



4B BRAIME GROUP

TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

1. **Basis of the Contract**

- 1.1 These Conditions apply to the contract for the purchase of the Goods and/or Services entered into by Supplier and Braime to the exclusion of all other terms and conditions including any terms and conditions appearing on the Supplier's Order acknowledgement, confirmation or quotation or which the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealings.
- 1.2 Without prejudice to clause 1.1, any terms or conditions contained in the Order will override the corresponding term or condition in these Conditions where a specific reference to the term or condition being overridden is made within such Order.
- 1.3 The Order constitutes an offer by Braime to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 1.4 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 1.5 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 1.6 Each Contract is a separate legal contract and contains all the terms agreed by the parties in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing. Each party acknowledges that in entering into a Contract it has not relied upon any matter not set out in it.

2. **Supply of the Goods**

- 2.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with their description and any applicable Goods Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Braime, expressly or by implication, and in this respect Braime relies on the Supplier's skill and judgment;
 - (c) perform in compliance with industry standards, any certificated standards applicable to the Goods and within any tolerances stated in the Order;
 - (d) be free from defects in design, materials and workmanship and remain so for twelve (12) months after first installation or use; and
 - (e) comply with all applicable statutory and regulatory requirements including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 2.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.



2.3 Braime shall have the right to inspect and test the relevant Goods at any time prior to Delivery, and if, following such inspection or testing, Braime considers that the relevant Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 2.1, Braime shall inform the Supplier and the Supplier will immediately take such remedial action as is necessary to ensure compliance.

2.4 Notwithstanding any such inspection or testing in accordance with clause 2.3, the Supplier will remain fully responsible for the relevant Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Braime shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

3. Delivery of the Goods

3.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach the Delivery Location (as defined below) in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) Braime will not return any packaging material unless specifically agreed otherwise. Where Braime agrees to return any such packaging material this shall be returned to the Supplier solely at the cost of the Supplier.

3.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within thirty (30) days of the date of the Order. Time shall be of the essence for date of delivery;
- (b) to Braime's premises at Hunslet Road, Leeds LS10 1JZ or such other location as is set out in the Order or as instructed by Braime before delivery ("**Delivery Location**"); and
- (c) during Braime's normal hours of business on a Business Day, or as instructed by Braime.

3.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.4 If the Supplier:

- (a) delivers less than the exact quantity of Goods ordered, Braime may at its sole discretion reject the Goods in their entirety; or
- (b) delivers more than 105 per cent of the quantity of Goods ordered, Braime may at its sole discretion reject the Goods in their entirety or reject the excess Goods only,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Braime accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

3.5 The Supplier shall not deliver the Goods in instalments without Braime's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Braime to the remedies set out in clause 7.1.

3.6 Title and risk in the Goods shall pass to Braime on completion of delivery.



3.7 If the Order provides for installation or it is otherwise agreed that the Goods will be installed, this shall form part of the Services and, in the absence of any agreed performance dates, the Supplier shall complete such installation as soon as reasonably practicable following delivery of the Goods at the Delivery Location.

4. Supply of the Services

4.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to Braime in accordance with the terms of the Contract.

4.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Braime.

4.3 In providing the Services, the Supplier shall:

- (a) co-operate with Braime in all matters relating to the Services, and comply with all instructions of Braime;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade and shall conform with all descriptions and specifications set out in the Service Specification;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that Deliverables will:
 - (i) conform with all descriptions and specifications set out in the Service Specification; and
 - (ii) be fit for any purpose expressly or impliedly made known to the Supplier by Braime, or held out by the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Braime, will be free from defects in workmanship, installation and design for twelve (12) months after first use by Braime (or Braime's customers (as the case may be));
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations, and ensure that the Services and Deliverables are in accordance with all applicable laws and regulation;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of Braime's premises; and
- (i) not do or omit to do anything which may cause Braime to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Braime may rely or act on the Services.

5. Risk, Title & Insurance of the Materials

5.1 The Materials shall at all times remain the property of Braime (or Braime's customer), and the Supplier shall have no right, title or interest in or to the Materials.

