

Terms and Conditions of Sale



1. Scope

- 1.1 These Terms and Conditions apply to all sales of product and/or the provision of services by ACE LIFTS LTD Communications Ltd ("ACE LIFTS LTD") and shall prevail over any inconsistent terms or conditions referred to in any order placed by any proposed purchaser of ACE LIFTS LTD's products or services ("Purchaser") or in correspondence or elsewhere unless such terms are specifically agreed to in writing by ACE LIFTS LTD and any conditions or stipulations to the contrary of these terms are hereby excluded or extinguished.
- 1.2 No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of any contract incorporating these conditions between the Purchaser and ACE LIFTS LTD for the sale of product by ACE Lifts Ltd and/or the provision of services by ACE LIFTS LTD ("Contract").
- 1.3 The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ACE LIFTS LTD which is not set out in the Contract between ACE LIFTS LTD and the Purchaser. Nothing in this condition shall exclude or limit ACE LIFTS LTD's liability for fraud or fraudulent misrepresentation.

2. Quotation

- 2.1 A quotation by ACE LIFTS LTD does not constitute an offer and ACE LIFTS LTD reserves the right to withdraw or amend the same at any time prior to the acceptance of the Purchaser's order.
- 2.2 The quantity and description of the products and/or services to be supplied by ACE LIFTS LTD shall be as set out in the quotation or acknowledgement of order issued by ACE LIFTS LTD to the Purchaser.
- 2.3 Each order or acceptance of product and/or services from ACE LIFTS LTD by the Purchaser shall be deemed to be an offer by the Purchaser to buy such products and/or services from ACE LIFTS LTD subject to these terms and conditions and no order placed by a Purchaser shall be deemed to have been accepted by ACE LIFTS LTD until a written acknowledgement of order or invoice is issued by ACE LIFTS LTD to the Purchaser or (if earlier), ACE LIFTS LTD delivers the products and/or services to the Purchaser.

3. Prices and Payment

- 3.1 All quoted prices for product and/or the provision of services are exclusive of delivery charges, insurance, taxes, duty or VAT payable or assessed on any sale to the Purchaser unless otherwise stated in our quotation. Prices stated on quotations shall be valid for a period of 30 days from the date of the quotation unless otherwise specifically agreed. At the expiry of the said period of 30 days, prices may be subject to revision in order to take all or any of the following factors into account: (a) any change in exchange rate, (b) any increase due to any reason in the cost of the product and/or service provided and/or delivery, (c) any increase in the cost of materials, components and/or equipment to be supplied to ACE LIFTS LTD before onward transmission of the equipment to the Purchaser, (d) any increase of any nature in the cost to ACE LIFTS LTD as a result of its importing the equipment or any part of them or any component parts or parts into the UK. ACE LIFTS LTD will notify the Purchaser in writing of any such revision to its quotation.
- 3.2 Subject to condition 3.4, payment of the price for the products and/or services supplied to the Purchaser by ACE LIFTS LTD is due in the currency specified in our invoice on the payment date specified in our invoice. In the absence of any payment date being specified, such price is payable on the date of issue of our invoice.
- 3.3 Time for payment by the Purchaser of any sum due under the Contract shall be of the essence and no payment shall be deemed to have been received by ACE LIFTS LTD until ACE LIFTS LTD has received such payment in cleared funds.
- 3.4 All payments payable to ACE LIFTS LTD under the Contract shall become due immediately on its termination despite any other provision.
- 3.5 The Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by ACE LIFTS LTD to the Purchaser.
- 3.6 If the Purchaser fails to pay ACE LIFTS LTD any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to ACE LIFTS LTD on such sum from the due date for payment at the annual rate of 2% above the base lending rate

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from time to time of The Royal Bank of Scotland PLC, accruing on a daily basis until payment is made, whether before or after any judgment.

