

1 Definitions

Business Day refers to any day other than a Saturday, Sunday, public holiday or 26, 27, 28, 29, 30 or 31 December, and 1st of January.

Completion is achieved when the Works are capable of use for the purposes required under the Contract and have passed all required tests, is free from any known Defects, and the Contractor has provided all the required documents and made good the Site and surroundings.

Contract is the agreement between the Parties for the performance of the Works comprised this Agreement, the Quotation and any other annexures to this Agreement.

Contract Price means the charges for the Goods and Services as set out in the Quotation (broken down as per the milestones in clause 2.11) as may be adjusted by variations or under clause 2.11 or otherwise in accordance with the Contract.

Defect is any aspect of the Works that does not conform with the Contract.

Goods are all goods or materials to be provided to the Customer under the Contract.

Installation Commencement Date is the date in the particular or determined in accordance with clause 2.2(a).

Parties are "the Contractor" and "the Client".

Quotation is the written quote provided by the Contractor to the Client for the Works as annexed at Schedule 1 to this Agreement.

Site is the lands and other places made available to the Contractor by the Client for the purposes of the Contract.

Services are the installation of the Goods, or any other services the Contractor provides to the Customer under the Contract.

Variation is any change to the character, form, quality, and extent of the Works instructed or accepted in writing by the Client. A Variation shall not invalidate the Contract.

Works are the whole of the work and Services to be carried out and Goods to be provided by the Contractor under the Contract.

Terms defined in the Contract Particulars have that meaning.

2 Terms and Conditions

2.1 General

2.1.1 State of Victoria

Where Goods are supplied and installed in VIC 2.1(a)-(c) apply and, the VIC Government's Supplier Code of Conduct (VIC Code), the VIC Industrial Relations Guidelines: Building and Construction Procurement (VIC Guidelines) and the VIC Government Procurement Policy Framework apply to the Contract.

2.1.2 State of Queensland

Where Goods are supplied and installed in QLD, The QLD Government's Supplier Code of Conduct (QLD Code), the QLD Industrial Relations Guidelines: Building and Construction Procurement (QLD Guidelines) and the QLD Government Procurement Policy Framework apply to the Contract.

2.1.3 State of New South Wales

Where Goods are supplied and installed in NSW 2.1(a)-(c) apply and, the NSW Government's Supplier Code of Conduct (NSW Code), the NSW Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) and the NSW Government Procurement Policy Framework apply to the Contract.

2.2 By undertaking to perform the works, The Contractor warrants it is not precluded from entering the contract and accepting the work under the Contract and agrees that it will be taken to have read and understood, and that it will comply with, the Codes & Guidelines of the state in which the works are completed.

- The Contractor agrees to support skills development in the construction of the Works.
- The Parties are to do all they reasonably can to co-operate in all matters relating to the Contract. Unless otherwise instructed or agreed, both parties have within 10 Business Days to arrange amendments.
- The Parties consent for notices and communications to be by electronic communication in accordance with the Electronic Transactions Act 2000.
- This Contract must be construed in accordance with and governed by the laws of the state of Australia where the Goods are installed. To the extent that the Australian Consumer Law applies 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 Services.
- To the extent permitted by law the liability of the Contractor is otherwise limited at the Contractor's discretion to any one or more of the following (and the Client releases the Contractor from any and all other claims against the Contractor arising out of or in relation to the Goods or Services provided under the Contract):
 - replacement of the Goods or supply of equivalent Goods and re-supply of the Services;
 - payment of the cost of replacing the Goods or of acquiring equivalent Goods and/or re-supply of the Services, by credit to the Clients account, in cash or by cheque at the Contractor's discretion; or

- (iii) repayment of any part of the Contract Price for the Goods or the Services which has been paid by the Client, by credit to the Client's account, in cash or by cheque at the Contractor's discretion; and
- (iv) any liability of the Contractor to the Client under the Contract is reduced proportionately to the extent caused or contributed to by the Client, its
- (v) officers, employees, agents, contractors and related entities.
- f) The Parties may only change the terms and conditions of this Contract by written agreement.
- g) The Contractor reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition, The Contractor may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices.
- h) If the Contractor refers the matter to a debt collection agency, the Client will, in addition to the outstanding account also be liable for interest (at the current Commonwealth Bank of Australia commercial lending rate) and all recovery costs associated with such action.
- i) The Client may not assign or otherwise transfer rights or obligations under the Contract without the prior written consent of the Contractor and any purported assignment or transfer contrary to this clause will be invalid.

