

ELSTER METERING LIMITED CONDITIONS OF PURCHASE (SERVICES)



1. Interpretation

1.1 The following definitions and rules of interpretation apply in these terms and conditions ("Conditions").

Contract: the Order and these Conditions.
Company: Elster Metering Limited (company registration number 873781).
Company's Equipment:

any equipment, systems or facilities provided by the Company and used directly or indirectly in the supply of the Services.

Company's Manager: the Company's manager for the Services, appointed in accordance with condition 6.

Deliverables: all Documents, products, deliverables and materials developed by the Supplier in relation to the Services in any form.

Document: any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: all Documents, information and materials provided by the Supplier relating to the Services.

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.

Key Personnel: all members of the Supplier's Team who are identified as being key in the Order and any replacement made in accordance with these Conditions.

Order: the Company's official purchase order form containing a written order to supply the Services, incorporating these Conditions.

Proposal: the materials handed to the Customer supporting the Supplier's presentation to the Customer and describing how the Supplier proposes to carry out the Services.

Services: the services to be provided by the Supplier under this Contract as set out in an Order and the Supplier's obligations under this Contract, together with any other services which the Company agrees to take from the Supplier.

Supplier: the firm or company who supplies the Services to the Company.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate contract between the parties under which title passes to the Company.

Supplier's Manager: the Supplier's manager for the Services appointed under condition 5.3.

Supplier's Team: the Supplier's manager and all employees, consultants, agents and sub-contractors which it engages in relation to the Services.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Words in the singular shall include the plural and vice versa.

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

1.6 A reference to writing or written includes faxes but not e-mail.

1.7 Where the words "including" or "including in particular" are used in these Conditions, they are deemed to have the words "without limitation" following them and where the context permits, the words "other and otherwise" are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. Application Of Conditions

2.1 These Conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation, proposal, confirmation of order, specification or other Document supplied by the Supplier, or implied by law, trade custom, practice or course of dealing.

2.2 The Supplier's Proposal constitutes an offer by the Supplier to supply the Services specified in it on these Conditions. No offer placed by the Supplier shall be accepted by the Company other than by the Company issuing a written and executed Order or acceptance of the Proposal, at which point a contract for the supply and purchase of these Services on these Conditions will be established. The Supplier's standard terms and conditions (if any) attached to, enclosed with or referred to in any Proposal, quotation, specification or other Document shall not govern this Contract.

3. Commencement And Duration

3.1 The Services supplied under this Contract shall be provided by the Supplier to the Company from the date specified in the Order, or if no date is specified in the Order, from the date of the issue by the Company of the Order in accordance with condition 2.2.

3.2 The Services supplied under this Contract shall continue to be supplied for the period confirmed in an Order or, if no such period is set out in an Order, until the Services are completed in accordance with the Order and, after that, shall continue to be supplied unless this Contract is terminated by one of the parties giving to the other not less than three (3) months' notice unless this Contract is terminated in accordance with condition 13.

4. Additional Services

4.1 Services which are additional to those set out in an Order shall be agreed in the following manner:

(a) the Company shall provide the Supplier with a request for additional Services, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what works to be done, dates by which it is to be started and finished, Deliverables, In-put Materials and any other materials required by the Company;

(b) the Supplier shall, within 14 days of receipt of a request for additional Services, provide the Company with a written proposal; and

(c) the Supplier and the Company shall discuss and agree the draft proposal and when it has been agreed, they shall both sign a copy of it and it shall become an Order subject to these Conditions.

4.2 Once the Order for additional Services has been agreed and signed in accordance with condition 4.1(c), no amendment shall be made to it except in accordance with condition 7 and condition 16.

5. Supplier's Responsibilities

5.1 The Supplier shall supply the Services, and deliver the Deliverables to the Company or as the Company may direct, in accordance with this Contract and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

5.2 The Supplier shall meet and time is of the essence as to any performance dates specified in an Order. If the Supplier fails to do so, the Company may (without prejudice to any other rights it may have):

(a) terminate this Contract in whole or in part without liability to the Supplier;

(b) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(c) purchase substitute services elsewhere;

(d) hold the Supplier accountable for any loss and additional costs incurred; and

(e) have refunded by the Supplier all sums previously paid by the Company to the Supplier under this Contract.

