

## The Supply of Lifting Equipment and Components for Industrial and Entertainment Industries

### Terms and Conditions of Business

This version supersedes all previous versions of this document. The latest version is always available on request.

#### 1 BASIS OF THE QUOTATION/SALE

- 1.1 In these terms and conditions ("these Conditions") "the Company" is Lift Turn Move Ltd which is offering and/or selling the goods, "the Customer" is the customer buying the goods from the Company and "the Contract Price" means the monetary value of any individual contract.
- 1.2 Subject to any variation under condition 1.4 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.3 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 1.4 These conditions apply to all the Company's quotations/sales and no variation to these conditions and no representations about the goods shall have effect unless expressly agreed in writing and signed by an authorised representative of the Company. Nothing in this condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- 1.5 Each order for goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase goods subject to these conditions.
- 1.6 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company (including waiting for any required signed drawings/confirmation of specification by the Customer), or (if earlier) the Company delivers the goods to the Customer.
- 1.7 Any quotation is given on the basis that it is an estimate for budget purposes only.
- 1.8 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 1.9 The basis of any quotation/order is for the supply of components and machines only, and is based upon the Company's interpretation of the Customer's specification and application, and is subject to change as the design is determined.
- 1.10 It is the Customer's responsibility to ensure suitability and correct specification in advance before entering into a Contract - If the Customer believes there to be a mistake or problem, they shall notify the Company immediately before the Company starts manufacturing / purchasing (subject to condition 8.2 where applicable).
- 1.11 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation including references to price is valid for a period of 30 days only from its date (unless otherwise stated), provided that the Company has not previously withdrawn it.

#### 2 DELIVERY

- 2.1 Any lead time, completion or delivery date is an estimate only made under current circumstances, and shall not be or become a term of the contract or any collateral contract between the Company and the Customer, and is given without any intention that it shall become legally binding.
- 2.2 Any lead time, completion or delivery date shall be subject to further delay if the Company has not accepted an order promptly as set out in clause 1.6.
- 2.3 Any changes to order specification after an order is accepted (as set out in clause 1.6), may increase the lead time, completion or delivery date for the order.
- 2.4 The Customer will accept delivery of the goods ordered notwithstanding that delay of all or part is made after the estimated delivery date.
- 2.5 The Company will not be liable for any loss of damage occasioned by delivery in delivery or completion however caused.
- 2.6 The Customer shall not be entitled to cancel any order or part of an order by reason of any failure by the Company to deliver any goods comprising a part of that order.
- 2.7 Where the goods ordered by the Customer are unavailable the Company may (without prejudice to the preceding provisions of this clause) reasonably allot such other goods ("the substitute goods") to the contract as are reasonably similar to the unavailable goods. The Customer will be notified of any proposed delivery of substitute goods pursuant to the provisions of this clause.

#### 3 ASSIGNMENT

- 3.1 The Company may in its absolute discretion assign or sub-contract the whole or any part of the contract and the Customer undertakes to co-operate with such assignee or subcontractor to the fullest possible extent to secure due performance of the contract.
- 3.2 The Customer may not assign the whole or any part of the contract unless the Company has given its specific prior consent in writing. Where the Company gives consent to an assignment by the Customer under the provisions of this Clause, the Customer agrees to indemnify the Company against any costs, losses, expenses or damages incurred by the Company, its assignees or any third party arising out of such assignment.

#### 4 RISK

- 4.1 Risk shall pass to the Customer and the Customer is responsible for all loss, damage or deterioration to the goods as soon as the Company has passed the goods to the carrier for delivery to the Customer.
- 4.2 It shall be the Customer's duty to carry out a suitable risk assessment and method statement for any lifting components and/or machines to be supplied

#### 5 RETENTION OF TITLE

- 5.1 Ownership of goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - a) The goods; and
  - b) All other sums which are or which become due to the Company from the Customer on any account.
- 5.2 Until ownership of the goods has passed to the Customer, the Customer must:
  - a) Hold the goods on a fiduciary basis as the Company's bailee;
  - b) Store the goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
  - d) Maintain the goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
  - e) Hold the proceeds of the insurance referred to in condition 5.2 (d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account.
- 5.3 The Customer may resell the goods before ownership has passed to it solely on the following conditions:
  - a) Any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - b) Any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 5.4 The Customer's right to possession of the goods shall terminate immediately if:
  - a) The Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) or appoints a solvent voluntary liquidator for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - b) The Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under this agreement or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - c) The Customer encumbers or in any way charges any of the goods.
- 5.5 The Company shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the Company
- 5.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

#### 6 PRICE

- 6.1 The price quoted by the Company is on an ex-works basis. The Company reserves the right to revise the contract price of goods at the date of despatch to take account of increase in costs including (without limitation) currency fluctuations, wages, materials, transport and overheads

- 6.2 Where the Company agrees to deliver the goods otherwise than at the premises of the Company or where the Company stores the goods, the Customer shall be liable to pay the Company's charges for transport packaging and insurance.
- 6.3 All prices are subject to VAT at the current rate applicable at the tax point.

