

Horsler Lift Services Ltd – Terms and Conditions

These Terms and Conditions are the standard terms which apply to the provision of all Goods and Services by us, Horsler Lift Services Ltd, a company registered in England under number 07919378, whose registered office address is at 8 Spur Road, Cosham, Portsmouth, PO6 3EB, of Unit 3 Little Balmer, Buckingham Industrial Park, Buckingham, MK18 1TF (“the Company”).

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“**Contract**” means the contract for the purchase and sale of the Goods and/or supply of the Services, as applicable, under these Terms and Conditions;

“**Customer**” means the sole trader, firm or corporate body who accepts our Quotation for the sale of the Goods and/or supply of the Services, or whose order for the Goods and/or Services is accepted by us. Where the person ordering the Goods is an individual doing so on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business and the business shall be the Customer in the context of this Contract;

“**Goods**” means the goods (including any instalment of the goods or any parts for them) which we are to supply, where stated in the Quotation, in accordance with these Terms and Conditions;

“**Quotation**” means our quotation to provide the Goods and/or Services, which if accepted and confirmed in accordance with clause 2, will constitute our entire scope of works. Unless otherwise stated, any Quotation remains open for acceptance for a period of 90 days; and

“**Services**” means the Services to be provided to you, where detailed in the Quotation, in accordance with these Terms and Conditions.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “we”, “us” and “our” is a reference to the Company and includes our employees, sub-contractors and agents;

1.2.2 “you” and “your” is a reference to the Customer and includes your employees and agents;

1.2.3 “writing” and “written” includes email & similar communications;

1.2.4 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.5 “these Terms and Conditions” is a reference to these Terms & Conditions as amended or supplemented at the relevant time;

1.2.6 a clause is a reference to a clause of these Terms and Conditions; and

1.2.7 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.

1.4 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender.

2. The Contract

2.1 We will provide a Quotation for the Goods and/or Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between us and you, and includes the acceptance of these Terms and Conditions, which shall apply between us.

2.2 Any sales literature or other documents issued by us are subject to alteration without notice and do not constitute offers to sell the Goods or Services which are capable of acceptance.

2.3 No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions, unless otherwise agreed by us in writing.

2.4 You are responsible for the accuracy of any information submitted to us and for ensuring that our Quotation reflects your requirements. The Quotation is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect the order value, we reserve the right to make adjustments to it.

2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, invoice or other document or information issued by us shall be subject to correction without liability on our part.

2.6 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.

3. Company’s Obligations

3.1 Once the Contract is formed, as detailed in clause 2.1, we shall, in consideration of the price being paid in accordance with clause 6, provide the Goods and/or Services as detailed in the Quotation.

3.2 Illustrations, photographs or descriptions, whether on our website, or in brochures, price lists or other documents issued by us, are intended as a guide only and shall not be binding on us.

3.3 We reserve the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory or regulatory requirements.

3.4 We will use reasonable care and skill to perform our obligations under the Contract and will use all reasonable endeavours to do so in a timely manner, however, time will not be of the essence in the performance of such obligations.

3.5 Any weights and dimensions we may quote are subject to the tolerances provided by the appropriate British Standards.

4. Supply of Goods

4.1 The Goods will only be supplied in the minimum units quoted, or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.

4.2 Delivery of the Goods shall be made by us delivering the Goods to the place specified in the Quotation.

4.3 The delivery date is approximate only and time for delivery shall not be of the essence unless previously agreed by us in writing. The Goods may be delivered in advance of the delivery date, provided we give reasonable notice to you.

4.4 If you fail to take delivery of the Goods or any part of them on the delivery date and/or fail to provide any instructions, consents or authorisations required to enable them to be delivered on that date, we will be entitled, on giving you written notice, to store or arrange for storage of the Goods and then notwithstanding the provisions of clause 7, risk in the Goods shall pass to you, delivery will be deemed to have taken place and you will be required to pay for all costs and expenses including storage and insurance costs arising from such failure.

4.5 If on delivery any of the Goods are defective in any material respect and either you lawfully refuse delivery of the defective Goods or, if they are signed for on delivery as “unexamined” and you give us written notice of such defect within 24 hours of such delivery, we shall at our option replace the defective Goods, or refund to you the price for those Goods (or parts thereof, as appropriate) which are defective, but we shall have no further liability to you and you may not reject the Goods if delivery is not refused or notice given by you as set out above.

4.6 No Goods may be returned to us without our prior agreement in writing.

4.7 We shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subsection to normal conditions, failure to follow our or the manufacturer’s instructions (whether given orally or in writing), misuse or alteration of the Goods without our prior approval, or any other act or omission on your part or that of any third party.

5. Supply of Services

5.1 Any programme dates provided by us are to be treated as estimates only and unless otherwise specified in writing, we shall have no obligation to complete the works by a specified date.

5.2 Unless specifically stated to the contrary in writing, the Services will be carried out during ordinary working hours.

5.3 If you require us to provide our Services to your client using your branded workwear, this will be subject to you providing us with such workwear no later than 7 days before we are due to commence on site. Such workwear must be compliant with current health and safety guidelines and must conform with your client’s site requirements.

5.4 Where we are required to work with goods provided by you or any third party, we cannot be held responsible for any faults in the goods, or for any delay in the delivery of such goods. In the event that we are delayed whilst working at the site, or our programme is delayed as a result, we may charge for the delay and any expenses incurred by us as a result.

5.5 We shall not be obliged to produce test and performance certificates or safety critical certificates unless these have been requested by you and expressly agreed by us in writing. In any event, we reserve the right to withhold such certification until such time as all payments due under the Contract have been received by us in full.