2.2 Site and Access

- a) The parties must agree in writing, dates for access both for the Contractor to assess the prospective lift location (if necessary) and the Installation Commencement Date and the Client shall allow the Contractor access to sufficient of the Site on the agreed dates for these purposes.
- b) In the instance of a residential install, it is the responsibility of the Client to ensure that an approx. area of 3sqm within the install vicinity is blocked off during installation. This means no access for any other personnel other than the Contractor staff should be permitted unless otherwise authorized by the Contractor.

2.3 Materials and Work

- a) Unless otherwise specified, the Contractor will undertake all necessary supply, install, commission, and testing for the Works as per the quotation, and will only use Goods which are new (unless otherwise specified) and free from Defects.
- b) The Contractor is to use standards of workmanship and work methods which conform with the Contract, relevant Australian Standards, codes of practice and the lawful requirements of any authority.
- c) The Client must prior to the lift being placed into manufacture
 - i. review drawings and other information provided by the Contractor to ensure that the Goods when installed are fit for the purpose required by the Client. The Contractor is required to answer all queries regarding the drawings and information provided to facilitate the Client review.
 - ii. Provide a signed copy of the Drawings
 - iii. Any subsequent changes to the Works will be assessed as variations under the Contract.
- d) The Client must ensure that it complies with all Client responsibilities as set out in the Contract.
- e) Nothing in the Contract creates any intellectual property in the Goods and the Client must not represent to any party that it has any such intellectual property rights nor shall the Client attempt to reverse engineer or otherwise modify any intellectual property in the Goods.

2.4 Variations

- a) The Contractor will be entitled a Variation where the Contractor incurs cost or delay due to a site condition that could not reasonably have been expected or an unexpected change in statutory requirements, due to the Client failing to comply with Client responsibilities as set out in the Contract or due to a suspension under the Contract not caused by the Contractor.
- b) The Contractor in assessing the time and cost impacts under clause 2.4(a) must use reasonable market costs (based on current market conditions) and take reasonable steps to mitigate the time and cost impacts. The Contract Price and Completion Date will be adjusted by the variation in necessitated under clause 2.4(a).
- c) The Client may request a variation in writing. Where the Client request a variation the Contractor will notify the Client whether or not the variation can be carried out (the Contractor may refuse a variation where the variation could be carried out but to do so would cause unreasonable delay or inconvenience to the Contractor). If the variation can be carried out the Contractor will submit a proposal for a Variation within 5 Business Days setting out the cost and time impacts.
- d) Within 10 Business Days after receiving the Contractor's proposal for a Variation, the Client is to notify the Contractor whether (or not) the proposal is accepted and proceed with signing and returning the provided variation proposal without amendment. The Contract Price and Completion Date will be adjusted by the signed accepted variation proposal.
- e) If the parties wish to negotiate then a new variation proposal must be prepared for acceptance. No handwritten amendments or notes by the Client on a variation proposal will be binding unless countersigned by the Contractor. The contractor is not bound to negotiate and if the Client does not accept a proposal the Contractor may refuse to carry out a variation.
- f) The Contractor is not required to carry out a variation unless it receives a signed variation proposal that complies with this clause and will have no liability to the Client in circumstances where this requirement is not met.
- g) The Contractor will take all reasonable steps to carry out variations concurrently with other work.

2.5 Time for Completion

- a) The Completion Date is as stated in the Contract Information.
- b) The Client is to notify the Contractor if it expects to be delayed in any aspects that will affect the prospective location for lift install, including the Installation Commencement Date.

- c) The Contractor will be entitled to an extension of time if delays affect the previously agreed Completion Date, for a variation, for a suspension under the Contract not caused by the Contractor or where the Contract otherwise provides for an extension of time or extension to the Completion Date.
- d) If the Contractor is delayed for reasons not caused or contributed to by the Client the Contractor will notify the Client.
- e) If the delay in (d) extends the Completion Date by greater than 12 months the Client may terminate the Contract and will be refunded any payments made or be provided with or retain Goods paid for at the election of the Client.
- f) If a delay caused or contributed to by the Client extends the Completion Date by greater than 12 months the Contractor may terminate the Contract and the Client be provided with or retain Goods paid for.
- g) The Client has no entitlement to costs for any delay or disruption other than as specified in this clause.

