

Melbourne Elevators
STANDARD TERMS and CONDITIONS

1 GENERAL

- 1.1 These conditions govern the supply of all goods and related services by Melbourne Elevators (ME) and its Related Corporations as defined in the Corporation Law, to any buyer.
- 1.2 These conditions prevail over any other conditions that may be communicated by the Buyer either in writing or orally and whether in an order, letter, tender document, negotiations or otherwise
- 1.3 These conditions may not be altered except by written agreement signed by an authorised officer of ME
- 1.4 The supply of goods and services will be performed during the normal working hours of ME

2 PRICES

- 2.1 The quoted prices for goods and services are in Australian dollars and include Australian sales tax, where applicable, but not other duties or taxes. The quoted prices will be altered to include any such other duties or taxes.
- 2.2 The quoted prices are based on rates of exchange, freight, handling, insurance, labour and material costs ruling at the date of the quotation. The quoted prices will be altered if any of those factors change after 30 days from the date of the quotation and before completion of the contract.
- 2.3 Except as specifically stated in the quotation, the quoted prices do not include goods or services supplied to the Buyer at the direction of a government inspector or other statutory officer. The quoted prices will be altered to include the price of such goods and services.
- 2.4 The Buyer is liable to pay the quoted prices as altered by these conditions.

3 PAYMENT

- 3.1 The Buyer must pay ME the quoted prices as altered by these conditions for goods and services supplied in accordance with the payment terms listed in ME's Quotation. Payment must be by way of cleared funds without deduction or setoff.
- 3.2 The Buyer must pay interest on overdue amounts calculated daily at a rate of 25% per year from the due date until the date of payment.

4 RISK AND TITLE

- 4.1 Risk in goods passes to the Buyer on delivery which is the time when the buyer receives the goods, but until the goods are paid for in full:
- (a) Title in the goods remains with ME; and
 - (b) ME may without notice stop goods in transit or retake possession of goods from premises owned or controlled by the Buyer and resell those goods and keep the proceeds

5 BUYER DEFAULT

- 5.1 If:
- (a) The buyer fails to pay when due any amount owing to ME;
 - (b) The Buyer breaches any other provision of the contract with ME and does not remedy the breach within 7 days after receiving a written request to do so;
 - (c) Any step is taken to enter into arrangement between the Buyer and its creditors;
 - (d) The Buyer ceases to be able to pay its debts as they become due or to carry on business;
 - (e) Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Buyers assets or business, then MEM may do all or any of the following (in addition to any other rights);
 - (f) Require the Buyer to pay immediately all amounts under all or any contract with ME invoiced but unpaid or to pay in advance of delivery of goods or performance of services;
 - (g) Suspend or cease supplying goods or services or both to the Buyer under all or any contract with ME; or
 - (h) Enter premises under the Buyers possession or control, repossess goods for which payment is overdue, resell them and keep the proceeds.
- 5.2 The buyer indemnifies ME against all expenses, losses, damages and costs including legal costs and disbursements that ME may sustain or incur as a result or indirectly of;
- (a) Any breach of the contract by the Buyer; and
 - (b) Any loss of or damage to goods while those goods are at the Buyers risk.

6 FORCE MAJEURE

- 6.1 The obligations of ME to perform in accordance with the contract will be suspended for the duration of any delay arising out of anything outside the control of ME, including but not limited to, fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage, failure or delay in transportation and act or omission of any government or government agency.
- 6.2 If ME's obligation to perform in accordance with the contract has been suspended for at least 3 months ME may terminate the contract with immediate effect by giving written notice to the Buyer.

7 EXCLUSIONS AND LIMITATIONS

- 7.1 This condition does not exclude or limit the application of any provision of any statute (including the Trade Practices Act) where to do so would;
- (a) contravene that statute; or
 - (b) cause any part of this condition to be void
- 7.2 ME excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would cause this clause to be void (Non-excludable Condition)
- 7.3 ME liability to the Buyer for breach of;
- (a) any express provision of the contract is limited to the lesser of;
 - (i) The price payable to ME for the goods or services in respect of which the breach occurred; and
 - (ii) The cost of providing the goods or services again; or
 - (b) any Non-excludable Condition is limited to providing, replacing or repairing goods or providing services again, except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which the liability of MEM is not limited under the contract.
- 7.4 Except where a Non-excludable Condition would be breached, ME will not be liable in any way to the Buyer whether under the law relating to contracts, torts or otherwise for any consequential, special, exemplary or indirect loss or damage suffered or incurred by the Buyer in any way.

8 ASSIGNMENT

- 8.1 The Buyer must not assign, transfer or otherwise deal with the contract or any part of it or any right or obligation arising out of it without the prior written consent of ME

9 NOTICES

- 9.1 Any notice will be deemed to have been duly given;
- (a) If sent by mail, 3 business days after posting
 - (b) If delivered by hand, on delivery; and
 - (c) If sent by facsimile transmission, on generation of an acknowledgement that the transmission has been successfully completed.

10 SEVERABILITY

- 10.1 If part or all of any provision of the contract is held to be invalid or unenforceable that part of the provision will be severed and will not affect the validity or enforceability of the remaining provisions.

11 GOVERNING LAW

- 11.1 The contract will be governed by the laws of the State in which the ME office issuing the quoted prices is located and each party submits to the nonexclusive jurisdiction of the courts of that State