

# Standard Purchase Terms and Conditions

Riyadh, 25 May 2021

## 1. DEFINITIONS. ORDER AND AGREEMENT.

a. "Buyer" means the entity issuing the Order, and any affiliates, subsidiaries, successors or assigns thereof. "Seller" means the person, firm or company to whom the Order is addressed. "Materials" means all the products and/or services to be supplied by Seller under the Order. "Order" means the purchase order issued by Buyer for the supply of Materials, being it written or electronic document, and may also include particular shipping instructions and/or other specifications required by Buyer for the Materials.

b. These terms and conditions, together with the Order, constitute an offer by Buyer to purchase the Materials from Seller pursuant to the terms and conditions described herein. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. Acceptance of any shipment of the Materials shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller.

c. This offer shall become an "Agreement" upon acceptance by Seller. Seller shall be deemed to have accepted this offer by commencement of performance called for in the Order, by delivery of the Materials to Buyer, by written acceptance or confirmation of this Agreement, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Buyer hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of this Agreement unless specifically agreed to in writing by Buyer.

## 2. SALE OF MATERIALS.

a. Seller agrees to sell, transfer and deliver the Materials to Buyer for the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof and any other conditions as may be included under the Order.

b. Buyer agrees to purchase the Materials, subject to all of the covenants, terms and conditions hereof, and to pay Seller the purchase price set forth in the Order. Typographical and other clerical errors in the Order are subject to correction. Buyer reserves the right at any time to modify the Order

upon notice to Seller. Upon such notice, Buyer and Seller shall negotiate an equitable adjustment in price and/or time of performance. Buyer shall have the right to stop all or part of the work under the Order or cancel any future delivery of any Materials upon notice to Seller.

c. Seller agrees to obtain from Buyer an Order number for any and all Orders of goods and/or services. Seller further agrees it will clearly reference the Order number as well as the delivery note on the applicable invoice(s). Seller acknowledges that any invoice submitted to Buyer that does not clearly reference Buyer's corresponding Order number may be considered invalid by Buyer and may result in delayed payment.

## 3. PURCHASE PRICE AND TERMS OF PAYMENT.

a. Materials shipped against this Agreement shall be invoiced at the price set forth in the Order. Unless otherwise specified on the Order, payment of the purchase price shall be due 60 days after the later of Buyer's receipt of Seller's correct invoice for such shipment or the date on which the Materials are received by Buyer. Seller agrees that it will take no adverse action against Buyer for any invoices not paid resulting from Seller's failure to obtain or clearly reference the Order / delivery note numbers on the applicable invoices or accurately invoice Buyer.

b. The purchase price for the Materials shall include all taxes, customs duties, customs fees or other governmental charges due with respect to the Materials. Buyer shall, however, pay for any taxes that it is statutorily required to pay. Seller shall provide Buyer with documentation satisfactory to Buyer that establishes Buyer's statutory liability to pay such taxes. If Seller fails to provide such documentation, Buyer shall not be obligated to pay any such taxes.

c. Seller shall be responsible for all shipping and insurance costs, including without limitation, packing, crating, cartage and freight costs, as per the Order.

d. Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer.

## 4. SHIPMENT, DELIVERY AND ACCEPTANCE.

a. Seller shall deliver the Materials according to the Incoterm as agreed in the Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Materials for shipment. Any loss or damage, whenever occurring, which results from Seller's improper packaging or

crating shall be borne by Seller. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Materials shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller.

b. All items shipped shall be properly identified with Buyer's Order number and any Order item number or other identification number shown. Seller accepts full responsibility for the completeness and accuracy of all transport and customs documentation ("Shipping Documents") provided to Buyer. Seller accepts any liabilities resulting from incomplete or inaccurate data on Shipping Documents or failure to comply with any import or export requirements.

c. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Materials after the same have been delivered to Buyer's premises. Buyer shall not be deemed to have accepted any such Materials until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Materials, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's expense, including all shipping costs. Buyer's failure to inspect or reject Materials, or payment for Materials, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

#### 5. WARRANTY PROVISIONS.

a. Seller hereby warrants to Buyer that, in addition to any and all express and implied warranties provided under the applicable laws of Kingdom of Saudi Arabia, the Materials: (i) shall be provided in a competent, professional manner and in accordance with the highest standards and best practices of Seller's industry; (ii) shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (iii) shall conform to and perform in accordance with all specifications, drawings, samples and other requirements referred to in the Order and provided by Seller; (iv) when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (v) shall be manufactured, produced, labeled, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations, as from time to time amended, modified and/or superseded.

b. Seller shall be obliged to ensure compliance with the TK Elevator Supplier Code of Conduct,

to be downloaded from the following link:

<https://www.tkelevator.com/global-en/company/sustainability/partners/>

c. Seller shall give Buyer reasonable advance written notice of any production change related to the Materials, including but not limited to any change in the manufacturing process, formulation, raw materials or production location. For any change that could affect performance of the Materials, Seller shall complete any reasonable qualification processes of Buyer and address Buyer's concerns about the change.

