

Terms and Conditions v7.0 320

1. DEFINITIONS -In these conditions, the "Company" shall mean Axess 2 Ltd. The "Purchaser" shall mean the Company or person(s) that places an order with the Company or otherwise agrees to buy Goods from the Company. The "Goods" shall mean all or any of the Goods which from time to time the Company offers for sale and which form the subject matter of the Contract. The "Contract" shall mean the Contract on these Terms and Conditions of Sale for the sale of the Goods by the Company to the Purchaser.

2. VALIDITY -Unless previously withdrawn, the Company's tender is open for acceptance within the period stated, or within 60 days after its date where no period is stated.

3. GENERAL -Terms or conditions of the Company also form the contract, are not to be varied or annulled, unless certain items are expressly agreed in writing by the Company.

4. SPECIFICATION – Any and all specifications, drawings and particulars submitted by the Company as part of their quotation or tender are approximate and the descriptions and illustrations contained in the Company's quotation and advertisement matter are only intended as a general description of the Goods proposed therein, and shall not form part of the Contract. Only approval drawings and as built drawings from the Company showing all specifications chosen by the Purchaser or their /main contractor/ responsible person, will form part of the Contract for the agreed goods to be supplied. All drawings supplied by the Company and any designs therein or otherwise supplied are to be approved by the Purchaser or their main contractor/responsible person. The Purchaser shall take liability for all design, the Company holds no design liability.

5. DELIVERY OF GOODS TO SITE – A clean dry storage area must be made available for the duration of the goods being on site, any parts taken or moved without consent of the Company, that are then damaged or lost from any designated storage area will be charged to the Purchaser as a Variation, and will cause delay to any agreed dates.

6. DELIVERY AND COMPLETION -Estimated times for delivery and completion shall not run from the date of receipt of a written order these will only be from the receipt of drawing approvals that will be issued by the Company for the Purchaser to approve, and any other licenses, permits and approvals as may be necessary to allow the work to proceed. The Company will endeavor to meet all required delivery dates but failure to do so will not entitle the Purchaser to claim damages from the Company in respect thereof nor rescind the contract. Where express dates for completion have been agreed, then all damages for delay caused by the failure of the Company shall be limited to a maximum of 1% of the Contract Price per week of delay for a maximum period of 10 weeks. This is an exhaustive remedy for any time related delay.

If, due to any circumstances beyond the control of the Company including but not limited to events such as war, travel restrictions, acts of god, terrorism, earthquakes, hurricanes, acts of government, plagues or epidemics (including the effect of coronavirus or covid-19), force majeure, or any prevention, act or omission of the Purchaser or any third party, or if the Purchaser cannot accept delivery of the Goods upon the agreed delivery date activated by the signing of drawings, or is otherwise unable to grant access to the Company to the site, then (a) the Company shall be entitled to an extension of time for any delay caused to any agreed programme/date for completion and (b) the Company shall be entitled to recover any cost incurred as a result of the delay as a Variation, and (c) the Company shall be entitled to make a claim for payment for invoice the outstanding amount for the materials with immediate payment and deliver them to the Purchaser, for the Purchaser to store at the Purchasers own risk

7. OVERTIME -Unless specifically mentioned to the contrary, in writing, the Contract Price is based on the assumption that all work shall be carried out in the normal working hours of the Company, and only if agreed, any overtime worked shall be added to the costs as an equal amount to the appropriate costs, overhead charges and profit and charged as a Variation.

8. PASSING OF RISK -The Goods or any part thereof shall be at the sole risk of the Purchaser from the time that they are delivered, in accordance with the terms of the Contract, whether or not accepted by the Purchaser. Where the Purchaser is unable to accept delivery of all or any part of the Goods, the said risk shall pass to the Purchaser on the notification that the Goods are delivered to the designated site. Once the risk has been passed to the Purchaser as aforesaid notwithstanding any other provisions herein such risk shall be incapable of being passed back to the Company.

9. PATENTS -The Purchaser warrants that any design or instruction furnished or given by it shall not be such as to cause the Company to infringe any letter patent, registered design or trademark in the execution of its order.

10. GENERAL LIABILITY -Save in respect of death or personal injury caused by the negligence of the Company it shall not, either before or after handling over the Goods to the Purchaser, be liable for any loss and/or damage caused by or arising from the use of any Goods otherwise than in accordance with instructions given by the Company 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. 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. If such Goods or any part of them are so used the Purchaser shall indemnify the Company against any liability that should be incurred by the Company to any person whether arising directly or indirectly from such use. Notwithstanding any other provision of the Contract, the Company shall not be liable to the Purchaser by way of indemnity or by reason of any breach of contract or of statutory duty 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 may be suffered by the Purchaser.

