

# ThyssenKrupp Elevator Australia

PLATINUM

## LIFT MAINTENANCE AGREEMENT

### The Parties

**Owner:** Strata Plan 52948  
1-15 Fontenoy Rd  
Macquarie Park NSW 2113  
Hereafter referred to as  
"Owner", "you",  
and "your".

**Location:** Macquarie Gardens  
1-15 Fontenoy Rd  
NSW 2113 Macquarie Gardens  
Hereafter referred to as  
"Premises"

**By:** **ThyssenKrupp Elevator Australia PTY LTD**  
**ABN 12 073 056 149**  
Hereafter referred to as  
"ThyssenKrupp  
Elevator Australia",  
"ThyssenKrupp  
Elevator", "TKEA",  
"we", "us" and  
"our".

*PO Box 16, Surry Hills NSW 2010*

*Phone 02 8303 9000*

*Fax 02 9310 4446*

*Email daniel.lewin@tkea.com.au*

### SCHEDULE OF EQUIPMENT

Building Name	Unit Quantity	Manufacturer	Type of Unit	Unit ID or Serial #	Number of Floors
Macquarie Gardens	4	Other	Elevator		9

COPY FOR YOUR  
INFORMATION

Contract Number



# PLATINUM MAINTENANCE AGREEMENT

## 1. Definitions

- **Agreement**, unless the text requires otherwise, Agreement means this comprehensive lift and escalator/moving walk maintenance agreement and any schedules attached to it entered into between TKEA and you.
- **Lift Equipment** refers to the items listed in 2.1(b) and also all equipment and accessories that TKEA supplies to you, this includes but is not limited to both mechanical and electric components and wiring, installed in your machine room excluding those items defined in Clause 5.
- **Obsolescence** means any component or part that has ceased to be commercially manufactured and/or is no longer generally available from a supplier, and for which TKEA considers there is no equivalent alternative which can be fitted without design change, modifications or increase in cost.
- **CPI** means the Consumer Price Index (All Groups) as published by the Australian Bureau of Statistics from time to time (All Capital Cities weighted average).
- **Electrical Fusion** means electrical or heat damage to the windings of a transformer, choke, electrical motor or generator;
- **Escalator** means any moving walk type equipment.
- **Normal Business Working Days and Hours** means Monday through Friday, 7.30 AM to 4:00 PM (except scheduled holidays).
- **After Hours** means work performed before or after normal business working days and hours.
- **After hours Service Requests** means minor adjustments or emergency entrapments that can be accomplished in two hours or less (excluding travel time) which are performed before or after normal business working days and hours.
- **Initial Term** means the period from the commencement date to the termination date as specified in accordance with clause 7.1
- **Final Term** means the Further Term or, if notice of termination is served pursuant to clause 7 then it means the Initial Term.

## 2. Full Coverage – Parts Repair and Replacement

TKEA will provide a full coverage of parts repair and/or replacement for all components worn due to normal wear, unless specifically excluded as defined in clause 5 "Exclusions".

### 2.1 Scope of Services / Inclusions

#### (a) Maintenance and Inspection

TKEA shall provide twelve (12) routine maintenance visits and examination of your lift equipment including an annual safety test during Normal Working Hours to a level TKEA deems appropriate to maintain the original characteristics and performance of all equipment at the commencement of this Agreement. TKEA shall not be obliged to attend for routine maintenance for the Lift Equipment outside normal working hours or during statutory or award public holidays.

#### (b) Replacement of components

We shall examine your Lift Equipment for optimum operation. If conditions warrant as a result of ordinary wear and tear, our examination, lubrication and adjustment will cover the following components of your elevator system:

- Car and Landing positioning systems
- Signal fixtures including call buttons, indicators and chimes
- Machines, power drives, motors, governors, sheaves, and ropes
- Group and Single lift control systems
- Hydraulic Power units, pumps, valves, and jacks
- Car and hoist-way door operating devices
- Door protection equipment
- Load-weighing systems, car frames, platforms and counterweights
- Safety mechanisms
- Roller and Slipper guides
- Escalator sprockets, power unit, controller parts, electrical switches, wiring, bearing, governors, brakes, step and chain wheels, sprockets, steps and step treads, comb plates, safety devices, handrails.

## 3. Monitoring Services

This Agreement also includes the following monitoring services:

- 24 hours a day, 7 days per week, fully data-based and documented Call Centre.

