

## **STANDARD TERMS AND CONDITIONS**

### **For The Machine Room**

#### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Instruction" means a purchase order from the organization or person who buys services from the Seller;
- 1.2 "Services" means the articles to be supplied to the purchaser from the Seller as listed on the Machin Room web site
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 " Price" means the list of prices of the services supplied by the Seller
- 1.5 "Seller" means The Machine Room

#### **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of services by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

#### **3 PRICE AND PAYMENT**

- 3.1 The price shall be that in the Seller's current List Price for the services listed on the Machine room web site or Tender document issued , or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. No services can be provided without a priced instruction or purchase order form the Buyer
- 3.2 Payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller.
- 3.3 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 10% per month above the base rate of the 4.8%
- 3.4 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - 3.4.1 require payment in advance of attendance in relation to any services not previously delivered or agreed ;
  - 3.4.2 refuse to make any further visits or submission whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - 3.4.3 terminate the contract.

#### **4 DESCRIPTION**

Any description given or applied to the services is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any other description when entering into the contract other than what is listed on the Machine Room web site or Tender submission

#### **5 SAMPLE**

Where a sample of the services is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality.

#### **6 DELIVERY**

- 6.1 Unless otherwise agreed in writing, The requirement for surveys shall take place at the address specified by the Buyer on the date specified by the Seller within 4 weeks of the instruction being received. The Buyer shall make all arrangements necessary to allow site access for Machine Room to allow the instructed service or Survey to take place.
- 6.2 The date of the visit is specified by the Seller and agreed upon buy on email . If access is not provided, arranged or authorized 1 stop cannot carry out the instructed service
- 6.3 Contract: To be received prior to manufacture as per the terms and conditions contained herein.
- 6.4 Covid – 19 Due to continuing developments, The Machine room will not be liable for any loss whatsoever or delay to delivery of materials, or completion of projects as a result of factory closures or partial shutdowns, border sanctions, and/or depletion of labour resources to fulfil requested programs as a result of the Covid-19 pandemic. Early settlement discount: All sums quoted Nett unless stated.
- 6.5 Retention: LEIA Contract guarantee scheme in lieu of retention. LADs: Liquidated and ascertained damages are to be limited to 1% of the sub-contract sum per week up to a maximum liability of 10% of the sub contract sum, this shall be an exhaustive remedy for any time breach.
- 6.6 Specification: The contract specification is as expressly detailed within this document.
- 6.7 Liability: The Machine room will or shall not be liable for any loss whatsoever relating to consequential, economic or indirect loss including but not limited to any loss related to loss of profit, customers, goodwill or business opportunity.
- 6.8 Set off: Any set off against The Machine Room from other contracts between the parties and related group companies is expressly excluded. Dayworks: Rates and percentages are the LEIA rates current at the time the work is carried out. Payment terms: Payment of 40% of the contract sum shall become due on receipt of the order prior to manufacture commencing. Payment of 50% of the contract sum shall become due on receipt of notification of availability to deliver and prior to any delivery being made. 10% of the contract sum shall become due on completion of installation prior to commissioning. The passing of risk: All goods comprised in the Works or any part shall be at the sole risk of the Customer from the time that they are delivered on-site.
- 6.9 Title: Title to the Goods shall remain vested in The Machien Room and shall not pass to the Customer until the purchase price for the Goods has been paid in full and received by The Machine room.
- 6.10 Prevention Or Frustration: If the contract becomes impossible to perform or is otherwise frustrated the customer shall be liable to pay The Machine Room all costs, expenses, overheads and any loss of profit which The Macnine room, his suppliers or sub-contractors incur as a result of frustration or impossibility of performance.
- 6.11 Delivery And Completion: Any times stated by The Machine Room for completion by The Macnine room of the Works shall run from receipt of a mutually agreeable contract from the Customer, together with, the receipt of all information, drawings, licenses, permits, and approvals necessary to enable The Macnine Room to proceed with the Works. The Customer shall at its own expense before the date of commencement of any part of the works ensure that the site is ready in all respects for the Works to commence and, that all facilities and attendances detailed in this Contract have been or will be provided by the Customer as and when required by The Machine Room in order to enable the Works to proceed.

Working hours: Our tender is based on available working hours of: 8.00 a.m. – 5.00 p.m. Monday to Friday.  
Site continuity: In order that we offer our most competitive tender it is assumed that our works will be undertaken during normal working hours and in one continuous operation. We will require an agreed programme for our works established at the date of order that incorporates our off and on site periods as stated in our tender. Should our programme be delayed or disrupted either before or during our procurement, delivery or installation periods, we reserve the right to claim for an appropriate extension of time and recovery of our loss and expense. Should we be forced to leave site for reasons beyond our control, unless agreed in writing to the contrary, we will require a minimum period of two weeks to remobilise our labour and a re-visit charge shall be payable by the Customer.

6.12 Builders work: All builders work and electrical work associated with the construction of the lift shaft and attendances as listed within this offer are excluded. Descriptions: Descriptions and illustrations in catalogues, price lists and other advertisement matter are intended merely to present a general concept of the goods described therein and none of these shall form part of this offer.

6.13 Warranty: The Machine Room hereby warrants the material and workmanship supplied by it under the contract and will make good any defects arising (within one year from the date of completion of installation of each lift) due to faulty design, workmanship or materials carried out or supplied by The Machine Room which is not due to ordinary wear and tear or to improper use or care by any party other than The Machine room . The warranty contained within this clause shall only apply if, at the completion of the works the Customer has executed an The Machine Room Warranty contract  
Standstill Maintenance: Standstill maintenance may be required between the period of installation completion and commissioning, and the period between commissioning and practical completion of the building. Such maintenance shall be provided at The Machine Rooms current rates. Extended Maintenance: We can also offer flexible enhanced service agreements to suit individual requirements

6.14 Extended Maintenance: We can also offer flexible enhanced service agreements to suit individual requirements. Early Use Agreements: We can offer 'Beneficial' and 'Builders' use agreements prior to Main Contract practical completion. Such agreements are subject to The Machine Rooms standard terms and conditions for early use agreements. Please liaise directly with your local office to discuss your particular service and early use requirements.

6.15 Collateral warranty: Where a collateral warranty may be required the terms and wording is to be agreed by The Machine Room . We do not accept any delay in payments whilst the warranty is being negotiated. Delivery: Once the delivery is agreed any delays to this must be notified to us in writing within 12 weeks of the agreed date. Failure to do this, and in the event the original delivery can not be accepted on site at the agreed date, requiring The Machine Room to store the lift equipment off site, will involve additional costs of: In and out of storage including delivery to site: £1200.00 per lift. Storage per week £200.00.

6.16 Termination: The Machine Room shall be entitled to determine its employment under the Contract in circumstances where: the customer is in material or continuing breach of any of its obligations under the Contract and fails to remedy such breach within 10 days of the receipt of written notification from The Machine Room of such breach and/or the customer makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation 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 of Insolvency Act 1986. Completion: The Works shall be considered complete on notification by Orona to the customer that its tests have been successfully completed.

## **7 LIABILITY**

7.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:

7.1.1 the correspondence of the services with any description;

7.1.2 the quality of the Services

7.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:

7.2.1 the correspondence of the services with any description;

7.2.2 the quality of the services

## **8 LIMITATION OF LIABILITY**

8.1 Where any court or arbitrator determines that for any reason the Seller shall be liable for any loss or damage suffered by the Buyer this amount will exceed the contract price.

8.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

## **9 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

## **10 FORCE MAJEURE**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

**11 RELATIONSHIP OF PARTIES**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

**12 ASSIGNMENT AND SUB-CONTRACTING**

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

**13 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

**14 SEVERABILITY**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**15 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of [COUNTRY] and the parties hereby submit to the exclusive jurisdiction of the [NATIONALITY] courts.