2.6 Defects

- a) The Contractor will make good any Defect evident during installation, when it becomes apparent.
- b) At any time during the Defects Liability Period, the Contractor will make good a Defect within an agreed period or if no period is agreed, as soon as reasonably practicable and at a time convenient to the Client (subject to freight for damaged items).
- c) The Client may, in its absolute discretion, propose to accept the Works with any specified Defect not made good, on terms agreed by the Parties, which may include a discount on the Contract Price.
- d) For the avoidance of doubt, where Works are provided within a tolerance range specified in the Contract, in an Australian Standard or code or legislative requirement, this will not be a Defect.
- e) The Contractor will not be responsible for any loss, damage or reduced performance of the Goods or lift, where the Client has not complied with the relevant manuals or documents provided with the lift, including maintenance and capacity limits.

2.7 Disputes

- a) If a Party is dissatisfied with an act or omission of the other Party in connection with the Contract then, within 20 Business Days after the act or omission, the dissatisfied Party is to notify the other Party in writing of a dispute. The notification is to include the legal and factual basis of the dispute.
- b) The Parties are to confer to try to resolve the dispute. If the dispute is not resolved within 20 Business Days, then the Parties are to attempt to agree upon an independent expert to resolve the dispute and the terms for the expert's engagement. If the Parties cannot agree on an expert within a further 15 Business Days, then either may request the Chief Executive Officer, Australian Disputes Centre (<https://www.disputescentre.com.au/>) to nominate an expert.
- c) The Parties are to share equally the expert's fees and out-of-pocket expenses, including any security required for the expert's fees. Each party is to otherwise bear its own costs and share equally any other costs of the process.
- d) Within 15 Business Days after the appointment of the expert, the notifying Party is to make its submission on the dispute to the expert.
- e) Within 15 Business Days after receiving a copy of that submission, the other Party is to make its submission in response, if any.
- f) The expert may request further information from either Party. The Party must respond within 15 Business Days after receiving the request.
- g) The Parties are to treat each determination of the expert as final and binding and give effect to it.

2.8 Suspension

The Contractor may instruct the Client that works will be suspended if payments due under the Contract are not paid in full or if the Client does not comply with the Client responsibilities under the Contract. Works will recommence within a reasonable period after payment is made in full or Client responsibilities have been met. The Contractor will have no liability to the Client for costs loss or damage incurred by the operation of this clause. All reasonable delay and costs incurred by the Contractor will be a variation and the cost will be added to the Contract price and the Completion Date will be extended by the delay.

2.9 Termination by The Contractor

If Client is breach of an obligation under the Contract (including non-payment within the time allowed by the Contract) and the Client either fails to give a satisfactory written response within 5 Business Days after receiving a notice from the Contractor setting out the breach, then:

- a) the Contractor may immediately terminate the Contract by notice in writing to the Client, in which case the respective rights and liabilities of the Parties shall be the same as they would be at common law if Client had wrongfully repudiated the Contract; or
- b) the Contractor may suspend and clause 2.8 will apply. If the breach remains unrectified for more than 14 days after suspension then the Contractor may terminate at any time immediately effective on written notice and clause 2.9(b) will apply.

2.10 Manufacturer's Warranty Conditions

- a) In this clause "Warranty" means manufacturer's warranty.
- b) The Warranty commences from the date of Completion for a duration of 12 months (or such longer period as may be provided by the manufacturer).
- c) Warranty does not include wear and tear, user misuse, or deterioration.
- d) A copy of the Warranty will be provided to the Client. Refer to Warranty for further Terms and Conditions
- e) All warranty claims are to be addressed to services@directlifts.com.au or contact 1300 240 298.
- f) Any call outs prior will be attended to during business hours. After hours will only be attended to in the case of an entrapment. Costs will be free of charge if it's a product fault. Some faults such as stop button pushed in, incorrect usage will be chargeable at applicable rates. Call out fees for the Contractor will apply in the event that such costs are not covered by the manufacturer.