## 4. Stoppages and Malfunctions

4.1 TKEA shall attend to all stoppages and malfunctions reported to our National or Local Call Centre as follows:-

- (a) Service requests during Normal Business Hours- No additional charge.
- (b) Service requests during After Hours - No additional charge. However the services are limited to minor adjustments or emergency entrapments.

4.2 When the reported nature of a malfunction is not detrimental to the safety of persons, nor of significant effect on the service provided by the Lift Equipment, then attendance to the same shall be carried out during TKEA's next routine maintenance visit.



## 5. Exclusions

Both parties agree that the services and components listed below are excluded in this agreement and if any of the following services and repairs are requested by You they will be considered as "Additional Services" and will be charged:-

- Power mains and switch gear and electric light on the supply side of the subject lift main circuit breakers;
- Structural enclosure of lift wells (including internal surfaces, ledges, beams and sills and machine rooms);
- Lift equipment damaged or requiring adjustment due to building shrinkage;
- Ventilation equipment for the motor or machine room unless otherwise agreed in writing by TKEA;
- Lift pits, sump pumps, syphons or other equipment installed so as to remove water from lift pits or machinery areas;
- Finishes to frames, transoms, sills architraves, landing door panels or gates;
- Car superstructure and materials on the internal surfaces thereof and including ceilings and panels, floor covering, plenum chambers, door panels or gates, light diffusers, handrails and other architectural features (as distinct from necessary accessories or features);
- Lighting tubes/globes and lighting fittings for the lift cars, escalator balustrades, and motor room machinery enclosure areas;
- Telephone, communication, audio and security equipment, plus wiring external to the lift-well or machinery enclosing areas unless agreed in writing by TKEA;
- Escalator step chains and main mechanical drives.
- Caissons, cylinders and buried piping on hydraulic lifts, other than for wearing parts and seals where ready access to same is practicable;
- Balustrades, skirtings, decking and other panels or floor plates of escalators;
- Motor field and armature fusion;
- Facia plates of car, enclosure or other push button and/or indication panels;
- Any Lift Equipment that is ~~obsolete~~, maliciously damaged, vandalised or misused;

## 6. Additional Service requested by You - ADDITIONAL PAYMENT

The Service Fee is based on TKEA's prevailing rates and charges, unless otherwise specified as per **Annexure 1**, for providing services and for repairing, altering or replacing the appropriate Lift Equipment parts when this is warranted as a result of fair, wear and tear.

Additional Payment will be charged by TKEA at its then prevailing rates from time to time in respect of the following matters:-

- Carry out inspections, tests and/or repairs outside normal working days and hours, including Group or System control tests;
- Carry out repairs, renewals or replacements necessary by any cause beyond the control of TKEA including negligence, abnormal or incorrect operation, misuse, abuse, vandalism, Act of God or other cause;
- Attending to any emergency service where those emergencies are found to be the result of abnormal operation of the Lift Equipment or attendance to nuisance call or other events that are beyond the control of TKEA;
- Carrying out any additional statutory safety tests or inspections or requirements (other than those specified in clause 2) including any labour, materials and equipment associated with Consultants requests for assistance;
- Providing labour and materials associated with site emergency power tests and car lighting tests;
- Installing new attachments, carrying out structural or other alterations, or making any replacements with parts of a different design which, after the commencement of this Agreement, become necessary as a result of obsolescence, directions from statutory authorities or your insurer or as the result of new or amending legislation.

## 7. Term

- 7.1 This Agreement commences on 1/7/2010 for an Initial Term of 7 years and terminating on 30/6/2017 *period of 6 months*
- 7.2 To ensure continuous service and subject to clause 7.1, this Agreement will be automatically renewed for an equivalent further periods *And thereafter continue subject to 90 days notice should either party wish to terminate the*
- 7.3 If either party does not wish to renew this Agreement for a Further Term, then that party must give written notice of termination to the other party no less than ninety (90) days before the expiration of the Initial Term or any subsequent Further Term. *to the AGREEMENT*
- 7.4 If you continue to use TKEA services after the Initial Term or after any Further Term has expired, without renewing this Agreement for any subsequent Further Term, all TKE services will be based on a monthly "holding over" period and will include but not be limited to repairs and service calls only, and will be provided on a "Fee for Service" basis and in accordance with TKEA's, at the time, prevailing charge out rates (unless otherwise specified within **Annexure 2**). Note: In this instance the Agreement will not provide Full Comprehensive cover of components and will be limited to minor components coverage only. The general content of this Agreement will continue to apply as far as it can apply to this fee arrangement.
- 7.5 You acknowledge that this fee arrangement for the limited maintenance service during the "Holding Over" period will only include items specified in **Annexure 2** to the exclusion of other.

