

Terms And Conditions Of Contract

1. GENERAL

The acceptance of Niche Lifts Ltd tender ("the Tender") includes the acceptance of the following terms and conditions. No terms or conditions stipulated or referred to by the Purchaser in any form whatever shall in any respect vary or add to these terms and conditions unless Niche Lifts Ltd agrees in writing.

2. VALIDITY

Unless previously withdrawn by Niche Lifts Ltd the Tender is open for acceptance within the period stated therein or, when no such period is so stated, within 30 days after the date of the Tender.

3. SPECIFICATION & DRAWINGS

Any and all specifications, drawings and particulars submitted with the Tender are approximate only. Any and all descriptions, illustrations and other materials of whatsoever nature contained in any catalogues, price lists and other advertisement matter produced by Niche Lifts Ltd are intended merely to present a general description of the goods specified in such material none of which shall form part of the contract between the Purchaser and Niche Lifts Ltd.

4. OVERTIME/DAY WORK

Unless specifically stated to the contrary in writing by Niche Lifts Ltd, the Tender is based on the assumption that the Works will be carried out during Niche Lifts Ltd's normal hours. Niche Lifts Ltd shall be entitled to receive additional remuneration for any work which it has been agreed between the parties will be undertaken outside such periods, in an amount equal to the additional costs and overhead charges incurred by Niche Lifts Ltd in undertaking such work plus an amount of profit.

5. DELIVERY AND COMPLETION

Any times stated by Niche Lifts Ltd for completion by Niche Lifts Ltd of the Works shall run from the date of receipt of a written order from the Purchaser or, if later from the receipt of all information, drawings, licences, permits and approvals necessary to enable Niche Lifts Ltd to proceed with the Works. All such times are to be treated as estimates only and unless otherwise agreed in writing by Niche Lifts Ltd shall not involve any obligation for Niche Lifts Ltd to complete the Works by a specified date. The Purchaser shall at its own expense before the estimated date of commencement of any part of the Works ensure that the site is ready in all respects for the Works to commence and, without prejudice to the generality of the Purchaser's obligations in this respect, that all the facilities and items listed in the layout drawings have been or will be, provided by the Purchaser as when required by Niche Lifts Ltd in order to enable the Works to proceed.

6. DELAY IN DELIVERY OR COMPLETION

If due to circumstances outside the control of Niche Lifts Ltd, the Purchaser cannot accept delivery of goods comprised in the Works upon the agreed delivery date for such goods, or is otherwise unable to grant access to Niche Lifts Ltd to the site for the purpose of commencement of the Works, Niche Lifts Ltd reserves the right to recover any costs incurred by the delay and/or to continue to manufacture goods and deliver them to storage in accordance with clause 8.

Niche Lifts Ltd shall not be liable for any delay or for any consequences of any delay in the production or delivery of any of the goods comprised in the Works or in the completion of the Works in circumstances where any estimated time for completion of the Works has been given by Niche Lifts Ltd.

In circumstances where Niche Lifts Ltd has agreed in writing a time for completion of the Works in accordance with clause 5, it shall not be liable for any delay or any consequences of delay as referred to in clause 6, if such delay is due to fire, strike, lockout, dispute with workmen, flood, accident, delay in transport, shortage of fuel, default of any sub-contractor, inability to obtain material and/or labour, embargo, act or demand or requirement of any government or any government department or local authority, or as a consequence of war or of hostilities (whether war be declared or not) or any other cause whatsoever beyond the reasonable control of Niche Lifts Ltd. If any such delay occurs then (unless the cause thereof shall frustrate or render impossible or illegal the performance of the contract or shall otherwise discharge the parties from their obligations under the Contract) the period within which Niche Lifts Ltd had stated that its obligations under the Contract shall be completed shall be extended by a period (not limited to the length of such delay) as Niche Lifts Ltd may reasonably require to complete the performance of its obligations.

In circumstances where Niche Lifts Ltd has agreed in writing a time for completion of the Works in accordance with clause 5 and the Works are not so completed for reasons other than those outlined above other than those attributable to the Purchaser Niche Lifts Ltd shall pay to the Purchaser liquidated damages in an amount equal to 1% of the contract value per week of delay up to an aggregate maximum amount of 10% of the contract value. Niche Lifts Ltd shall have no other or further liability of whatsoever nature to the Purchaser whether in contract or in tort in respect of a failure to complete the Works in the circumstances outlined in this clause.

7. DELIVERY OF GOODS

Unless stated to the contrary in the Tender Niche Lifts Ltd shall deliver goods comprised in the Works to the site.

Niche Lifts Ltd shall have no liability to the Purchaser in respect of any loss or damage to any goods comprised in the Works whilst in transit nor in respect of any shortage in the quantity of such goods delivered unless, in the case of damage in transit or shortage in quantities, a notice in writing is given by the Purchaser to the carrier of such goods within three days and to Niche Lifts Ltd within seven days of the receipt of the goods, followed by a complete written claim to the carrier and Niche Lifts Ltd within fourteen days of such receipt. In the case of loss of goods, Niche Lifts Ltd shall have no such liability unless a written notice and a complete written claim is provided to the carrier of such goods and Niche Lifts Ltd within twenty-one days of the date of consignment. Where goods are accepted from a carrier without being checked, the delivery book of the carrier concerned must be signed "not examined".