11. INSTALLATION -Any extra costs incurred, due to suspension of work as a result of instructions received from the Purchaser or non-payment, the lack of such instructions, interruptions, delays, overtime, unusual working hours, and additional work or variations or work for which the Company is not responsible or mistakes or any other causes outside the Company's control, shall be added to the Contract Price and be paid by the Purchaser as a Variation. Any such charges shall be based upon the Company's normal rates and shall include outworking and lodging allowances where appropriate. The Contract Price is based on the payment of nationally agreed rates for outworking allowances and lodgings. If suitable lodgings are not available at these rates due to circumstances beyond the Company's control the difference in cost including any extra fares incurred shall be added to the Contract Price and paid by the Purchaser as a Variation.

12. PAYMENT TERMS

1. The Purchaser shall pay the company:
 - a. the "Contract Price" being the price stated in the Company's tender, quotation, order acknowledgment or as otherwise issued or as otherwise agreed between the parties; and
 - b. all additional sums for Variations and such other sums as may become due under the Contract or at law.
2. Unless agreed otherwise in writing from the Company the Purchaser shall pay the Company the Contract Price in the following stage payments:
 - a. The first stage payment - 20% of the Contract Price shall be paid by way of a non-refundable deposit and shall become due at the time of placing of the order
 - b. The second stage payment - 30% of the Contract Price shall become payable upon receipt of drawing approval and prior to placing the lift into manufacture
 - c. The third stage payment -45% of the Contract Price shall become payable 2 weeks prior to goods leaving the factory or as provided for under clause 12.6
 - d. The fourth stage payment - 5% of the Contract Price shall become payable after the completion of the works and prior to handover to the Purchaser
3. Any additional sums for Variations or such other sums shall become payable upon the Company making a claim for payment of those sums.
4. In respect of payment of any kind, be that any of the aforementioned stages (or any alternative agreed payments) for the Contract Price, or payment for Variations, other sums due under the Contract or at law:
 - a. the 'Due Date' for each payment shall be the same date as the issuing of the relevant claim for payment by the Company.
 - b. The 'Final date for Payment' of any sum shall be seven days after the relevant Due Date.
5. The Purchaser shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted.
6. In the event that the date for the goods leaving the factory is postponed or delayed by the Purchaser at any time and for any reason, then the third stage payment together with any applicable sums due for Variations including storage charges (or such other sum as is agreed) shall instead become payable on the earlier of (a) 2 weeks prior to the revised date for the goods leaving the factory, or (b) completion of the manufacture of the goods by the Company.
7. Should the Purchaser not accept the Goods when they are ready for dispatch or delivery on the agreed time activated from sign off of drawings (given in weeks within the Company's quotation), or in the event that the date for the goods leaving the factory is postponed or delayed by the Purchaser at any time and for any reason, then all goods shall be stored at the Purchasers expense at a rate of £420.00/week after a 2 week free of charge period. The payment of storage charges shall be a paid as a Variation
8. It is a condition precedent to the Company commencing any manufacture that the Purchaser has first made payment in full of the first stage payment and the second stage payment.
9. It is a condition precedent to the Company delivering the goods to the Purchaser or undertaking any installation works, that the Purchaser has first made payment in full of the first stage payment, the second stage payment, the third stage payment and any Variations (including storage charges) and any other sum that have been claimed by the Company prior to the date of delivery.
10. If the Purchaser shall fail to pay any amount due under this Contract by the Final Date for Payment
 - a. The Purchaser shall lose the benefit of any previously agreed discount on the entire Contract Price; and
 - b. The Company will be entitled to charge interest and the reasonable costs of debt recovery on overdue payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2013; and
 - c. without limiting its other rights or remedies, the Company may suspend any or all of its obligations under the Contract Where the Contract is a construction contract as defined by the Housing Grants, Construction and Regeneration Act 1996 (as amended) the Suppliers right to suspend any or all of its obligations under this Contract as a result of the Purchaser failing to pay any amount due under this Contract by the Final Date for Payment shall be subject to the notification requirements of s.112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended)
11. In the case of a Contract for more than one item which is not preceded simultaneously, the terms of payment set out shall apply as though there were a separate Contract in respect of each item.
12. Irrespective of any delivery, all Goods supplied shall remain the property of the Company and title to the Goods shall only be transferred to the Purchaser when the Purchaser has made payment in full of all sums due to the Company. In the event of the Purchaser failing to make payment, without prejudice to any other remedy in equity or at common law, the Company shall be entitled to enter the premises where such Goods are held and remove the same, whether installed or not and the Purchaser shall not in any way dispose of Goods supplied by the Company in respect of which payment has not been received in full.
13. Notwithstanding any other provisions of the Contract the Company may at its discretion require payment with order or against pro-forma invoices.

