

Supply of Goods Terms and Conditions

- 14.1.2 in the event the Purchaser gives to us any false or misleading statement or making any negligent or fraudulent misrepresentation in relation to this Contract.
- 14.2 The Supplier has the right to terminate this Contract immediately if the Purchaser commits a material breach of this Contract and fails to remedy that breach within 14 days of receiving notice of the breach, or if the Purchaser goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 14.3 In the event of termination:
- 14.3.1 all payments due under this Contract shall become due and immediately payable. In respect of any Goods provided but for which no invoice has been submitted, we shall be entitled to submit an invoice, which shall become due and immediately payable;
- 14.3.2 any and all obligations of the Purchaser which either expressly or by their nature continues beyond the termination, cancellation or expiration of this Contract, they shall survive termination on a pro-rata basis.
- 14.4 The rights to terminate this Contract given by this clause 14 shall not affect, relieve or prejudice any right to damages or any other remedy or from any other liability whatsoever which the Purchaser has to the Supplier as set out in this Contract in respect of any breach of this Contract which existed at or before the date of termination
- 15. Confidentiality**
- 15.1 Both parties recognise that throughout the term of this contract, certain information will be shared, which may be confidential, commercially valuable, sensitive and/or personal.
- 15.2 It is Purchaser's responsibility to identify and mark any such information and to notify us of the same. Such information will only be disseminated within our organisation in so far as we deem this to be reasonably necessary in order to fulfil our legal and contractual duties in the provision of our obligations under this Contract. No such information will be shared outside the organisation, unless required by law, by any court order or unless so authorised by the Purchaser in writing.
- 15.3 The Purchaser warrants that they will not use any confidential information provided by us other than to perform their obligations under the Contract and will not disseminate it to any third party unless required by law, by any court order or unless so authorised by us in writing.
- 15.4 The provisions of this clause 15 shall continue in force, notwithstanding the termination of the Contract for any reason.
- 16. Intellectual Property**
- 16.1 Subject to a written agreement to the contrary, we retain ownership in all intellectual property which may subsist in the provision of the Goods. Nothing in the Contract will vest any ownership rights in the Purchaser.
- 16.2 Provided payment is made in accordance with the terms of payment above, we will grant the Purchaser a non-exclusive, non-transferrable licence to use the intellectual property the subject of the Contract, only for the purposes for which we are engaged by the Purchaser. The licence will become effective only once the final documentation has been provided and once we have received all payments under the Contract in full.
- 16.3 The Purchaser may not sub-licence these intellectual property rights without our prior written permission.
- 16.4 The licence will apply only to the final documentation and will not extend to any draft concepts, equations, notes or other material viewed by the Purchaser. These cannot be used without our express permission. We reserve the right to reuse the documentation at our discretion.
- 16.5 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of our intellectual property rights.
- 16.6 Any licence granted shall be automatically revoked if the Purchaser is in breach any of these terms and conditions or if the Contract is terminated in accordance with clause 14.
- 16.7 The Purchaser warrant that any document or instruction furnished or given by the Purchaser will not cause us to infringe any letter patent, registered design or trade mark in the execution of our obligations hereunder and will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of the Purchaser's information.
- 17. Use of Software**
- If the scope of delivery of the Goods comprises of software, the Purchaser shall be granted a non-exclusive right to use the supplied software including its documentation. It is delivered for use on the system of the delivered Goods only and use of the software on more than one system shall be prohibited. The Purchaser shall only reproduce, edit or translate the software or convert the software from the object code into the source code within the framework admissible by law Copyright, Designs and Patents Act 1988. The Purchaser undertakes to refrain from removing the manufacturer's indications such as the copyright notice in particular or to refrain from changing them without our express prior approval. We reserve any other rights to the software and the documentation including copies. The Purchaser shall not be permitted to grant sub-licenses.
- 18. Non-solicitation**
- For a period of 12 months following the termination of this contract for any reason, the Purchaser shall not offer employment to any employee of ours involved in performing any of the obligations hereunder induce or encourage the employee to leave our employment without our written consent.
- 19. No Employment**
- Nothing in this Contract will render or be deemed to render us an employee or agent of the Purchaser or the Purchaser an employee or agent of ours.
- 20. Assignment and Sub-Contracting**
- 20.1 The Purchaser is not entitled to assign the benefits under the Contract.
- 20.2 We may sub-contract the performance of any of our obligations under the Contract without the prior written consent of the Purchaser. We will be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.