6. Price & Payment

6.1 The price will be as stated in our Quotation. The price is inclusive of any charges for packaging and transport (where applicable) but exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority, for which you shall be additionally liable.

6.2 We reserve the right, by giving you written notice at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to us which is due to any factor beyond our control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs), any change in quantities or specifications for the Goods or Services which are requested by you, or any delay caused by your instructions or lack of instructions.

6.3 Subject to any special terms agreed in writing between us, we shall invoice you on or at any time after delivery of the Goods and/or the provision of the Services (as applicable), unless, in the case of Goods, you wrongfully fail to take delivery of the Goods, in which event we shall be entitled to invoice you in full at any time after we have notified you that we have tendered delivery of the Goods.

6.4 However, we reserve the right to invoice by way of stage payments as the works progress.

6.5 All invoices are payable within 30 days from the date of our invoice, without any set-off, withholding, retention or deduction.

6.6 The time for payment shall be of the essence of the Contract.

6.7 If at any time we are not satisfied as to your creditworthiness, we may give notice in writing to you that no further credit will be allowed in which event no further Goods or Services will be delivered or provided to you other than against cash payment in advance.

7. Risk and Retention of Title

7.1 Risk of damage to or loss of any Goods shall pass to you at the time of delivery or, if you wrongfully fail to take delivery of the Goods, at the time when we have tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any

- other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to you until we have received in cash or cleared funds payment in full of the price of the Goods.
- 7.3 Until payment has been made to us in accordance with these Terms and Conditions and title in the Goods has passed to you, you shall be in possession of the Goods as bailee for us and you must store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by us and shall insure the Goods against all reasonable risks.
- 7.4 We reserve the right to repossess any Goods in which we retain title without notice. You irrevocably authorise us to enter your premises (or any premises at which we reasonably believe the Goods are being held) during normal business hours for the purpose of repossessing the Goods in which we retain title and inspecting them to ensure compliance with the storage and identification requirements of clause 7.3.
- 8. Cancellation**
- 8.1 No order which has been accepted by us may be cancelled by you, except with our agreement in writing on the terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of such cancellation.
- 8.2 In addition, where an order is placed and a site date is confirmed, and the order is subsequently cancelled by you, we reserve the right to charge a cancellation fee per loss day, at our standard rate in effect at the time.
- 8.3 If, due to unforeseen circumstances, we have to reschedule or cancel an agreed site date, we will contact you as soon as possible to minimise disruption and will book another date as soon as reasonably possible.
- 9. Customer's Default**
- 9.1 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:
- 9.1.1 cancel the order or suspend any further deliveries or provision of Goods and Services to you;
- 9.1.2 terminate your right to possession of any Goods in which we maintain legal and beneficial title;
- 9.1.3 appropriate any payment made by you to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between you and us) as we may think fit. If the Goods or Services have been provided but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary; and
- 9.1.4 charge you interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above the Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 9.2 This clause 9 applies if:
- 9.2.1 you fail to perform or observe any of your obligations hereunder or are otherwise in breach of the Contract;
- 9.2.2 you become subject to an administration order or enter into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) become bankrupt or (being a company) go into liquidation;
- 9.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets;
- 9.2.4 you cease, or threaten to cease, to carry on business; or
- 9.2.5 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.
- 10. Liability**
- 10.1 We will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the supply of the Goods and/or Services.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 You shall indemnify us against all damages, costs, claims and expenses suffered by or arising from loss or damage to any goods or equipment (including that of third parties) caused by you.
- 10.4 None of our employees or agents are authorised to make any representations concerning the Goods or Services unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which are not so confirmed.
- 10.5 Nothing in these Terms and Conditions excludes or limits our liability for death or personal injury caused by our negligence, for fraud or fraudulent misrepresentation or for any other matter which it would be illegal for us to exclude or attempt to exclude our liability.
- 10.6 Subject to the other provisions of this clause 10, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Contract price.
- 11. Confidentiality**
- 11.1 For the purpose of this clause 11, "Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
- 11.2 Each Party undertakes that during the continuance of the Contract, the Parties may disclose certain Confidential Information to each other. Both parties agree that they will not use the Confidential Information provided by the other, other than to perform their obligations under this Contract. Each Party will maintain the Confidential Information's confidentiality and will not disseminate it to any third party, unless required by law, by any court order or unless so authorised by the other Party in writing.
- 11.3 The provisions of this clause 11 shall continue in force, notwithstanding the termination of the Contract for any reason.
- 12. Licence and Copyright**
- 12.1 Copyright in any documentation provided by us under the Contract shall remain vested in us, but insofar as we are empowered to do so, we will grant a royalty-free non-exclusive licence to you to use and reproduce said documents for your own use, solely in connection with the Contract, provided all sums properly due to us under this Contract have been paid in full. We shall have no liability for improper use of the documents other than that for which they are prepared and you shall indemnify us from and against any loss arising from their improper use.
- 12.2 You warrant that any document or instruction given to us shall not cause us to infringe any confidentiality right or obligation, or any intellectual Property right or obligation of any third party and will indemnify us against all loss, damages, costs and expenses awarded against us or incurred by us which results from our use of any document or information provided by you.
- 13. Assignment and Sub-Contracting**
- 13.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Contract.
- 13.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Contract, without your prior consent
- 14. No employment:** Nothing in this Contract shall render or be deemed to render us an employee or agent of yours, or you an employee or agent of ours.
- 15. Communications**
- 15.1 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.
- 15.2 Notices shall 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; on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 16. Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 17. Waiver:** The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 18. Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.
- 19. Third Party Rights:** A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20. Law and Jurisdiction**
- 20.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising from or associated with them) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.2 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 from or associated with them) shall fall within the jurisdiction of the courts of England and Wales.