5.2 The Supplier shall:

- (a) keep all Materials clearly labelled and apart from any other materials and maintain Materials in good condition until returned to Braime;



- (b) keep the Materials at all times at the site to which the Materials were delivered and shall not move or attempt to move any part of the Materials to any other location without Braime's prior written consent;
- (c) not suffer or permit the Materials to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Materials are so confiscated, seized or taken, the Supplier shall notify Braime and the Supplier shall at its sole expense use its best endeavours to procure an immediate release of the Materials and shall indemnify Braime on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (d) not, without the prior written consent of Braime, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Materials or allow the creation of any mortgage, charge, lien or other security interest in respect of it; not exercise any lien over any Materials in its possession; and
- (e) deliver up the Materials promptly upon request and If the Supplier fails to do so, then Braime may without limiting its other rights or remedies enter the Supplier's premises and take possession of them.

5.3 The risk of loss, theft, damage or destruction of the Materials shall pass to the Supplier on delivery of the Materials to the Supplier's premises. The Materials shall remain at the sole risk of the Supplier for the term during which the Materials are in the possession, custody or control of the Supplier (**Risk Period**) until such time as the Materials are redelivered to Braime. During the Risk Period, the Supplier shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Materials to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Braime may from time to time nominate in writing; and
- (b) insurance against such other or further risks relating to the Materials as may be required by law, together with such other insurance as Braime may from time to time consider reasonably necessary and advise to the Supplier,

and shall ensure that Braime's interest in the Materials is noted on all such policy.

5.4 The Supplier shall give immediate written notice to Braime in the event of any loss, accident or damage to the Materials or arising out of or in connection with the Supplier's possession or servicing of the Materials as part of the Services.

6. Braime's Obligations

6.1 Braime shall:

- (a) provide the Supplier with reasonable access at reasonable times to Braime's premises and/or a customer's premises to the extent reasonably necessary for the purpose of providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and Braime considers reasonably necessary for the purpose of providing the Services.

7. Remedies

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Braime shall, without limiting its other rights or remedies, have the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;



- (c) to recover from the Supplier any costs incurred by Braime in obtaining substitute goods and/or services from a third party;
- (d) where Braime has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and/or
- (e) upon request, reimburse Braime for any additional costs, loss or expenses (including air freight costs) incurred which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Goods are not delivered and/or the Services are not performed by the applicable date, Braime may, at its option, claim or deduct a percentage of the price of the Goods and/or Services for each week's delay in delivery by way of liquidated damages as set out in the Order, up to a maximum amount as set out in the Order.

7.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2.1, then, without limiting its other rights or remedies, Braime shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by Braime in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by Braime arising from the Supplier's failure to supply Goods in accordance with clause 2.1.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 The Supplier shall keep Braime indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Braime as a result of or in connection with:

- (a) any claim made against Braime by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Braime by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against Braime for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

7.6 Braime's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7.7 This clause 7 shall survive termination of the Contract.



8. Charges & Payment

8.1 The price for the Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, as otherwise agreed in writing between the parties or, if no such agreement exists, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Braime. No extra charges shall be effective unless agreed in writing and signed by Braime.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Braime, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of Goods, the Supplier shall invoice Braime on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Braime on completion of the Services. Each invoice shall include such supporting information required by Braime to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, Braime shall pay each undisputed invoice (or the undisputed parts of each invoice as the case may be within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by Braime under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Braime, Braime shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If Braime fails to pay any amount properly due and payable by it under the Contract, except where an amount is overdue as a result of a bona fide dispute, the Supplier shall have the right to charge interest on the overdue amount at the rate of four (4) per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause 8.6 shall not apply to payments that Braime disputes in good faith.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Braime to inspect such records at all reasonable times on request.

8.8 Braime may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Braime to the Supplier under the Contract.

9. Intellectual Property Rights

9.1 In respect of the Goods and any goods or deliverables that are transferred to Braime as part of the Services under this Contract, including the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Braime, it will have full and unrestricted rights to sell and transfer all such items to Braime.

