

## **TERMS AND CONDITIONS**

### **1. Quotation for Goods and/or Services**

- 1.1 Any Quotation given by the Supplier shall not be construed as an offer or obligation to sell. A Quotation is only valid for 30 calendar days from the date of issue, unless otherwise stated in writing. No Quotation is binding on the Supplier until the Customer executes the Quotation and the Supplier accepts the executed Quotation. The Supplier reserves the right to accept or reject any executed Quotation. Acceptance of the Quotation by the Supplier creates a binding Contract. Payment of the Deposit by the Customer shall be deemed acceptance of the Quotation.
- 1.2 The Customer must provide the Supplier with and complete all Pre-Work Requirements at the Customer's absolute expense, by such time periods specified by the Supplier. The Supplier does not accept any responsibility or Liability for any incorrect or incomplete Pre-Works Requirements provided by the Customer and the Customer acknowledges that the Supplier shall be entitled to rely on all such Pre-Work Requirements.

### **2. Price and Payment**

- 2.1 The Price shall be the price invoiced by the Supplier. Unless otherwise agreed by the Supplier in writing, the Price is exclusive of GST. Invoices shall be issued in accordance with the Payment Instalment Terms, or as otherwise advised by the Supplier from time to time. Payment must be made as directed by the Supplier on the date of invoice. The Customer acknowledges that if payments are to be made in instalments as directed by the Supplier, the maximum time interval between payments shall not exceed 3 (three) months. The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- 2.2 The Supplier may at any time charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time, including Optional Extras, increased supplier and base material costs, international currency fluctuations, variations, freight and delivery costs and additional costs which were not reasonably anticipated at the date of Quotation.
- 2.3 All overdue invoices will incur interest at the rate of 15% per annum compounding weekly from the date of default.

### **3. Delivery and Acceptance of Goods**

- 3.1 The Supplier shall provide a Works Program with estimate time frames for delivery, installation and handover etc. All such time frames are indicative only and the Supplier may vary the Works Program at any time without notice and the Supplier does not accept any liability for any delay, loss or damage. The Supplier may suspend the Works Program at any time for any project or Quotation of which the Customer is the client, in the event that the Customer has not made payment in full of all monies by the due date specified on any invoice, for any project or Quotation of which the Customer is the client. Any suspension of the Works Program by the Supplier due to a breach of these T&Cs by the Customer shall not constitute a breach of these T&Cs by the Supplier.
- 3.2 If the Supplier discovers the presence or likely presence of asbestos or other such hazardous material at the Customer's Premises, or such other defect or hazard at the Customer's Premises which would otherwise render the Supplier's completion of the Works Program unsafe, or in breach of occupational health and safety regulations, the Supplier reserves the right without liability to suspend all works and the progress of the Works Program until such time as the hazard has been removed or rectified to the Supplier's reasonable satisfaction. If the Supplier so requests, the Customer must provide copies of the asbestos clearance certificate to the Supplier prior to works resuming.
- 3.3 The Supplier shall deliver the Goods to the Customer's Premises in accordance with the Works Program and on such date as advised to the Customer in advance of delivery. Delivery may be in separate instalments. The Customer must be at the Customer's Premises on the delivery date to facilitate and accept delivery of the Goods. If the Customer is unable to receive delivery for any reason, or if the Supplier reasonably considers that the Customer's Premises are unsuitable to facilitate delivery of the Goods, the Supplier may store the Goods in accordance with clause 3.4 below and/or attempt re-delivery, with all such further delivery costs being payable by the Customer in accordance with the Supplier's invoice. Immediately upon delivery, the Supplier's responsibility for and risk in the Goods immediately ceases and the Goods shall be deemed duly delivered at the Customer's sole risk.
- 3.4 In the event of the Customer being unable to accept delivery of the Goods on the delivery date, the Supplier may store the Goods at the Supplier's Premises at the Customer's absolute risk and liability.

The Supplier reserves the right to charge storage fees of \$350.00 plus GST per week after thirty (30) days from the date of the delivery invoice, or as otherwise advised in writing by the Supplier from time to time. The Goods may be stored by the Supplier up to the maximum duration specified in the Customer's Contract, or as otherwise determined by the manufacturer of the Goods, whichever is lesser.

