

# Terms and Conditions

## 1 Terms

- 1.1 These Terms and Conditions apply to:
  - 1.1.1 all supplies of goods or services by the Company to the Customer; and
  - 1.1.2 all purchases of goods or services by the Company from the Supplier.
- 1.2 These Terms and Conditions apply in place of any terms provided or referred to by the Customer or Supplier.
- 1.3 No prior statements made by either Party, nor any correspondence between the Parties, are incorporated into any Agreement to which these Terms and Conditions apply, unless separately agreed in writing and signed by properly authorised officers or representatives of both Parties.
- 1.4 Neither party to any Agreement to which these Terms and Conditions apply shall be bound by any amendment of, variation to or addition to these Terms and Conditions unless agreed in writing and signed by properly authorised officers or representatives of both Parties.
- 1.5 The waiver by the Company of any term of an Agreement, or the failure of the Company to insist on due and proper performance of any agreement by the Customer, whether deliberate or otherwise, shall not give rise to any future waiver or abandonment of the Company's rights under such Agreement or any other agreement between the Company and the Customer.
- 1.6 If any terms of provision of any Agreement to which these Terms and Conditions apply shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form any part of the Agreement, but the validity and enforceability of the remainder of the Agreement shall not be affected.

## 2 Definitions

- 2.1 'Company' means **Go Escalator Services Ltd**.
- 2.2 'Customer' means the customer ordering goods or services as specified on the Customer's Order.
- 2.3 'Supplier' means the supplier of goods or services ordered by the Company as specified on the Company's Order.
- 2.4 'Order' means:
  - 2.4.1 for the supply of goods or services by the Company, the Customer's purchase order, or if the order was placed other than by a purchase order, the order as described in the Company's acknowledgment of such order.
  - 2.4.2 for the purchase of goods or services by the Company, the Company's purchase order.
- 2.5 'Agreement' means any contract between the Company and a Customer or Supplier.
- 2.6 'Party' means:
  - 2.6.1 for an agreement for supply of goods or services by the Company, the Company or the Customer; and
  - 2.6.2 for an agreement for the purchase of goods or services by the Company, the Company or Supplier.
- 2.7 'Insolvency' means in respect of the Customer any act of bankruptcy, or calling a meeting (whether formal or informal) of any of the Customer's creditors or (where the Customer is a body corporate) having a receiver or manager appointed of its undertaking or any part thereof, or passing or presenting to any Court a resolution for the winding-up of the Customer, or the happening of any act whatsoever or the commencement of any proceedings whatsoever relating to the insolvency or possible insolvency of the Customer.

## 3 Description and Samples

- 3.1 Any description given or applied to goods supplied by the Company is given by way of identification only and the use of such a description shall not give rise to a sale by description. The Customer confirms that it did not in any way rely upon any description when entering into an agreement with the Company.
- 3.2 Where any sample of goods was shown to or inspected by the Customer, the Customer confirms that such showing or inspection was for the sole purpose of enabling the Customer to assess the quality of bulk goods and did not give rise to a sale by sample.

## 4 Quotation and Price

- 4.1 Any price shown on any quotation is valid for 60 days from the date of such quotation.
- 4.2 Each quotation is given on the basis that no Agreement will come into existence between the Company and the Customer until the Company sends the Customer an acknowledgement of its order.
- 4.3 Notwithstanding any price which may be shown on any quotation, acknowledgment of order or other document the Company will be entitled to charge the Customer its price current at the date of despatch or, in the case of delivery by instalments, at the date of despatch of each such instalment.

## 5 Payment

- 5.1 All invoices are strictly net for payment within **30 days** of date of invoice and the Customer confirms that the Agreement expressly excludes any 'pay when paid' term such as would entitle the Customer to defer payment to the Company until the Customer had itself been paid by any customer or subcontractor of itself.
- 5.2 The Company may, at its own sole discretion, require the Customer at the time of or before entering into any Agreement to arrange for a personal guarantee of the Customer's liabilities from a director or directors of the Customer, or such other form of security as the Company may deem appropriate. Such guarantee or security shall extend to the whole of the Customer's liability to the Company incurred since the granting of such guarantee or security.
- 5.3 The Company will be entitled to send out its invoice immediately after the goods have been despatched or services performed, or, if despatch of goods is delayed for reasons beyond the Company's control, when they are ready for despatch.
- 5.4 All amounts due to the Company under an Agreement for supply of goods or services by the Company shall be paid in full by the Customer, without any deduction or withholding other than such as may be required by law, and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify the withholding of payment of any such amount in whole or in part.
- 5.5 If the Customer fails to make payment when it is due, or in the event of Insolvency of the Customer, the Company will be entitled to:
  - 5.5.1 Charge interest on the balance owing in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998; and
  - 5.5.2 Demand immediate payment of all invoices sent to the Customer irrespective of date; and
  - 5.5.3 Withhold further deliveries under the Agreement or any other Agreement with the Customer until all payment and interest due under all invoices has been paid; and
  - 5.5.4 At the Company's discretion, rescind the Agreement and recover such goods or materials as remain the Company's property.