- 21. Suppliers Liability and Indemnity**
- 21.1 Nothing in these Terms and Conditions excludes or seeks to exclude our liability for death or personal injury caused by our negligence, or for fraud or fraudulent misrepresentation.
- 21.2 Except as provided in clause 21.1 above, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our employees, agents or otherwise) in connection with the performance of our obligations under the Contract. All warranties or conditions whether express or implied by law are hereby expressly excluded to the maximum extent permitted by law.
- 21.3 We shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subject to improper conditions, failure to follow our instructions (whether given orally or in writing), incompatibility of a product/subsystem with other manufacturers' products/subsystems, misuse, attempted repair or alteration of the Goods without our prior approval, using the lift for "Beneficial Use" without having entered into a separately negotiated and agreed "Beneficial Use" Agreement with us or any other breach of these conditions or act or omission on the part of the Purchaser, its employees or agents or any third party.
- 21.4 In the event of a breach by us of our express obligations under these Terms and Conditions, the remedies of the Purchaser will be limited to damages, which in any event, will not exceed the fees and expenses paid by the Purchaser for the Goods in the 12 months immediately preceding the date on which the claim arose.
- 22. Force Majeure**
- 22.1 Definition: "Force Majeure" means the occurrence of an event or circumstance ("Force Majeure Event") that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment ("the Affected Party") proves:
- a) that such impediment is beyond its reasonable control; and
- b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
- c) that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.
- 22.2 Non-performance by third parties. Where a contracting party fails to perform one or more of its contractual obligations because of default by a third party whom it has engaged to perform the whole or part of the contract, the contracting party may invoke Force Majeure only to the extent that the requirements under clause 22.1 of this Clause are established both for the contracting party and for the third party.
- 22.3 Presumed Force Majeure Events. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under clause 22.1 of this Clause, and the Affected Party only needs to prove that condition (c) of clause 22.1 is satisfied:
- a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
- b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy;
- c) currency and trade restriction, embargo, sanction;
- d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
- e) plague, epidemic, natural disaster or extreme natural event;
- f) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
- g) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 22.4 Notification. The Affected Party shall give notice of the event without delay to the other party.
- 22.5 Consequences of Force Majeure. A party successfully invoking this Clause is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. The other party may suspend the performance of its obligations, if applicable, from the date of the notice.
- 22.6 Temporary impediment. Where the effect of the impediment or event invoked is temporary, the consequences set out under clause 22.5 above shall apply only as long as the impediment invoked prevents performance by the Affected Party of its contractual obligations. The Affected Party must notify the other party as soon as the impediment ceases to impede performance of its contractual obligations.
- 22.7 Duty to mitigate. The Affected Party is under an obligation to take all reasonable measures to limit the effect of the event invoked upon performance of the contract.
- 22.8 Contract termination. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.
- 22.9 Unjust enrichment. Where clause 22.8 above applies and where either contracting party has, by reason of anything done by another contracting party in the performance of the contract, derived a benefit before the termination of the contract, the party deriving such a benefit shall pay to the other party a sum of money equivalent to the value of such benefit.
- 23. Entire agreement**
- 23.1 No terms or conditions stipulated or referred to by the Purchaser in any form whatsoever shall in any respect vary, modify or add to these Terms and Conditions unless otherwise agreed by us in writing in our Order Acknowledgement.
- 23.2 No variation, modification or addition by the Purchaser to these Terms and Conditions, or to the Contract, shall be binding unless agreed in writing between the authorised representatives of the parties and confirmed in our Order Acknowledgement.
- 24. Waiver**
- The Purchaser agrees that no failure by the Supplier to enforce the performance of any provision in these Terms and Conditions or under the Contract will constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure will not be deemed to be a waiver of any preceding or subsequent breach and will not constitute a continuing waiver.
- 25. Severance**
- The Purchaser agrees that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) will be deemed severed from the remainder of these Terms and Conditions (and the Contract, as appropriate). The remainder of these Terms and Conditions will be valid and enforceable.
- 26. Data Protection**
- Both parties agree to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018 and any subsequent amendments thereto.
- 27. Third Party Rights**
- No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 28. Notices**
- 28.1 All notices shall be in writing, addressed to the most recent address or email address notified to the other Party and shall be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 28.2 Notices will be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; when sent, if transmitted by email and a successful return receipt is generated; or on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid.
- 29. Law and Jurisdiction**
- 29.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) will be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) will fall within the jurisdiction of the courts of England and Wales.