## 8. Payment

- 8.1 From the Commencement Date, you agree to pay TKEA the annual service fee of \$ \$22,000 + GST by quarterly instalment in advance. As agreed the first quarter's maintenance fee will not be charged.
- 8.2 TKEA will invoice you for each quarterly payment, the first such invoice being issued 3 months after the Commencement Date.
- 8.3 You must make payment of all amounts due under this Agreement from time to time in cleared funds and without set off or deduction of any kind not later than the 20<sup>th</sup> day of the month following the date of invoice.
- 8.4 In addition to the payment of annual service fee, You must pay each invoice presented to you with respect to the performance of any other repairs and/or additional services in accordance with this Agreement no later than 30 days after the date of the invoice.



- 8.5 If any amount owing by you is not paid when due under this Agreement, TKEA may (without prejudice to any other rights or remedies available to it) charge you interest (as liquidated damages) on all outstanding amounts at the rate of 2% per month on a daily basis from the date payment is due until the amounts are paid in full.

## 9. Adjustment of Service Fee and other additional payment

- 9.1 24 months from the start of this agreement TKEA is entitled to adjust the price of the Service Fee and any additional Payment as follows:-

- CPI (5YDNEY ALL GROUPS) and CAPPED AT 5%.
- (a) **Service Fee**-according to the movement of ~~an increase at a fixed percentage of 5%~~  
(b) **All labour and material rates**- according to any additional costs, taxes or other expenditure arising, including but not limited to amount arising under any statutes, regulation issued by any Government Department or other authority or any agreement including the Enterprise Bargaining Agreement.

## 10. Lift Equipment Information

You agree to provide TKEA with current wiring diagrams that reflect all changes, parts catalogs, and maintenance instructions for the equipment covered by this agreement, (except for TKEA products which will be supplied by us at no additional cost). You agree to authorize us to produce single copies of any programmable device(s) used in the equipment for the purpose of archival back-up of the software embodied therein. These items will remain your property.

## 11. Limitation of Liability

- 11.1 TKEA shall not be liable for any cost, loss, liability or damage arising from any defect or deficiency in, or failure by the Lift Equipment to operate nor any defect or deficiency in the items specified under clause 5-"Exclusions"
- 11.2 In no event will TKEA be liable for any indirect or consequential injury, liability, loss, cost or damage (including loss of profit) incurred or suffered by You or any person claiming through or against You (including for personal injury or death) as a result of the provision, or non-provision, of the services or resulting from the use of or inability to use the Lift Equipment, any defect or deficiency in the Lift Equipment or caused (directly or indirectly) by any act of God, strike, lockout or other industrial action, fire, explosion, theft, flood, civil commotion, earthquake, malicious damage, storm or any other cause whatsoever beyond the control of TKEA.
- 11.3 Subject to the limitations of liability contained elsewhere in this Agreement, TKEA's sole liability for breach of or a failure to comply with the terms of this Agreement, or for negligence or omission on the part of its employees, agents, servants or contractors, shall be limited to liability for damage to property or death or injury to any person which is the direct and foreseeable result of such breach, failure, negligence or omission on the part of TKEA.
- 11.4 Certain legislation, including the Australian Trade Practices Act 1974 (Cth) may imply warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. If those statutory provisions apply, notwithstanding any other provision of this Agreement, to the extent to which TKEA is entitled to do so, TKEA limits its liability in respect of any claim under those provisions to :-
- (a) in the case of goods, at TKEA's option:
- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of having the goods repaired
- And (b) in the case of services, at TKEA's option:
- (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## 12. Your Obligations