- 3.5 The Customer must inspect any Goods immediately on delivery of the Goods. The Customer must pay all shipping and delivery costs in advance of the delivery date as invoiced by the Supplier. The Supplier shall issue such invoice at least three (3) weeks in advance of the delivery date where possible.
- 3.6 The Customer shall provide safe and clear access to a storage location at the Customer's Premises, with such location being site within 10 meters of the installation location, on the lowest level of installation. The Customer shall ensure that all access provided is of a suitable quality for the Supplier's use of horizontal transport equipment such as pallet trolleys and dolly's. If the Customer fails to provide suitable access to the storage and installation locations, the Supplier reserves the right to charge the Customer additional costs associated with the inadequate access and increased material handling costs.

#### **4. Risk and Title**

- 4.1 Risk in the Goods passes to the Customer upon delivery of the Goods. Title in the Goods does not pass to the Customer until the Customer makes payment in full in cleared funds of the full Price and any other amounts payable to the Supplier.
- 4.2 Until the Customer receives title in the Goods, the Customer will be only a bailee of the Goods and must keep the Goods fully insured under a valid insurance policy in good order and condition for its full replacement value; safely and securely store the Goods as separately identifiable goods; ensure that the Goods are not modified, altered or installed; and return the Goods to the Supplier immediately upon request. The Customer must at all times whilst a bailee of the Goods insure and secure the Customer's Premises against theft and wholly indemnifies the Supplier against any loss or damage of or to Goods from the Customer's Premises whilst a bailee of the Goods. The Supplier may at any time whilst the Customer is a bailee of the Goods enter the Customer's Premises to re-take possession of the Goods with such entry not constituting trespass. The Customer indemnifies the Supplier against all Claims and Liability associated with such entry and re-possession.

#### **5. Security and Charge**

- 5.1 In consideration of the Supplier agreeing to provide the Goods and/or Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer now or in the future, to secure the performance by the Customer of its obligations under these T&Cs, including but not limited to the payment of any money.
- 5.2 The Customer indemnifies the Supplier from and against all costs and disbursements including legal costs on a full indemnity basis incurred by the Supplier in exercising any of the Supplier's rights under these T&Cs, including registration of a Financing Statement under the PPSA.
- 5.3 The Customer irrevocably appoints the Supplier as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause, including but not limited to signing any document on the Customer's behalf.
- 5.4 If the *Building and Construction Industry Security of Payment Act 2002 (Victoria)* ("SOP Act") applies to any Quotation or Contract, the SOP Act will govern such Quotation or Contract and the Supplier will exercise all rights under the SOP Act, with all invoices issued by the Supplier constituting a payment claim under the SOP Act.

#### **6. PPSA and Charge**

- 6.1 For the purposes of the PPSA:
  - (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
  - (b) this is a Security Agreement and the Supplier has a Purchase Money Security Interest (as defined in section 14 of the PPSA) ("PMSI") in all present and future Goods supplied and the proceeds of the Goods; and
  - (c) the Security Interest (as defined in the PPSA) is a continuing interest.
- 6.2 The Customer acknowledges that:

- (a) the Supplier will continue to hold a PMSI in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be comingled or become an accession with other goods;
  - (b) any Security Interest of the Supplier will be a continuing and subsisting interest in the Goods with priority to the fullest extent permitted by law over all other registered and unregistered Security Interests;
  - (c) they must sign any further documents and provide such information that the Supplier may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS register; and
  - (d) they must not register or permit to be registered a Financing Change Statement in the Goods without the prior written consent of the Supplier.
- 6.3 To secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
  - (a) a Security Interest over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a Security Interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act 2001 (Cth)); and
  - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a Security Interest under the PPSA.
- 6.4 The Supplier may lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's security under this clause.
- 6.5 The Security Interests arising under this clause 6 attach to the Goods when the Goods are dispatched from the Supplier's premises and not at any later time.
- 6.6 The Customer:
  - (a) agrees that, to the extent permitted under section 115(1) of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143 of the PPSA do not apply;
  - (b) agrees that, to the extent permitted under section 115(7) of the PPSA, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137 of the PPSA do not apply;;
  - (c) acknowledges that the Supplier may, at the Customer's cost, register one or more Financing Statements in relation to any security;
  - (d) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any Verification Statement relating to the registration of any Financing Statement or any related Financing Change Statement; and
  - (e) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.
- 6.7 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any PMSI it has in the Goods supplied by the Supplier.