## 6 Ownership and Risk

- 6.1 The property in goods supplied under the Agreement will not pass to the Customer until the price for all such goods and all other sums due from the Customer under the Agreement by which such goods are supplied have been paid in full.
- 6.2 The risk will pass on delivery to the Customer, or a carrier, whichever is the earlier.

## 7 Delivery and Time of Performance

- 7.1 The Company will endeavour to perform services or deliver goods under the Agreement within the time agreed and if no time is agreed within a reasonable time but the Customer agrees that time is not of the essence of any Agreement for the supply of goods or the provision of services.
- 7.2 The Company will be entitled to make delivery of goods by instalments and to invoice the Customer for each instalment despatched.
- 7.3 The Company will make delivery of goods [ex works] [carriage paid] by such means of carriage as it may choose.
- 7.4 No claim for damage or shortages will be considered unless the Company is advised in writing within three days of delivery and no claim for non-delivery be considered unless the Company is notified in writing within 10 days of despatch. Any claim for damage or shortages must also be notified to the carrier by the Customer in the manner and within the appropriate time limit prescribed the carrier's terms and conditions.
- 7.5 The Supplier confirms that time is of the essence of any Agreement for the purchase of goods by the Company.

## 8 Force Majeure

- 8.1 In no circumstances will the Company be liable for loss or damage of any kind whatsoever caused directly or indirectly if completion of the Agreement or delivery of goods or materials or provision of services is delayed by reason of any cause of whatsoever kind and whenever occurring beyond the Company's control including but not limited to any Act of God, war, national emergency, Act of Parliament, order regulation or bye-law made under any statutory authority, industrial dispute, strike, lock-out, civil commotion, fire, tempest, flood or failure to deliver or delay in delivery by any of the Company's suppliers from whatever cause

arising,

8.2 Delay arising from any such cause in Clause 8.1 will not entitle the Customer to terminate or rescind the Contract.

## **9 Replacement or Rework of Goods or Services**

9.1 Other than as excluded by Clause 9.3 the Company guarantees all products of its manufacture and all services as carried out by its servants, agents or sub-contractors against any defect which are and can be shown to the Company's satisfaction to have been caused by reason only of the use of defective materials or by reason of faulty workmanship and which appears and arises within a period of 12 months from the date of despatch of goods or completion of services provided that the Customer has notified the Company in writing of the fault within that period.

9.2 Should such defect appear and be notified within such period the Company's liability will be limited solely to repairing or at its option replacing the defective product or part and such guarantee shall extend only as to the cost of any defective materials utilised in such repair to labour, dismantling and reassembly or product or part and such guarantee shall extend only as to the cost of any defective materials utilised in such repair to labour, dismantling and reassembly or the transportation of personnel of the Company to the premises of the Customer which shall be borne by the customer.

9.3 The Company shall not be liable for any such defect in any circumstances if:

9.3.1 The goods or part of the goods supplied or the subject matter of the services provided have been the subject of abuse or misuse and such abuse or misuse is to be deemed to include:

9.3.1.1 The use of any such goods supplied or parts thereof or the subject matter of the services provided otherwise than the purpose for which they are intended or otherwise than in fashion specified by the Company or the manufacturer of the subject matter of the services provided where that is not the Company.

9.3.1.2 Any dismantling, modification or repair carried out in respect thereof otherwise than in accordance with the specifications of the Company or the manufacturer of the subject matter of the services provided where that is not the Company.

9.3.2 The goods supplied or the subject matter of the services provided have been subjected to:

9.3.2.1 Unsuitable storage, treatment or handling prior to use.

9.3.2.2 Abnormal use or to use under abnormal conditions or beyond their capacity as rated and recommended by the Company or the manufacturer of the subject matter of the services provided where that is not the Company.

9.3.3 The defect has been caused or contributed to by:

9.3.3.1 Operation of the goods or the subject matter of the services provided in abnormal atmospheric conditions.

9.3.3.2 Faulty installation, servicing or repair of the goods or the subject matter of the services provided by any person other than a duly authorised representative of the Company or the manufacturer of the subject matter of the services provided where that is not the Company.