You shall:-

- 12.1 Comply with all statutory and local authority legislation, regulations, codes, and requirements in relation to the management of any hazard on the Lift Equipment;
- 12.2 Immediately report to TKEA any breakdown, damage, stoppage or malfunction of the Lift Equipment or any accident, emergency or other circumstances likely to affect the safe and proper function of the Lift Equipment;
- 12.3 At all times at its own expenses keep clean, remove and dispose of any spillage, rubbish, hazardous asbestos, dangerous substances in the building where the Lift Equipment is located;
- 12.4 Ensure TKEA's personnel have a safe access to and from the Lift Equipment at all times during the continuation of this Agreement;
- 12.5 Permit TKEA's employees and agents access to the Lift Equipment and associated landings, lobbies and motor rooms associated therewith for the fulfilment of TKEA's obligations under this Agreement;
- 12.6 Not to permit or authorise any maintenance, service, replacement, repair, renewal or substitution of the Lift Equipment without the consent of TKEA in writing.
- 12.7 Endeavour to protect the equipment and the necessary facilities, and not to allow any other person to enter the machine rooms and shaft;



- 12.8 Provide a suitable machine room including secured doors, waterproofing, lighting, ventilation and heat to maintain the room within the manufacturers recommended range. (if not available 20 degrees Celsius) You also agree to maintain the elevator, pit, shaft and machine room in a dry condition at all times, Should water or other liquids become present, you will contact with others for removal and the proper handling of such liquids prior to TKEA having corrective action;
- 12.9 Instruct or warn passengers in the proper use of the equipment and to keep the equipment under continued surveillance by competent personnel to detect irregularities between elevator examinations.

### **13. Change of Ownership**

- 13.1 You must effect an assignment of this Agreement to any new owner should there be a change in the beneficial and legal ownership of the Lift Equipment and premises. You will give TKEA its full cooperation to facilitate a continuity of service to any new owner.
- 13.2 If You cannot secure an assignment of this Agreement, You will be liable to TKEA for all charges and fees that may fall due under this Agreement for the entire term of this Agreement.
- 13.3 You must not assign its rights and obligations under this Agreement without the prior written consent of TKEA. Any change in the ownership or effective control of You will be deemed to be an assignment of this Agreement requiring the prior consent of TKEA.

### **14. Termination**

- 14.1 You are permitted to terminate this Agreement in the following situations:-
- (a) where You have permanently closed down the Lift Equipment after giving TKEA (90) ninety days prior written notice;
  - (b) where a term of this Agreement is breached by TKEA and the breach has not been rectified by TKEA within 90 days of giving a written request by You to TKEA to rectify such breach.
- 14.2 TKEA is permitted to terminate this Agreement in the following situations:-
- (a) the ownership of the Lift Equipment changes, and You do not effect an assignment of the ownership of the premises and Lift Equipment under this Agreement to a new owner pursuant to clause 13.
  - (b) if any third party other than TKEA, its servants and agents carries out any work on the Lift Equipment which is within the scope of this Agreement;
  - (c) if a breach of this Agreement is committed by You and is not rectified by You within 30 days of a written request to do so by TKEA;
  - (d) if TKEA do not receive payment that has fallen due within 30 days of the payment due date;
  - (e) if You elect not to accept TKEA's offer to Upgrade the Lift Equipment in accordance to clause 17 after (90) ninety days prior written notice is given to You.
- 14.3 Either party may terminate if:
- (a) either party commits an act of bankruptcy or (being a company) insolvency or is de-registered or has a liquidator, receiver, voluntary administrator or controller appointed in respect of its business, asset or undertaking or is placed under official management or enters into compromise or other arrangement with its creditors or has any proceedings commenced against it;
  - (b) if, by any cause beyond the reasonable control of either party, the Lift Equipment becomes permanently unusable.

### **15. Early Termination**

- 15.1 If You terminate this Agreement during the term of this Agreement or if this Agreement is terminated under clause 14, You will pay TKEA a lump sum amount of unamortised costs spent in TKEA's performance of this Agreement ("**termination fee**").
- 15.2 The parties agree that the termination fee is any amount equal to the monthly charge times the number of unexpired months under this Agreement which shall be deemed to be the liquidated sum recoverable by TKEA for the damages it will sustain as a result of the early termination of this Agreement.

### **16. Notifications of Accident/Events**

Each party has a responsibility to notify the other party:

- 16.1 If there is an event or circumstances occurring which adversely affecting or likely to affect the safe and proper operation of the Lift Equipment; and
- 16.2 Of the death of or injury to any person or damage to any property arising from the use of the Lift Equipment.

