

CONDITIONS OF SALE

1. INTERPRETATION

- (i) In these Conditions:
- "Purchaser" means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.
 - "Goods" means the Goods (including any instalment of the Goods or any parts for them) which the Company is to supply in accordance with these Conditions.
 - "Company" means Elster Metering Ltd (registered in England under number 873781)
 - "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Company.
 - "Contract" means the contract for the purchase and sale of the Goods.
 - "Writing" includes telex, facsimile transmission and comparable means of communication.
- (ii) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- (iii) The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE AND ORDERS

- (i) The placing of an order is subject to the following terms and conditions which supersede any terms and conditions proposed by the Purchaser and shall not be varied except with the written consent of the Company and any such variation shall only apply in respect of the particular order involved.
- (ii) All orders are subject to written acceptance by the Company's authorised representatives.
- (iii) Errors or omissions are subject to correction.
- (iv) No binding contract shall be deemed to have been effected by the acceptance on the part of the Purchaser of a quotation or offer made by the Company until such contract shall have been confirmed in writing by the Company.
- (v) The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- (vi) Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed.

3. DELIVERY

- (i) Any dates and/or times quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.
- (ii) The Purchaser in the case of damaged Goods shall give notice within three days after delivery that the Goods have been delivered damaged, and in the case of non-delivery of the Goods, shall if he had been advised of the despatch of the Goods, give notice within ten days after the receipt of such advice that the Goods were entrusted for delivery to a carrier.
- (iii) The liability of the Company shall be limited to the replacement or repair within a reasonable time of the Goods damaged or not delivered, provided always that the Company shall not be responsible for and damage to, or non-delivery of the Goods, if by reason of the failure of the Purchaser to give notice of damage or non-delivery as in this clause provided, the Company shall be prevented from recovering compensation for such loss or damage from a third party.
- (iv) If for any reason the Purchaser fails to take delivery of the Goods at the time when the Goods are due and ready for delivery, the Company shall be entitled to store the Goods until their actual delivery and the Purchaser shall be liable to the Company for the costs (including insurance) of the storage or sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.
- (v) Where the Goods are to be delivered in instalments, each delivery constitutes a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments does not entitle the Purchaser to treat the Contract as a whole as repudiated.
- (vi) If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Purchaser's fault, and the Company is accordingly liable to the Purchaser, the Company's liability is limited to the excess (if any) of the cost to the Purchaser (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

4. PAYMENT

- (i) Subject to any special terms agreed in Writing between the Purchaser and the Company, the Company is entitled to invoice the Purchaser for the price at any time after the Company has notified the Purchaser that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- (ii) The Purchaser will pay the price of the Goods in sterling within 30 days of the date of the Company's invoice and the Company is entitled to retain the Goods until the full amount payable has been received. Delivery of the Goods has not passed to the Purchaser. The time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request.
- (iii) If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company may:
- (a) cancel the Contract or suspend any further deliveries to the Purchaser
 - (b) appropriate any payment made by the Purchaser to such other Goods or the Goods supplied under other Contract between the Purchaser and the Company as the Company may think fit (notwithstanding any purported appropriation by the Purchaser) and
 - (c) charge the Purchaser interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per annum above National Westminster Bank plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5. PRICE

- (i) The price of the Goods is the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Purchaser, after which time they may be altered by the Company without giving notice to the Purchaser.
- (ii) The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to take account of any increase in the price of any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.
- (iii) Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Purchaser and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Purchaser's premises, the Purchaser shall be liable to pay the Company's charges for transport, packaging and insurance.
- (iv) The price is exclusive of any applicable value added tax, for which the Purchaser is additionally liable to the Company.

6. SPECIFICATION

- (i) Unless otherwise specified, Goods which are the subject of this quotation will be to the Company's standard specification. In the event of the Purchaser requiring any modification of the specification the Company reserves the right to amend the price and delivery date.
- (ii) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not affect their quality or performance.
- (iii) The Purchaser is responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

7. SPECIFICATION OF NON-STANDARD PRODUCTS

- (i) All descriptive and technical specifications drawings and particulars of weights and dimensions submitted by the Company in quotations, bids or tenders are approximate only, and the descriptions and illustrations contained in catalogues, price lists and other advertisement matter issued by the Company are intended merely to present a general idea of the Goods described therein, and none of these shall form part of the contract. After acceptance of a quotation, bid or tender, a set of certified outline drawings will be supplied if desired.
- (ii) Equipment non-standard or made specially or in special finish cannot be returned.

8. CANCELLATION OF ORDERS

- No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in Writing of the Company and on terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

9. RISK

- Risk of damage to or loss of the Goods shall pass to the Purchaser:
- (i) In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the Goods are available for collection; or
 - (ii) In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

10. PROPERTY

- (i) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property and the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Company to the Purchaser for which payment is then due.
- (ii) Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Purchaser shall be entitled to re-sell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (iii) Until such time as the property in the Goods passes to the Purchaser and provided that the Goods are still in existence and have not been sold, the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.
- (iv) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

11. TESTS

- The goods are carefully inspected and, where practicable, submitted to standard tests before despatch. If special tests or tests in the presence of the Purchaser or his representative are required, these, unless otherwise agreed must be made at the Company's works and will be charged for separately.