9.3.3.3 Other than where the goods or the subject matter of the services provided were intended for such exposure, exposure of the Goods or the subject matter of the services provided to direct weather conditions at any time.

9.3.4 The Customer fails as soon as possible after the assumed defect has become apparent to notify that defect to the Company in writing quoting the company's reference number if any and the date of purchase of the goods alleged to be defective.

9.4 Entirely at the customer's risk any repair or examination of defective goods or parts may be carried out at the Company's premises but in which event the Customer shall bear:

9.4.1 The expense of delivering said goods to the Company; and

9.4.2 The risk as to adequate packaging of said goods; and

9.4.3 The subsequent expenses of re-delivery to the Customer.

9.5 The decision of the Company is final as to whether or not a defect is due to faulty workmanship or material.

9.6 If in the opinion of the Company the goods are satisfactory in operation or are defective only as a result of circumstances for which the Company is not liable hereunder or as a result of fair wear and tear the Customer shall if required by the Company pay a reasonable charge for the examination of the goods by the Company and any cost of returning the goods to the Customer. In such case the Company shall submit to the customer a quotation for repair of the goods before effecting any repair.

9.7 The Company shall not in any case be liable under this clause or at all in respect of any goods or subject matter of the services provided not of the Company's manufacture although the Company will do all that is reasonable at the Customer's expense to secure the benefit (with corresponding liabilities) to the Customer of any right which the Company may have against the supplier of such goods or subject matter but not so as to impose upon the Company a greater liability than will be imposed by its own guarantee herein contained.

## **10 Supplier's Warranty and Guarantee to Company of Quality of Goods**

10.1 In any Agreement for the purchase of goods by the Company the Supplier warrants that all goods supplied will be:

10.1.1 free from any defects, patent or latent, in material and workmanship;

10.1.2 conform to applicable specifications and drawings;

10.1.3 to the extent that detailed designs were not provided by the Company, will be free from design defects and in every aspect suitable for the purposes intended by the Company, as to which the Supplier hereby acknowledges that it has had due notice.

10.2 The approval by the Company of any designs provided by the Seller shall not relieve the Seller's obligations under any provision of Clause 10.1.

10.3 The Seller's obligations under Clause 10.1 shall extend to any defect or non-conformity arising or manifesting itself within twelve months from delivery. The Company, without thereby waiving any rights or remedies otherwise provided by law or under the Agreement with the Supplier, may require the Supplier to:

10.3.1 make good or replace such items at the Seller's risk and expense; or

10.3.2 refund such portion of the price as is equitable under all the circumstances.

## **11 Supplier's Guarantee to Company as to Title**

11.1 In any Agreement for the purchase of goods by the Company the Supplier warrants that it:

11.1.1 holds full, clear and unencumbered title to all of the goods;

11.1.2 will on the date of delivery hold such title in and to all the goods; and

11.1.3 will on the date of delivery have the full and unrestricted right, power and authority to sell, transfer and deliver all of the goods to the buyer at which point the latter will acquire a valid and unencumbered title to the goods.

## **12 Limit of Liability**

12.1 Except as expressly provided in Sub-Clauses 9.1 to 9.3 and except where the absolute prohibitions against exclusion and restriction of liability contained in the Unfair Contract Terms Act 1977 apply, the Company shall under no circumstances be liable to the Customer in respect of any loss, damage or injury of any kind (including consequential loss or damage) whether suffered by the Customer or any other party and howsoever caused (including being caused by any defect in failure of or unsuitability for any purpose of the goods or by any negligence whether in relation to design or manufacture of the goods or provision of services or at all) and all conditions warranties or other terms whether expressed or implied statutory or otherwise are hereby excluded.

12.2 The Company shall not be liable for any loss of any kind (including consequential loss or damage) arising from representations statements warranties recommendations or advice made or given before the making of any Agreement.

12.3 The expression 'consequential loss' shall be deemed to include loss of profits, loss of business revenues, loss of use or loss of goodwill whether of the Customer or of any other party.

12.4 The liability of the Company in respect of any claim shall in any event be limited to the sum paid by the Customer to the Company in respect of the work from which the claim arises, unless the Customer and Company agree an alternative limit in accordance with Clause 1.4.

