



STANDARD TERMS AND CONDITIONS

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8

1. DEFINITIONS

1.1 In these conditions the following definitions apply:

"Applicable Law" means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

"Business" means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf, including the activities of any governmental department or local public authority;

"Client" means the person or persons identified in the Quotation who engage the Contractor to carry out the Works;

"Consumer" means an individual acting for purposes that are wholly or mainly outside the individual's trade, business, craft or profession;

"Contract" means the contract between the Client and the Contractor for the Works comprising these Terms and other documents specified herein;

"Contractor" means Dolphin Stairlifts (South West) Ltd (Company No. 08474600) whose registered office is at 5 Providence Court, Pynes Hill, Exeter, Devon EX2 5JL;

"Contract Price" means the price payable by the Client to the Contractor as determined in accordance with Clause 6 of this Contract;

"Commencement Date" means the date that the Works are commenced;

"Purchase Order" means the Client's agreement to the Quotation, whether by returning the Quotation signed in person, or digitally signed, or by email or by post or by otherwise confirming agreement to the Quotation;

"Quotation" means the quotation issued with the Terms;

"Terms" means these Standard Terms and Conditions; and

"Works" means the works as described in Clause 5 of this Contract.

1.2 In these Terms, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Terms, the Quotation, and their respective schedules, appendices and annexes (if any);

1.2.2 any clause, schedule or other headings in these Terms is included for convenience only and shall have no effect on the interpretation of the Terms;

1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 a reference to a gender includes each other gender;

1.2.7 words in the singular include the plural and vice versa;

1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form.



2. APPLICATION OF THESE TERMS

- 2.1 These Terms apply to and form part of the Contract between the Contractor and the Client and supersede any previously issued terms and conditions.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Contractor agrees in writing.
- 2.3 No variation of these Terms or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Contractor and the Client respectively.

3. CONTRACT FORMATION

- 3.1. The Purchase Order constitutes an offer by the Client to instruct the Works in accordance with the Quotation and these Terms.
- 3.2. The Purchase Order shall only be deemed to be accepted when the Contractor confirms receipt of the Purchase Order and the Contractor has received payment (in cash or cleared funds) of any deposit specified in the Quotation, at which point and on which date a Contract shall come into existence.
- 3.3. The Quotation shall not be considered an offer, and is only valid for the period stipulated within the Quotation and if no period is stated, a period of 30 days from its date of issue.
- 3.4. Unless otherwise stated in the Quotation, the Quotation has been prepared prior to any surveys being conducted and, consequently, the Contractor reserves the right to claim additional costs in the event that additional work and / or materials are found to be required once a survey or opening up works have been undertaken (for example, if the staircase and / or surrounding area and / or existing electrical wiring is unsound or non-compliant).

4. GENERAL OBLIGATIONS

- 4.1. The Contractor will exercise reasonable skill and care in the performance of the Works.
- 4.2. The Client will give the Contractor access to its premises as reasonably required by the Contractor to enable it to carry out and complete the Works without interference by the Client or others.
- 4.3. The Client is responsible for the protection of all fixtures, chattels, furnishings and decorations for the duration of the Works.
- 4.4. Unless otherwise expressly agreed, the Client is responsible for obtaining any permissions, consents, approvals and other licenses or permits required for the Works. If the Contractor agrees to be responsible for obtaining any permissions, consents, approvals or other permits or licenses then it shall be entitled to claim for the cost of obtaining these.
- 4.5. Unless otherwise expressly agreed, the Client is responsible for providing the Contractor with a free and unrestricted supply of electricity and water.

5. THE WORKS

- 5.1. Subject to clause 3.4, the Works constitutes the work that the Contractor shall be instructed to carry out by the Client and as more particularly described in the Quotation.
- 5.2. If the Contractor requests measurements from the Client in respect of the Works, the Client shall be responsible for making sure those measurements are correct.
- 5.3. The Contractor will be entitled to charge the Client additional sums in the event that the Client fails to provide the Contractor with information reasonably requested in respect of access or if the Client fails to complete any preparatory work to prepare for the Works, as agreed. For example, the Contractor may need to return on another day, with extra manpower or reschedule the Works.
- 5.4. The Contractor shall commence the Works on such date as the Contractor shall notify the Client of in writing.

- 5.5. Time of performance of the Works is not of the essence. The Contractor shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are indicative only.
- 5.6. The Contractor shall complete the Works within a reasonable period.
- 5.7. If the Works are delayed for reasons beyond the Contractor's control for a period of in excess of 3 calendar months, the Contractor reserves the right to charge for the provision of facilities required for the storage of any materials and equipment procured specifically for the Works at a rate of £15,00 per week. Such charges shall be added to the Contract Price.
- 5.8. To the extent permitted by law, the Contractor shall not be liable for any losses that the Client may incur as a result of any delay to the Works.

