



Lift and Escalator Industry Association

CONDITIONS OF CONTRACT

L1 for the manufacture, supply, installation, modernisation and repair of **LIFTS**

JANUARY 2010



33-34 Devonshire Street, London W1G 6PY
Telephone: 020 7935 3013 Fax: 020 7935 3321



CONDITIONS OF CONTRACT – LIFTS

1. GENERAL

- 1.1 The acceptance of the Lift Contractor's 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 the Lift Contractor agrees in writing to any such variation or addition.

2. VALIDITY

- 2.1 Unless previously withdrawn by the Lift Contractor the Tender is open for acceptance within the period stated therein or, when no such period is so stated, within 30 days after the date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. DRAWINGS

- 3.1 Any and all specifications, drawings and particulars submitted with the Tender are approximate only. Any and all descriptions, illustrations and other material of whatsoever nature contained in any catalogues, price lists and other advertisement matter produced by the Lift Contractor 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 the Lift Contractor.

- 3.2 The Lift Contractor shall supply to the Purchaser two copies of general arrangement drawings giving details of builders work required to be undertaken in preparation for the works to be undertaken by this contract ("the Works"). If the Lift Contractor is required by the Purchaser to supply further drawings or revisions the Lift Contractor reserves the right to apply an extra charge in respect of the provision of such drawings or revisions.

4. OVERTIME DAYWORK

- 4.1 Unless specifically stated to the contrary in writing by the Lift Contractor, the Tender is based on the assumption that the Works will be carried out during the lift contractor's normal hours. The Lift Contractor 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 the Lift Contractor in undertaking such work plus an amount of profit.

- 4.2 Any work carried out on a daywork basis shall unless otherwise stated in this Contract in writing or agreed between the parties be charged by the Lift Contractor in accordance with those rates published by the Lift and Escalator Industry Association which are applicable at the time at which such work is undertaken.

5. DELIVERY AND COMPLETION

- 5.1 Any times stated by the Lift Contractor for completion by the Lift Contractor 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 the Lift Contractor to proceed with the Works. All such times are to be treated as estimates only and unless otherwise agreed in writing by the Lift Contractor shall not involve any obligation for the Lift Contractor 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 Schedule to this Contract have been or will be, provided by the Purchaser as and when required by the Lift Contractor in order to enable the Works to proceed.

6. DELAY IN DELIVERY OR COMPLETION

- 6.1 If, due to circumstances outside the control of the Lift Contractor, 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 the Lift Contractor to the site for the purpose of commencement of the Works, the Lift Contractor 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.

- 6.2 The Lift Contractor 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 an estimated time for completion of the Works has been given by the Lift Contractor.

- 6.3 In circumstances where the Lift Contractor 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 6.2 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 the Lift Contractor. 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 the Lift Contractor 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 the Lift Contractor may reasonably require to complete the performance of its obligations.

- 6.4 In circumstances where the Lift Contractor 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 in 6.2 and 6.3 above other than those attributable to the Purchaser the Lift Contractor 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. The Lift Contractor 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.



CONDITIONS OF CONTRACT – LIFTS

7. DELIVERY OF GOODS

7.1 Unless stated to the contrary in the Tender the Lift Contractor shall deliver goods comprised in the Works to the site.

7.2 The Lift Contractor 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 the Lift Contractor within seven days of the receipt of the goods, followed by a complete written claim to the carrier and the Lift Contractor within fourteen days of such receipt. In the case of loss of goods, the Lift Contractor shall have no such liability unless a written notice and a complete written claim is provided to the carrier of such goods and to the Lift Contractor 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

8.1 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 dispatch it shall arrange and pay for suitable storage, maintenance and insurance of such goods. If the Lift Contractor has sufficient and appropriate facilities for those purposes it will store such goods at the Purchaser's risk and expense.

9. PASSING OF RISK

9.1 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 the Lift Contractor that it is unable to accept delivery of all or any part of the goods within seven days after notification from the Lift Contractor that they are ready for dispatch risk in such goods shall pass to the Purchaser at the expiry of such seven day period.

9.2 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 the Lift Contractor.

10. TERMS OF PAYMENT

10.1 All quotations made by the Lift Contractor are strictly net cash unless otherwise stated and are exclusive of Value Added Tax or any similar or other taxes, levies or duties.

