

# Rubax Lifts Ltd, Terms and Conditions of Purchase



These terms and conditions of Purchase shall apply to the supply by the SUPPLIER of all Goods and Services to RUBAX, to the exclusion of all terms and conditions that may be put forward by the SUPPLIER.

## 1. Interpretation

In these terms and conditions, the following words and expressions shall have the following meanings: -

<b>"Contract"</b>	means the contract between RUBAX and the SUPPLIER for the purchase of Goods and Services which shall incorporate these Conditions and the Purchase Order
<b>"Contracting Parties"</b>	means RUBAX and the SUPPLIER and "Contracting Party" shall be construed accordingly
<b>"Conditions"</b>	means the standard conditions for the purchase of the Goods and Services as set out in this document
<b>"Force Majeure"</b>	means any act of God, riots or insurrections, acts of terrorism, war (whether declared or not), civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, acts of destruction, failure of subcontractors, difficulties in obtaining labour or materials, breakdown of machinery, fire, flood or unavoidable accident but excluding strikes, lock outs or trade disputes (whether involving its own employees or those of any other person) or other industrial disturbances
<b>"Goods"</b>	means the goods to be supplied to RUBAX by the SUPPLIER as more particularly set out in the Purchase Order
<b>"Intellectual Property Rights"</b>	means all and any intellectual property rights of any kind and rights of a like nature wherever and whenever arising and whether registered or unregistered and including, without limitation, any patents, copyright, registered design, design rights, topographic rights, database rights and rights in confidential information, trademarks, trade names or service marks
<b>"Materials"</b>	means any parts, stock or materials which are provided by RUBAX or made by the SUPPLIER for or on behalf of RUBAX
<b>"Price"</b>	means the price for the Goods and Services as set out in the Purchase Order
<b>"Purchase Order"</b>	means the order or orders for the supply of Goods and/or Services submitted to the SUPPLIER by RUBAX
<b>"SCHINDLER"</b>	means Schindler Limited or the relevant SCHINDLER company within the SCHINDLER GROUP as designated on the Purchase Order
<b>"SCHINDLER Group"</b>	means all subsidiary or holding companies (as defined by Section 736 of the Companies Act 1985 as amended) from time to time of Schindler Holding AG
<b>"Services"</b>	means the services to be provided to RUBAX by the SUPPLIER as more particularly set out in the Purchase Order
<b>"Specifications"</b>	means any specifications provided by RUBAX to the SUPPLIER in the Purchase Order or as otherwise provided to the SUPPLIER by RUBAX from time to time
<b>"SUPPLIER"</b>	means the party named on the Purchase Order
<b>"Tools"</b>	means any tools which are provided by RUBAX or made by the SUPPLIER for or on behalf of RUBAX

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



## 2. Contracting Parties

2.1 The Contract is concluded between the SUPPLIER and RUBAX.

## 3. Goods and Services to be Delivered

3.1 The SUPPLIER shall supply and RUBAX shall purchase the Goods and/or Services (as appropriate) in accordance with the Contract and as specified in Purchase Orders.

## 4. Basis of and Amendments to the Contract

4.1 RUBAX only enters into Contracts on the basis of the Conditions and the Purchase Order.

4.2 Alternate terms and conditions or similar documents submitted by either party shall not apply, save where agreed in writing by the Contracting Parties and signed in confirmation thereof.

4.3 The SUPPLIER shall perform the ordered services on its own responsibility as an independent contractor. Any personnel deployed on site in the delivery of services shall remain employees of the SUPPLIER throughout the entire deployment.

4.4 In the event of any conflict between these Conditions and any specific term or condition referred to in the Purchase Order, the relevant terms in the Purchase Order shall prevail (to the extent of the conflict or inconsistency only).

4.5 The SUPPLIER shall notify RUBAX within 24 hours of receipt of a Purchase Order if it is unable to accept that Purchase order. If no such notification (in writing) is received, the SUPPLIER shall be deemed to have accepted the PURCHASE ORDER.

4.6 RUBAX shall be entitled to cancel a Purchase Order, in whole or in part, at any time, provided that reasonable notice is given in writing (and without notice if the Purchase Order has not been acknowledged by the SUPPLIER), whereupon all work under the Purchase Order (or the cancelled part) shall be discontinued and RUBAX shall pay to the SUPPLIER such proportion of the Purchase Order as may be fair and reasonable having regard to the value of the Goods previously delivered and of Services performed under the Purchase Order and RUBAX shall have no further liability whatsoever by reason of such cancellation.

