

ELSTER METERING LIMITED

CONDITIONS OF PURCHASE (GOODS)



1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in these conditions.

Company: Elster Metering Limited (company registration number 873781).

Contract: The Order and the Seller's acceptance of the Order.

Elster Goods: All goods that are supplied to the Company's specification and all goods which are developed by the Seller at the request of the Company and any improvements, modifications and changes thereto.

Goods: Any goods (including without limitation Elster Goods) agreed in the Contract to be bought by the Company from the Seller (including any part or parts of them).

Intellectual Property Rights:

All patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: The Company's official purchase order form containing a written instruction to supply the Goods, incorporating these conditions.

Seller: The person, firm or company who accepts the Company's Order.

Specification: Includes any plans, drawings, data, patterns, samples, raw materials, jigs, tools, fixtures and other materials or information relating to the Goods.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. Application Of Terms

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Company's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company in accordance with the Company's policy which is available on request.

3. Quality And Defects

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and any Specification supplied or advised by the Company to the Seller.

3.2 The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.

3.3 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times.

3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to Specification supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.6 If any of the Goods fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. Indemnity

4.1 The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

(a) defective workmanship, quality or materials;

(b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

(c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach of negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

5. Delivery

5.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by the Company.

5.2 The date for delivery shall be as specified in the Order or as otherwise specified in writing by the Company at any time before the delivery date, or if no such date is so specified then delivery shall take place within 28 days of the Order.

5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company.

5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of

Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.5 Time for delivery shall be of the essence.

5.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.

5.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:

(a) cancel the Contract in whole or in part;

(b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

(c) recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and

(d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

5.8 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Seller at the cost of the Seller.

5.9 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

5.10 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

5.11 The Seller shall not be deemed to have accepted the Goods until it has had seven working days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for seven working days after any latent defect in the Goods has become apparent.

6. Risk/Property

6.1 The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking). Ownership of the Goods shall pass to the Company upon payment for the Goods by the Company.

7. Price

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by the Company.

8. Payment

8.1 (Unless otherwise agreed in writing by the Company) the Company shall pay the price of the Goods within sixty (60) days of the end of the month in which delivery of the Goods to the Company takes place, but time for payment shall not be of the essence of the Contract.

8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

8.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at two (2)% per annum over the Bank of England base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

9. Confidentiality

9.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. The Company's Property

10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of Intellectual Property Rights in all drawings, Specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

10.2 The Company is the sole owner of all Intellectual Property Rights in Elster Goods. Nothing in this Contract shall be deemed to transfer title in any Intellectual Property Rights in Elster Goods to the Seller. The Seller undertakes that during the term of this Contract and for a period of twelve (12) months after the expiry or termination of this Contract it shall not engage in the development or commercial exploitation of any goods which (in the opinion of the Company) compete with the Elster Goods or are equivalent in functionality to the Elster Goods.

10.3 The Seller hereby grants to the Company a free, perpetual, worldwide licence to use any Intellectual Property Rights belonging to the Seller and comprised in Goods as required by the Company for its normal business purposes.

11. Termination

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

(a) the Seller commits a material breach of any of the terms and conditions of the Contract; or

(b) any distress, execution or other process is levied upon any of the assets of the Seller; or

(c) the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a

solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

(d) the Seller ceases or threatens to cease to carry on its business; (e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

(f) there is a change of control of the Seller (as defined in section 574 of the Capital Allowances Act 2001).

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. Remedies

12.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

(a) to rescind the Order;

(b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

(c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

(e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. Assignment

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.2 The Company may assign the Contract or any part of it to any person, firm or company.

14. Force Majeure

14.1 The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15. General

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

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