#### 6. DEFAULT.

a. Seller shall be deemed to be in default hereunder if it violates any of the terms hereof or fails timely to perform any of its covenants, duties or obligations hereunder, or if it performs or fails to perform any other act, whether pursuant to this Agreement or otherwise, which gives Buyer reasonable grounds to feel insecure with respect to Seller's future performance hereunder.

b. Upon default by Seller hereunder, Buyer may exercise any or all of the following rights and remedies, in addition to such other rights and remedies as may be provided hereunder or under applicable law:

- (i) Reject or revoke acceptance of any or all of the Materials, whether or not such Materials are defective and whether or not the condition of delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default; and/or
- (ii) Terminate this Agreement without any obligation whatsoever with respect to Materials not yet delivered to Buyer at the time of such termination. Buyer's decision to pursue any one such remedy shall not be deemed to be an election not to pursue any other remedy at the same time or at any other time.

#### 7. INDEMNIFICATION.

a. Seller agrees to indemnify and hold Buyer harmless from and against any and all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with Seller's breach of any of its obligations hereunder.

b. Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which Buyer may suffer or incur (including reasonable attorneys' fees) arising out of, relating to or concerning any claim, action or allegation that any of the Materials (or the use of same in an intended manner) infringes any patent or intellectual property rights claimed by any third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly

after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller's sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceeding.

#### 8. GENERAL PROVISIONS.

a. In order to assess Seller's performance under and in compliance with this Agreement, including but not limited to Seller's compliance with respect to pricing, specifications, warranties and certifications, Buyer and/or its designated representative(s) shall have the right upon reasonable notice to Seller to access and audit Seller's facilities, books, records, goods and services related to the Agreement and Materials. The costs of any such audit will be paid by Buyer, unless the audit reveals any nonconformance by Seller, in which case Seller will promptly reimburse Buyer for the reasonable costs of the audit.

b. Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities and other items that are necessary to meet the Order requirements. Time is of the essence in Seller's performance. Seller must immediately notify Buyer whenever Seller has knowledge of an actual or potential delay to the timely performance of the Order. In the event of Seller's refusal or failure to meet the delivery date(s) specified in the Order, Buyer may, without limiting its other rights and remedies, direct expedited routing and charge excess costs incurred thereby to Seller, or cancel all or part of the Order.

c. This Agreement shall constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof and supersedes any prior written or oral understandings with regard thereto. No purported amendment, modification or waiver of any provision of the Agreement shall be binding on Buyer unless set forth in a written document signed by an authorized representative of Buyer. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of the Agreement between Seller and Buyer or of the same circumstance or event upon any recurrence thereof.

d. Seller may not assign or subcontract any of its rights or obligations without Buyer's prior written consent. Seller is responsible for the performance or non-performance of any subcontractor and will indemnify, defend and hold harmless Buyer from and against all claims, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any subcontractor's acts or omissions.

e. If any provision hereof is held to be unenforceable by the final order of any court of competent

jurisdiction, such provision shall be severed herefrom and shall not affect the interpretation or enforceability of remaining provisions hereof.

f. This Agreement shall be governed by and interpreted in accordance with the laws of Kingdom of Saudi Arabia, without reference to any conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Seller hereby consents to the exclusive jurisdiction and venue of the Kingdom of Saudi Arabia courts located in Riyadh as the exclusive forum for the resolution of disputes.

g. Seller shall not advertise, publicly announce or provide to any other party information relating to the existence of this Agreement or use Buyer's name in any format for any promotion, publicity, marketing or advertising purpose, without Buyer's prior written consent. All information, drawings, material, goods, equipment, apparatus or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, and also all knowledge of any business relationship between Seller and Buyer, shall be treated by Seller as confidential proprietary information of Buyer and shall not be disclosed or made available to others by Seller without prior written permission by an officer of Buyer. Seller also agrees not to use any of such information, drawings, material, goods, equipment, apparatus or documents for the manufacture or production of products or components for any other party or for Seller. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (a) is already known to Seller at the time of its receipt from Buyer as shown by Seller's records, (b) is or subsequently becomes available and accessible to the public through no fault of Seller, or (c) is disclosed to Seller by a third party on a non-confidential basis.

h. The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided to Seller by Buyer or produced by Seller in submitting a bid or estimate or in carrying out an Order for Buyer shall be vested in Buyer, and Seller agrees to return or deliver such tangible property to Buyer upon request. Seller hereby expressly assigns to Buyer all copyrights in and to any literary property produced by Seller for Buyer.

