

# Terms & Conditions

## 1. Basis of Sale

**1.1** Any order submitted to Brooks Stairlifts Limited, ("the Supplier") by the Dealer ("the Dealer") for the purchase of the stairlift or any ancillary parts ("the Products") and/or for the Supply and Installation Services ("Services") shall be subject to these terms and conditions (the "Terms") and accepted entirely at the discretion of the Supplier.

**1.2** The Supplier shall confirm acceptance of any order via email ("in Writing"). If accepted, these terms and conditions ("the Terms") and any written variation shall govern the agreement between the Supplier and the Dealer ("the Order"). For the avoidance of doubt an Order can be for the provision of Products (" a Supply Only Order ") and/or the Supply of Installation Services a ("Supply and Install Order") or for the provision of spare parts ("Parts Order").

## 2. Orders

**2.1** Before any Order is submitted to the Supplier, the Dealer must check and ensure the following:

**2.1.1** - These Terms have been read and understood;

**2.1.2** - The Order form has been completed in full, ensuring that all requested information in relation to the Order are correct and accurate; and

**2.1.3** - In the case of an Order for Supply and Installation Services, there is a valid signed contract between the end user and the Dealer which does not impose any non-standard or unusual obligations on the Supplier.

**2.2** The Dealer agrees that it shall not and its employees shall not:

**2.2.1** - Represent itself as an agent of the Supplier for any purpose or purposes, or pledge the Supplier's credit; or

**2.2.2** - Give any condition or warranty on the Supplier's behalf; or

**2.2.3** - Make any representation on the Supplier's behalf, or commit the Supplier to any contracts.

**2.3** Time of delivery or installation shall not be of the essence of an Order. Any dates quoted on the website, orally, or in the sales literature regarding installation or delivery of the Products are approximate only and the Supplier shall not be liable for any delay in performance however caused. The Supplier may install or deliver the Products in advance of any quoted date.

**2.4** The Supplier reserves the right to make changes to the specification of the Products which do not materially affect their quality or performance.

## 3. Supply Only Orders and Training

**3.1** If the Dealer places a Supply Only Order, the Supplier shall deliver the Products to the Dealer premises unless agreed otherwise. If the Dealer agrees to collect the Products they will do so as soon as practicable after the time after the Supplier has notified the Dealer that the Products are ready for collection but in any event within 3 working days of being notified. Where the Supplier delivers the Products to the Dealer the Supplier's standard delivery charge shall be payable. These charges shall be notified to the Dealer at the time the Order is accepted.

**3.2** All individuals employed, sub-contracted or otherwise who perform installation or maintenance work, for the Products supplied under these Terms must be approved by the Supplier and where necessary must first complete the installation and maintenance training provided by the Supplier ("Authorised Personnel")

**3.3** The Supplier shall provide such training and refresher training to the Dealer's Authorised Personnel as shall be agreed between the parties. Such training shall be chargeable by the Supplier at the rate applicable at the time.

**3.4** The Dealer must not place Supply Only orders unless they have sufficient numbers of Authorised Personnel to install and maintain the Product. The Dealer must notify the Supplier if the Authorised Personnel cease to work for the Dealer and shall immediately arrange for additional personnel to become authorised before placing any further Orders.

## **4. Supply and Install Orders**

**4.1** In addition to the sale of the Products, the Supplier will provide a service to install the Products in the premises of the Dealer's end user.

**4.2** The Supplier may at its discretion contact the end-user directly to discuss, arrange, adjust or delay the installation or removal of the products.

**4.3** If the Supplier is unable to install the Product for safety or other practical reasons, then the Supplier will be entitled to cancel the Dealer's Supply and Install Order, even if the Supplier has already accepted it, without any liability to the Supplier. Furthermore, Supplier will not be liable to the Dealer if the installation is cancelled or refused by the end-user.

**4.4** The Supplier at its discretion may charge the Dealer for additional parts and components which were not included in the original Supply and Install Order where these are judged as reasonable and necessary by the installer to complete the installation. The Dealer shall be invoiced for these additional parts and components in accordance with the Supplier's standard pricing in force at the time.

**4.5** The Dealer will notify the Supplier of any information relevant to the installation of the Products at the end-user's premises, including but not limited to any restrictions to accessing the premises and any specific requirements of the end-user.

**4.6** The Supplier will have the exclusive right to offer the end user any service, maintenance, insurance product and/or extended service agreement in connection with the Product. The Dealer agrees that it shall not work with any third party to promote the sale of any other service, maintenance, insurance product and/or extended service agreement in connection with the Product.