12. PERFORMANCE

- Any performance figures given by the Company are based upon experience and as such as the Company expects to obtain on test prior to despatch from the Company's works. The Company will however, accept no liability if those figures are not obtained unless specifically guaranteed by the Company.

13. WARRANTIES, LIABILITY AND EXCLUSIONS

- (i) Subject to the Conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery.
- (ii) The above warranty is given by the Company subject to the following Conditions:
- (a) the Company's warranty is in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser.
 - (b) the Company is under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's approval.
 - (c) the Company is under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
 - (d) the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- (iii) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (iv) Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Purchaser are not affected by these Conditions.
- (v) Any claim by the Purchaser which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Purchaser) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after despatch or failure. If delivery is not refused, and the Purchaser does not notify the Company accordingly, the Purchaser shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- (vi) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Purchaser.
- (vii) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under any express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser, except as expressly provided in these Conditions.

14. EXPORT

- (i) Goods for export are sold FOB (Incoterms - current version). Where Goods are sold FOB the responsibility of the Company shall cease immediately the Goods are so placed and the Company shall be under no obligation to give the Purchaser any notice under the Sale of Goods Act 1979.
- (ii) Unless otherwise agreed in writing by the Company, all Goods, services and software are supplied on the strict condition that:
- (a) they are for civil use
 - (b) they are not to be supplied to any other country or for any application prohibited by any law or regulation binding or in effect in the United Kingdom
 - (c) they will not in any way be installed used or applied in or in connection with the operation of any nuclear facilities such as but not limited to nuclear power plants, nuclear facilities fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores or research reactors.
- The Purchaser acknowledges that governmental regulations of more than one country may prevent or restrict the export to other countries of the Goods or the software. Further information will be provided on request but the Purchaser agrees to abide by any such regulations which may exist and to indemnify the Company against any actions costs demands or expenses resulting from any failure by the Purchaser to do so. The Company may be subject to United States/United Kingdom export control laws and a requirement to obtain a validated export licence as well as similar laws in other applicable jurisdictions. If applicable the Company shall file for the export licence only after appropriate documentation for the licence application has been provided by the Purchaser who shall furnish such documentation within reasonable time after order acceptance. Any delay in obtaining such licence shall suspend delivery dates without liability to either party. If an export licence is not granted or is revoked by the appropriate authorities, the Contract may be cancelled by the Company without liability for damages of any kind.
- (iii) The Purchaser is responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company has no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- (iv) Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Purchaser in favour of the Company and confirmed by a bank in London acceptable to the Company or, if the Company has agreed in writing on and before acceptance by the Purchaser and delivery to the Company of a bill of exchange drawn on the Purchaser payable 60 days after sight to the order of the Company at such branch of National Westminster Bank plc as may be specified in the bill of exchange.
- (v) The Purchaser undertakes not to offer the Goods for resale in any country notified by the Company to the Purchaser at or before the time the Purchaser's order is placed, or to sell the Goods to any person if the Purchaser knows or has reason to believe that the person intends to resell the Goods in any such country.

15. INDEMNITY

- In the event of any action for infringement or other proceedings being taken against the Purchaser in respect of any articles manufactured by the Purchaser in accordance with the Purchaser's instructions, the Purchaser shall indemnify the Company against all loss, damages, costs and expenses awarded against them or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, or any other action, or proceedings which result from the Company's use of the Purchaser's specification.

16. FORCE MAJEURE

- The Company shall not be liable for any failure to deliver or any other failure to comply with any contractual or other obligation due to any cause beyond its reasonable control, including (without prejudice to the generality of the foregoing), instructions or lack of instructions from the Purchaser, industrial disputes, shortage of labour or materials, or acts of God or any local or government authority.

17. INSOLVENCY

- (i) This clause applies if:-
- (a) the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstitutions); or
 - (b) an insolvency receiver takes possession, or a receiver is appointed of any of the property or assets of the Purchaser; or
 - (c) the Purchaser ceases, or threatens to cease, to carry on business; or
 - (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
- (ii) If this clause applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. GENERAL

- (i) Any dispute under this Contract shall be referred to an arbitrator or arbitrators to be appointed by the parties or in default of agreement by the President of the Law Society for the time being, and his or their decision shall be binding on both parties.
- (ii) The Contract incorporating these terms and conditions shall be subject to an construed and interpreted in accordance with English law and the Uniform Laws of International Sales Act 1967 shall not apply to any sale hereunder.
- (iii) The Company is a member of the group of companies whose holding company is Elster Metering Holdings Ltd, and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- (iv) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (v) No waiver by the Company of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (vi) Any of our products which fall within the WEEE regulations must be disposed of locally at an authorised WEEE recycling outlet. Our WEEE producer identification number is WEEE/EU/0221X/PRO. We do not offer a take back service for these products.
- (vii) Please note our Battery Producer Registration Number - BPRN0680 refers. This is relevant for UK customers only.
- (viii) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

A FULL SIZE COPY IS AVAILABLE ON REQUEST