## **7. Privacy, confidentiality and Intellectual Property Rights**

- 7.1 The Supplier complies with the Privacy Act 1988 (Cth) and all Australian privacy principles, laws and regulations and all existing obligations of confidentiality. Upon a written request from the Customer, the Supplier shall provide to the Customer all private and confidential information held by the Supplier.
- 7.2 All Intellectual Property Rights of the Supplier shall remain with the Supplier and will not be assigned to the Customer. No supply of Goods and/or Services to the Customer grants the Customer any Intellectual Property Rights.
- 7.3 The Customer must ensure that all Confidential Information is maintained confidential; not disclosed to or used by any third party without the Supplier's prior express written consent; only used for the purposes of the supply of the Goods and/or Services by the Supplier; and not appropriate, copied, memorised, reproduced or reverse engineered for the Customer's or any other party's use.
- 7.4 All Confidential Information remains the exclusive property of the Supplier and no rights in respect of Confidential Information are granted or conveyed to the Customer. In the event that the Customer is

legally required to disclose any Confidential Information, the Customer must immediately notify the Company of that fact prior to any such disclosure.

7.5 The Customer acknowledges that all confidentiality provisions contained in this clause 7 shall endure and shall not terminate at the conclusion of any Contract or otherwise after the Goods and/or Services have been supplied.

7.6 The Customer acknowledges that if the Customer breaches this clause, then the Supplier may seek injunctive relief at the Customer's sole cost in respect of the breach.

## **8. Warranty**

8.1 The Supplier warrants that all Goods and/or Services provided and supplied by the Supplier in private single residential dwellings or residential premises shall be in accordance with industry standards and existing regulations and ordinances at the time of supply, and will be free from defects in materials and workmanship for a period of 36 months from the date the Goods are commissioned. In the event of any installation of further parts by the Supplier after the initial installation and commissioning of the Goods, such further installed parts shall be warranted to be free from defects in materials and workmanship for a period of 12 months from the date of installation of such further parts.

8.2 The Supplier warrants that all Goods and/or Services provided and supplied by the Supplier in commercial or non-residential premises shall be in accordance with industry standards and existing regulations and ordinances at the time of supply, and will be free from defects in materials and workmanship for a period of twelve months from the date the Goods are commissioned.

8.3 All claims made under the Supplier's warranty shall be determined and accepted or rejected by the Supplier at the Supplier's absolute discretion.

8.4 The Supplier will, at its sole option, repair or replace any Goods which are found to be defective in materials or workmanship at the Supplier's absolute discretion. Any repair or replacement is subject to the examination of the alleged defect by the Supplier.

8.5 Subject to clause 8.6 below, any defect in materials or workmanship must be notified to the Supplier in writing within 36 months of the date the Goods are commissioned for residential Goods and/or Services and within twelve months of the date the Goods are commissioned for commercial Goods and/or Services, and any claim not made within this period shall be conclusively deemed waived by the Customer.

8.6 All repairs and replacement shall be conducted by the Supplier or the Supplier's chosen repairer, with such repairs or replacements limited only to the defect in materials or workmanship. All warranty works, repairs and replacements shall be conducted by the Supplier during standard business hours of 7.00am to 3.00pm Monday to Friday (excluding public holidays), or as advised by the Supplier from time to time. Any after-hours callouts during the Supplier's warranty shall be charged to the Customer at \$790.00 per call for the first hour, with each additional hour or part thereof charged at the Supplier's usual after-hours rate. Any callouts which do not form part of the Supplier's warranty shall be charged to the Customer at the Supplier's usual hourly rate.

8.7 The Supplier is not liable for any expense, loss or damage (whether direct or indirect) incurred by the Customer in making a claim under the Supplier's warranty, or remedying any defect in the Goods and/or Services.