6. CONTRACT PRICE & PAYMENT

- 6.1. The Contract Price shall be the sum stated in the Quotation as adjusted in accordance with the Clause 6.2 below. If no sum is stated in the Quotation, the Contractor shall be entitled to claim a reasonable sum for the Works in accordance with clauses 6.3 – 6.6 below.
- 6.2. The Contract Price shall be adjusted to take into account any additional work or variations that are agreed between the parties.
- 6.3. The Contractor shall be entitled to claim a reasonable sum for any additional work including but not limited to the following:
- 6.3.1 Labour costs;
 - 6.3.2 Sub-contract work;
 - 6.3.3 Materials and goods;
 - 6.3.4 The hire and provision of plant, services and equipment; and
 - 6.3.5 Sundry costs necessary to carry out the Works including travel costs and other costs associated with the Works.
- 6.4. Unless otherwise agreed in writing, any additional labour cost shall be charged at the rates set out in Schedule 1 (all rates are exclusive of VAT).

- 6.5. Any additional materials shall be charged at cost price plus the agreed uplift as stated in the Quotation. In default of an agreed uplift the rate shall be 20%.
- 6.6. All other additional costs shall be charged at cost price plus the agreed uplift as stated in the Quotation. In default of an agreed uplift the rate shall be 20%.
- 6.7. Where the Client is asked to pay a deposit ("**the Deposit**") the Client shall pay the Deposit prior to the Commencement Date and the Contractor shall retain the Deposit until the final payment is due whereupon the Contractor will deduct the Deposit from the final payment and / or return any balance to the Client.
- 6.8. The Client shall pay the Contractor the Contract Price.
- 6.9. If the Works are completed within 1 week of the Commencement Date, the Contractor shall submit to the Client an invoice for the Contract Price following the completion of the Works.
- 6.10. If the Works are not completed within 1 week of the Commencement Date, the Contractor shall be entitled to payment of the Contract Price by way of interim payments on a fortnightly basis for work carried out and materials purchased during the previous fortnight.
- 6.11. The Contractor shall submit to the Client an invoice in accordance with either clause 6.9 or 6.10. The invoice shall specify the sum that the Contractor considers will or has become due on the payment due date and the basis on which that sum is calculated.
- 6.12. An invoice will be deemed to have been validly submitted if sent to the Client by email or in the post whether such invoice is received or not. If the invoice is sent by post it is deemed to be submitted on the date that it is posted. If the invoice is sent by email it is deemed sent on the day the email is sent.
- 6.13. The due date for payment of the invoice shall be the date that the invoice is submitted.
- 6.14. The final date for payment shall be 7 days after the due date.

6.15 If the Client disputes any part of an invoice and wishes to withhold any amount, he must notify the Contractor in writing at least 5 days before the final date for payment with a statement setting out the amount(s) he proposes to withhold and the reasons. The undisputed parts of an invoice must be paid and any disputed amount will be dealt with under clause 12 (Disputes). Except as stated in this clause, the Client shall not withhold any money or set off any amount against invoices of the Contractor.

6.16 If the Client fails to pay any amount due under the Contract by the relevant final date for payment, the Contractor can suspend performance of its obligations under the Contract immediately upon giving written notice to the Client. Any period of suspension will entitle the Contractor to claim any additional costs he incurs as a result of the suspension, as well as an extension of time for completion of the Works.

6.17 Late payment entitles the Contractor to claim interest at the rate of 8% above the Bank of England base rate from the final date for payment until the date of actual payment.

6.18 Prices are quoted exclusive of VAT which will be added as appropriate and payable by the Client. The Contractor will issue a valid VAT invoice or receipt for each such amount.

6.19 The Contractor shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Client under the Contract or under any other contract which the Contractor has with the Client.

6.20 The Client shall pay all sums that it owes to the Contractor under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law or as provided by these Terms.

7 INSURANCE & LIABILITY

7.1 The Contractor shall take out and maintain the following insurances (except as otherwise agreed):

- Public Liability Insurance

- Employer's Liability Insurance

7.2 Unless otherwise agreed, the Client will be responsible for insurance of the Works with the Contractor named as co-insured.

8 LIMITATION OF LIABILITY

8.1 Where the Client is a Business, subject to clause 8.4, the Contractor shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- 8.1.1 loss of profits;
- 8.1.2 loss of sales or business;
- 8.1.3 loss of agreements or contracts;
- 8.1.4 loss of anticipated savings;
- 8.1.5 loss of or damage to goodwill; and
- 8.1.6 any indirect or consequential loss.

8.2 Subject to clause 8.1, the Contractor's total maximum aggregate liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the original Contract Price.