13. PRICE VARIATION -The Contract Price is based on materials and wage rates at the date of tender and shall be subject to change in accordance with

the Formula and Indices for Contract Price Adjustment (current addition) compiled by the Lift and Escalator Industry Association. The proportionate variation in such index between tender date and dispatch date shall be applied as an increase in the Contract Price and shall be payable as a Variation. Alternatively, if the tender so states, firm prices are quoted on the understanding that completion within the period specified is not prevented by act or omission of the Purchaser, otherwise price variation as aforesaid shall be applied in respect of over-run period and shall be payable as a Variation. All prices will be subject to 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 price adjustment or charge variation referred to above may be invoiced immediately once the amount thereof has been ascertained and be payable forthwith. The provisions of clause 10 above in respect of interest payable on overdue accounts shall be applied to any payments due under this clause should they become overdue. The Contract Price, where appropriate, allows for the cost of importing materials based upon the rate of exchange, tax or duty, landing charges, dock duties, demurrage, post premiums and customs duties prevailing at the date of tender. In the event of any adjustment in such rates or costs the Company reserves the right to make an adjustment to the Contract Price as a Variation

14. PREVENTION OR FRUSTRATION -If the Contract becomes impossible of performance or otherwise frustrated, the Purchaser will be liable to pay the Company all costs, expenses, overheads and any loss of profit which the Company, its suppliers or sub-contractors have incurred, or for which there is liability under the Contract at the time of impossibility of performance or frustration. Any pre-payments which may have been made to the Company under this Contract shall be applied towards satisfaction of such sum as may become due to it under the foregoing provisions and the excess (if any) of such pre-payments will be refunded.

15. DETERMINATION -The Company shall be entitled to determine its employment under the Contract in circumstances where: 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 receipt of written notification from the Company of such breach, and The Purchaser makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or an encumbrance takes possession of, or a receiver or manager is appointed over, all or any property or assets of the Purchaser or the Purchaser ceases to carry on business or the Purchaser generally becomes unable to pay its debts within the meaning of section 123 Insolvency Act 1986.

16. MAINTENANCE AND WARRANTY -Full parts warranty period of 1 year and a 3 month callout warranty are included in these terms of sale from the date of completed installation of our equipment not handover. Callout fees will be applicable in the first 3 months should the reason for the visit be deemed user error or misuse on arrival. Subject to a service agreement being taken with the Company within the warranty period, the callout warranty will be extended for a further 9 months, only attended in normal working hours Mon-Fri 8-5pm, all other out of hours callouts are chargeable. It is the lift owners responsibility take a service agreement to activate the extra callout warranty within 90 days of handover and send back to the Company. Should the service agreement be with another company, then the Company will only provide a 1 years parts warranty, all callouts will be chargeable.

The callout, defects, and parts warranty ceases and is null and void, should the Lift owner or any of its representatives chose to use an alternative service/maintenance provider, not approved or employed by the Company within and /or at the end of the warranty period, all further liability on the part of the Company ceases.

The liability of the Company under this clause shall constitute its sole liability (save in respect of death or personal injury caused by the negligence of the Company) 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.

17. LAW APPLICABLE -(i) This Contract is governed by, and shall be construed in accordance with, the laws of England. (ii) The Company and the Purchaser irrevocably agree that the Courts of England and shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Contract and, for such purposes, the Company and the Purchaser each irrevocably submit to the jurisdiction of the Courts of England.

18. CANCELLATION -If the order is cancelled after the Company has accepted it, the Purchaser will become liable to the Company for a cancellation charge as well as the 30% non refundable deposit. That charge will be calculated so as to recover only the direct and indirect costs incurred by the Company in connection with the Purchaser's order setup to the time of the receipt of notification of the cancellation.

19. COLLATERAL WARRANTIES – Where a collateral warranty may be required the wording is to be agreed and in accordance with the LEIA recommended form for the lift industry.

20. COPYRIGHT – Software details are the Company's own patented software material, and our own make up and design of the lift controller and drive system. Given the commercially sensitive nature of this information and to protect the Company's interest, the Company cannot grant a license to reproduce this information. This amendment must be included as a matter of company policy, the Company can confirm however that the system can be maintained and functionality amended by any trained person without special access to codes.

21. WORK INSTRUCTIONS – Within the as built drawings supplied by the Company are final agreed finishes, specifications and colours that are full and final as agreed within the approval of drawings from the Purchaser, all other documentation regarding any finishing items, colours and specifications are null and void. Included in these drawings are written instructions for other trades to be arranged by the Purchaser that are required prior to installation and after installation. Should the Purchaser instruct any change to the final agreed finishes, specifications and colours as referred to in clause 21 above, then such changes shall be deemed a Variation.

