

# KONE 3G Lift Emergency Phone Solution

## Terms and conditions

Please read the following Terms and Conditions carefully before placing an order.

By choosing the “Submit” you agree to the Terms and Conditions contained herein and if accepting on the behalf of a company or other legal entity warrant that you have full authority to bind said company or legal entity to these Terms and Conditions.

### 1. GENERAL

The acceptance of our tender includes the acceptance of the following terms and conditions.

No conditions or terms stipulated incorporated or referred to by the Customer are to annul or vary these conditions and terms unless agreed to by the KONE in writing.

It is the customer’s responsibility to supply an activated SIM card prior to KONE’s start on site. KONE recommends a dedicated post-paid plan be organised for each lift. If an activated SIM card is not supplied at time of installation, additional costs may apply.

The quoted price is subject to adequate 3G signal strength at a suitable location for the gateway installation in the building. Additional charges may apply if an additional antenna is required.

The quoted price is based on all items listed being completed as one portion.

Our quote for this work is based on the condition of the equipment at today’s date. This price is for work to be completed during KONE Elevators normal hours, and is in accordance with the KONE Elevators Pty Ltd Conditions of Contract for Minor Works, a copy of which is enclosed.

### 2. VALIDITY

The quotation is open for acceptance within 45 days and from the date hereof and then lapses. Costs applying are from date of quotation.

### 3. PRICE ADJUSTMENT

(a) The prices quoted are based on materials and wage rates applying at the date of quotation.

(b) Alternative, if the tender so states, firm prices are quoted on the understanding that the work will be completed within the period specified. Should completion be delayed for any reason beyond that period KONE reserves the right to adjust the prices in accordance with the price adjustment formula referred to above.

(c) All prices will be subject to further variation in respect of any additional costs arising by virtue of any statute, regulations or orders issued by any Government Department or other duly constituted authority.

(d) IMPORTED MATERIALS - The tender price, where appropriate, allows for the cost of importing materials based upon the rates of exchange, tax or duty prevailing at the date of tender. In the event of any adjustment in such rates, between the date of tender and 14 days after receipt of sufficient payment to settle the overseas debt, the KONE reserves the right to make an appropriate adjustment to the price.

4. TERMS OF PAYMENT

(a) Payment shall be effected against progress claims in the following

	1st Claim	2nd Claim	3rd Claim
Up to \$1K	100% with order	0%	0%
Up to \$5K	50% with order	50% on completion	0%
Up to \$10K	50% with order	40% on SOS	10% on completion
Over \$10K	30% with order	60% on SOS	10% on completion

I. First 2 claims issued on order and no SOS until 1st claim received.

II. 7 day invoicing on all 1st claims with credit card facilities.

(b) Interest shall be paid on overdue accounts from the date payment was due until actually made at the “Indicator Lending Rate” published by Westpac Banking Corporation plus two percent (2%) during the period in which interest is payable based on progress claims.

(c) Title to all equipment supplied by the KONE hereunder shall remain vested in it until the quoted price has been paid in accordance with provision of Clause 4(a) hereof. Failure to pay agreed price when due, as stipulated in Clause 4(a), shall give us the right to discontinue work and enter the site and retake possession of any equipment supplied by us and then unpaid for which has been affixed to the building and to remove from the site and the works all plant and equipment and other property supplied by us pursuant to this contract. The Customer shall also pay to us all expenses, loss and damage incurred or sustained by us consequent upon the exercise by us of the rights conferred by this clause.

5. OVERTIME/DAY WORK

All works shall be performed in normal working hours of regular working days unless otherwise specified. If overtime becomes necessary and agreed, additional charges at our usual rates will be added to the quotation. Our routine days off will apply on nominated dates in accordance with the award.

6. DEFECTS LIABILITY

Should any defects arise from faulty material or workmanship within (1) year of practical completion of K ONE work under this contract and which is not due to improper use or maintenance by the Customer, all such defects shall be made good free of cost to the Customer during normal working hours. It is agreed that such defects liability period shall relate only to the new equipment installed, the subject of this quotation.

Where goods of a proprietary brand are not manufactured by KONE and supplied at the request of the Customer, then the Customer shall be entitled only the benefit of any guarantees obtainable by KONE in respect thereof.

## 7. FORCE MAJEURE

KONE shall not be liable for and the Contract shall not be liable to suspension or terminations by reason of any loss damage or delay due to causes beyond our reasonable control including but not limited to materials or component shortages, shipping space, embargoes, acts of government, strikes, lockouts, fires, bans, explosions, theft, flood, riot, civil commotion, war, malicious mischief, act of God or any other cause beyond KONE's control.

## 8. LIMITS OF LIABILITY

KONE's liability for any loss, damage or delay arising directly or indirectly from any act, default or omission negligent or otherwise in or about the performance and completion of the Contractor or order shall be limited to liability for physical damage or injury to any person and damage to property which in any such case is the natural immediate and foreseeable result of such act, default or omission caused by KONE our servants or agents solely and not jointly with any other person or for which KONE are solely responsible under this Contract or order an in no case shall KONE be liable for any consequential damages, loss of rent or profits or for claims made against the owner by any other person. Notwithstanding anything to the contrary contained in this Contract, KONE will not be liable to the Customer or any third parties under or in connection with this Contract for any loss of profits or revenue or rent, increased expense of operation, loss or denial of opportunity or loss of use.