8.8 Unless otherwise agreed in writing, all modifications, civil and building works, cabling and wiring runs, foundations, footings, electrical power to the equipment, telecommunications connections and connection to any alarms or access control systems are excluded from the scope of work and warranty of the Supplier.

8.9 The Customer may enter into a separate Lift Maintenance Agreement with the Supplier for the ongoing maintenance and servicing of the Goods. The Customer acknowledges that the manufacturer may require as a condition of any manufacturer warranty that the Goods be serviced by an authorised repairer or technician in accordance with the manufacturer's service requirements.

8.10 Notwithstanding this clause 8 but subject to the Competition and Consumer Act 2010, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain and service any Goods, with such maintenance and service to be conducted by an authorised repairer or technician where required by the manufacturer;

- (b) the Customer using the Goods for any purpose other than for which they were designed;
- (c) the Customer continuing to use any Goods after any defect, fault or issue became apparent or should have become reasonably apparent to a prudent operator or user;
- (d) the Customer failing to follow any instructions, guidelines or manuals issued or provided by the Supplier and/or the manufacturer, including but not limited to care, cleaning, servicing and maintenance guidelines; or
- (e) fair wear and tear, neglect, vandalism, any accident or incident, or any act of God.

8.11 This warranty does not apply:

- (a) to any Goods and/or Services no longer required by the Customer or Goods and/or Services incorrectly ordered by the Customer;
- (b) if the Customer breaches any warranty contained in clause 10;
- (c) if the Customer has engaged in acts of neglect or misuse; or unusual, abnormal, improper or negligent use of the Goods has occurred, as assessed by the Supplier at the Supplier's absolute discretion;
- (d) if the Customer's Premises are not safe and free from vermin, chemicals, substances or conditions which could and do cause damage to the Goods;
- (e) if the Goods have been involved in any accident or incident or the Goods have been damaged due to improper use or care, cleaning, maintenance or are otherwise damaged due to the negligence or actions of the Customer or the Customer's Personnel or other individuals;
- (f) if the care, cleaning, servicing and maintenance guidelines issued or otherwise provided by the Supplier and/or the manufacturer have not been adhered to, in the Supplier's absolute discretion.

## **9. Refunds and Repairs**

9.1 The Supplier will only accept Goods for refunds if the Goods are wrongly supplied or over-supplied. No refunds will be recognised if the Goods are made to order. The Supplier will not accept any Goods for exchange. In the event of a defect in materials or workmanship of such Goods, the Supplier shall at the Supplier's absolute discretion, repair or replace the Goods, subject to the Supplier's warranty in clause 8.

9.2 All postage and delivery charges for any returned Goods shall be the responsibility of the Customer, regardless of whether the Supplier accepts or denies any returned Goods for refund.

## **10. Representations and Liability**

10.1 The Customer acknowledges that the Supplier has not made any representation or given any promise or undertaking which is not expressly set out in the Quotation, Contract and/or T&Cs.

10.2 The Customer expressly warrants that:

- (a) all particulars and information provided to the Supplier are true and correct and all relevant and pertinent information has been provided, of which the Supplier is authorised to rely on;
- (b) they accept responsibility for any loss or damage of any Goods due to civil commotion, act of God, government intervention, war, strikes, seizure under legal process, accident, misadventure, fire or water;
- (c) they will provide at the Customer's absolute expense and liability, any and all Approvals required at law for the Supplier to supply the Goods and/or Services, and other such Approvals as reasonably required by the Supplier from time to time. The Customer acknowledges that the Supplier is entitled to and will rely upon any such Approvals provided by the Customer and that the Supplier shall not accept any liability for any default or defect in such Approvals;
- (d) they will undertake and complete to the required Australian Standards and provide where required to the Supplier when required all Pre-Works Requirements. The Supplier does not accept any responsibility or Liability whatsoever for any incorrect or incomplete Pre-Works Requirements. The Customer acknowledges that the Supplier shall be entitled to rely on and utilise all Pre-Works Requirements provided and completed by the Customer;