## 5. Delivery

5.1 The date of delivery of the Goods and Services shall be that specified in the Purchase Order unless agreed otherwise in writing between RUBAX and SUPPLIER and unless otherwise agreed in writing between RUBAX and the SUPPLIER, all deliveries of the Goods and Services shall be made in one delivery on the date specified in the Purchase Order.

5.2 The agreed delivery date is binding and shall be of the essence of the Contract. Delays in delivery shall be notified to RUBAX in writing immediately, stating the reasons for the delay. In the event of delayed delivery, the SUPPLIER shall remain obliged to perform the Contract provided that any failure by the SUPPLIER to adhere to any provisions as to time contained in the Purchase Order shall entitle RUBAX, at its option, to treat the Contract as repudiated in whole or in part. RUBAX shall be entitled to exercise this option at any time unless a written extension of time has been given to the SUPPLIER by a duly authorised representative of RUBAX and the time of any extension has not lapsed. Failure by RUBAX to exercise its option in respect of any part of a Purchase Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Purchase Order and RUBAX shall remain entitled in every case to pursue the remedies available to it under law.

5.3 Unless an extension of time has been agreed by RUBAX in accordance with the above provisions, the SUPPLIER's failure to deliver on the dates or date specified shall entitle RUBAX to purchase substitute goods or services and to hold the SUPPLIER accountable for all losses or additional costs (or both) incurred as a result.

5.4 Save where otherwise agreed in writing between the Contracting Parties, the SUPPLIER is not entitled to effect delivery at a time earlier than that agreed and RUBAX shall be entitled to reject any early delivery or, in the case of Goods, charge the SUPPLIER for the cost of insurance and storage of the Goods until the contractual date of delivery.

5.5 In the case of sub-contract services performed on site RUBAX reserves the right to perform acceptance testing and delivery is not considered complete until any identified faults or omissions are rectified.

5.6 In the event of late delivery by reason of the occurrence of an event of Force Majeure RUBAX may cancel the Contract without liability or, at its own discretion, extend the period for performance.

## 6. Transfer of Risk and Title

6.1 Goods and Services shall be supplied to the delivery address specified in the Purchase Order. Delivery shall only be deemed to be completed once the Goods have been signed for at the point of delivery.

6.2 Risk of loss and/or damage shall pass to RUBAX upon safe delivery, as specified in 6.1, of Goods to the delivery address.

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



- 6.3 Any inspection obligations stipulated by law are waived so far as is legally possible. However, RUBAX remains entitled to check the Goods or Services provided that any such checking shall not be deemed to waive any of RUBAX'S rights at law or under these conditions or be deemed to imply acceptance of the Goods or Services by RUBAX.
- 6.4 The title to the Goods or any part of the Goods shall pass upon the earlier of delivery or the time of any payment being made for them.

## 7. Packing Material

- 7.1 The SUPPLIER shall provide packing materials which shall afford sufficient protection and shall be suitable for the intended mode of transport being utilised to deliver the Goods to RUBAX.
- 7.2 Cost of suitable packing materials shall be included within the cost of the Goods and Services provided. The SUPPLIER shall, wherever possible, use recyclable packing materials.
- 7.3 At the request of RUBAX, the SUPPLIER must take back the packaging material free of charge. Any damage caused by inadequate and/or inappropriate packaging shall be the responsibility of the SUPPLIER.

## 8. Prices

- 8.1 The Price for the Goods and Services shall be the Price specified in the Purchase Order. No costs or charges shall be accepted by RUBAX unless specifically indicated in the Purchase Order.
- 8.2 Any price reductions occurring between the time of the Purchase Order and the time of delivery must be passed on in full to RUBAX. Save where expressly agreed otherwise, the Prices are quoted inclusive of all levies, customs duties, charges, delivery and packaging, but exclusive of VAT. For the avoidance of doubt, although Prices are quoted inclusive of all levies, customs duties, charges, delivery and packing, these elements, and VAT must be shown separately and on a cost basis on all invoices.

## 9. Payment Terms

- 9.1 Payments by RUBAX shall only be made on receipt of a valid invoice, submitted in accordance with the Conditions containing at least the following information:
- Order dates
  - Order numbers
  - Precise designation of the goods/services delivered
  - Separate statement of ancillary costs (e.g. taxes, levies, charges, duties, etc.)
- 9.2 Unless otherwise agreed by RUBAX in writing invoices shall not be rendered by the SUPPLIER until completion of delivery of all of the Goods and performance of all of the Services which are the subject of the Purchase Order.
- 9.3 Payment shall be made within 60 days after receipt of invoice.
- 9.4 RUBAX specifically reserves the right to deduct from any monies due or to become due to the SUPPLIER any monies due to RUBAX from the SUPPLIER. RUBAX shall also be entitled to withhold any amounts expressed to be due under an invoice which it disputes are properly due to the SUPPLIER.
- 9.5 RUBAX shall not be responsible for the payment of any charges for Goods supplied or Services performed in excess of the Goods or Services required by the Purchase Order or any variation to it unless authorised in writing by a further priced Purchase Order.