#### 7 PAYMENT

- 7.1 Payment of the price for the goods is due immediately on issue of the invoice. With the Company's written agreement credit terms are available such that the Company may accept payment no later than the last working day of the month following the month in which the invoice is issued to the Customer. All invoices shall become immediately payable if the Customer commits any of the acts referred to in condition 5.4(a)-(c).
- 7.2 Time for payment shall be of the essence.
- 7.3 No payment shall be deemed to have been received until the Customer has received cleared funds into its bank account.
- 7.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 7.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 7.6 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 The Company reserves the right to refuse to deliver further orders to the Customer whilst any payment in respect of earlier orders made by the Customer remains outstanding.
- 7.8 The Company reserves the right at its sole discretion to request that a deposit payment in the form of cleared funds be paid to the Company on account of any order or series of orders made or to be made by any Customer, and any deposit so received by the Company shall be held as security for the payment of the Contract Price and shall only be returned without interest to the Customer if and when all sums outstanding in respect of that order or series of orders have been paid in full.
- 7.9 If the price is payable by instalments and any amount is not paid on the due date the whole outstanding balance shall become immediately due and payable. Once the price (or any part of it) has become due and payable, it is recoverable by action, notwithstanding the retention of title provision contained in these Conditions.

#### 8 CUSTOMER SPECIFICATIONS

- The following shall apply:
- 8.1 Where goods are made to the design or the specification of the Customer, the Company accepts no responsibility for the accuracy of such design or specification or the suitability of the goods for the purpose for which they are intended. Further, the Company is under no obligation as to the confidentiality of such design or specification, and is not required to maintain safekeeping of any drawings or documents supplied, and will only return them when requested and where it is practical to do so.
  - 8.2 Where goods require modification(s) (other than when by reason of any fault by the Company) of such modification(s) shall be paid by the Customer in full.
  - 8.3 If any of the contract goods are manufactured or any processes are applied to the contract goods by the Company in accordance with the design or specification requirements submitted by the Customer, the Customer shall indemnify the Company against any loss or damage which the Company incurs in connection with or paid by the Company in settlement of any claim for infringement of any patent, copyright or other intellectual property right of any other person which results from the Company's use of the Customer's specification.

#### 9 INSTALLATION OF GOODS

- 9.1 Unless otherwise stated explicitly, the basis of any quotation/order is for the supply of components and machines only. The Customer shall at its own cost provide all services necessary for the installation of the goods including (but not limited to) building services, lighting, power, lifting, hoisting, cranes, platforms or scaffolding.
- 9.2 Where applicable, the Customer shall ensure that the Company has free uninterrupted access to work areas as and when required by it for the purposes of installing the goods.
- 9.3 Without prejudice to condition 4 of these Conditions the Customer shall be responsible for any loss or damage to the goods which occurs during and after installation by reason of any act, neglect or default of the Customer, its servants or agents or any third party.
- 9.4 The Customer is solely responsible for the correct application of machines and the legal obligations of incorporating components and machines into lifting systems.
- 9.5 When components and/or machines are incorporated as part of a lifting system, the lifting system as a whole shall be tested and marked with its safe working load by the Customer.
- 9.6 It shall be the Customer's duty to check with their own structural engineer in advance to ensure the building and/or supporting structure connected to the goods supplied has been evaluated and rated to accept the applied loads.
- 9.7 The Company shall not be held responsible for the structural condition of the building and/or the supporting structure connected to the goods supplied.

#### 10 SAFETY INFORMATION

- It shall be the Customer's duty to keep the Company immediately and fully informed of any safety defects in the contract goods of which the Customer becomes aware, or which the Customer ought reasonably to be aware, whether such defects relate to the risks thus posed to person or property.

#### 11 PRODUCT SAFETY ACTION

- In the event of any product safety action being undertaken by the Company, or any third party, and where such action in any way relates to or involves the contract goods, the Customer will provide the Company or third party with all reasonable assistance and the Customer agrees to indemnify the Company against all costs, claims and expenses incurred by it as a result of any failure or unreasonable delay on the part of the Customer in providing such assistance to the Company. In this clause, the term "Product Safety Action" includes but is not limited to those cases where a product recall campaign is launched by any party, statutory or otherwise, and whether or not the recall is mandatory; or where a request is made, or advice given to the effect that the contract goods cannot be safely used, either themselves or in conjunction with other goods or services.

