

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2020

Plain English:

Last revised on 12 Dec. 2019

1. Interpretation

This section contains the definition of the various key words. The most important ones are.

"Purchaser" is the person or entity buying the goods.

"Goods" is the lift, equipment and the services we provide to you.

"Company" is Octagon Lifts Pty Ltd.

Order of Precedence: The Plain English descriptions are provided for clarity. If the Plain English description results in an unintended meaning, different to the Right Hand column, the Terms to the Right apply over the Plain English descriptions.

2. General

These Terms & Conditions of Sale apply to all quotes and offers made 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.

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 costs in writing (as a Variation). Octagon will not Order a lift from the Manufacturer unless we have an agreed Order & Terms and you have paid the Deposit amount.

4. Delivery

In our Quotation we advise Delivery times. The times we provide are 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 accept any consequential costs. The best solution is to Order the lift well in advance of the required date of installation.

Legal Terms and Conditions of Sale:

Last revised on 12 Dec. 2019

1. Interpretation

In the interpretation of these terms and conditions:

"Covenants" by more than one person shall be deemed to have been given jointly and severally.

"Purchaser" means the Purchaser, and the customers of the Purchaser, and in the case of a partnership, each partner and his heirs, successors and personal representatives and in the case of a corporation, the Purchaser and each director and guarantor and its and their successors, personal representatives and heirs as the case may be.

"Goods" means all goods and chattels, all services, all charges for work and labour, hire charges, fees, service charges, repairs, materials or insurance charges associated with the supply, manufacture, constructions, installations or repair of the goods or services supplied to the Purchaser.

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

"Order" means the offer made by the Company and accepted by the Purchaser in writing.

One gender includes the other gender.

2. General

- a) These Conditions of Sale apply to all offers made by the Company and may only be varied by consent of the Company in writing and does not incorporate the conditions of any Head Contract or any other contract between the Purchaser and a third party who is not a signatory although the Company will make every effort to meet those conditions.
- b) Unless varied in writing by the Company, should these Conditions conflict in any way with those conditions which are attached to, or form part of, any Purchase Order placed or subcontract agreement issued by the Purchaser then these Conditions of Sale will take precedence over any conditions of the Purchaser.
- c) Any offer made by the Company may be withdrawn at any time prior to the acceptance of a Purchase order or payment of Deposit if the Company considers that for reasons of which it was unaware at the time of the offer, the Company would be disadvantaged or would not be able to carry out its duties and responsibilities to the benefit of both parties to the contract.

3. Prices

- a) Unless otherwise agreed in writing all prices quoted by the Company include all Government charges, taxes and duties except GST existing at the date of the Order.
- b) The price quoted remains valid for 90 days from the quotation date.
- c) All cost variations to the Purchase Order made during the period of the contract will be confirmed in writing and the Purchaser must notify the Company of its acceptance of the additional costs in writing ("the Variation Order") before any changes to the contract are made.
- d) The Company will not commence any work, until acceptance in writing of the Purchase Order and the deposit is received by the Company or alternatively where written instructions provided by the Purchaser to the Company is accepted by the Company in writing and the deposit received.

4. Delivery

- a) Delivery times are approximate.
- 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, no contractual liability will be accepted for equipment delivered late due to reasons beyond the control of the Company.
- d) The Purchaser shall provide adequate parking, access, single and 3-phase power and storage during the construction period. 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 Purchaser and added to the contract price.

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Plain English:

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.

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.

Legal Terms and Conditions of Sale:

5. Terms of Payment

- a) Terms of payment are strictly thirty (30) days of the date of invoice issued by the Company.
- b) The Purchaser may nominate the day/date of the month on/by which the **invoice** should be issued.
- c) Interest is applied at the current Bank West "Indicative unsecured variable rate" + 1 % p.a. or part thereof on all unpaid invoices. All site works or guarantees will cease forthwith and further credit will be withdrawn until such time as the outstanding account is fully paid.
- d) Any invoices remaining overdue and unpaid for 90 days will be subject to enforcement and any loss, claim, damage, proceeding, expense or whatsoever nature including but not limited to any legal costs calculated on a solicitor/own client basis including but not limited to any legal action brought in any Court that may be incurred by the Company will be paid by the Purchaser at the settlement of the outstanding account or judgement.
- e) 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.

- f) The Company reserves the right to amend or withdraw credit facilities at any time during the delivery period if previous outstanding accounts are not paid by due date.