## 10. Warranties

- 10.1 The SUPPLIER warrants that:
- 10.1.1 All Goods supplied will correspond to the Specifications, be fit for purpose and are free from defects in material, workmanship and title, and conform to all relevant UK and EC Standards, and laws and shall comply with all samples and descriptions provided by the SUPPLIER.
- 10.1.2 All Services will be performed in a skillful and professional manner and in accordance with RUBAX'S requirements, the Specifications and all other representations made by the SUPPLIER in relation to such Services.
- In relation to all Goods supplied, the warranty set out above shall be valid for a period of 12 months from the date of the Goods being used by an end user or 18 months from delivery, whichever shall be the shorter.
- 10.1.3 The SUPPLIER warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



and Services prior to the Purchase Order. Nothing contained in these conditions shall in any way detract from the SUPPLIER's obligations under common law or statute or any express warranty or condition contained in the Purchase Order.

- 10.1.4 Without prejudice to any other rights that RUBAX may have, in the event of any breach of the above warranties, the SUPPLIER shall either (at RUBAX'S option) immediately repair or replace the defective Goods/Services or shall credit RUBAX with an amount equal to the Price paid by RUBAX for the defective Goods/Services in question.
- 10.2 Without prejudice to the warranties given by the SUPPLIER set out above, the SUPPLIER assigns to RUBAX all warranties and guarantees applicable to the Goods which have been given to it by any third-party manufacturer or supplier of the Goods and Services. The SUPPLIER shall provide such assistance as is reasonable to assist RUBAX to enforce the terms of any such warranties or guarantees.
- 10.3 The SUPPLIER shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by RUBAX.
- 10.4 All of the Goods and Services must pass such acceptance tests as RUBAX notifies to the SUPPLIER from time to time.
- 10.5 RUBAX shall be entitled to reject all Goods and Services which do not conform in every respect with the terms the Purchase Order and in particular (but without prejudice to the generality of the foregoing) this clause 10. Furthermore, if by the nature of the Goods and Services any defects therein or any failure thereof to conform as aforesaid does not or would not become apparent (despite the carrying out of any examination and/or such tests) until after use, RUBAX may reject the same even after a reasonable period of use.
- 10.6 The SUPPLIER will ensure that in all respects in the case of Specifications, the Goods and Services comply with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force in the territory where the Goods are to be delivered or the Services are to be performed.
- 10.7 The SUPPLIER warrants that it has received and is compliant with the RUBAX Code of Conduct (Vendor Policy).

## 11. Liability

- 11.1 The SUPPLIER shall indemnify RUBAX and keep RUBAX fully and effectively indemnified in respect of the following:-
  - 11.1.1 all losses, costs, damages, expenses and claims suffered or incurred by RUBAX as a result of any breach of the Contract by the SUPPLIER;
  - 11.1.2 any claims or allegations made against RUBAX by a third party that the use or the sale of the Goods infringes any of the intellectual property rights of that third party (provided that this indemnity shall not apply in cases where the alleged infringement arises solely as a result of the SUPPLIER manufacturing the Goods to the specifications, drawings or designs provided by RUBAX);
  - 11.1.3 all claims in respect of royalties payable by the SUPPLIER in respect of the Goods.
  - 11.1.4 all claims arising out of errors and omissions in drawings, calculations, packaging details or other particulars supplied by the SUPPLIER; and
  - 11.1.5 all claims made against RUBAX arising out of the acts or omission of the SUPPLIER, its employees, agents or sub-contractors.
- 11.2 Except in relation to payment of the Price of Goods and/or Services properly delivered to RUBAX in accordance with the terms of the Contract, RUBAX shall have no liability whatsoever to the SUPPLIER for any direct or indirect, special or consequential losses or damages whatsoever, howsoever caused provided that nothing in this Clause 11.2 shall be construed as excluding or limiting RUBAX'S liability for death or personal injury caused by RUBAX'S negligence.

## 12. Applicable Law

- 12.1 The Contracting Parties agree that this Contract shall be governed by and interpreted exclusively according to the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts in relation to any matter or dispute arising out of or in connection with this Contract. For the avoidance of doubt, any dispute between the Contracting Parties in connection with this Contract shall be referred in the first instance to the dispute resolution procedure as provided in Clause 30.