2.11 Payments

- a) Payment is to be made by way of milestones as below:
 - **10% Drawings:** Upon Payment of Drawings Invoice, The Contractor will issue the "For Review" revision of the drawings for your lift as per provided specifications.
 - **50% Manufacture:** Manufacturing commences upon payment of Drawings and Manufacture Invoices as well as signed drawings.
 - **30% Arrival to Warehouse:** Payment is due prior to delivery to site. Invoice will be issued approximately 30 days prior to expected delivery date.
 - **10% Practical Completion:** Practical Completion is the stage when all major work is finished, with only minor defects or omissions that do not impact functionality. Upon payment, the lift will be handed over and ready for use
- b) Invoices must be paid within 14-days of issue to the Client.
- c) Outstanding invoices will be subject to interest of 2% (applied per week from due date of invoice) of the invoice total.
- d) Delays in payments at any stage will result in an extension the proposed Completion Date.
- e) All lifts and platforms awaiting commissioning exceeding 1 month from installation are subject to interest on any outstanding balances. Lift will be commissioned, and certification provided following payment of all outstanding amounts including interest as per clause 2.1(h).
- f) The Contract Price for Manufacture will be held for a period of 3 calendar months from acceptance of the Quotation. If the Contract Price for Manufacture is not paid within that three months, then the Contract Price for Manufacture will be adjusted to the manufacturers adjusted costs (if any) at the date that the Client is able to make payment. The Contractor will provide all reasonable documentary evidence of manufacturers adjusted costs.
- g) The Client acknowledges that the Contract Price for Manufacture represents a direct out of pocket cost and the increase is necessary to cover any additional costs that the Contractor will incur due to manufacturers price increases after the above stated period. The increase in Contract Price for Manufacture may include increases in actual cost due to increase in foreign exchange cost to the Contractor and increase in the cost of transportation charged by the manufacturer as well as the costs of physical manufacture.
- h) Once the Goods are received from the manufacturer the Contractor will store the Goods at their warehouse.
- i) Payment of the Pre-Delivery invoice within 7 days of lift arrival at the contractors' warehouse will entitle the client to 4 weeks storage at no charge.
- j) If it is necessary for the Goods to be stored by the Contractor for any longer than 4 weeks (and it is not due to the Contractor's fault), the Client must pay the Weekly Storage Fee in the Contract particulars for each additional week (in full or in part) that the Contractor is required to store the Goods. The Weekly Storage Fee will be charged as a variation to the contract price.
- k) If payment of the Pre-Delivery invoice is not received within 7 days of lift arrival at the contractors warehouse, then the weekly storage fee noted in the contract particulars will be charged as a variation to the contract price from the date of arrival at the contractors warehouse.

2.12 Communication and Notices

- a) The Client must ensure that the Client Representative is available at all times that Works are being undertaken on Site. Communications between the parties may only be between the Client Representative and the Contractor Representative as set out in the Contract Particulars. The Client must ensure that no instructions are given by any other person and that all communications are given to the Contractor Representative. If the Client gives instructions or allows any party other than the Client Representative to represent that they are authorised to give instructions then the Client will be liable for any delay or cost incurred by the Company.
- b) All verbal requests or instructions from the Client must be confirmed in writing within 24 hours. No verbal instruction will be binding unless confirmed in writing and accepted by the Contractor in writing. Where the Client makes a request in writing the Contractor will confirm in writing whether it can be achieved or not (and where not what if anything could be achieved). Once agreed both parties must sign agreed terms. This clause must be read with clause 2.4 and to the extent applicable the requirements of clause 2.4 will take precedence.
- c) Written communication may be given in the following forms and shall be deemed duly given or made in the case of:
 - (i) delivery in person, when delivered;
 - (ii) delivery by post an Australian address the 3rd Business Day after posting;
 - (iii) email to the address of the parties representative at the time the email becomes capable of being retrieved by the addressee (not the automatic delivery confirmation report generated by the sender's email system), except where the sender receives notice that the email was undelivered or unsuccessful, or receives an out of office notice from the recipient, in which case, the email will not be delivered under the Contract.
 - (iv) Where notice is given in person or electronically and is received after 4:00 pm on a Business Day or on a day that is not a Business Day at the place of receipt, such notice will be deemed to have been received on the next business day at the place of receipt.

2.13 Personal Property Securities Act

The Client acknowledges that unless payment has been made in full and installation completed, the Client has no security interest in the Goods and will not assert any right in or register or attempt to register any interest in the Goods under the *Personal Property Securities Act 2009* (Cth) (PPSA). The Client agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Contractor asks and considers necessary for the purposes of ensuring that a Security Interest under the PPSA is enforceable, perfected and otherwise effective and enabling the

Contractor to exercise rights in connect with a Security Interest and/or apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest.

3 Client Responsibilities

It is the responsibility of the Client (which includes where the Client is a builder or has engaged a builder for other elements of construction) to ensure that the below have been achieved. A failure to do so may be a breach of the Contract:

3.1 Works Establishment

- Provide accurate timeframes for availability to undertake the Works at Site so that the Contractor can manage manufacture, delivery, and installation stages.
- Ensure that all required authorisations to undertake work at the Site have been approved.
- If the lift required is applicable to the Disability Discrimination Act (DDA), all required documentation has been received and provided to the Contractor (where required).
- All information provided, such as names, numbers, email addresses and postal addresses are correct and if details change, notifications should be provided to The Contractor within 10 business days of amendment.
- The Contract has been approved and signed prior to commencement of works, including final drawings.
- Once drawings have been finalised, no amendments can be made. Ensure that all amendments have been added prior to signing off on drawings.
- All revisions after signing are "Issued for Construction/Issued for Production".
- Ensure that you have provided the correct dimensions, finishes and requirements such as required Australian Standards prior to finalising drawings. Design Certifications available to assist your certifier.