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 in the Purchase Order.
- b) In the absence of acceptance in writing by the Company, the Purchaser will not retain any monies as retention monies during the life of a contract.
- c) Title to goods, equipment or services supplied to the Purchaser shall until payment in full, remain the sole and absolute property of the Company as legal and equitable owner and no person shall be entitled to use, dispose of or otherwise deal with, the goods in any way which is inconsistent with the Company's rights or these conditions until such time as all money due to the Company has been paid by the Purchaser. If such property is sold by the Purchaser to another party prior to payment and or if they become constituents of other goods then The Company shall be assigned the right to the entire proceeds of sale thereof or such other constituent product.
- d) The Customer acknowledges that it is in possession of all goods equipment or services supplied on credit, as bailee for the Company until payment in full has been received by the Company.

7. Charge

- a) The Customer agrees to charge any land now owned, or acquired in the future, by the Purchaser and/or the Guarantors to secure payment of all outstanding accounts and the Purchaser agrees to enter into a Mortgage over such land upon being required to do so by the Company.
- b) Any such security is to be prepared by the Company's solicitor on the terms and conditions that the Company's solicitor sees fit.
- c) The Purchaser further authorises the Supplier to register an absolute Caveat over any land now owned by the Purchaser or by the Guarantors, or in the future acquired by the Purchaser or the Guarantors, to secure any sum due under this agreement at any time during the continuance of this agreement.
- d) The terms and conditions of this agreement shall relate to any charge or security imposed by the Company on the Purchaser.

OCTAGON LIFTS PTY LTD: TERMS & CONDITIONS OF SALE - 2020

Plain English:

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 Purchase Order

If you cancel a Purchase Order, you will need to pay us reasonable costs incurred, including profit.

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, this will have to be resolved by Arbitration, as Octagon will not install a lift in a shaft we believe to not comply with Building & Lift Code Requirements.

11. Goods and Services Tax – GST.

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

12. Limit of Liability

If Octagon fail to supply and install equipment in good working order and condition, we will repair and rectify the equipment or replace components of the equipment where we are responsible.

Legal Terms and Conditions of Sale:

8. Warranty/ Defects Liability

- a) Any warranty, condition, description or representation whether express or implied as to the description, state, quality, merchantability or fitness of the goods for the purpose for which they are provided is hereby excluded to the extent that Commonwealth, State and Territorial laws permit.
- b) Should any defect in material or workmanship 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 Purchaser.
- c) Warranties will be in suspended until the full payment is received.
- d) Where equipment only is supplied the warranties provided by the manufacturer of that equipment will take precedence over these Conditions of Sale.

9. Cancellation of Purchase Order

- a) If by reason of any fact, circumstance, matter or thing, beyond the reasonable control of the Purchaser, the Purchaser cancels a Purchase Order or contract due, then the Company will be entitled to be paid its reasonable costs and expenses, including profit by the Purchaser.
- b) Where equipment has been paid for by the Company then the Company will be reimbursed for the cost of any such payment made and agrees to reimburse the Purchaser any monies recovered when that equipment has been either re-used or sold elsewhere.

10. Work Provided by Others

- a) Where a lift is to be installed then the Purchaser must provide a suitable lift shaft or enclosure in accordance with Building and Lift Code requirements.
- b) Should the Purchaser be unable or unwilling to provide such suitable housing in accordance with requirements to enable the Company to meet its legal obligations and 'duty of care' responsibilities, then such dispute may be referred to arbitration by the Company at the Purchaser's expense.
- c) If the Purchaser refuses to submit to arbitration and the dispute remains unresolved then the Company has the right to cancel the contract and claim all costs whatsoever incurred as a result of the Purchaser's breach from the Purchaser.

11. Goods and Services Tax – GST.

If during the term of any contract between the Company and the Purchaser, 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 Purchaser 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. Limit of Liability

- a) If due to an omission or failure by the Company, its servants, agents or contractors, to properly carry out the works due to be done hereunder, or provide equipment in good working order and condition, the Company will without making any admissions, rectify, repair or restore such works or equipment or, in the event that in the opinion of the Company the equipment cannot be satisfactorily repaired, then the Company will replace that equipment with equipment the same as or equal to quality and function as the original equipment.
- b) The Purchaser does not have under any circumstances any cause of action against or right to claim or recover from the Company for, or in respect of, any loss or damage or injury or claim of any kind whatsoever, whether directly or indirectly arising from any works, material or services rendered or provided by the Company, its servants, agents or contractors.

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Plain English:

13. 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.

14. Notices

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

15. Governing Law

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

16. Acceptance of Conditions of Sale

Just what it says to the right →

17. Amendment Summary

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

Legal Terms and Conditions of Sale:

13. 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.

14. 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.

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. Acceptance of Conditions of Sale:

The Purchaser acknowledges notice of and accepts these Conditions of Sale when the Purchaser places a Purchase Order.

17. Amendment Summary

Contract Number:

Date:

Approved by:

List of Amendments:

1. Nil.