## 13. Intellectual Property Rights

- 13.1 The SUPPLIER shall assign to RUBAX all the Intellectual Property Rights in the Goods and Services and shall execute all such documents as may be required to perfect Schindler's ownership of such Intellectual Property Rights.

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



13.2 The SUPPLIER undertakes to indemnify RUBAX and keep RUBAX fully and effectively indemnified in respect of all claims, losses, damages, liabilities, costs and expenses suffered or incurred by RUBAX as a result of any claim or allegation by a third party that the Goods and/or Services infringe the Intellectual Property Rights of that third party.

## 14. Ownership of Tools and Materials

14.1 Any Tools and Materials that are the property of RUBAX but are held by the SUPPLIER shall be marked in a clearly visible position as "property of RUBAX," kept in a suitable place, and shall be maintained by the Supplier and insured (and RUBAX'S interest noted in the insurance policy).

14.2 Any Tools and Materials held by the SUPPLIER shall be returned to RUBAX immediately upon RUBAX'S request. In the event that the SUPPLIER fails to do so RUBAX (or its authorised representative as notified to the SUPPLIER from time to time) shall be entitled to access any premises on which the Tools or Materials are stored to enable RUBAX to repossess such Tools or Materials or ensure that the provisions of clause 14.2 are being adhered to. Any damage to the Tools or Material arising from bad workmanship or negligence of the SUPPLIER shall be made good at the SUPPLIER'S expense.

14.3 For the avoidance of doubt, all Intellectual Property Rights in the Tools and any associated software or documents (including but not limited to drawings and instruction manuals) shall belong to RUBAX and the SUPPLIER shall execute all such documents as may be required by RUBAX to perfect RUBAX'S ownership of such Intellectual Property Rights.

## 15. Data Protection

15.1 Each party shall, when having access to Personal Data, comply with the applicable Personal Data protection legislation and impose the same obligations on its personnel and any affiliates or third parties involved.

## 16. Confidentiality

16.1 The Contracting Parties (as a "Receiving Party") hereby acknowledge that the other (the "Disclosing Party") has provided confidential information to the Receiving Party and in respect of all such confidential information, the Receiving Party will:

16.1.1 treat it as confidential.

16.1.2 restrict its disclosure to such of its employees, agents and professional advisors as have a need to know and subject always to such employees and agents being under a similar duty of confidentiality; and

16.1.3 not disclose it to any third party without the prior written consent of the Disclosing Party.

16.2 The requirements detailed above shall not apply to any confidential information which:

16.2.1 is or becomes common knowledge without breach of the obligations contained within this Clause 17 by the Receiving Party; or

16.2.2 was in the Receiving Party's possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or

16.2.3 the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.

## 17. Publicity

17.1 The SUPPLIER must not make any public statement concerning the Agreement or the Goods or Services without Schindler's prior written consent.

## 18. Insurance

18.1 The SUPPLIER shall ensure that all Goods are adequately insured until they have been safely delivered in accordance with the Contract. For the avoidance of doubt, the cost of this insurance shall be included in the Price.

18.2 The SUPPLIER shall obtain and maintain insurance cover sufficient to cover all of its potential liabilities to RUBAX under a Contract.

## 19. Involvement of Sub-Contractors

19.1 The SUPPLIER shall not sub-contract any of its obligations under the Contract without giving RUBAX prior written notice in good time, such notice to contain the name of the sub-contractor and their proposed activities in relation to the Contract. The SUPPLIER

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



shall not be entitled to appoint any sub-contractor until the aforementioned notice has been given and RUBAX has consented to their appointment.

19.2 For the avoidance of doubt, the SUPPLIER remains fully liable for all acts or omissions of sub-contractors.

## 20. Termination

20.1 The SUPPLIER is required to inform RUBAX without delay if its financial circumstances may lead to insolvency or financial restructuring so that it is unable or may be unable to comply with its delivery obligations.

20.2 Without prejudice to any other rights or remedies to which it may be entitled, RUBAX may terminate the Order forthwith and without liability in the event that:

20.2.1 the SUPPLIER shall become bankrupt or, under Section 123 of the Insolvency Act 1986, be deemed to be unable to pay its debts or shall compound with its creditors or if a resolution shall be passed or proceedings commenced for the administration or liquidation of the RUBAX (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager shall be appointed of all or any part of its assets or undertaking; or

20.2.2 the SUPPLIER shall commit any material breach of its obligations under the Contract and fail to rectify such breach within seven days of receipt of written notice from RUBAX specifying the breach and requiring it to be remedied.