## **13 Indemnity and Liability to Third Parties**

13.1 Without prejudice to the generality of any of the other Contract terms the Customer will indemnify the Company and keep the Company indemnified against all claims, costs, proceedings, demands or liability of whatsoever nature incurred by or made against the Company:

13.1.1 which arise from any services carried out by the Company but which result directly or indirectly partially or wholly from act or omission of the Customer or any other person; or

13.1.2 arising or resulting from the death of or injury to any of the Company's servants, agents or sub-contractors while he or they are on site (wherever that may be, other than the Company's own premises, where such person or persons are performing services for the Customer) howsoever caused otherwise than wholly through the Company's negligence or the Company's servants', agents' or sub-contractors' negligence.

13.2 The Customer will indemnify and keep indemnified the Company, the Company's servants, agents and sub-contractors against any loss or damage of whatsoever nature, including but not limited to death of or injury to any person or persons, and however so arising, incurred or suffered by the Company, the Company's servants, agents or sub-contractors by reason of any claim made by a third party which loss or damage would not have been incurred or suffered if the third party had been in direct contractual relationship with the Company, the Company's servants, agents or sub-contractors provided always that this

indemnity shall not apply where such loss or damage arises from any negligence or breach of the Contract on the Company's part or on the part of the Company's servants, agents or sub-contractors.

#### **14 Design**

14.1 Where goods are manufactured to the design or specification of the Customer:

14.1.1 The Customer warrants that such goods do not infringe any patent registered design, design right, copyright or trade mark or other like protection or the provision of any statutory instrument or regulation for the time being in force.

14.1.2 The Company will have the right to retain any drawings, specifications or other documents supplied by the Customer.

14.2 The Company shall be under no liability whatsoever to the Customer:

14.2.1 where any of the Company's suppliers varies the specification of goods or materials forming the whole or part of the Contract Work and the Company then supplies to the Customer goods or materials as so varied; or

14.2.2 where goods or material forming the whole or part of the Contract are no longer available from the supplier and as a result the Company supplies to the Customer goods or material similar to but not the same as the goods and materials specified in the Contract.

14.3 The Customer agrees that it will acquaint itself with the requirements of all Government or statutory or other authorities bodies or corporations relating to the goods and undertakes that at all times he will comply with such requirements and will indemnify the Company and keep the Company indemnified against any liability due to a breach of any such requirements.

#### **15 Termination**

15.1 This Agreement will terminate immediately upon service of written notice of termination by the Company on the Customer on any one or more of the following grounds:

15.1.1 The Insolvency, reconstruction or amalgamation of the Customer.

15.1.2 The failure of the Customer to observe or perform any of his obligations or duties under the Agreement.

15.1.3 That the carrying out of the Agreement or any substantial part thereof is prevented or rendered impracticable for a continuous period of ninety days by reason of accidental damage of any kind whatsoever and however arising or by the act or default of any person other than the Company but including the Customer.

15.2 Termination of this Contract in any way whatsoever will be without prejudice to the rights, obligations and liabilities of either Party accrued prior to termination.

15.3 Upon termination of this contract the provisions of Clause 5.5 will apply immediately.

15.4 Without prejudice to any of the Company's other rights to claim damages, the Customer will, on termination of Contract under Clauses 15.1.1 or 15.1.2, or if the Customer cancels, extends or delays or purports to cancel, extend or delay the Contract or fails to take delivery of any goods or materials, indemnify the Company against any loss, damage or expense incurred by the Company in connection with the Contract including but not limited to the payment of the costs of any goods, materials plant or tools used or intended to be used therefore and the costs of labour and other overheads including a percentage in respect of profit.

#### **16 Relationship of Parties**

16.1 Nothing in any Agreement between the Parties shall be construed as establishing or implying any partnership or joint venture between the Parties, and nothing in this agreement shall be deemed to constitute either of the Parties as the agent of the other or authorise either Party to:

16.1.1 incur any expense on behalf of the other Party; or

16.1.2 enter into any engagement or make any representation or warranty on behalf of the other Party; or

16.1.3 pledge the credit of, or otherwise bind or oblige the other Party; or

16.1.4 commit the other Party in any way whatsoever, without in each case obtaining the other Party's written consent.

#### **17 Assignment and Sub-Contracting**

17.1 Any Agreement between the Parties shall not be assigned or transferred without the prior written consent of the Company.

17.2 The Customer confirms that the Company may sub-contract the performance of any Agreement for supply of goods or services by the Company.

#### **18 Law and Jurisdiction**

18.1 This Contract will be construed and operate in accordance with the law of England and Wales.

18.2 All disputes relating to this Contract will be subject to the jurisdiction of the courts of England and Wales.