4. Delivery and Risk

- 4.1 Subject to any valid bill and hold instruction agreed by ACE LIFTS LTD and the Purchaser, ACE LIFTS LTD shall deliver or arrange delivery of its products and / or services in accordance with the purchase order issued by the Purchaser to the specified delivery address of the Purchaser. Any delay or default in the performance of any obligation of ACE LIFTS LTD under this condition caused directly or indirectly by acts of God, Acts of Government, war, civil commotion, strikes or labour disputes, fire, flood or any other cause or causes (whether or not by a like nature) by matters beyond the reasonable control of ACE LIFTS LTD or its selected delivery agent shall not be deemed to be a breach of the Contract. Upon delivery of the product to the Purchaser or Purchaser's agent, all risks whether insurable or not relating to the product supplied by ACE LIFTS LTD shall pass absolutely to the Purchaser. Any products held by ACE LIFTS LTD or its selected third party storage agent for a Purchaser on a valid bill and hold instruction agreed between ACE LIFTS LTD and the Purchaser shall be at the risk of the party referred to in the bill and hold instruction as having such risk during such storage period to the extent stated therein.
- 4.2 The quantity of any consignment of product as recorded by ACE LIFTS LTD or if applicable, its selected third party storage agent or supplier upon dispatch from ACE LIFTS LTD's place of business or if applicable, from the third party storage premises or ACE LIFTS LTD's chosen supplier's premises if such product is being delivered from there direct to the Purchaser shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.
- 4.3 ACE LIFTS LTD shall not be liable for any non-delivery of product (even if caused by ACE LIFTS LTD's negligence) unless the Purchaser gives written notice to ACE LIFTS LTD of the non-delivery within 10 days of the date when the product would in the ordinary course of events have been received.
- 4.4 Any liability of ACE LIFTS LTD for non delivery of product and/or delay in the provision of services shall be limited to replacing the product and/or delivering the services within a reasonable period of time or issuing a credit note for the relevant amount of any invoice issued by ACE LIFTS LTD relating to the product and/or services that have not been delivered and/or provided to the Purchaser on time.

5. Reservation of Title

- 5.1 The property and legal and beneficial title of all products supplied by ACE LIFTS LTD to the Purchaser shall notwithstanding delivery and passing of risk remain with ACE LIFTS LTD until the full amount of the purchase price together with all other sums due by the Purchaser to ACE LIFTS LTD have been paid in full in cleared funds.
- 5.2 If any amount owing by the Purchaser to ACE LIFTS LTD is due and unpaid, then ACE LIFTS LTD may without prejudice to any of its other rights or remedies repossess and resell any or all of the products to which such amounts relate and for that purpose the Purchaser hereby authorises ACE LIFTS LTD, its servants or agents to have an irrevocable licence to enter upon its premises at all reasonable times and without notice to the Purchaser. If the Purchaser shall sell any products delivered in such manner as to pass to a third party a valid title to the products, the Purchaser shall hold the proceeds of such sale on trust absolutely for ACE LIFTS LTD, providing that nothing herein shall constitute the Purchaser acting as the agent of ACE LIFTS LTD for the purposes of any such sub-sale and also providing that the Purchaser shall not be entitled to sell such products after the appointment of a receiver or administrator to its property, or has been placed in liquidation or administration, or not being a company, has committed an act of bankruptcy.
- 5.3 The Purchaser's right to possession of the product supplied by ACE LIFTS LTD shall terminate immediately if the Purchaser encumbers or in any way charges any of the product supplied by ACE LIFTS LTD.

6. Warranty

Subject to the limitations of liability set out in these terms and conditions, products sold by ACE LIFTS LTD to the Purchaser are warranted against defects in workmanship and material during the period of the warranty notified by ACE LIFTS LTD as the applicable warranty period for such products when the Contract is entered into. ACE LIFTS LTD will make good by replacement or repair at its option any defect in any products which appears under normal use within the warranty period provided that the product has been serviced, maintained, installed and used properly in accordance with the instructions issued by ACE LIFTS LTD or the manufacturer and has not been subject to any neglect misuse or accident. This warranty is valid only if written notice of any alleged defect of such product is given in writing to ACE LIFTS LTD within 10 days after the discovery of such defect and if such defect is proved to have been caused by faulty materials or

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workmanship. Except for the express warranties stated above, ACE LIFTS LTD makes no warranties to the Purchaser and disclaims all other warranties or conditions whether expressed or implied by law to the extent that it is legal to do so or to attempt to do so.