9.2 The Supplier hereby assigns to Braime with full title guarantee (free from all licence, charges and encumbrances) any Intellectual Property Rights arising out of the performance of any of the Services or design or creation of any bespoke Goods on behalf of Braime with the intent that the same shall vest in Braime upon creation. The Supplier shall execute all such documents and do all such acts as Braime requires in order to give effect to this clause 9. The Supplier shall deliver up any materials contain such Intellectual Property Rights, including all plans, specifications and designs, promptly upon request.



10. **General Insurances**

- 10.1 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance (as applicable) to cover the liabilities that may arise under or in connection with the Contract and shall, on Braime's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 10.2 If the Supplier fails to effect or maintain any of the insurances required under the Contract (where under this clause 10 or otherwise), Braime shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Supplier.

11. **Confidentiality**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. **Termination**

- 12.1 Without limiting its other rights or remedies, Braime may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of receipt of notice in writing of the breach; or
 - (b) the Supplier becomes insolvent and/or is made bankrupt, makes an involuntary arrangement with its creditors, enters into administration, go into liquidation and/or a receiver or other security holder is appointed over all or any part of the Supplier's assets or undertakings, ceases to or suspends all or a substantial part of its business (or threatens to) or any events having the same, similar or equivalent effect in any other jurisdiction.
- 12.2 Without limiting its other rights or remedies, Braime may terminate the Contract with immediate effect by giving written notice to the Supplier. If the Contract is terminated in accordance with this clause 12.2 in respect of Goods, Braime shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination which are to correspond to an applicable Goods Specification but such compensation shall not include loss of anticipated profits or any consequential loss provided the Supplier can clearly evidence the same and uses all reasonable endeavours to mitigate such costs.
- 12.3 In any of the circumstances in these Conditions in which Braime may terminate the Contract, where both Goods and Services are supplied, Braime may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

13. **Consequences of Termination**

- 13.1 On termination of the Contract or any part of it for any reason:



- (a) where the Services are terminated, the Supplier shall immediately deliver to Braime all Deliverables, whether or not then complete, and return all Materials. If the Supplier fails to do so, then Braime may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. General

- 14.1 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than fourteen (14) days, Braime shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.
- 14.2 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Braime. Braime may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 14.3 Any notice, claim or demand required to be served under or in connection with the Contract is to be provided in writing and will be deemed sufficiently given or served if delivered by hand or by first class post to the relevant party at the address specified within the Order addressed to a director of that party. Such notice will be treated as having been received if delivered by hand, on the day of delivery if delivered within Business Hours (or the following Business Day if delivered outside Business Hours) or on the second Business Day following delivery by first class post.
- 14.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.5 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 14.6 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.7 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.8 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.9 A person who is not a party to the Contract shall not have any rights under or in connection with it.



- 14.10 Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Braime.
- 14.11 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15. **Definitions & Interpretation**

- 15.1 The following definitions shall apply to these terms and conditions for the purchase of goods and services:

Braime	Braime Elevator Components Limited (a company registered in England and Wales with company number 01171825 whose registered office address is Braime Elevator Components Limited, Hunslet Road, Leeds LS10 1JZ); ¹
Business Day	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
Commencement Date	has the meaning set out in clause 1.4;
Conditions	these terms and conditions as amended from time to time in accordance with clause 14.10;
Contract	the contract between Braime and the Supplier for the purchase of the Goods and/or Services incorporating these Conditions and the Order;
Deliverables	all documents, products and any Materials developed or supplied by the Braime or its agents, contractors and employees as part of or in relation to the Services;
Goods	the goods (or any part of them) set out in the Order;
Goods Specification	any specification for the Goods (if any), including any related plans and drawings, that is agreed in writing by Braime and the Supplier;
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Materials	any and all materials (including raw materials), equipment and/or tools, supplied by Braime to the Supplier in the course of or in connection with the Supplier performing the Services;

¹ The correct company details for each subsidiary will need to be inserted here.



Order	Braime's order for the supply of Goods and/or Services as set out in, or attached to Braime's purchase order, or Braime's written acceptance of the Supplier's quotation, as the case may be;
Service Specification	the description or specification for Services (if any) agreed in writing by Braime and the Supplier;
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification; and
Supplier	the person or firm from whom Braime purchases the Goods and/or Services.

15.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.