## 9. COMPETITION AND CONSUMER ACT 2010, as amended

In the event that the supply of goods and/or services pursuant to this agreement is a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010, as amended ("the act") nothing contained in this Agreement excludes, restricts or modifies in relation to this Agreement and the goods and/or services to be supplied hereunder any condition warranty right or remedy which pursuant to the Act applies to this Agreement or is conferred on the owner provided that to the extent the Act permits KONE to limit its liability for a breach of a condition or warranty implied by the Act then KONE's liability for such breach shall be limited to:-

(d) In the case of goods supplied pursuant to this Agreement, the payment of the cost of replacing the goods or acquiring equivalent goods; and

(e) In the case of services supplied pursuant to this Agreement, the payment of the cost of having the service supplied again.

## 10. INSPECTIONS

KONE have allowed in its quotation for any inspections deemed necessary by the appropriate lift authorities. Should, after their inspection any part or parts fail under test or any further work other than that specified in this quote or due to non-performance of others be requested it may be subject to further quotation.

## 11. DRAWINGS

Any specifications, drawings and particulars submitted with the tender are approximate only and the descriptions and illustrations contained in the KONE's catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods therein and none of these shall form part of the contract when specified.

## 12. DELIVERY AND COMPLETION

Estimated times for delivery and completion shall run from the date of receipt of the written order and of any such information, drawings, licences, permits and approvals as may be necessary to enable the work to proceed. All such times are to be treated as estimates only not involving any contractual obligation.

## 13. DELAY IN DELIVERY OR COMPLETION

KONE shall not be liable for any delay or for any consequence of any delay in the production or delivery of any of the goods or the completion of the work for any cause beyond its reasonable control.

## 14. IMPROVEMENTS

Where improvements in design, manufacturing techniques material availability of installation, procedures will offer an installation at least equal to that described in this quotation, KONE reserves the right to change the specification to incorporate such improvements without prior written notice. KONE hereby grants to the Customer an irrevocable, transferrable, non-exclusive, and royalty free licence to use the intellectual property created by KONE under this Contract. The Customer acknowledges that nothing in this Contract confers any further rights in the Contractor's Intellectual Property.

## 15. GENERAL

(f) The Tender, unless otherwise specified, assumes that any old material removed will become the property of KONE due to allowances being made.

(g) It is agreed that we do not assume possession or management of any part of the equipment, but such remains yours exclusively as the owner (or lessee).

(h) Notwithstanding any other provision in this contract, KONE shall not be liable for any loss, damage, or cost resulting from any delay, disruption or interference to the progress of the work arising in connection with risks to health caused by the manifestation on the site of asbestos, material, silicon dust or the Aids disease whether or not such matters were discoverable at any time by KONE.

## 16. PERFORMANCE

KONE shall be entitled to perform its obligation hereunder by its employees or its contractors. The customer shall provide to KONE uninterrupted access to its premises during ordinary business hours and as such other times as may be reasonably agreed to enable KONE to perform its obligations hereunder.

## 17. NOTIFICATION OF ACCIDENTS

Each of KONE and the customer have a responsibility to notify the other party when it is aware of the death or injury to any person or damage to property arising from goods or services supplied hereunder

## 18. ASBESTOS

The Customer warrants that the site is free from asbestos. The Customer shall provide KONE with a copy of the Asbestos Building Survey report & Risk Register as a precondition to KONE starting work on the site.

## 19. GOODS AND SERVICES TAX

(i) Unless the context indicates otherwise, terms in this clause that are defined or used in the Goods and Services Tax Act 1985 have the same meaning as in that Act.

(j) Unless expressly stated to be inclusive of GST, the consideration for any taxable supply made by a party under or in connection with this Contract does not include GST and may be increased by the party by an amount equal to the GST payable on that taxable supply. The Recipient need not make any payment for a taxable supply unless the party has first issued a tax invoice.

(k) If an adjustment event occurs in relation to any supply made under or in connection with this Contract, the party must issue an adjustment note to the recipient and the difference between the GST payable on the supply (taking into account any adjustments) and the amount of GST included in the price for the supply must be paid by or refunded to the Recipient as applicable.

(l) Any amount to be reimbursed or indemnified in connection with this Contract must be reduced by an amount equal to any input tax credit to which the party being reimbursed (or its representative member) is entitled in respect of that amount.

(m) Any rebates, discounts, allowances or other reductions in price to which the Purchaser is entitled or which is granted by the party are to be calculated on the GST inclusive Price.

20. PERSONAL PROPERTY SECURITIES ACT (CTH) 2009 (“PPSA”)

(n) KONE may register any actual or impending security interest (in any manner KONE considers appropriate) in relation to any security interest contemplated or constituted by this Contract in the equipment/materials and the proceeds arising in respect of any dealing in the equipment/materials.

(o) The Customer undertakes to:

i. do anything that is required by KONE:

1. so that KONE may acquire and maintain one or more perfected security interests under the PPSA in respect of the equipment/materials and its proceeds.

2. to register a financing statement or financing change statement; and

3. to ensure that KONE’s security position, and rights and obligations, are not adversely affected by the PPSA.

ii. not register a financing change statement in respect of a security interest contemplated or constituted by this Contract without KONE’s prior written consent; and

iii. not create or purport to create any security interest in the equipment/materials, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the equipment/materials in favour of a third party without KONE’s prior written consent.

(p) To the extent permitted under the PPSA, the Customer:

iv. waives its rights under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Contract;

v. agrees that the following provisions of the PPSA will not apply and are contracted out of : section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

vi. agree that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

(q) Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and KONE agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

(r) For the purposes of section 20(2) of the PPSA, the collateral is equipment/material including any equipment/material which is described in any Contract provided by KONE to the Customer from time to time. This Contract is a security agreement for the purposes of the PPSA.

(s) The Customer agrees to notify KONE in writing of any change to the Customer's details set out in a credit application (if applicable), within 5 days from the date of such change.

## 21. GOVERNING LAW

This Contract is governed by and construed in accordance with the laws of the State of New South Wales and the Commonwealth of Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.