- (e) they will provide safe, free, uninterrupted and sufficient access to the Customer's Premises for the Supplier to supply the Goods and/or Services. Any failure to provide the Supplier with such access will result in the Customer's liability to pay any costs incurred by the Supplier for such lack of access, or suspension of the works by the Supplier until such access is reinstated; and
  - (f) they will advise the Supplier of any restrictions on access to the Customer's Premises which may impede delivery in advance of the delivery date.
- 10.3 The Supplier shall maintain public liability insurance to a minimum value of \$10,000,000.00. Any additional insurances, including but not limited to building and contents insurance, shall be the sole responsibility of the Customer.
- 10.4 The Supplier reserves the right to refuse to provide the Goods and/or Services if the Supplier considers that the Customer's Premises may pose an occupational health or safety hazard to the Supplier or the Supplier's Personnel.
- 10.5 The Supplier does not accept any responsibility and will not be liable to the Customer or any third party for any Liability or Claim of any kind arising directly or indirectly in relation to any physical or financial or direct, indirect or consequential loss, damage, injury or death whether or not in the reasonable contemplation of the parties as a result of any use of the Supplier's Goods and/or Services, except to the extent that liability is imposed on the Supplier by any statutory provision which cannot be excluded.
- 11. Default, Termination, Cancellation, Variation and Suspension**
- 11.1 The Supplier may cancel any Quotation or Contract at any time prior to the delivery date without notice and no liability other than to repay to the Customer any amount of the Price paid by the Customer in advance. The Supplier shall not be liable for any loss or damage whatsoever arising from such variation or cancellation. In the event of the Supplier having to vary or cancel a Quotation or Contract due to actions of a third party, the Supplier will endeavour to discuss all such variations or cancellations with the Customer prior to actioning such variation or cancellation.
- 11.2 The Customer may not cancel a Contract and may only vary a Contract with the prior express written consent of the Supplier prior to the acceptance of drawings and specifications by the Parties or placement of any order with any manufacturer or supplier for the manufacture of the Goods, whichever is earliest. Any variation or Optional Extras shall be agreed between the parties in writing prior to the Supplier conducting or accepting such variation or Optional Extras. The Customer shall be liable for all losses or additional costs incurred (whether direct or indirect) by the Supplier as a direct result of any variation or Optional Extras (including loss of profits), which the Customer covenants to pay.
- 11.3 The Supplier may suspend the performance of any Contract or Works Program without liability if the Customer fails to complete the Pre-Works Requirements to the required standard by the required date.
- 11.4 The Supplier may without notice to the Customer immediately terminate, vary or suspend the performance of any Quotation, Contract or Works Program and the Customer must immediately pay all monies owed to the Supplier if:
  - (a) subject to clause 11.3(b) below, the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a written or verbal notice from the Supplier requiring the Customer to do so;
  - (b) the Customer fails to pay the Price within seven (7) days of the due date for payment;
  - (c) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
  - (d) there is any change in the Control of the Customer; or
  - (e) an Insolvency Event arises in relation to the Customer.
- 11.5 If there is a change in Control of the Customer, changes to the Customer's contact details or the Customer wishes to assign or novate the Contract, the Customer must provide at least 14 days advance written notice to the Supplier. The Supplier may immediately terminate without notice any Contract in the absence of advance written notice being provided. All Contracts are not subject to novation or assignment on the Customer's part, unless prior written consent is provided by the Supplier. Consent may be withheld at the Supplier's absolute discretion. The Customer shall indemnify the Supplier

against all loss and damage incurred by the Supplier by the Customer's failure to comply with this clause.

- 11.6 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these T&Cs, the Supplier may suspend or terminate the supply for Goods and/or Services to the Customer. The Supplier shall not be liable to the Customer for any loss or damage or Liability the Customer suffers because the Supplier has exercised its rights under this clause.
- 11.7 If the Supplier terminates, varies or suspends a Quotation or Contract pursuant to this clause 11, all monies owing to the Supplier including any interest is immediately due and payable without need for a demand. The Supplier may immediately repossess any Goods held by the Customer as a bailee without notice.
- 11.8 These T&Cs, as amended from time to time, are binding on all parties despite any action taken to terminate or suspend any Quotation or Contract and shall endure after the end of any Quotation or Contract.