20.3 Either party may terminate this agreement by giving 3 months' notice in writing.

20.4 In the event of termination under section 21 existing purchase orders will be completed unless the parties mutually agree otherwise.

## 21. Duty of Information and Product Recall

21.1 The SUPPLIER is required to inform RUBAX as soon as reasonably practicable in writing of any defects in the Goods or Services including, but not limited to, errors in documents made available by RUBAX.

21.2 The SUPPLIER agrees to provide RUBAX with all assistance reasonably necessary to procure the recall of Goods if RUBAX notifies the SUPPLIER of any concern or defect affecting the Goods. For the avoidance of doubt, the SUPPLIER shall be responsible for all costs incurred in the event of a valid product recall which arises as a result of the supply of defective Goods by the SUPPLIER.

## 22. Written Form

22.1 For the purposes of these Conditions, the written form includes:

- documents signed by the Contracting Parties;
- forms of transmission which permit evidence by text, such as fax, e-mail or other forms of electronic transmission (but excluding SMS text messaging);
- verbal agreements with written confirmation by the Contracting Parties.

## 23. Severance

23.1 In the event that any of the Conditions are held to be invalid or unenforceable, in whole or in part, then the unaffected provisions shall remain in full force and effect.

## 24. Partnership

24.1 Nothing in these Conditions will create a partnership, agency or relationship of employment between the Contracting Parties.

## 25. Contract (Rights of Third Parties) Act 1999

25.1 A person who is not a party to this Contract (a "third party") shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 (the "Act") to enforce any terms of this Agreement. Any remedy or right of a third party which exists that is available apart from the Act is not affected.

## 26. Assignment

SUPPLIER INITIALS	
-------------------	--

# Rubax Lifts Ltd, Terms and Conditions of Purchase



26.1 The SUPPLIER shall not be entitled to assign a Contract or of any part of a Contract without the prior written consent of RUBAX.

## 27. Force Majeure

27.1 Neither the SUPPLIER nor RUBAX shall be liable to the other for any default under this Contract where the same is due to an event of Force Majeure affecting the party in default provided that the party seeking to rely on this provision shall give written notice to the other containing full particulars of the act or matter which it claims has put the due performance of its obligations under the Contract beyond its control provided further that no such notice may be given once such act or matter has ceased to subsist.

27.2 Without prejudice to RUBAX'S rights of termination set out in these Conditions, if any act or matter relied upon by either the SUPPLIER or RUBAX for the purposes of the previous paragraph shall continue for more than 90 days, the other party shall be entitled to terminate this Contract by one month's notice in writing provided that no such notice may be given once such act or matter has ceased to subsist.

## 28. No Waiver

28.1 The failure of the Parties to enforce a provision of this Agreement or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way to affect the validity of this Agreement. The waiver of any claim for breach of this Agreement by a Party hereto shall not operate as a waiver of any claim pertaining to another prior or subsequent breach.

## 29. Dispute Resolution

29.1 Should any dispute arise out of the Contract, including the interpretation thereof or any other matter specifically referred to herein, the Contracting Parties agree to negotiate for the settlement thereof by the following procedure:

29.2 The Contracting Parties shall use all reasonable endeavor's to promptly negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof within 14 days of notification by one party to the other of such dispute.

29.3 If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties within such 14 day period, the dispute shall be immediately referred to the relevant directors of both Contracting Parties who shall meet (either by person, by telephone or through such other means of communication as may be agreed between them) in good faith within 14 days of the request of either party in order to attempt to resolve the dispute within a further 14 days from the initial date of such meeting.

29.4 In the event that the Contracting Parties are unable to resolve the dispute pursuant to the above the Contracting Party may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure"). To initiate a mediation, a party by its Managing Director shall give notice in writing ("ADR Notice") to the other Contracting Parties to the dispute addressed to its duly authorised officer requesting a mediation in accordance with the Model Procedure. The place of mediation shall be London, England. The language of the mediation and agreement shall be in English.

## 30. Survival

30.1 The termination of this agreement shall not relieve either Party from its obligations owed to the other Party at the effective date of termination. The provisions of the following sections of the agreement shall continue beyond such termination:-

- a) Section 10 Warranties
- b) Section 11 Liability
- c) Section 12 Applicable Law
- d) Section 13 Intellectual Property Rights
- e) Section 16 Data Protection
- f) Section 17 Confidentiality
- g) Section 22 Duty of Information

**Signature**

**Name**

**Position**

**Date**

.....  
.....  
.....  
.....

SUPPLIER INITIALS	
-------------------	--