8.3 Where the Client is a Consumer, if the Contractor fails to comply with these Terms, it is responsible for loss or damage that the Client suffers that is a foreseeable result of the Contractor breaking this Contract or its failing to use reasonable care and skill, but the Contractor is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both the Contractor and the Client knew it might happen, for example, if the Client discussed it with the Contractor prior to the formation of the Contract.

8.4 For the avoidance of doubt, the Contractor shall not be liable for any modifications made to the lift(s) without the Contractor's full knowledge and written consent. Any such unauthorised modifications may be contrary to applicable regulations and standards and could endanger the Client and would invalidate any guarantee(s).

8.5 For the avoidance of doubt, the Contract does not exclude or limit in any way its liability where it would be unlawful to do

so. This includes liability for death or personal injury caused by the Contractor's negligence or the negligence of its employees, agents or subcontractors, for fraud or fraudulent misrepresentation and for breach of the Client's legal rights.

8.6 The Client acknowledges that the lift(s) may, from time to time, be temporarily unavailable due to malfunction, power interruption, scheduled or unscheduled maintenance, user error, or any other cause.

8.7 The Contractor's obligations under this Contract are limited to the supply, installation, commissioning, repair and maintenance of the lift(s) as expressly set out in this Contract.

8.8 For the avoidance of doubt, the Contractor shall have no obligation or liability to provide, arrange or ensure any alternative means of access between floors or any other contingency arrangements, nor to secure the Client's ongoing ability to move between levels during any period in which the lift(s) is/are unavailable. The Client is solely responsible for putting in place and maintaining appropriate contingency/alternative access arrangements at the Client's own cost.

8.9 Nothing in this clause excludes or limits liability that cannot lawfully be excluded or limited, including (where applicable) liability for death or personal injury caused by negligence, and (for Consumers) the Client's statutory rights. This clause is intended to be transparent and fair in accordance with Applicable Law.

9 DURATION, HANDOVER & DEFECTS LIABILITY

9.1 Defects in design or materials supplied by the Client and defects attributable to fair wear and tear or to misuse or failure by the Client to comply with any operating or maintenance manuals will not be the responsibility of the Contractor.

9.2 Where equipment or materials used in the Works have the benefit of a manufacturer's warranty, the Contractor will take reasonable steps to procure that the Client has the benefit of that warranty, subject to the Client making full payment of the Contract Price. Subject to clause 8, the Contractor will not be liable for any defect in that equipment or materials except to the extent that this is due to the Contractor's negligence.

9.3 The Client shall notify the Contractor of all and any claims of damage caused by the Contractor during the course of carrying out the Works within 7 days of the completion of the Works.

9.4 The Client shall notify the Contractor as soon as reasonably practicable in the event that any defect caused by poor workmanship appears after the expiry of 7 days from the date of completion of the Works. The Contractor shall, at the Contractor's sole discretion, be afforded a reasonable opportunity to rectify any such defects.

10 MATERIALS

10.1 Title to any materials supplied by the Contractor as part of the Works shall not pass to the Client until the Contractor has received payment in full for all materials supplied and work undertaken.

10.2 Until title to the materials has passed the Client shall:-

10.2.1 Hold the materials on a fiduciary basis as the Contractor's bailee;

10.2.2 Store the materials separately from all other goods held by the Client so that they remain readily identifiable as the Contractor's property;

10.2.3 Not remove any identifying marks or packaging on the material; and

10.2.4 Maintain the materials in a satisfactory condition.

10.3 Before title to any materials passes the Contractor may notify the Client that he wishes him to deliver up the materials and if the Client fails to do so the Contractor may enter onto the Client's property where the materials are stored or located and recover them.

10.4 Irrespective of whether title to any materials remains vested in the Contractor, risk in the materials shall pass to the Client upon delivery of the materials to site.

11 TERMINATION

11.1 Where the Client is a Business, then without affecting any other right or remedy available to it, the Contractor may terminate the Contract with immediate effect by giving written notice to the other party if:

11.1.1 the Client commits a material breach of any term of the Contract which breach cannot be remedied or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;

11.1.2 the Client takes any step or action in connection with its administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

11.1.3 the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.1.4 the Client's financial position deteriorates to such an extent that in the Contractor's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.2 Without affecting any other right or remedy available to it, the Contractor may terminate the Contract with immediate effect by giving written notice to the Client if:

11.2.1 the Client fails to pay any amount due to the Contractor under the Contract; or

11.2.2 there is a change of control of the Client.

11.3 On termination of the Contract for whatever reason:

11.3.1 the Client shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;

11.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and

11.3.3 termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.4 In addition to the rights set out above, where the Client is a Consumer:

11.4.1 The Client shall have the right to cancel this Contract within 14 days of the formation of this Contract.

11.4.2 To exercise the right to cancel, the Client must inform the Contractor of its decision to cancel this Contract by a clear statement (e.g. a letter sent by post or email). The Client may use the model cancellation form at Schedule 2, but it is not obligatory.