8. STORAGE

Where the Purchaser is unable to accept delivery of all or any of the goods comprised in the Works within seven days after notification that they are ready for despatch it shall arrange and pay for suitable storage, maintenance and insurance of such goods. If Niche Lifts Ltd has sufficient and appropriate facilities for those purposes it will store such goods at the Purchaser's risk and

expense.

9. PASSING OF RISK

All goods comprised in the Works or any part shall be at the sole risk of the Purchaser from the time that they are delivered on site whether or not accepted by the Purchaser. In the event that the Purchaser notifies Niche Lifts Ltd that it is unable to accept delivery of all or any part of the goods within seven days after notification from Niche Lifts Ltd that they are ready for despatch risk in such goods shall pass to the Purchaser at the expiry of such seven day period.

In the event that risk in the goods has passed to the Purchaser in accordance with the terms of the contract then notwithstanding any other of its provisions such risk shall not in any circumstances be passed back to Niche Lifts Ltd.

10. TERMS OF PAYMENT

All quotations made by Niche Lifts Ltd are strictly net cash unless stated and are exclusive of Value Added Tax or any similar or other taxes, levies or duties. Unless otherwise agreed, the Purchaser shall pay Niche Lifts Ltd within fourteen days of the date of an application for payment being made by Niche Lifts Ltd in accordance with the following provisions.

Interest shall be paid on all overdue amounts from the date payment was due until actually made at the rate of three per cent above the Midland Bank Base rate operating during the period of delay in payment by the Purchaser.

Payment shall be made to Niche Lifts Ltd in the following proportions:-

- a. Payment of 30% of the contract value shall be made at the time at which an order is placed by the Purchaser.
- b. A further 50% of the contract value shall be paid on receipt by the Purchaser of notice that the goods comprised in the Works are ready for despatch and no such goods shall be despatched until such payment is received.
- c. The final 20% of the contract value, shall be paid as progress payments as installation proceeds.

If through no fault of Niche Lifts Ltd final adjustments cannot be made when installation is otherwise complete, payment shall nevertheless become due as though such final adjustments has been made.

In circumstances where more than one lift is to be provided by Niche Lifts Ltd, the terms of payment set out above shall apply in respect of the provision of each lift.

In the event that the Purchaser does not accept delivery of any goods comprised in the Works or allow commencement or completion of the Works in circumstances where Niche Lifts Ltd is ready to deliver such goods and/or commence or complete the Works, payment will be made as if delivery had been made, or within a reasonable time after the Works would have commenced or completed as the case may be.

All goods supplied by Niche Lifts Ltd shall remain its property until full payment of the contract price and Niche Lifts Ltd shall be entitled, in the event that the Purchaser fails to make payment to Niche Lifts Ltd, and without prejudice to any other remedy which Niche Lifts Ltd may have at law or otherwise to enter the premises where such goods are held and remove them. The Purchaser shall not use or in any way dispose of the goods supplied by Niche Lifts Ltd in respect of which payment has not been received in full by Niche Lifts Ltd.

If payment is not made in accordance with these terms, Niche Lifts Ltd shall be entitled to suspend work immediately and in such circumstances the times estimated by Niche Lifts Ltd for completion of the Works shall be extended by an amount not limited to the period of such suspension.

Notwithstanding any other provision of the contract the Lift Company may in its discretion require full payment with order or against pro-forma invoices.

11. PRICE VARIATION

The prices quoted are based on materials and wage rates applicable at the date of the Tender and shall be subject to adjustment in accordance with the Formula and Indices for Contract Price Adjustment (current edition), compiled by the Lift and Escalator Industry Association "the Formula"). Alternatively, if specified in the Tender, firm prices are quoted on the understanding that in installation will be completed within the period specified. Should completion be delayed for any reason beyond that period Niche Lifts Ltd reserves the right to adjust the prices in accordance with the Formula.

All prices shall be subject to further variation in respect of any additional costs arising by virtue of any statute, regulations or orders issued by any Government Department or other duly constituted authority.

Any adjustment or variation made in accordance with clauses 11.1 and 11.2 respectively may be invoiced immediately the amount of such adjustment and/or variation has been ascertained and shall be payable by the Purchaser forthwith on receipt by it of a notice from Niche Lifts Ltd outlining the amount of the adjustment or variation as the case may be.

12. IMPORTED MATERIALS

The price stated in the Tender, where appropriate, allows for the cost of importing materials based upon the rates of exchange, tax or duty prevailing at the date of the Tender. In the event of any adjustments in such rates, between the date of the Tender and 14 days after receipt of sufficient payment to settle the overseas debt Niche Lifts Ltd reserves the right to make an appropriate adjustment to the Contract price.

