of the Goods and Services. The Supplier shall provide such assistance as is reasonable to assist Jackson to enforce the terms of any such warranties or guarantees.

21.3 The Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by Jackson.

21.4 All of the Goods and Services must pass such acceptance tests as Jackson notifies to the Supplier from time to time.

21.5 Jackson shall be entitled to reject any Goods and Services which do not conform in every respect with the terms the Purchase Order and in particular (but without prejudice to the generality of the foregoing) this clause 10. Furthermore, if by the nature of the Goods and Services any defects therein or any failure thereof to conform as aforesaid does not or would not become apparent (despite the carrying out of any examination and/or such tests) until after use, Jackson may reject the same even after a reasonable period of use.

- 21.6 Should any defect or fault occur with the Goods and/or Services provided by the Supplier during the Defects Liability Period that Jackson are responsible for under their contract with their Client then Jackson shall be entitled to recover from the Supplier all costs, expenses and damages incurred as a result of such issue.
- 21.7 The Supplier will ensure that in all respects in the case of Specifications, the Goods and Services comply with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force in the territory where the Goods are to be delivered or the Services are to be performed.

22 Supplier Assessment

- 22.1 Jackson may, from time to time, carry out Supplier assessments to monitor and assess the performance of the Supplier.
- 22.2 If the Supplier, at any time, fails such an assessment then this may be deemed a breach of its obligations under the Contract and within seven days of receipt of written notice from Jackson specifying the breach and requiring it to remedy such breach the Supplier will take all necessary measures to rectify such breach.

23 Dispute Resolution

- 23.1 Should any dispute arise out of the Contract, including the interpretation thereof or any other matter specifically referred to herein, the Contracting Parties agree to negotiate for the settlement thereof by the following procedure:
- 23.2 The Contracting Parties shall use all reasonable endeavours to promptly negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof within 14 days of notification by one party to the other of such dispute.
- 23.3 If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties within such 14 day period, the dispute shall be immediately referred to the relevant directors of both Contracting Parties who shall meet (either by person, by telephone or through such other means of communication as may be agreed between them) in good faith within 14 days of the request of either party in order to attempt to resolve the dispute within a further 14 days from the initial date of such meeting.
- 23.4 In the event that the Parties are unable to resolve the dispute pursuant to the above the Party may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure"). To initiate a mediation, a party by its Managing Director shall give notice in writing ("ADR Notice") to the other Party to the dispute addressed to its duly authorised officer requesting a mediation in accordance with the Model Procedure. The place of mediation shall be London, England. The language of the mediation and agreement shall be in English.

24. Applicable law

The Contracting Parties agree that this Contract shall be governed by and interpreted exclusively according to the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts in relation to any matter or dispute arising out of or in connection with this Contract. For the avoidance of doubt, any dispute between the Contracting Parties in connection with this Contract shall be referred in the first instance to the dispute resolution procedure as provided in Clause 22.4.