22. VARIATIONS – In respect of any Variation, the Company shall be entitled to, and the Purchaser shall pay to the Company, a fair and reasonable additional payment for undertaking the Variation. In addition, where any Variation causes a delay, the Company shall also be entitled to an extension of time for any agreed programme/date for completion.

23. CONTINUOUS IMPROVEMENT – The Company reserve the right to change, product descriptions, specifications including materials, dimensions and finishes, at any time without prior written or oral notice, due to ongoing product innovation, improvement and development

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1. The Purchaser shall not without the prior consent of the other party assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract.
2. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
3. Any waiver of any right by the Company under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by the Company in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
4. A person who is not a party to the Contract shall not have any rights to enforce its terms.
5. In the event of any conflict between these terms and conditions and the quotation, then the quotation shall prevail in respect of that conflict.

25. DISPUTE RESOLUTION

Any dispute between the parties arising out of or in connection with this Contract, may at any time be submitted to adjudication under the rules as set out in part I of the Scheme for Construction Contracts (England & Wales) Regulations 1998 (As amended). The nominating body shall be any nominating body chosen by the Referring party.

26. BREXIT CLAUSE

Upon the United Kingdom no longer being a member of the European Union in any form ('Brexit') and regardless of any of the terms reached regarding any form of Brexit should there be any delay to the delivery by any company ('the Vendor') of goods of any kind to the Company at any place within the United Kingdom which is caused directly or indirectly by any of the terms of Brexit then such a delay is agreed to be a non-culpable delay on the part of both the Company and the Vendor.

27. HEALTH & SAFETY: CDM

the Company are committed to Health & Safety on site under the Construction Design and Management Regulations (CDM), and will provide all necessary information for the Health & Safety plan. However, the Company are unable to accept any responsibility for the obligations of the Principle Contractor or for the CDM Co-ordinator.

28. HEALTH AND SAFETY: ASBESTOS IN BUILDINGS

the Company has a legal obligation to ensure that it provides all its' employees or it's representatives with a safe working environment. Under current Health & Safety legislation, the Company need to be satisfied that the Purchaser is providing the same level for our on-site operatives before any representative of the Company attends site.

In order to comply with current asbestos requirements (Control of Asbestos Regulations 2012), for all buildings constructed before the end of 1999 the Company require a detailed Asbestos Register to be provided by the Purchaser prior to attending the site. This must include all the areas of the building to which the Company will be required to access i.e. redundant lift shafts/motor rooms including access routes to and from the work area. The Company will review the register and advise accordingly should remedial action be required before our attendance.

If Asbestos has been removed from any area that the Company will be required to access the Company will need the Purchaser to supply documentary evidence of its removal and evidence that the area is Asbestos free.

This does not preclude the Purchaser from its obligations under the Construction Design and Management Regulations 2015 (CDM:2015).

29. THE LIFTS DIRECTIVE – YOUR LEGAL RESPONSIBILITIES

It is illegal to handover a lift which does not comply with the Lift Directive for example, if the Purchaser or their builder has not supplied a dedicated telephone line or permanent 3 phase power or permanent lighting outside landing entrances it will prevent hand over.

In this situation, once written confirmation has been received that the outstanding items are complete, a return visit will be scheduled and may take up to 3 weeks for the Company to attend site to complete the handover. This may have a cost implication of up to £900 excluding VAT per visit which shall be recoverable as a Variation

Please note, the Company and the Purchaser have a joint responsibility to comply with these regulations which became mandatory on the 1st of July 1999.

The Purchaser is to do everything possible to ensure the building work does not delay the final completion and handover of the lift installation.

30. LIMITATIONS

Where the Company attends site prior to manufacture and or installation to take dimensions and/or to determine if the site is sufficiently ready for installation, it remains the absolute responsibility of the Purchaser to ensure that the lift shaft and all other aspects of Builders Work comply with the dimensions and other criteria set out on the Builders Work drawings notwithstanding that the Company may not have detected and/or reported any breach of any of the Purchaser's obligations

Please remember, the lift(s) being provided are model lift(s), and therefore not bespoke, and the lift well(s) must be constructed and/or altered to meet the requirements set out in this drawing. the Company reserve the right to inform you of any additional requirements to facilitate the installation of the lift(s).

The risk and liability in the lift well remains the absolute responsibility of the Purchaser and not the lift contractor. For the avoidance of doubt, the Purchaser fully indemnifies the Company for all and any losses, costs or damages that may arise as a result of failure by the Purchaser to comply in all aspects with the Company's Builders Work drawings and/or schedules.