**4.7** In relation to a Supply and Install Order the Dealer accepts that the Supplier shall be free to contact the end user to offer any of its products or services.

## **5. Cancellation**

**5.1** In the event of a cancellation of an Order the Dealer shall reimburse the Supplier for all reasonable costs incurred by the Supplier in the performance of these Terms in addition to the price.

**5.2** Following confirmation of a Supply and Install Order if the end-user does not consent to the installation of the Products or the Dealer fails to provide the Supplier with the correct instructions or

specifications for the installation then the Supplier may charge the Dealer the standard abort fee for the reasonable cost in the performance of the Order.

**5.3** Following the installation of a Supply and Install Order, the Supplier will have no obligation whatsoever to the Dealer in the event that the end-user should exercise any rights of cancellation, statutory or otherwise, which result in the Dealer being required to remove the Products from the end user's premises. In the event of cancellation which requires removal of the Products, the Dealer shall be responsible for all costs and expenses for the removal of the Products, and negotiating any full and final settlement with the end-user.

**5.4** The Dealer may in connection with a Supply and Install Order request the Supplier to remove the Products from the end-user's premises subject to the payment of the standard re-stocking fee which shall be payable from time to time for the installation and subsequent removal of the Products.

**5.5** In relation to a Supply Only Order the Supplier may at its sole discretion agree to "take back" the Product subject always to the payment of the applicable standard fee in which case the Supplier shall refund the Dealer the cost of the Product. **5.6** The Supplier may at its sole discretion refund any payment for the Supply and Install of the Product subject always to the payment of the fees set out in clause 5.2, 5.4 and 5.6 of these terms and conditions.

**5.7** The Supplier shall be entitled to cancel an Order by giving notice in Writing to the Dealer with immediate effect without any liability to the Dealer if a resolution is passed for the winding up of the Dealer or if an appointment is made of an Administrator, Receiver or Liquidator, or the Dealer is served with a Court order for winding-up or suffers any analogous event.

**5.8** The Supplier shall be entitled to cancel an Order by giving notice in Writing to the Dealer with immediate effect there is a change of Control of the Dealer ("Control") shall be as defined in section 1124 of the Corporation Tax Act 2010.

## **6. Prices and Payment**

**6.1** The price for the Products shall be in sterling unless otherwise notified to the Dealer by the Supplier in Writing.

**6.2** The price is exclusive of any applicable value added tax, which the Dealer shall pay to the Supplier in addition. Unless otherwise stated in writing, the Dealer shall pay the price for the Products within 2 days of the Order being accepted and in any event prior to the delivery of the Products or where appropriate the supply and installation of the Product at the end user's premises.

**6.3** The Dealer shall not be entitled by reason of set-off, counter-claim, abatement, or other similar deduction to withhold payment of any amount due to the Supplier. If the Dealer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier all payments due to the Supplier from the Dealer shall become immediately due and payable and in addition the Supplier shall be entitled to cancel the Order and any other existing orders from the Dealer and the Dealer shall pay interest (both before and after any judgment) on the amount unpaid at the rate of 2 percent per annum above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis from the due date of payment until receipt by the Supplier of the full amount.

**6.4** The Dealer shall make payments by cheque or BACS transfer to such an account as the Supplier shall specify to the Dealer from time to time.

**6.5** The standard fees payable in accordance with clause 5 shall be specified by the Supplier from time to

time.

## **7. Title and Risk**

**7.1** The title to the Products remain with the Supplier until the Supplier has received payment in full for (a) the price for such Products and (b) all other sums due from the Dealer to the Supplier on any other account.

**7.2** Risk shall pass in the Products on either a) the installation of the Product at the end user's premises by the Supplier on a Supply and Install Order; or b) the delivery of the Products to the Dealer or c) collection of the Products by the Dealer.

**7.3** Until such time as title in the Products passes to the Dealer, the Dealer shall hold the Products as the Supplier's fiduciary agent and shall keep the Products properly stored, protected and insured and the Supplier may at any time after payment for the Products has become due take possession of the Products (which for the avoidance of doubt will include the right to stop the Products in transit) and remove them and the Dealer shall be deemed to have granted irrevocable authority to the Supplier to enter the Dealer's premises or other premises and vehicles or modes of transport where such Products may be, by its employee or agent to take possession of such Products.