10.2 Payments shall become due to the Lift Contractor as follows:

- (a) Payment of 30% of the contract value shall become due on the date when an order is placed by the Purchaser.
- (b) A further 30% of the contract value shall become due on the date which is midway between the date on which the order is placed and the contract date for dispatch.
- (c) A further 20% of the contract value shall become due on receipt by the Purchaser of notice that the goods comprised in the Works are ready for dispatch.
- (d) The final 20% of the contract value shall be paid as progress payments as installation proceeds and such payments shall become due on the date of an application for payment being made by the Lift Contractor.

If through no fault of the Lift Contractor final adjustments cannot be made when installation is otherwise complete, payment shall nevertheless become due as though such final adjustments had been made.

10.3 The Purchaser shall, not later than five days after the date on which any payment becomes due, give notice to the Lift Contractor specifying the amount (if any) of the payment made or proposed to be made, specifying to what the payment relates and the basis on which the amount was calculated.

10.4 The final date for all payments shall be fourteen days from the due date for payment.

10.5 Any notice of intention to withhold payments under Section 111 of The Housing Grants, Construction and Regeneration Act 1996 shall be given no later than the prescribed period which shall not be later than nine days before the final date for payment.

10.6 In the event that the Lift Contractor has exercised his right under Section 112 of The Housing Grants, Construction and Regeneration Act 1996 to suspend performance of his obligations under this contract, the Purchaser shall reimburse the Lift Contractor in respect of any loss and/or expense incurred by him during the period of the suspension including the cost of re-mobilisation on the lifting of the suspension.

10.7 The due dates and the final date for payment set out in sub-clauses 10.2 and 10.4 shall remain in place notwithstanding 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 the Lift Contractor is ready to deliver such goods and/or commence or complete the Works.

10.8 In circumstances where more than one lift is provided by the Lift Contractor, the terms of payment set out above shall apply in respect of the provision of each lift.

10.9 All goods supplied by the Lift Contractor shall remain its property until full payment of the contract price and the Lift Contractor shall be entitled, in the event that the Purchaser fails to make payment to the Lift Contractor, and without prejudice to any other remedy which the Lift Contractor may have at law 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 the Lift Contractor in respect of which payment has not been received in full by the Lift Contractor.



CONDITIONS OF CONTRACT – LIFTS

- 10.10 Interest shall be paid on all overdue amounts from the date when payment was due until actually made at the rate of eight percent above the Bank of England base rate operating during the period of delay in payment by the Purchaser.
- 10.11 Notwithstanding any other provision of this contract the Lift Contractor may in its discretion require full payment with order or against pro-forma invoices.
- 11. PRICE VARIATION**
- 11.1 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 the installation will be completed within the period specified. Should completion be delayed for any reason beyond that period the Lift Contractor reserves the right to adjust the prices in accordance with the Formula.
- 11.2 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.
- 11.3 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 the Lift Contractor outlining the amount of the adjustment or variation as the case may be.
- 12. IMPORTED MATERIALS**
- 12.1 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 adjustment in such rates, between the date of the Tender and 14 days after receipt of sufficient payment to settle the overseas debt the Lift Contractor reserves the right to make an appropriate adjustment to the Contract price.
- 13. GUARANTEE**
- 13.1 The Lift Contractor 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 the Lift Contractor which is not due to ordinary wear and tear or to improper use or care by any party other than the Lift Contractor.
- 13.2 The liability of the Lift Contractor under this clause 13 shall constitute its sole liability (save in respect of death or personal injury caused by the negligence of the Lift Contractor) 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.
- 13.3 The guarantee contained in this clause 13 shall only apply if, at completion of the Works all lifts are serviced by the Lift Contractor or by a competent person approved by it and (if the latter) in accordance with the terms of a servicing contract approved by the Lift Contractor.
- 13.4 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 the Lift Contractor’s prior approval.
- 13.5 The Purchaser shall not assign the benefit of this guarantee.
- 14. GENERAL LIABILITY**
- 14.1 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 the Lift Contractor. If such goods or any part of them are so used the Purchaser shall indemnify the Lift Contractor against any liability that may be incurred by the Lift Contractor to any person whether arising directly or indirectly from such use.
- 14.2 Save in respect of death or personal injury caused by the negligence of the Lift Contractor 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 the Lift Contractor 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.
- 14.3 Notwithstanding any other provision of the contract, the Lift Contractor 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**
- 15.1 The well and motor room shall be handed over properly completed and weather tight to the Lift Contractor’s installers.
- 15.2 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 the Lift Contractor is not responsible or mistakes or any other causes outside the Lift Contractor’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 the Lift Contractor’s normal rates and shall include outworking and lodging allowances where appropriate.
- 15.3 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 the Lift Contractor’s control the difference in cost including any extra fares incurred shall be added to the contract price and paid by the Purchaser.