7. Limitation of Liability

- 7.1 This condition 7 prevails over all other conditions in these terms and conditions and the Contract and sets forth the entire liability of ACE LIFTS LTD, and the sole and exclusive remedies of the Purchaser in respect of a breach of these conditions or the performance, non performance, purported performance or delay in performance of the Contract or otherwise in relation to the Contract or the entering into or performance of the Contract or conduct of any services ancillary thereto or for any use made or resale by the Purchaser of any product supplied by ACE LIFTS LTD or any product incorporating any such product.
- 7.2 Nothing in these terms and conditions shall exclude or limit ACE LIFTS LTD's liability for death or personal injury or for fraud or fraudulent misrepresentation or for any matter for which it would be illegal for ACE LIFTS LTD to exclude or attempt to exclude its liability.
- 7.3 Save as provided in condition 7.2, ACE LIFTS LTD's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise or for any loss or damage to the Purchaser's tangible property shall in no circumstances exceed the lesser amount of:
- 7.3.1 125% of the price payable for the products ordered from ACE LIFTS LTD by the Purchaser to which the liability relates and/or 125% of the price payable for the services provided by ACE LIFTS LTD to the Purchaser to which the liability relates ; or
- 7.3.2 the maximum aggregate sum of £1,000,000.

And the limitation of liability under this condition 7.3 has effect in relation both to any liability expressly provided for under the Contract or these terms and conditions and to any liability arising by reason of the invalidity or unenforceability of any terms in these terms and conditions or the wider Contract.

- 7.4 ACE LIFTS LTD shall in no event be liable for:

- 7.4.1 loss of profits;
- 7.4.2 loss of contracts;
- 7.4.3 loss of the use of money;
- 7.4.4 loss of anticipated savings;
- 7.4.5 loss of business;
- 7.4.6 loss of opportunity;
- 7.4.7 loss of goodwill;
- 7.4.8 loss of reputation; or
- 7.4.9 any indirect, special or consequential loss

and any such liability of ACE LIFTS LTD is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, conditions 7.4.1 to 7.4.9 apply whether such losses are direct, indirect, special, consequential or otherwise.

- 7.5 The Purchaser acknowledges and agrees with ACE LIFTS LTD that the allocation of risk and liability contained in the Contract (which incorporates these conditions) is reasonable in all the circumstances having regard to all relevant factors including the nature of the Contract and the ability of the Purchaser to rely on its own respective insurance arrangements and other resources to bear or recover any loss or damages incurred.

8. Insolvency of Customer

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In the event of the Purchaser being declared bankrupt, having a receiver appointed, an administrator appointed, a petition presented or a resolution passed for its winding up, all sums unpaid by the Purchaser for products and / or services supplied by ACE LIFTS LTD shall become immediately due and ACE LIFTS LTD shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Purchaser. The Purchaser's right to deal in the ordinary course of business or otherwise sell or dispose of products in which the title and property remains with ACE LIFTS LTD shall automatically and immediately terminate and all products to which ACE LIFTS LTD holds title shall be returned to ACE LIFTS LTD at the expense of the Purchaser without reference to any third party.

9. Re-export Control

If the Purchaser wishes to export items purchased from ACE LIFTS LTD then the Purchaser undertakes to comply with the export control regulations, including in particular, the requirements of the USA regulatory body and any other specific requirements which may be required from time to time.

10. Governing Laws

These conditions of sale and all other express terms herein and any Contract shall be governed by and construed in all respects in accordance with the laws of England and the exclusive forum for settling any dispute thereunder shall be the English Courts.

11. General

- 11.1 Paragraph headings in these Terms and Conditions of Sale are for ease of reference only and shall have no legal significance whatsoever.
- 11.2 ACE LIFTS LTD may assign the Contract or any part of it to any person, firm or company including any member of ACE LIFTS LTD's group of companies.
- 11.3 Each right or remedy of ACE LIFTS LTD under the Contract is without prejudice to any other right or remedy of ACE LIFTS LTD whether under the Contract or not.
- 11.4 If any provision of the Contract incorporating these terms is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable from these terms and the Contract and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11.5 Failure or delay by ACE LIFTS LTD in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract and any waiver by ACE LIFTS LTD of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 11.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.7 The Contract may be terminated at any time for any reason with the prior and express written consent from both ACE LIFTS LTD and the Purchaser to such termination.

12. Communications

All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax (in case of communications to ACE LIFTS LTD) to its registered office or such changed address or such fax number as shall be notified to the Purchaser by ACE LIFTS LTD or (in the case of the communications to the Purchaser) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Purchaser or fax number set out in any document which forms part of the Contract or such other address as shall be notified to ACE LIFTS LTD by the Purchaser and communications shall be deemed to have been received if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting) or if delivered by hand, on the day of delivery or if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.