5.3 The Supplier shall:

(a) co-operate with the Company in all matters relating to the Services;

(b) subject to the prior written approval of the Company, appoint or, at the written request of the Company, replace without delay;

(c) the Supplier's Manager who shall have authority under this Contract contractually to bind the Supplier on all matters relating to the Services; and

(d) any member of the Supplier's Team who shall be suitably skilled, experienced and qualified to carry out the Services;

(e) subject to condition 5.3(b), ensure that the same person acts as the Supplier's Manager throughout the term of this Contract;

(f) procure the availability of the Supplier's personnel to provide the Services on such days and at such times as the Company may require during the term of this Contract;

(g) promptly inform the Company of the absence or anticipated absence of any member of the Supplier's Team and, if the Company requires, provide a suitably qualified replacement;

(h) not make any changes in the Supplier's Manager or the Key Personnel without the prior written approval of the Company not to be unreasonably withheld or delayed; and

(i) ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

5.4 The Supplier shall:

(a) observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises. The Company reserves the right to refuse the Supplier's Team access to the Company's premises, which will only be given to the extent necessary for the performance of the Services;

(b) notify the Company as soon as it becomes aware of any health and safety

hazards or issues which arise in relation to the Services; and

(c) before the date on which the Services are to start, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to:

(i) the Services;

(ii) the installation of the Supplier's Equipment;

(iii) the use of In-put Material;

(iv) the use of all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this Contract including computer programs, data, reports and specifications the pre-existing materials specified in an Order; and

(v) the use of the Company's Equipment in relation to the Supplier's Equipment.

5.5 The Supplier acknowledges and agrees that:

(a) the Company is entering into this Contract on the basis of the Proposal and that the Proposal is accurate and complete in all material respects, and is not misleading;

(b) if it considers that the Company is not or may not be complying with any of the Company's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this Contract;

(c) to the extent that it restricts or precludes performance of the Services by the Supplier; and

(d) if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Company in writing.

6. Company's Obligations

6.1 The Company shall:

(a) co-operate with the Supplier in all matters relating to the Services and appoint the Company's Manager in relation to the Services, who shall have the authority contractually to bind the Company on matters relating to the Services;

(b) provide such access to the Company's premises and data, and such office accommodation and other facilities as may reasonably be required by the Supplier and agreed with the Company in writing, in advance, for the purposes of the Services; and

(c) provide the In-put Material and/or such information as the Supplier may reasonably request and the Company considers reasonably necessary, in order to carry out the Services, in a timely manner, and ensure that it is accurate in all material respects;

(d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Company's premises.

7. Change Control

7.1 The Company's Manager and the Supplier's Manager shall meet as agreed to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other party in accordance with this Contract.

7.2 If the Company requests a change to the scope or execution of the Services:

(a) the Supplier shall, within a reasonable time (and in any event not more than five working days after receipt of the Company's request), provide a written estimate to the Company;

(b) if the Company does not wish to proceed, there shall be no change to this Contract; and

(c) if the Company wishes the Supplier to proceed with the change, the Supplier shall do so after agreement on the necessary variations to its charges, the Services, and any other relevant terms of this Contract to take account of the change and this Contract shall be amended in accordance with condition 16.

7.3 If the Supplier requests a change to the scope of the Services, the Company shall not unreasonably withhold or delay consent to it. If the Company wishes the Supplier to proceed with the change, the Supplier shall do so, following a variation of charges in accordance with condition 8.2. The Supplier's request will be attributable to the Company's non-compliance with the Company's obligations, neither the Supplier's charges, the Services, and any other relevant terms of this Contract shall vary as a result of such change.

8. Charges And Payment

8.1 Condition 8.2 shall apply if the Supplier provides the Services on a time and materials basis. Condition 8.3 shall apply if the Supplier provides the Services for a fixed price. The remainder of this condition 8 shall apply in either case.

8.2 Where the Services are provided on a time and materials basis:

(a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates for the Supplier's Team, details of which are set out in an Order;

(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);

(c) the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Team unless it has the Company's prior written consent to do so;

(d) the Supplier shall ensure that the members of the Supplier's Team complete time sheets recording time spent on the Services, and subject to the written approval of them by the Company's Manager, the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 8.2(e); and

(e) the Supplier shall invoice the Company monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 8.2 and condition 8.4. Each invoice shall set out the time spent by each member of the Supplier's Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

8.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in an Order. The total price shall be paid to the Supplier in instalments, as set out in an Order with each instalment being conditional on the Supplier completing the supply of the corresponding Services. On completion and/or at the end of a period specified in an Order in respect of which an instalment is due, the Supplier shall invoice the Company for the charges that are then payable, together with expenses, the costs of materials (and VAT, where appropriate) calculated as provided in condition 8.4.