3.2 Delivery to Site and Installation

- Ensure that the correct Installation Commencement Date has been provided and update if altered within 10 (ten) Business Days once known.
- Delivery will be arranged once Pre-Delivery Invoice has been paid. Please allow up to 2 (two) weeks for arrangement of delivery to site once payment has been finalised.
- Site access and delivery requirements are to be provided to The Contractor at least 1 (one) week prior to delivery. Any fees incurred due to incorrect information or failure of delivery will be the responsibility of the Client.
- Any applicable OH&S requirements or certification requirements are to be provided at time of Contract execution.
- The Client is responsible for all traffic control/management requirements at the Site.
- The Contractor can provide horizontal movements upon request (pallet jack etc). It is preferred that this be available at time of delivery and installation to allow for prompt movement and works.
- Surfaces to lift assembly point (within 10 metres from shaft) are required to be free of debris and materials/goods.
- If Goods are to be stored on Site, it is the responsibility of the Client to ensure the security of the goods, inclusive, but not limited to, a moisture free environment. If lift is exposed to the elements while stored on Site, any corrosion, rust, or related issues are the responsibility of the Client. Associated costs and delays will be the responsibility of the Client.
- Storage area is recommended to be within 10 (ten) metres of the shaft to allow for prompt assembly but can be stored in an undercover area and moved to an area 2 (two) car bays wide (approximately 25sqm) for assembly and installation.
- Any damages incurred (other than by The Contractor) during the time that the lift is on Site is the responsibility of the Client and all associated costs incurred shall be worn by the Client.

3.3 Lift Shaft/Void

- Lift shaft is to be free of debris, moisture and meet specifications prior to installation. Any delays borne by the above will result in a delay to Completion and may be subject to additional fees, which will be paid by the Client.
- Unless otherwise specified for external use, no portion of the lift will be exposed to the elements.

3.4 Fixings

It is vital that all associated elements at the Site meet Building Codes. Any deviations that subsequently affect the lift will be the responsibility of the Client.

3.5 Scaffolding

Unless specified, the cost of scaffolding has not been included in the price. It is the responsibility of the Client to ensure that this has been accounted for prior to commencement on site. The Contractor can provide scaffolding at an additional cost. If scaffolding is not arranged prior to commencement on Site, Works may be delayed. All associated costs will be worn by the Client.

3.6 Electrical and Hydraulic

- Unless specified at time of sale and approval from management, no other services are permitted in the lift shaft. E.g. Storm water, Fire pipes, wiring other than for the lift.
- Conduits required to transport electrical and hydraulic cables from the control cabinet should be at least 100mm and include sweeping bends.
- It is the responsibility of the Client to ensure that permanent power is available at time of Completion. If power is not available, Completion cannot take place.
- The lift control cabinet is required to have a telephone point. Residential properties may be a continuation from the main house line. An autodial phone must have a dedicated line.

3.7 External and internal door and button finishings

- a) Unless otherwise specified, door rails/handles are to be provided by Client.
- b) Landing buttons, which are installed into the wall, will require completing by the Client.
- c) Fire rated doors are not to be painted. If painted by Client, this will void the certification.
- d) Unless otherwise stipulated and agreed prior to execution of the Contract, Client to finalise penetrations and sills.

3.8 Control Box

- a) The location of the Control Box cabinet should be situated on the lowest level and in a clear area in front of the lift to allow for easy access. If a different location is required, ensure this is discussed with your consultant.
- b) It is recommended that the cabinet be painted as components are not weatherproof and will be subject to corrosion.

3.9 Site establishment, facilities, and general requirements

- a) Unless otherwise specified, lift is not to be used as a builder's lift at any stage. Any damages incurred by use of others will be subject to a fee which will be worn by the Client. This may also affect the warranty and LMA.
- b) Toilets, kitchen facilities and bins are to be provided by Client. Large rubbish removal can be provided by the Contractor upon request. May be subject to variation.
- c) Upon Completion, it is the responsibility of the Builder to ensure all items have been covered. Completion checklist will be provided, and minor defects list shall be completed if applicable. Both the installer and Client will need to sign off on this list for Completion to be finalised.
- d) Unless otherwise indicated, protection blankets or other protective materials have not been included in the price.