#### 12 CLAIMS

- 12.1 The Company shall not be liable for defects in, damage to or shortages in delivery of goods delivered to the Customer or for any such other goods being in any other respect not in accordance with the contract unless the Customer notifies the Company of the matter or matters complained of in writing within 7 days of delivery of the goods and the goods are returned to the Company at the Customer's expense within 14 days of delivery. If the defect was not visible or could not have been discovered by testing at the time of delivery, the Company shall not be liable for such defect after 7 days following discovery of the defect and not in any event after 6 months following delivery of the goods. The Company may if it so chooses replace any goods which are proven to be defective, damaged or in any other respect not in accordance with the contract.
- 12.2 Notwithstanding the periods provided in condition 12.1 for making claims, the Company will not accept liability for notifying carriers of, nor will it have any liability to the Customer for any claim for shortage or defect, or for any loss, damage or delay in transit, mis-delivery, unless (without prejudice to Clause 4 of these Conditions) the Customer puts the Company in a position to comply with the claims procedures under the carrier's conditions current at the commencement of the transit.
- 12.3 The Customer shall not be entitled to make any claim in respect of any repairs or alterations to goods undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse.
- 12.4 In the event of any of the goods being defective or damaged or otherwise not in accordance with the contract, the Customer shall first ask the Company to repair the goods or supply replacements. The Company shall be entitled at its option, to repair the defective goods or to supply replacements free of charge within a reasonable time. If the Company does repair the goods or supply replacements, the Customer shall accept them and the Company shall be under no liability in respect of any loss or damage whatsoever arising from, or consequent upon, the initial delivery of the defective goods or from any delay before the defective goods are repaired or the replacements are delivered.

#### 13 LIABILITY

- 13.1 Subject to condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-

- contractors) to the Customer in respect of:
  - a) Any breach of these conditions; and
  - b) Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law excluded from the Contract.
- 13.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 13.4 Subject to conditions 13.2 and 13.3:
  - a) The Customer's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the greater of the Company's relevant insurance provision and the Contract Price; and
  - b) The Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 13.5 Any advice given by the Company is in the form of guidance and recommendations only and should not be taken as compliance.

#### 14 TERMINATION

- Without prejudice to any other rights which it may have against the Customer, the Company may terminate the contract, in whole or in part, or suspend deliveries under it, or of any other goods, in any of the following circumstances:
- 14.1 If any sum is due from the Customer to the Company under the contract (or on any other account) but is unpaid; or
  - 14.2 If the Customer is in breach of any provision of the contract; or
  - 14.3 If the Customer commits any of the acts set out in clause 5.4 (a)-(c).

#### 15 GENERAL LIEN

- Without prejudice to any other right which it may have against the Customer, the Company shall have a general lien over any property of the Customer which is in the Company's possession, in respect of all unpaid debts due to it from the Customer. The Company shall be entitled to dispose of that property, as it thinks fit, after the expiration of 14 days' prior notice to the Customer, and to apply the proceeds of sale in, or towards, payment of those debts.

#### 16 FORCE MAJEURE

- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### 17 RETURNABLE PACKAGING

- Where the Customer specifies that items of packaging are to be returned to it, such items shall be returned at the Customer's expense and the risk of damage or loss to such packaging shall be borne by the Customer until such time as they are received by the Company in good order and condition. If the Customer fails to deliver the packaging as directed by the Company, the Company will charge the Customer the replacement market price of the packaging items and the provisions for interest on late payments in Condition 7.7 of these Conditions shall apply.

#### 18 EXPORT DOCUMENTATION

- The Customer shall be responsible for ensuring that all documentation, licences or permissions necessary for the export of goods are obtained and shall indemnify the Company in respect of any actions, claims or demands relating thereto. Where the Customer fails to obtain the requisite documentation, the Company may (without prejudice to any other of its rights under the Contract) treat this as a material breach of contract. Entitling it to terminate the Contract.

#### 19 DATA PROTECTION

- The Customer is advised that details of the contract may be entered into a computer database and the Customer hereby consents thereto and to any subsequent uses [or disclosure of] such details.

#### 20 COMMUNICATION

- 20.1 The Company shall not be liable for the correct and complete transmission of the contents of any transmitted electronic communication, or for any delay in its receipt.
- 20.2 Any views or opinions expressed/presented by employees (or representatives of) the Company do not necessarily represent those of the Company itself.
- 20.3 All information supplied by the Company is correct to the best of our knowledge, errors and omissions excepted. The Company shall not be held accountable for incorrect or incomplete information supplied in any communication, document or specification.
- 20.4 Any written communication by the Company (or a representative of), whether electronic or physical, does not create any contractual obligations for the Company.
- 20.5 Any communication from the Company together with any attachments transmitted is intended only for the addressee and may contain information which is confidential. If you receive any communication in error, please destroy it and notify the Company immediately.
- 20.6 All electronic communication and any attachments from the Company are checked using a regularly updated Symantec Antivirus database. The Company cannot guarantee that all electronic communication is free from viruses and shall not be held liable for any losses caused by virus infection.

#### 21 GENERAL

- 21.1 The Customer warrants that these Conditions are freely accepted in the knowledge and on the basis that the price charged for the goods would be higher if the Company were under any liability, or potential liability, than as set out in these Conditions.
- 21.2 Materials, equipment, tools, dies, moulds, copyright, design rights, trade marks, or any other form of intellectual property rights in all drawings, specifications, goods and data supplied by the Company shall at all times be and remain the exclusive property of the Company and nothing in this Contract shall be or deemed to be a transfer, assignment or licence by the Company to the Customer over or in relation to any such intellectual property rights.
- 21.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 21.4 If any provision of the Contract 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 its illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severed and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 21.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 21.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 21.7 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 21.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 21.9 In these conditions:
  - (a) Reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
  - (b) References to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires;
  - (c) Headings will not affect the construction of these conditions;
  - (d) The terms of this Contract shall be construed without reference to the Ejusdem Generis rule.