## **12. Release and Indemnity**

- 12.1 The Customer indemnifies the Supplier and the Supplier's Personnel for all costs (including legal costs and disbursements on a full indemnity basis), expenses, loss or damage incurred or suffered by the Supplier, from and against any Liability or Claim arising directly or indirectly in relation to:
- (a) the accuracy of all information provided by the Customer to the Supplier;
  - (b) any breach of these T&Cs or any Quotation or Contract;
  - (c) the negligence or wilful misconduct of the Customer or the Customer's Personnel;
  - (d) the Supplier or any member of the Supplier's Personnel delivering the Goods or performing the Services in accordance with the Customer's instructions;
  - (e) the Supplier or any member of the Supplier's Personnel entering the Customer's Premises;
  - (f) damage to the Customer's Property or the property of the Customer or any third party during the delivery or provision of Goods and/or Services;
  - (g) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
  - (h) the Customer not being present at the Customer's Premises to accept any delivery;
  - (i) the Customer or the Customer's Personnel purporting to cancel any Quotation or Contract;
  - (j) the use of the Goods by the Customer or any individual, including in the event of any Customer or individual becoming stuck or otherwise trapped or confined within any lift or the Goods due to an event not the result of actions or omissions by the Supplier such as an electrical power outage;
  - (k) insufficient telephone reception or signal in the Customer's Premises which may interfere with any emergency telephone device;
  - (l) recovery of monies owing to the Supplier;
  - (m) retaking possession of the Supplier's Goods by the Supplier;
  - (n) the enforcement of these T&Cs; and
  - (o) the supply of Goods and/or Services;
- and shall pay all such costs without the need for a demand.
- 12.2 The Supplier does not accept any responsibility and will not be liable to the Customer or any third party for any Liability or Claim of any kind arising directly or indirectly in relation to any physical, financial, direct, indirect or consequential loss, damage, injury or death whether or not in the reasonable contemplation of the parties as a result of any use of the Supplier's Goods and/or Services, except to the extent that liability is imposed on the Supplier by any statutory provision which cannot be excluded.

## **13. Website**

- 13.1 Use of the Supplier's Website is deemed acceptance of these T&Cs.

- 13.2 The Supplier's Website is provided by the Supplier. The Supplier's Website may provide advertisement or links to third party websites and the products or services of third parties and the Supplier disclaims all responsibility and liability in any way. The Supplier does not endorse or recommend the goods or services of such advertisers or their websites. The Customer accesses or uses the third party sites at the Customer's own risk.
- 13.3 Copyright in the Supplier's website is owned by the Supplier and/or its licensors. The Supplier's Website may contain trademarks or logos of the Supplier, other companies or organisations and these are proprietary to the owner(s) of such marks. The Customer and any third party or individual must not at any time do or permit any act which may infringe any intellectual property rights of the Supplier and/or its licensors. Nothing contained on the Supplier's Website is to be construed as granting any license or right to use any trade mark or logo without the prior written consent of the Supplier.
- 13.4 The Supplier may at any time discontinue or limit access to the Supplier's Website or its content. The Supplier may terminate or limit the Customer's access to the Supplier's Website if they breach these T&Cs. All disclaimers and limitations of liability by the Supplier will survive termination.