11.4.3 If the Client requests that the Contractor starts to provide the Works within this 14-day cancellation period, the Client is responsible to pay for such Works that are performed even if the Client subsequently cancels this Contract.

11.4.4 For the avoidance of doubt, where the Client has ordered a bespoke product, the Client shall have no right to cancel in respect of the manufacture and supply of the same.

11.4.5 The Client agrees that by returning a signed copy of this Contract or by continuing to provide the Contractor

with instructions that the Contractor may start work immediately and charge the Client for the reasonable costs of its work up to the cancellation even if the Client exercises its cancellation rights.

12 DISPUTES

12.1 Whether or not the Works are “construction operations” pursuant to the Housing, Grants, Construction and Regeneration Act 1996, the parties agree that any dispute or difference arising under or in connection with this Contract may be referred to adjudication by giving notice to the other party at any time. The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply to any adjudication except that the adjudicator, if not appointed by agreement between the parties, shall be appointed by the President of the Royal Institute of Chartered Surveyors on the application of either party.

12.2 If either party intends to dispute the adjudicator’s decision, it must serve a notice in writing on the other party stating its intention to refer the dispute for final determination by issuing court proceedings. If neither party serves such a notice within 28 days of the adjudicator’s decision, the adjudicator’s decision will be final and binding on the parties.

13 FORCE MAJEURE

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (including but not limited to any acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war or war, any law or any action taken by a government or public authority, any labour or trade dispute, strikes, industrial action or lockouts and any delayed or non-performance by suppliers or subcontractors (a **Force Majeure Event**)).

13.2 In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six months, the party not affected may terminate the Contract by giving 7 days’ written notice to the affected party.

14 GENERAL

14.1 **Notices** - Unless otherwise stated every notice shall be in writing and delivered by hand, sent by first class post to the address of the recipient or via email. A notice sent by post shall be treated as having been received two working days after posting. A notice delivered by hand shall be treated as having been received at the time of delivery unless this is after the normal working hours of the recipient, in which case delivery shall be treated as occurring at 9.00 a.m. on the next working day. A notice by email shall be treated as having been received at the time of transmission. This clause does not apply to the service of any proceedings or other documents in any legal action.

14.2 **Governing Law** - The Contract and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

14.3 **Jurisdiction** - Subject to clause 12, the parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

14.4 **Assignment** – The Contractor may at any time assign, mortgage, charge, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Contractor.



- 14.5 **Entire Agreement** - The Quotation and these Terms constitute the only agreement between the parties and supersede any previous arrangements, agreements or understandings relating to the Works.
- 14.6 **No Reliance on Warranties** - The Client acknowledges that he has not relied on and will have no remedy in respect of any statement, representation, warranty, or undertaking of any person (whether a party to the Contract or not) other than is expressly set out in the Contract. However, nothing in this clause shall limit or exclude liability for fraud.
- 14.7 **Severance** - If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected. In that situation, the parties shall apply the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable and shall negotiate in good faith in order to agree a replacement provision that, to the

greatest extent possible, achieves the commercial result of the original provision.

- 14.8 **Conflict** – In the event that there is any conflict or ambiguity between the terms of the documents listed in this clause 14.8, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

14.8.1 the Quotation;

14.8.2 the Terms.

- 14.9 **Waiver** - The waiver by the Contractor of a breach by the Client in the performance of its obligations under the Contract shall not constitute a waiver of any default nor shall failure to complain of any default constitute a waiver of that default by the Contractor.

- 14.10 **Third Party Rights** – Unless it expressly states otherwise, these Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

By accepting this quotation, on the date of acceptance, the Client confirms that they have read, understood, and agree to these Terms and Conditions. Acceptance of this quotation shall also constitute the Client’s express consent for Dolphin to commence the Works before the expiry of any cancellation period provided for under Regulation 30(1) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

**SCHEDULE 1
SCHEDULE OF RATES**

1.1	Role	1.2	Hourly Charge-Out Rate (Exc. VAT)
1.3	All Roles	1.4	£40



SCHEDULE 2
MODEL CANCELLATION FORM

(Complete and return this form only if you wish to withdraw from the Contract)

To: Dolphin Stairlifts (South West) Ltd of 5 Providence Court, Pynes Hill, Exeter, Devon EX2 5JL

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract for the supply of the following service(s):

Ordered on [*] / received on [*]:

Name of Consumer(s):

Address of Consumer(s):

Signature of Consumer(s): (only if this firm is notified on paper)

Date:

[*] Delete as appropriate