## **8. Warranty and Liability**

**8.1** The Dealer must at all times follow the Warranty claims procedure as set out by the Supplier from time to time.

**8.2** The Supplier warrants that the Products will be free from material defects in material and workmanship ("Warranty") for a period ("the Warranty Period") of:

**8.2.1** - 12 months from the date of installation for a Supply and Install Order;

**8.2.2** - 12 months from the date of dispatch for a Parts Order; or

**8.2.3** - 24 months from the date of dispatch for a Supply Only Order.

**8.3** The Supplier's Warranty shall not apply in respect of any defect or problem arising out of any improper use; improper storage; fair wear and tear; wilful damage; negligence; unauthorised maintenance work, installation or maintenance work undertaken by persons not trained by the Supplier in the servicing and/or installation of the Products; alterations to the Products undertaken by the Dealer; or defects or problems arising where the Supplier manufactured the Products in accordance with the specification provided to it by or on behalf of the Dealer and the defect or problem arises from such specification.

**8.4** The Supplier shall supply any spare parts requested by the Dealer that are required to enable the Dealer to fulfil its repair and service obligations under the end user Warranty. For the avoidance of doubt, the Supplier shall not be obligated to provide the Dealer with spare parts except in relation to a Product under Warranty.

**8.5** For Supply and Install Orders the following shall apply with respects to a claim under the Warranty:

**8.5.1** - The Dealer shall ensure that the end user is informed that only the Supplier shall be permitted to repair and service the Products for the duration of the Warranty Period. Any repair, service, or maintenance of installed Products, undertaken by anyone other than the Supplier, will automatically invalidate the Warranty.

**8.5.2** - Upon the Supplier acknowledging a valid Warranty claim, the Dealer shall procure the Supplier's right to attend the end user's premises and allow the Supplier a reasonable time in which to do so.

**8.5.3** - The Supplier may at its discretion contact the end-user directly to discuss, arrange, adjust or delay the repair or maintenance work to the Products.

**8.6** For Supply Only Orders or Parts Orders, the following shall apply with respects to a claim under the Warranty:

**8.6.1** - The Supplier's liability shall be limited to the replacement of defective parts and/or components of Products supplied under these Terms for the duration of the Warranty Period.

**8.6.2** – In the event of any claim by the Dealer for the replacement of defective parts and/or components of Products, the Supplier may at its option request that the Dealer arrange to return the defective parts and/or components to the Supplier for inspection.

**8.6.3** - The Dealer shall be responsible for all the costs and expenses not limited to fuel, labour, shipping, delivery, engineering, accommodation, and diagnostics in replacing the defective parts and/or components and of returning the defective parts and/or components to the Supplier for inspection.

**8.6.4** - Where damage to the Product occurs during the shipment of the Product, the Supplier shall only be liable if such damage is notified to the Supplier within 24 hours of the Product being delivered to the Dealer or the end user.

**8.7** In the event of the Dealer receiving defective Product which does not comply with specification, the Dealer shall within 10 days of the date of discovery notify the Supplier in writing (where the defect was not apparent on reasonable inspection).

**8.8** Where a claim in respect of any defect in the quality or condition of the Product is notified in writing to the Supplier, the Supplier shall at its option either replace the Product (or the part(s)/components(s) in question) or, reimburse the Dealer the price of the Product (or a proportionate part of the price of the Product attributable to the part/component in question). The Supplier shall have no further liability to the Dealer for the defect or failure.

**8.9** The Supplier shall not be liable to the Dealer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Order if the delay or failure was due to any cause beyond the Supplier's reasonable control.

**8.10** The Supplier's aggregate liability to the Dealer in contract, tort (including, without limitation, negligence) and/or breach of statutory duty for any loss or damage which the Dealer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of a Supply Only Order, Supply and Install Order or Parts Order by the Supplier, its employees, agents or representatives, is limited to the price paid or payable by the Dealer under the Order.

**8.11** Subject to Clause 8.10, the Supplier shall not be liable to the Dealer in contract, tort (including, without limitation, negligence) and/or breach of statutory duty for any economic loss, loss of profit, loss of business, loss of goodwill, loss of revenue, loss of anticipated savings, loss of use, loss of contract or any other similar loss which the Dealer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of the Order by the Supplier, its employees, agents or representatives.

**8.12** Nothing in these Conditions shall operate so as to exclude the Supplier's liability (if any) to the Dealer in respect of death or personal injury caused by the negligence of the Supplier, its employees, agents or representatives; or for fraud or fraudulent misrepresentation; or for any other matter for which it would be illegal for the Supplier to exclude or attempt to exclude its liability.