#### **14. Miscellaneous**

- 14.1 The parties agree:
- (a) a Contract and these T&Cs may only be amended with the Supplier's express written consent;
  - (b) the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
  - (c) the failure or delay by the Supplier to exercise any right, power or privilege is not a waiver thereof. Any waiver must be express and in writing and does not prevent the Supplier from exercising such right later;
  - (d) if a conflict between a Contract and these T&Cs arise, these T&Cs will prevail to the extent of any inconsistency;
  - (e) in the event of any dispute, the Supplier's records will be conclusive evidence;
  - (f) the actions of any person claiming or appearing to have the Customer's authority will bind the Customer to the extent permitted by law;
  - (g) the rights of the Supplier in any Quotation, Contract or T&Cs are cumulative with and do not exclude any rights given by law independently of the Quotation, Contract or T&Cs;
  - (h) the Supplier reserves the right to amend the T&Cs at any time without notice and such change shall be binding on the Customer from the date of publication of the amended T&Cs by the Supplier. The request for provision of any Goods and/or Services by a Customer after the date of variation will be deemed to be the Customer's acceptance of such varied T&Cs;
  - (i) the Supplier may licence or sub-contract all or any part of its rights and obligations without the Customer's consent;
  - (j) any notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received two business days after the date of posting. Notices sent by facsimile or email are deemed received immediately upon delivery;
  - (k) the Contract and these T&Cs shall be governed by the law in the State of Victoria and the parties unconditionally submit to the non-exclusive jurisdiction of the courts thereof;
  - (l) the Customer warrants that it has the power to enter into these T&Cs and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these T&Cs created binding and valid legal obligations on it;
  - (m) if any provision of a Contract or these T&Cs are held to be void, illegal or unenforceable, that provision(s) is severed and the validity or enforceability of all other provisions are not affected by such severance;
  - (n) these T&Cs, and no terms and conditions of the Customer, will apply to any Quotation or Contract for the supply of Goods and/or Services by the Supplier to the Customer. No variation of these T&Cs is binding on the Supplier without the Supplier's express written consent;



- (o) these T&Cs are subject to the Australian Consumer Law and are not intended to purport, modify or contract out of the Australian Consumer Law and its associated warranties and guarantees. These T&Cs do not affect the Customer's rights at law;
- (p) all conditions and warranties expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded to the maximum extent permitted by law. Where permitted, the Supplier's liability for a breach of condition, guarantee or warranty is limited at the Supplier's option to repair or replacement of the Goods and/or Services, the cost of replacement or acquisition of equivalent Goods and/or Services, or the Price.

14.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act 2001 (Cth) has the meaning given to the word or expression in the Corporations Act 2001 (Cth);
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, guarantee, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

**15. Definitions**

In these T&Cs:

"Approvals" means any permit, report, approval or authorisation document or other such document required by any council, government, department or other such authority under any law, rule, regulation or other such ordinance required to allow the Goods and/or Services to be supplied or performed at law, including but not limited to any planning permits, building permits, occupancy certificates, engineering reports and the like;

"Claim" means any actual, contingent, present or future claim, demand, action, suit, prosecution or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Contract" means a binding agreement formed as a result of the acceptance of a Quotation by the Customer by way of executing any Quotation, payment of a deposit or signing any drawings/specification sheet, as accepted by the Supplier;

“Control” has the meaning set out in the Corporations Act 2001 (Cth);

“Customer” means the organisation, company, individual, joint venture, partnership, trust or other such entity set out in any Quotation, Contract or invoice, who requests the supply of Goods and/or Services, being the party to whom the Goods and/or Services are supplied and/or in whose name the Supplier maintains an account;

“Confidential Information” means all information of a confidential nature relating to the Supplier and the Supplier’s business regarding the past, current or future business interests, methodology or affairs, including but not limited to matters of a technical nature, trade secrets, marketing procedures, financial information, wages / salary information, customer / client lists, Intellectual Property, business and supplier contacts, and any other information which becomes known to the Customer;

“Customer’s Premises” means the location for performance of the Services and delivery and installation of the Goods;

“Deposit” means the proportion of the estimated total Price or Quotation payable prior to the commencement of the Works or the Pre-Works, which will be 50% of the Price, unless stated otherwise;

“Goods” means the goods the subject of a Quotation or Contract, including but not limited to any residential, commercial or goods lifts and stairlifts and associated electrical and mechanical parts, machinery and equipment;

“Handover Date” means the date upon which the Goods have been installed and commissioned and the works completed;

“Insolvency Event” means any one or more of the following, or any analogous, events:

- (a) the Customer disposes of the whole or any part of the Customer’s assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases, or threatens to cease, carrying on business;
- (c) the Customer is unable to pay the Customer’s debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of any part of the Customer’s assets, operations or business;
- (e) any application is made to a court for an order that the Customer be placed into bankruptcy or that the Customer be wound up or such order being made;
- (f) a resolution being passed to wind up the Customer or notice of intention to do so being given;
- (g) the Customer failing to comply with a statutory demand made pursuant to section 459E of the Corporations Law which remains in effect;
- (h) the Customer being placed into liquidation, whether voluntarily or otherwise
- (i) any of the events referred to in section 459C(2)(b) or section 585 of the Corporations Law occurring in relation to the Customer; or
- (j) in respect of Customer who is a natural person, the person becoming bankrupted or insolvent under administration as defined in section 9 of the Corporations Law or action being taken which could result in that occurring or anything having a substantially similar effect to any of the events specified above happening under any law of any applicable jurisdiction.

“Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any Confidential Information, copyright, trade marks, service marks, designs, drawings, technical information, documents, patents, circuit layouts, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

“Liability” means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

“Lift Maintenance Agreement” means any written contract entered into between the Supplier and the Customer for the provision of ongoing maintenance services and associated Goods and/or Services;

“Optional Extras” means any options and upgrades applicable to the Goods set out in any Quotation as an additional item but not included in the original base price specified in the Quotation;

“Quotation” means any written quotation of the Supplier for the supply of Goods and/or Services to the Customer;

“Payment Instalment Terms” means the schedule of payment terms particularising when payment instalments are due as contained in any Quotation or Contract, as varied by the Supplier from time to time;

“Penalty Interest Rate” means the rate for the time being fixed by section 2 of the *Penalty Interest Rates Act* 1983;

“Personnel” means any employee, servant, contractor, subcontractor, agent, authorised representative, partner, director or officer of a party;

“PPSA” means the Personal Property Securities Act 2009 (Cth);

“Pre-Works Requirements” means all specifications, measurements, certifications, tolerances, engineering reports and other particulars including but not limited to preparatory and post-construction works and provision of services required by the Supplier to supply Goods and perform the Services as may be particularised in any deviations and/or clarifications section or such other provision in any Quotation or Contract;

“Price” means the price of the Goods and/or Services as nominated by the Supplier from time to time in any Quotation or Contract as varied from time to time and any price stated on any invoice;

“Services” means the services in a Contract and any services associated with the Goods, including but not limited to any installation of such Goods;

“Supplier” means the principal contractor of Goods and/or Services being Southern Lifts Pty Ltd (A.C.N. 100 621 574) of Unit 2, 226 Governor Road, Braeside, Victoria and any permitted assigns and successors;

“T&Cs” means these Terms and Conditions of Supply and Sale;

“Website” means the website and domain name held by the Supplier accessible at [www.southernlifts.com.au](http://www.southernlifts.com.au); and

“Works Program” means the schedule of estimated phases and time frames of the provision of the Goods and/or Services by the Supplier, as set out in any Quotation.

## **16. Declaration**

I/We, the undersigned Customer, hereby acknowledge that I/We have received, read and understood these T&Cs of the Supplier, and acknowledge all supporting documentation are to be read in conjunction with these T&Cs and I/We hereby agree that we have had the opportunity to seek independent legal and financial advice prior to the execution of and consent to be bound by these T&Cs and associated documentation and I/We have sought such advice as considered relevant and necessary or otherwise have elected not to obtain such independent advice and I/We hereby agree to be bound by these said T&Cs.

**EXECUTED AS AN AGREEMENT**

**DATE:**

**\*USE THIS IF CUSTOMER IS A COMPANY**

\*If Customer is a company with two (2) or more directors, 2 directors have to sign

<b>SIGNED</b> for and on behalf of	)	_____
_____	)	Director/Secretary
("the Customer") by being signed by the	)	Name:
Customer's authorised officer(s)	)	
		_____
		Director/Secretary
		Name:

**\*USE THIS IF CUSTOMER IS AN INDIVIDUAL**

<b>SIGNED</b> by _____	)	_____
("the Customer") in the presence of:	)	

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

<b>EXECUTED</b> by <b>Southern Lifts Pty Ltd</b>	)	
<b>(A.C.N. 100 621 574)</b> in accordance with	)	_____
Section 127 of the <i>Corporations Act 2001 (Cth)</i> :	)	Director
		Name: