

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Plain English:

Last revised on 11/12/23

Legal Terms and Conditions of Sale:

Last revised on 11/12/23

1. Interpretation

This section contains the definition of the various key words referred to in these Terms and Conditions.

1. Interpretation

"*Agreement*" means these terms and conditions together with the Quotation submitted by the Company.

"*Building and Lift Code Requirements*" means any Australian Standards that apply from time to time with respect to the Goods/Services provided by the Company pursuant to this Agreement.

"*Company*" means Octagon Lifts Pty Ltd (ABN: 34 621 817 052); its successors, assignors, related companies (within the meaning of the Corporations Act), sub-contractors, employees and agents.

"*Customer*" means the individual or company that the Company enters into this Agreement with and its successors, assignors and any other person claiming under or through the Customer.

"*Goods*" means all goods supplied by the Company to the Customer pursuant to this Agreement.

"*Guarantee*" means the guarantee set out at clause 14 herein.

"*Services*" means all services, labour, hire and repairs, provided by the Company to the Customer.

"*Order*" means the order placed by the Customer after accepting the Quotation issued by the Company.

"*Quotation*" means the written quote provided by the Company with respect to the supply of Goods and Services.

2. General

These Terms & Conditions of Sale apply to all quotations issued by Octagon. These terms most commonly apply to service & repair of lifts and supply and installation of Residential lifts.

If we agree to vary any of the Terms it will be in writing and clear, most commonly for Commercial lifts & larger contracts.

If you send us conditions with your Purchase Order or Payment of Deposit that we are not aware of previously and we are not prepared to accept, we may withdraw our Offer.

2. General

- a) These Terms and Conditions apply to all Orders and may only be varied with the consent of the Company in writing.
- b) These Terms and Conditions take priority over any prior terms and conditions supplied by the Customer or between the Customer and any third party.
- c) Notwithstanding that these Terms and Conditions shall take priority over any other terms and conditions, the Company will (in its absolute discretion) make every effort to comply with those other terms and conditions.
- d) To the extent that there are inconsistencies between these Legal Terms and Conditions and 'Plain English' Terms and Conditions contained herein, these Legal Terms and Conditions shall take precedence.
- e) The Customer warrants that the information provided by the Customer to the Company which the Company has relied on for the purpose of preparing the Quotation is true and correct.
- f) Any Quotation issued by the Company may be withdrawn/cancelled at any time prior to the acceptance of an Order or payment of any deposit if the Company considers that for reasons of which it was unaware of at the time the Quotation was issued, the Company would be disadvantaged or would not be able to carry out its obligations pursuant to this Agreement.

3. Prices

Octagon include all taxes, duties and government charges in our price other than GST. The offer price is Valid for a period of 90 days from the date of Quotation unless stated otherwise. If there are changes to the extent of work Quoted, we will advise why and notify you of the costs in writing. Octagon will not Order a lift from the Manufacturer unless we have an agreed Order & Terms and you have paid the Deposit amount.

3. Prices

- a) Unless otherwise agreed in writing all prices quoted by the Company include all Government charges, taxes and duties and are exclusive of GST.
- b) The price quoted remains valid for 90 days from the date of the Quotation.
- c) The Company may, in its discretion, request a deposit from the Customer for Goods and Services provided/supplied.
- d) All variations to the Quotation/Order made during the term of this agreement will be agreed upon between the parties in writing before any changes to the contract are made.
- e) The Company will not commence any work, until the Order is placed by the Customer and any requested deposit is received by the Company or alternatively where written instructions provided by the Customer to the Company is accepted by the Company in writing and any deposit is paid.

4. Delivery

In our Quotation we advise Delivery times. The times we provide are

4. Delivery

- a) Delivery times are approximate and are subject to change.

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Plain English:

realistic; however they may change due to issues outside our control such as manufacturing and shipping durations. If the Delivery is late, we will not be liable for any consequential loss and damage. The best solution is to Order the lift well in advance of the required date of installation.

5. Terms of Payment

Standard Terms of Payment apply, typically 30 days payment from date of Invoice or Payment approval.

Payment Terms for supply & installation

Payment 1 – 30 % Deposit
Payment 2 – 50 % Equipment delivery into Octagon store
Payment 3 – 15 % Installation
Payment 4 – 5 % Test & Commission

If you have not paid the Deposit and signed off the Lift technical details and Interior finishes, we will not Order the Lift.

Where the Quotation and Order specifies different payment percentages and terms, these take precedence over the Terms above.

Supply only of Lift Equipment (including custom order spare parts)

Payment 1 – 50 % deposit
Payment 2 – 50 % delivery into Octagon store (i.e. Full payment is required before we will dispatch to you)

6. Liquidated Damages, Retention Monies and Ownership of Goods

Octagon does not accept Liquidated Damages or Retention Monies unless clearly notified of the value and terms in advance of Purchase Order issue. Where Liquidated Damages do apply, they are limited to \$ 300 per day to a limit of 5 % of Lift Order value unless agreed in writing in advance of Order placement.

Where Payment of Goods has not been received in full, Octagon retains Ownership of the Goods.

Legal Terms and Conditions of Sale:

- b) Delivery times of equipment at the date of the Order are based on manufacture and shipping times reasonably known to the Company existing at the time of the Order and are dependent on the sailing date of vessels and are totally outside of the control of the Company.
- c) Whilst every effort will be made to ensure that delivery is on time, the Company shall not be liable for any consequential loss suffered by the Customer due to delays arising from matters outside of the Company's control.
- d) The Customer shall provide adequate parking, access, single and 3-phase power and storage during the construction period.
- e) Storage costs incurred by the Company as a result of the site not being available at the time of delivery will be the borne by the Customer and added to the contract price. These storage charges are in the Company's discretion and shall be determined based on the size of the equipment being stored.

5. Terms of Payment

- a) Unless otherwise agreed in writing between the parties, terms of payment are strictly thirty (30) days from the date invoices are issued by the Company.
- b) Interest is payable by the Customer on the outstanding balance of invoices rendered by the Company after the due date for payment.
- c) Interest is calculated at the rate of 12% per annum.
- d) In the event invoices are not paid by the applicable due date, the Company may, in its absolute discretion:
 - i. cease further work for the Customer; and/or
 - ii. suspend the Customer's credit facilities with the Company.
- e) Any unpaid invoices with a balance outstanding for a period of 90 days will be subject to enforcement action and any loss, claim, damage, proceeding, expense of whatsoever nature including but not limited to any legal costs calculated on a solicitor/own client basis and debt collection costs shall be paid by the Customer.
- f) Invoices will be issued based on the percentage of contract value as follows:

i. Supply and Install Lifts

Service, Passenger and Other Lifts and Equipment:

Payment 1 – 30% of contract value with order.
Payment 2 – 50% of contract value on delivery to Octagon store.
Payment 3 – 15% of contract value on completion of installation.
Payment 4 – 5% of contract value on testing and commissioning of lift (Practical Completion).
Final payment due prior to handover of lift.
(Testing and commissioning will be carried out after provision of permanent mains power by others and after payment for progress claim No. 3 is made).

ii. Supply Only All Lift Equipment:

Payment 1 – 50% with order.
Payment 2 – 50% on delivery into Octagon store.

6. Liquidated Damages, Retention Monies and Ownership of Goods

- a) Liquidated damages will not apply to any contract entered into by the Company unless expressly agreed in writing by the Company in the Quotation.
- b) In the absence of acceptance in writing by the Company, the Customer acknowledges and agrees that it will have no right to retain monies payable to the Company during the operation of this Agreement.
- c) Title to Goods supplied by the Company to the Customer shall remain vested in the Company until such time as the Customer has paid the Company all amounts due and payable pursuant to this Agreement.
- d) Until such time the Customer has paid all amounts due and payable pursuant to this Agreement, the Customer agrees not to use, dispose of or otherwise deal with Goods in any way which is inconsistent with this Agreement.

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Plain English:**7. Charge**

If you are having trouble paying the agreed amount on time, we prefer to discuss and negotiate revised payment terms rather than pursue legal action.

However where Octagon is owed monies for work completed and you refuse to communicate and agree revised payment terms, we will take Legal action to secure the funds owed.

8. Warranty / Defects Liability

Octagon provides a 12 month parts and labour warranty for equipment supplied and installed. If any monies are outstanding, Warranty work will be completed after full payment has been received.

Where only equipment is supplied, only the Manufacturers' warranty applies.

9. Cancellation of Order

If you cancel an Order, you will need to pay us reasonable costs incurred to the date of cancellation (including administrative and associated costs incurred after this date).

Legal Terms and Conditions of Sale:**7. Charge & Security**

- a) The Customer agrees to charge as beneficial owner and as trustee of every trust all of the Customer's land (including land acquired in the future) in favour of the Company to secure the payment of money payable by the Customer to the Company pursuant to this Agreement.
- b) The retention of title arrangement in clause 6(c) above constitutes the grant of a purchase money security interest by the Customer in favour of the Company in respect of all present and after acquired Goods supplied by the Company to the Customer.
- c) The Customer acknowledges that the Company may register the security interest set out at clause 7(b) above in accordance with the provisions of the *Personal Properties Securities Act 2009*.
- d) The Customer acknowledges and agrees to sign any documents and provide any necessary information required by the Company to ensure that the Company's purchase money security interest is a perfected security interest.
- e) Any security referred to in this clause is to be prepared by the Company's solicitor on the terms and conditions that the Company's solicitor sees fit.

8. Warranty and Limitation of Liability

- a) Where the Customer is a consumer as defined by any relevant law such as the Australian Consumer Law and similar state laws, certain conditions and warranties ("the Consumer Warranties") cannot be excluded. A consumer then has the benefit of the Consumer Warranties. To the extent permitted by Law all implied warranties and conditions are otherwise excluded.
- b) Should any defect in Goods and Services supplied by the Company develop within 12 months from the date of commissioning a lift, operated under normal working conditions and regular maintenance, subject to the final payment being made within 28 days of invoice, then such defect shall be made good at no cost to the Customer.
- c) Warranties will be in suspended until the full payment is received with respect to Goods and Services provided by the Company to the Customer pursuant to this Agreement.
- d) Where only Goods are supplied, the warranties provided by the manufacturer of those Goods will take precedence over any obligations of the Company pursuant to these Terms and Conditions
- e) in no event shall the Company be liable for any other claims, losses or damages including but not limited to claims for negligent or misleading advice, damages arising from the loss or use of any Goods or howsoever arising and any indirect, special or consequential damage including but not limited to damages on account of prospective profits expenditures or other commitments relating to the business or goodwill of the Customer or on account of any consequential loss or damage incurred or suffered by the Customer or customers of the Customer, which arises from or is connected in any way whatsoever with the use of the Goods or the provision of Services or injury to any person, corporation or other entity.
- f) The Customer releases the Company from any claim, action or liability for consequential loss or damage to person or property including, without limitation, loss of profits arising by reason of any act, matter, conduct or thing done, permitted or committed by the Company.

9. Cancellation of Order

- a) If, for any reason, the Customer cancels an Order, the Company will be entitled to be paid its reasonable costs and expenses incurred up to the date of cancellation (including an amount for the Company's margin thereon) together with any administrative/associated costs incurred as a result of the cancellation.
- b) Unless otherwise agreed in writing, where Goods have been purchased by the Company which are no longer required due to the Customer's cancellation of the Order, then the Customer shall pay the Company an amount equivalent to the cost of those Goods, which will be refunded by the Company in the event the Company sells those Goods or re-uses the Goods in some other manner.

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Plain English:

10. Work Provided by Others

The Lift Shaft must be structurally sound and safe for Lift Installation to proceed. If the Owner or Builder is not prepared to supply a safe and fit for purpose shaft, we shall have the right to terminate this Agreement.

11. Goods and Services Tax – GST

If the GST or other Government applied charges change during the Contract period, the Customer will pay Octagon the difference.

12. Arbitration

Octagon aim to achieve high quality customer service in all instances. In the event we did not meet your expectations we would like you to clearly explain what the problem is in writing. This ensures any concerns you have are brought to the attention of senior management promptly.

If you were still not satisfied, using Arbitration ensures a dispute is dealt with impartially and promptly.

13. Notices

It is important that Notices are received by the relevant party in a reasonable timeframe.

14. Guarantee and Indemnity

If you have signed this agreement as a guarantor, Octagon may (in its discretion) pursue you legally for any

Legal Terms and Conditions of Sale:

10. Work Provided by Others

- a) Where a lift is to be installed by the Company, the Customer must provide a suitable lift shaft or enclosure in accordance with Building and Lift Code Requirements.
- b) Should the Customer be unable or unwilling to comply with clause 10(a) above, the Company may terminate this Agreement by notifying the Customer.
- c) If the Company terminates this Agreement in accordance with this clause, the Customer agrees to pay the Company the Company's reasonable costs incurred to the date of termination (including administrative/associated costs and the Company's margin).

11. Goods and Services Tax – GST

If during the term of any contract between the Company and the Customer, changes to the Goods and Services Tax or any similar tax, duty, impost or levy is introduced by and becomes payable to the Government of the Commonwealth of Australia or any State or Territory Government, then the Company will be entitled to recover the full amount from the Customer and any additional costs payable after deduction of the amount of any previously allowed tax or duties payable or previously paid and which are recoverable from the Australian Taxation Office.

12. Arbitration

- (a) In the event of a dispute arising under this Agreement, either party may refer the dispute to arbitration. The party wishing to refer the matter to arbitration shall, by notice in writing advise the other of the intention to refer the matter to arbitration, and shall nominate an arbitrator. The other party shall, within seven (7) days, advise in writing as to whether the party accepts or rejects the nominated arbitrator, and in the event of the other party rejecting the nominated arbitrator, or not responding to the notice within the 7-day period as herein specified, then the matter shall be referred to arbitrator appointed by the President of the Law Society.
- (b) Either party shall be entitled to be represented by a legal practitioner.
- (c) The parties further agree that the arbitrator shall be entitled to award costs for the legal representation, and such costs shall be calculated on a solicitor own client basis.
- (d) Nothing in this Agreement shall prevent a party from:
 - (i) applying to a court of competent jurisdiction to seek urgent relief; or
 - (ii) initiating legal proceedings against the other with respect to a breach of this Agreement.

13. Notices

Any notice to be served by one party on the other under this agreement must be in writing and is deemed to have been duly served if given:

- (a) by mail, two (2) business days after it is posted where the party's last known address is in the Commonwealth of Australia, and five (5) business days after it is posted by airmail where the party's last known address is outside the Commonwealth of Australia; or
 - (b) by hand, at the time it is left at the party's last known place of residence or business; or
 - (c) by Email, upon receipt or if applicable upon receipt by the sender of the confirmation receipt; or
 - (d) by facsimile transmission, at the time of transmission to the party's last known facsimile number;
- or such earlier time if acknowledged by the receiving party.

14. Guarantee and Indemnity

- (a) In consideration of the Company entering into this Agreement, each Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual payment of all debts and monetary liabilities including without limitation sums of money, interest, costs, damages,

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Plain English:

breaches of this agreement by the customer.

Octagon may, in its absolute discretion, secure money owing to it pursuant to this agreement by lodging a caveat against any property registered in the guarantor's name.

Legal Terms and Conditions of Sale:

charges and expenses which are, or which may become payable by the Customer to the Company on any account and in any capacity ("Guaranteed Moneys") and, as a separate and independent obligation, agrees to indemnify and keep the Company indemnified from and against any claim, action, loss, damage, cost, expense, outgoing or payment suffered, paid or incurred by the Company in relation to the non-payment or non-recovery of the Guaranteed Moneys.

- (b) Each Guarantor jointly and severally acknowledges and agrees that this Guarantee and Indemnity is given upon and subject to the following conditions:
- (i) in the event that the Customer fails to pay the Company any Guaranteed Moneys, the Guarantor(s) will immediately pay such money to the Company;
 - (ii) in the event the Customer fails to carry out or perform any of its obligations herein, the Guarantor will immediately carry out and perform the same;
 - (iii) the Guarantor shall be deemed jointly and severally liable with the Company (in lieu of being merely a surety for it) for the payment of the Guaranteed Moneys and it shall not be necessary for the Company to make any claim or demand, or take any action or proceedings against the Customer or make any demand against the Guarantor before commencing proceedings against the Guarantor to pay the Guaranteed Moneys;
 - (iv) no time or other indulgence whatsoever that may be granted by the Company to the Customer shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to remain in full force and effect until all monies owing to the Company have been paid and all obligations have been performed.
- (c) The Guarantor(s) hereby charges their respective right, title and interest as beneficial owner and as trustee of every trust in all real estate which they or any of them now have or at any time hereafter may have to secure their obligations pursuant to this Agreement.

15. Governing Law

Octagon are based in Western Australia; therefore, the Laws of WA apply to this Agreement.

15. Governing Law

This agreement shall be governed by the laws of Western Australia in force from time to time, and the parties agree to submit to the jurisdiction of the Courts of that State.

16. Special Conditions

If specific terms above are agreed to be amended/included, they will be listed here.

16. Special Conditions

Contract Number:
Date:
Approved by:

List of Special Conditions:

1. _____
2. _____
3. _____

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2023

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods.

If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.