CONDITIONS OF CONTRACT – LIFTS

16. TESTING, ACCEPTANCE AND COMPLETION

16.1 The Works shall be considered complete on notification by the Lift Contractor to the Purchaser that its tests have been successfully completed.

16.2 If any lift supplied under the Contract is not taken into normal service at this time it shall be shut down, and the Lift Contractor 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. PREVENTION OR FRUSTRATION

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

17.2 Any pre-payments which may have been made to the Lift Contractor under the contract shall be applied towards satisfaction of such sum 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

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

19. DETERMINATION

19.1 The Lift Contractor 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 the Lift Contractor of such breach; and/or
- (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

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

20.2 This contract does not confer or purport to confer any benefit on any third party. In particular, rights that would otherwise arise in favour of third parties under the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

21. ADJUDICATION

21.1 Both the Purchaser and the Lift Contractor shall be entitled to refer any dispute or difference arising under this contract to adjudication at any time. The adjudication shall be conducted in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.



CONDITIONS OF CONTRACT – LIFTS

SCHEDULE

The Tender excludes the following items which, unless otherwise agreed in writing, it shall be the responsibility of the Purchaser to provide to the Lift Contractor's requirements:

1. Calculations with regard to the building, the obtaining of any necessary permissions and the issue of any relevant notices.
2. Builder's work such as forming lift well, pit and machine room which shall be dry and free from dust with the necessary access according to local bye-laws, also, cutting away and making good and site painting. All work to be in compliance with British Standards, Codes of Practice, local bye-laws and any legislative requirements.
3. Machine room floor including any reinforcement necessary for load bearing.
4. Tested lifting beams where necessary marked with safe working load and any steelwork other than that specified in the tender.
5. Any necessary drainage, tanking, lining or reinforcement of the pit.
6. Steel surrounds for vertical bi-parting sliding doors.
7. When required dividing beams for multiple wells and inter-well screens.
8. A bore hole and the provision of a liner for the jack in the case of direct acting hydraulic lifts.
9. Guarding of openings and other measures necessary to ensure the safety and convenience of the occupants and other personnel within the building. The protection of surrounds, surfaces, furnishings and access routes.
10. Scaffolding, planks and ladders within or adjacent to the lift shaft(s) to the lift contractor's requirements.
11. Off-loading and storage of materials, tools and clothing in a suitably locked, dry, heated and illuminated storage space protected from theft and damage.
12. Working lights and temporary and permanent electricity supplies to the Lift Contractor's requirements including the repositioning and up-grading, where necessary, of mains switches and supply cables.
13. A three-phase electrical supply for a mobile platform or hoist fitted in the well, if required.
14. The supply or installation of electrical wiring external to the lift well or machine room.
15. Mess rooms, sanitary accommodation and welfare facilities.
16. Permanent ventilation or other arrangements to ensure a machine room temperature between 5°C and 40°C for traction lifts and between 15°C and 35°C for oil hydraulic lifts, in operation prior to testing.
17. Provision for reinforcement of pavements and floors, making suitable access and trucking, crange and unskilled labour for handling equipment to its final position on site.
18. Cleaning, renewal or replacement of lift equipment damaged by dust produced from such processes as dry grinding of mosaic and other builders' work.
19. Extra costs due to surveyor's fees or special requirements of government departments, local authorities, insurance companies, consultants, other bodies or officials.
20. Provision of safe and adequate access to the machine room and lift well to the satisfaction of the Health and Safety at Work, etc. Act.
21. Provision for taking on any of the roles specified in the Construction (Design and Management) Regulations other than that of "Contractor".

Signed
on behalf of the Purchaser

Signed
on behalf of the Lift Contractor

Date

Date

Issued under the sanction of and approved by:
THE LIFT AND ESCALATOR INDUSTRY ASSOCIATION
33/34 Devonshire Street, London W1G 6PY