i. In the event the Agreement relates to consulting services, the Seller shall be considered a consultant and every work or idea created or acquired by or on behalf of the Seller for Buyer (past and future) shall be considered a "work made for hire" on behalf of the Buyer. It is the intent of the parties that Buyer shall have unrestricted ownership in and to all such works and to any derivative works, without further compensation of any kind to the Seller. To the extent

that the law would fail to automatically vest in Buyer the full unrestricted ownership of all such works under “work for hire” treatment or similar concepts, the Seller hereby assigns to Buyer the copyright and any and all other rights in and to every such work including any derivatives, and the Seller waives any claim of moral right that it may have in or in connection with such work.

j. Buyer and Seller acknowledge that they are each independent parties and neither shall be deemed an agent or representative of the other or have authority to bind the other in any manner whatsoever.

k. During the term of this Agreement and one year following completion of final delivery of the Materials, Seller agrees that it will not, without Buyer’s prior written consent, directly, or indirectly through third parties, employ, solicit, engage or retain the services of Buyer’s employees or personnel.

#### l. Anti-Corruption Clause

Seller shall note and shall procure that in connection to this Agreement neither the Seller itself, nor its employees or agents shall offer, give or agree to give to any person or accept or agree to accept from any person whether for itself or on behalf of another person and either directly or indirectly any gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice under the laws involved, including so-called facilitation payments to public officials (“Anti-Corruption Obligation”). Seller shall disclose in writing to Buyer the details of any breach of the Anti-Corruption Obligation. This shall be an ongoing obligation. Seller shall:

- at all times maintain strict compliance with the Anti-Corruption Obligation;
- monitor its employees and agents to ensure their compliance with the Anti-Corruption Obligation;
- make clear, in all its dealings on behalf of Buyer, that it is acting in accordance with the Anti-Corruption Obligation;
- disclose in writing any conflict of interest or any kind of personal relationship with an employee of Buyer. This shall be an ongoing disclosure obligation.

#### m. Antitrust Clause

Seller in its assignment for Buyer shall at any time observe all applicable competition laws. Under no circumstances may Seller make arrangements which have as their objective or effect the prevention, restriction or distortion of competition. In particular, Seller shall neither agree upon a restraint of competition with competitors of the group of companies of the TK Elevator group (“competitors of TK Elevator”) nor in any other way induce a concerted market behavior between Buyer and competitors of TK Elevator.

Seller shall treat all competitively sensitive information

disclosed to him confidential. In particular, Seller shall neither disclose any competitively sensitive information entrusted to him by Buyer to competitors of TK Elevator nor disclose competitively sensitive information entrusted to him by competitors of TK Elevator.

Seller is obliged to address all questions of doubt whether or not a third party is a TK Elevator competitor and all questions of doubt whether or not an information is competitively sensitive or not to TK Elevator on its own initiative.

#### n. Audit Clause

1. Seller shall keep and maintain under its control full and proper documentation and records of all transactions and matters relating to the performance of this Agreement.

2. Such documents and records shall be retained by the Seller at all times during the term of this Agreement and for a period of at least 10 (ten) years after the expiration or termination of this Agreement.

3. During the term of this Agreement and for a period of at least 10 (ten) years after the expiration or termination of this Agreement, Buyer and its representatives shall have the right to enter the Seller’s premises at a reasonable time to examine and audit such documents and records and to make photocopies thereof or extracts there from and such right may be exercised by an independent firm of accountants or other professionals nominated by Buyer. Seller shall co-operate fully with Buyer and its representatives and any accountants or professionals nominated by Buyer in carrying out all such examinations and audit.

4. If a transaction should at any time be subject to any official investigation or pre-investigation including, but not limited to, tax, criminal or administrative investigations, Seller shall upon request by Buyer provide a written declaration to Buyer stating whether, to which extent, when, to which tax authority and under which file number Seller has accounted for the compensation received for a transaction.

Upon request by Buyer, Seller shall further provide a written declaration by the competent tax authority, alternatively by a financial auditor, confirming that the compensation received has been properly accounted for in the Buyer’s tax declaration

#### o. Seller Status Clause

1. Seller agrees and acknowledges that it has been retained as an independent contractor under this Agreement. Seller is responsible for and has control over all means, methods, techniques, sequences, procedures and coordination of all portions of the services/work/supplies to be performed or delivered under the Agreement, unless Buyer shall give specific written instruction concerning these matters.