13. GUARANTEE

Niche Lifts Ltd hereby warrants the material and workmanship supplied by it under the contract and will make good any defects arising (within one year from the date of completion of installation of each lift) due to faulty design, workmanship or materials carried out or supplied by Niche Lifts Ltd which is not due to ordinary wear and tear or to improper use or care by any party other than Niche Lifts Ltd.

The liability of Niche Lifts Ltd under this clause 13 shall constitute its sole liability (save in respect of death or personal injury caused by the negligence of Niche Lifts Ltd) whether in contract, tort (including negligence) or otherwise in respect of any defects in the goods and services supplied under the contract and any warranties or conditions implied by law are hereby expressly excluded.

The guarantee contained in this clause 13 shall only apply if, at completion of the Works all lifts are serviced by Niche Lifts Ltd or by

a competent person approved by it and (if the latter) in accordance with the terms of a servicing contract approved by Niche Lifts Ltd.

It is a condition to the enforceability of this guarantee that the Purchaser shall ensure that all accessible parts of the lifts supplied are kept clean, and that no person modifies, adjusts or interferes with any equipment without Niche Lifts Ltd's prior approval.

The Purchaser shall not assign the benefit of this guarantee.

14. GENERAL LIABILITY

The Purchaser shall not use or permit to be used the whole or any part of the goods supplied under this Contract before they have been completed, installed, tested and handed over by Niche Lifts Ltd. If such goods or any part of them are so used the Purchaser shall indemnify Niche Lifts Ltd against any liability that may be incurred by Niche Lifts Ltd to any person whether arising directly or indirectly from such use.

Save in respect of death or personal injury caused by the negligence of Niche Lifts Ltd it shall not, either before or after the handing over to the Purchaser of the Works, be liable for any loss and/or damage caused by or arising from the use of any goods comprised in the Works otherwise than in accordance with instructions given by Niche Lifts Ltd from time to time as to its operation and maintenance, and shall not, in any event, be liable for any loss arising out of any cause beyond its reasonable control.

Notwithstanding any other provision of the contract, Niche Lifts Ltd shall not be liable to the Purchaser by way of indemnity or by reason of any breach of the contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit or income or for any indirect or consequential damage whatsoever which may be suffered by the Purchaser.

15. INSTALLATION

The well and motor room shall be handed over properly completed and weather tight to Niche Lifts Ltd's installers.

Any extra cost incurred, due to a suspension of the Works as a result of instructions received from the Purchaser the lack of such instructions, interruptions, delays, overtime, unusual working hours, and additional work or variations or work for which Niche Lifts Ltd is not responsible or mistakes or any other causes outside Niche Lifts Ltd's control, shall be added to the contract price and paid by the Purchaser in accordance with clause 10. Any such charges shall be based upon Niche Lifts Ltd's normal rates and shall include outworking and lodging allowances where appropriate.

The price stated in the Tender is based on the payment of nationally agreed rates for outworking allowances and lodging. If suitable lodgings are not available at these rates due to circumstances beyond Niche Lifts Ltd's control the difference in cost including any extra fares incurred shall be added to the contract price and paid by the Purchaser.

16. TESTING, ACCEPTANCE AND COMPLETION

The works shall be considered complete on notification by Niche Lifts Ltd to the Purchaser and its tests have been successfully completed.

If any lift supplied under the Contract is not taken into normal service at this time it shall be shut down, and Niche Lifts Ltd shall be entitled to additional payment at current rates from the Purchaser for such servicing, cleaning, lubricating or other work as may be necessary to ensure its satisfactory condition when taken into normal service by the Purchaser.

17. PERVENTION OR FRUSTRATION

If the contract becomes impossible to perform or is otherwise frustrated the Purchaser shall be liable to pay Niche Lifts Ltd all costs, expenses, overheads and any loss of profit which Niche Lifts Ltd, his suppliers or sub-contractors incur as a result of such frustration or impossibility of performance.

Any pre-payments which may have been made to Niche Lifts Ltd under the contract shall be applied towards satisfaction of such sums as may become due to him under the foregoing provisions, and the excess (if any) of such pre-payments will be refunded to the Purchaser.

18. PATENTS

The Purchaser warrants that any design or instruction furnished or given by him shall not cause Niche Lifts Ltd to infringe any letter patent, registered design or trade mark in the execution of the Works.

19. DETERMINATION

Niche Lifts Ltd shall be entitled to determine its employment under the Contract in circumstances where:

- a. the Purchaser is in material or continuing breach of any of its obligations under the Contract and fails to remedy such breach within (10) days of the receipt of written notification from Niche Lifts Ltd of such breach; and
- b. the Purchaser makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or an encumbrancer takes possession of, or a receiver or manager is appointed over, all or any property or assets of the Purchaser or the Purchaser ceases or threatens to cease to carry on business or the Purchaser generally becomes unable to pay its debts within the meaning of Section 123 of the insolvency Act 1986.

20. LAW APPLICABLE

This contract shall be governed by and construed in accordance with English law.