8.4 The Supplier's charges exclude the Supplier's Services in such form as the Company shall approve. The Supplier shall allow the Company to inspect such records at all reasonable times on request.

8.5 The Company shall pay each invoice properly due, issued and submitted to it by the Supplier, within 60 days of the end of the month in which it was received by the Company.

8.6 Claims for payment in respect of materials purchased by or services provided to the Supplier, or for reimbursement of expenses, shall be payable by the Company only if accompanied by relevant receipts.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier's Services in such form as the Company shall approve. The Supplier shall allow the Company to inspect such records at all reasonable times on request.

8.8 Without prejudice to any other right or remedy it may have, the Company reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the Company to the Supplier under this Contract.

9. Quality Of Services

9.1 The Supplier warrants to the Company that:

(a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;

(b) the Services will conform with all descriptions and specifications provided to the Company by the Supplier; and

(c) the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform the Company as soon as it becomes aware of any changes in that legislation.

9.2 The Company's rights under this Contract are in addition to the statutory terms implied in favour of the Company by the Supply of Goods and Services Act 1982 and any other statute.

9.3 The provisions of this condition 9 shall survive any performance, acceptance or payment pursuant to this Contract and shall extend to any substituted or remedial services provided by the Supplier.

10. Intellectual Property Rights

10.1 The Supplier assigns to the Company, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Supplier and Deliverables which the Supplier creates or produces.

10.2 The Supplier shall, promptly at the Company's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Company's rights in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any Company or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or

the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Contract by the Supplier.

11.2 During the term of this Contract and for a period of 12 months thereafter, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance in an amount not less than one million pounds (£1,000,000) and shall, on the Company's request, produce both the policy and such certificate giving details of cover and the receipt for the current year's premium.

11.3 The provisions of this condition 11 shall survive termination of this Contract, however arising.

12. Confidentiality And The Company's Property

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

12.2 All In-put Materials, Company's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier shall, at all times, be and remain as between the Company and the Supplier the exclusive property of the Company, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until the termination of this Contract and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

12.3 This condition 12 shall survive termination of this Contract, however arising.

13. Termination

13.1 Without prejudice to any other rights or remedies which the Company may have, the Company may terminate this Contract without liability to the Supplier immediately on giving notice to the Supplier if:

(a) the performance of the Services is delayed, hindered or prevented by circumstances beyond the Supplier's reasonable control; or

(b) the Supplier commits a material breach of any of the terms of this Contract and fails to remedy that breach within 14 days of being notified in writing of the breach; or

(c) an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Supplier; or

(d) an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(e) a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession or control of the Supplier's assets; or

(f) the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(g) the Supplier ceases, or threatens to cease, to trade; or

(h) the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

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

13.2 On termination of this Contract for any reason the Supplier shall immediately deliver to the Company:

(a) all In-put Material and all copies of information and data provided by the Company to the Supplier for the purposes of this Contract. The Supplier shall certify to the Company that it has not retained any copies of In-put Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in condition 12; and

(b) all specifications, programs (including source codes) and other documentation created and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Company (to the extent that they have not already done so by virtue of condition 10), who shall be entitled to enter the premises of the Supplier to take possession of them.

13.3 If the Supplier fails to fulfil its obligations under condition 13.2, then the Company may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

13.4 Termination of this Contract, however it arises, shall not prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

14. Remedies

14.1 If any Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of this Contract, the Company shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

(a) to rescind this Contract; or

(b) to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the Company to the Supplier under this Contract; or

(c) to require the Supplier, without charge to the Company, to carry out such additional work as is necessary to correct the Supplier's failure; and

(d) in any case, to claim such damages as it may have sustained in connection with the Supplier's breach or breaches of this Contract not otherwise covered by the provisions of this condition 14.

15. Force Majeure

15.1 The Company reserves the right to defer the date for performance of, or payment for, the Services, or to terminate this Contract, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or network, act of God, natural disasters, such as fire, flood, storm or malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16. Variation

16.1 Subject to condition 4 and condition 7, no variation of this Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17. Waiver

17.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

17.2 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

18. Assignment

18.1 The Supplier shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

18.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

19. No Partnership Or Agency

19.1 Nothing in this Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. Rights Of Third Parties

20.1 This Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

21. Notices

21.1 Notice given under this Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in this Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed to be received under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. Governing Law And Jurisdiction

22.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

All full size copy is available on request.

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