2. Further, Seller is fully responsible for and has control over all means, methods, techniques, sequences, procedures and coordination of all portions of the services/work/supplies related to the safety of the Seller’s employees and any other persons in and about

the area in which Seller is performing the services/work/supplies.

p. Safety clause (only applicable for the provision of services)

1. Seller warrants that it takes all reasonable safety precautions with respect to its work, shall comply with all safety measures initiated by Buyer and with all applicable laws, statutes, ordinances, rules, regulations and orders of any applicable governmental agency or political subdivision for the safety of any persons or property.

2. Seller shall provide the following information prior to the commencement of any services/works, as and if applicable (only applicable for the provision of services):

a. Seller's personnel list for the job or work order together with a photocopy of work permits or identity or social security cards for all workers,

b. Photocopy of relevant licenses of the company and all workers,

c. Seller's proposals for operation, e.g. safe work method statements, including risk assessments,

d. Register and specification/licenses of tools/equipment'

e. Health & safety training records,

f. Accident insurance certificates, and

g. Other pertinent information.

3. If applicable, Seller shall appoint a health & safety coordinator which shall be the main contact person for Buyer with respect to any health & safety matters. Any change in the person of the health & safety coordinator must be communicated to Buyer in writing.

4. Seller warrants that, prior to performing any services/work pursuant to this Agreement, it will evaluate the safety and condition of the premises and will notify Buyer in writing within 24 hours of the discovery of any unsafe condition in place and will further prevent its personnel from entering into any such area or performing any services/work in or around any such area.

5. Seller warrants that only personnel which received proper health and safety induction training prior to the commencement of services/work shall perform any services/work and that only those Seller's personnel which have been specifically trained for the job enter the worksite and are not replaced by unregistered/untrained personnel.

6. Seller warrants that it will maintain detailed reports of all incidents and/or accidents involving personal injury including death! and/or property damage and shall submit copies of such reports to Buyer within 24 hours of any incident and/or accident.

7. Seller warrants its compliance with the 10 Safety Rules as outlined on <https://www.tkelevator.com/global-en/about-us/sustainability/supplier-information.html>

q. Data Protection Clause

The parties undertake to comply with the relevant data protection laws and regulations. The Subcontractor guarantees to comply with the obligations towards his customers or contractual partners in accordance with the relevant data protection regulations. Should a delivery or service constitute a data processing of personal data according to applicable data protection regulations, the parties shall conclude a data processing agreement. In the event of processing of personal data that does not constitute a data processing according to applicable data protection regulations, the parties shall ensure that the relevant legal requirements and, where applicable, agreements have been concluded. The Seller assures Buyer that it has obligated its employees to maintain data secrecy in accordance with the applicable data protection laws while providing the services for Buyer and provides Buyer with written evidence of this upon request.

The Seller shall ensure that the corresponding employees are duly informed of the said storage and use of their personal data for the said purpose. For more details, please see our Privacy Policy on our website [www.tkelevator.com](http://www.tkelevator.com).

r. Non-Assignment Clause

Seller shall not assign this Agreement or any amounts due or to become due thereunder to any third party and shall not subcontract the whole or any portion of this Agreement without the prior written consent of Buyer.

s. Termination Clause (only applicable for the provision of service)

If Seller at any time shall fail or refuse to supply sufficient properly skilled workmen or materials or equipment of the proper quality and quantity or fail in any respect to prosecute Seller's services/work with promptness and diligence and in accordance with the terms and conditions of this Agreement or is in breach of any warranty given in the abovementioned Safety Clause, Anti-Corruption Clause, Antitrust-Clause and the Audit Clause, Buyer, at its sole discretion and option, may terminate the Seller's right to complete the services/work under this Agreement by delivering written notice to the Seller. Thereafter, Buyer may take possession of the project which is the subject matter of the services/work, and all materials, tools, appliances and equipment of the Seller at the building site and through himself or others provide all labour, equipment, and materials necessary to prosecute the services/work on such terms and conditions that Buyer, in its sole discretion, shall deem appropriate. Buyer shall deduct the cost thereof, including without restriction, all charges, expenses, losses, costs, damages and attorneys' fees incurred as a result of Seller's failure to perform as set forth above from any money then due or thereafter to become due to Seller under this Agreement and shall retain the right to

prosecute an action at law or equity to enforce its rights under this Agreement. Seller further acknowledges that Buyer may decide to blacklist Seller for any future services/works in case of any breach of warranty pursuant to the Safety Clause.

2. Buyer may, at any time and without default of Seller, terminate the whole or any part of this Agreement for the sole convenience of Buyer. Seller agrees that upon any such termination, Seller's sole remedy shall be payment of the full value for all services/work performed in accordance with the terms and conditions of this Agreement less all payments Seller has received previously on account of such services/work performed. The Seller agrees to waive all claims for damages, including lost or anticipated profits, arising from or related to any such termination by Buyer.