## **9. Anti-bribery compliance**

**9.1** The Dealer shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. The Dealer shall comply with the Supplier's Anti-Bribery Policy as updated from time to time.

## **10. Product Liability and Insurance**

**10.1** The Supplier shall maintain adequate levels of public and product liability and other relevant insurance in relation to the Products and Services supplied under these Terms, with a reputable insurer and shall provide a copy of the insurance policy to the Dealer upon request.

**10.2** The Dealer shall also maintain appropriate insurance not less than £1,000,000 per incident with a reputable insurance company covering public, product liability and other relevant insurance for the Products supplied under these Terms. The Dealer shall provide the Supplier with a copy of the insurance policy or insurance certificate upon request.

**10.3** The Dealer shall as a matter of urgency give such assistance as the Supplier shall reasonably require for the purpose of recalling or carrying out any safety checks on the Products, including for the avoidance of doubt providing the Supplier with any end-users' contact details including a telephone or mobile telephone, number, address and where available a current email address. For the avoidance of doubt the Supplier shall only use the end user contact information for the purpose of recalling or carrying out the safety checks for which the information was requested.

**10.4** The Dealer shall, as soon as they become aware of any matter which may result in a claim by an end user or third party against the Supplier in connection with the supply or Supply and Installation of the Products:

**10.4.1** - notify the Supplier and provide full written details of the matter sufficient to allow the Supplier to contact the end user and fully investigate the matter;

**10.4.2** - provide the Supplier with access to and allow copies to be taken of any materials, records or documents as the Supplier may require to take action; and

**10.4.3** - allow the Supplier the exclusive conduct of any proceedings and take any action that the Supplier requires to defend or resist the matter, including using professional advisers nominated by the Supplier; and

**10.4.4** - not admit liability or settle the matter without the Supplier's written consent.

## **11. Trade Marks**

**11.1** The Supplier grants to the Dealer the non-exclusive right, to use any of the Suppliers registered trademarks ("the Trade Marks") in the promotion, advertisement and sale of the Products, subject to, and for the duration of, this agreement. The Dealer acknowledges and agrees that all rights in the Trade Marks shall remain in Supplier, and that Dealer has and will acquire no right in them by virtue of the discharge of its obligations under this agreement, except for the right to use the Trade Marks as expressly provided in this agreement.

**11.2** The Dealer shall comply with all rules for the use of the Trade Marks issued by the Supplier and shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks. The Dealer shall not alter, deface or remove any reference to the Trade Marks, any reference to the Supplier or any other name displayed on the Products or their packaging or labelling.

**11.3** The Dealer shall not do, or omit to do, anything in its use of the Trade Marks that could adversely

affect their validity or reputation. The Dealer shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names or domain names the same as or similar to the Trade Marks. The Dealer shall not use the Trade Marks as part of the name under which Dealer conducts its business, or any connected business, or under which it sells or services any products (except the Products).

## **12. Confidentiality**

**12.1** Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as provided by clause 12.2.

**12.2** Each party may disclose the other party's confidential information: to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and as may be required by law, court order or any governmental or regulatory authority.

**12.3** No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

## **13. General**

**13.1** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Order.

**13.2** If the Court decides that any of these terms is legally incompatible or ineffective in whole or in part, that shall not affect the other terms of the Order.

**13.3** If the Supplier chooses to ignore any breach of these Terms by the Dealer on one occasion, the Supplier may still take issue with the Dealer if the Dealer should breach the same or any other terms of this agreement subsequently.

**13.4** No addition, alteration or substitution of these Terms will bind the Supplier unless they are expressly accepted in Writing by an authorised representative of the Supplier. Any typographical, clerical or other error or omission on the Website, sales literature, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability to the Supplier.

**13.5** These Terms, and the Order form, contain the entire agreement between the parties with respect to its subject matter, supersede all previous communications, representations, agreements and understandings either oral or written made between the parties, and may not be modified except by an instrument in Writing signed by the duly authorised representatives of the parties. In particular, no other terms and conditions, (including any set out in any purchase order issued by the Dealer) shall apply except in respect of any fraudulent misrepresentation by either party.

**13.6** The Dealer may not assign, novate or sub-contract any of its rights or obligations under this agreement without the prior written consent of the Supplier.

**13.7** The Supplier may assign, novate or sub-contract any of its rights or obligations under this agreement to any company within the same group of companies as the Supplier without the prior written consent of

the Dealer.

**13.8** This agreement and any matters relating to it shall be interpreted under the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.