### **17. Replacement of Unsafe Lift Equipment**

- 17.1 Should TKEA consider that modification, substitution, replacement, or change to any part of the Lift Equipment falling outside the range of services to be provided by this Agreement is necessary for reasons of Lift Equipment preservation or safety, TKEA will advise You as soon as is possible of the need for modification, substitution, replacement or change.
- 17.2 If TKEA deems the Lift Equipment or lift site to be unsafe, TKEA may suspend services under this Agreement until You make satisfactory arrangements to ensure that the Lift Equipment and lift site are safe.

### **18. Good and Services Tax ("GST")**

- 18.1 The amounts payable under this Agreement are exclusive of GST.

- 18.2 If GST is payable as a consequences of any supply made (or deemed to be made) by one party to the other in connection with this Agreement, the party receiving the supply must pay to the party making the supply an amount equal to the GST payable in respect of the supply, in addition to the consideration (if any) required to be paid under any other provision of this Agreement.

## **19. Dispute**

### **Dispute notification procedure**

- 19.1 If a Dispute arises, each party must not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the provisions of this clause 19, except to seek urgent interlocutory relief.
- 19.2 A party claiming that a Dispute has arisen must notify the other in writing giving details of the Dispute.
- 19.3 On receipt of a notification, the parties must use reasonable endeavours to resolve the Dispute.

## **20. Notices and Approvals**

- 20.1 A notice or approval must be:-

- (a) in writing; and
- (b) left at or posted to the address or sent to the facsimile number of the party.

- 20.2 A notice or approval given pursuant to this Agreement will be deemed to be validly given:

- (a) in the case of hand delivery, at the time received;
- (b) in the case of posting, on the third business day following the date of posting or on the fifth business day following the date of posting (if between countries) to the address of the receiver last advised to the sender;
- (c) in the case of facsimile transmission, at the date and time the facsimile is sent.

## **21. Governing Law**

This Agreement is governed by and construed in accordance with the law of the State in which the Lift Equipment is situated and the parties agree to submit to the non-exclusive jurisdiction of the courts of the said State.

## **22. Severability**

Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement. Such invalidity shall not affect the validity of the remaining provisions of this Agreement.

## **23. Entire Agreement**

This Agreement is the entire agreement and understanding between the parties and supersedes all previous agreements, understandings and negotiations on the subject matter.

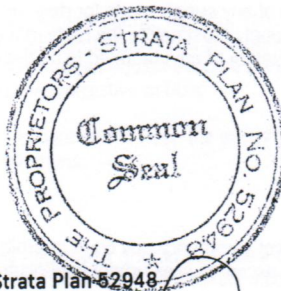
## **24. Variation**

Any variation, additions, modifications of this Agreement must be in writing.



EXECUTED AS AN AGREEMENT

EXECUTED BY



ThyssenKrupp Elevator:

Strata Plan 52948

ThyssenKrupp Elevator Approval:

By: [Signature]  
(Signature of Authorised Individual)

By: [Signature]  
(Signature of Authorised Individual)

By: [Signature]  
(Signature of Authorised Individual)

Daniel Lewin  
Daniel Lewin

William Fry  
(Print Name)

Kelly Fidler  
(Print Name)

ThyssenKrupp Elevator  
Customer Service Representative

Strata Manager  
(Title/Position)  
(Director / Senior Officer)

Business Development Manager  
(Title/Position)  
(Director / Branch Manager)

18/6/2010  
(date)

24.06.2010.  
(date)

18.6.2010  
(date)

ThyssenKrupp Elevator Bank Details for electronic payment customers

Receiver: **ThyssenKrupp Elevator Australia Pty Ltd**  
Account Number: **8333 88011**  
BSB: **012-003**  
Bank: **ANZ**

Annexure 1

Labour Only

Normal Hours ( 7:30am – 4:00pm ) Monday – Friday	<u>PER HOUR</u> \$155.00 + GST Minimum 2 hours
After Hours Monday – Friday ( 4pm – 7:30am ) All Day Saturday and Sunday	<u>PER HOUR</u> \$200.00+GST per hour Min Two Hours
All Day On Public Holidays	<u>PER HOUR</u> \$250.00ph + GST Minimum 2 hours

Chargeable Call Rates for Keys etc in Pit

Normal Hours ( 7:30am – 4:00pm ) Monday – Friday	<u>FLAT RATE</u> \$250.00
After Hours Monday-Friday ( 4pm – 7:30am ) All Day Saturday, Sunday	<u>FLAT RATE</u> \$300.00
Public Holidays	<u>FLAT RATE</u> \$350.00