

ODS METERING SYSTEMS

GENERAL TERMS AND CONDITIONS OF PROCUREMENT OF GOODS AND SERVICES



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1. GENERAL

- 1.1. For the purpose of these Terms, "the purchaser" means ODS Metering Systems B.V. (filed at the Dutch Chamber of Commerce at Rotterdam on 7-1-2015 under number 61950238) who, as provider, Purchaser or performer, is party to the legal actions and agreements mentioned in paragraph 2. "the Supplier" means the prospective Supplier, prospective supplier and generally the Purchaser's contract party to the legal acts and agreements referred to in paragraph 2.
- 1.2. These General Terms for procurement of Goods and Services are applicable to all received offers, quotations, agreements concluded and yet to be concluded, and to all other (legal) acts of the purchaser with respect to the procurement of goods and services.
- 1.3. Any trade terms used in these General Terms and Conditions, order or otherwise shall be interpreted in accordance with the most recent version of the Incoterms produced by the International Chamber of Commerce in force at the time of concluding the agreement.
- 1.4. If a written provision in an agreement between the Supplier and the Purchaser is in conflict with a provision of these General Terms or with a provision of an applicable Incoterm, the written provision of the agreement shall take precedence.
- 1.5. Where these General Terms or the law stipulates the formal requirement that something must be in writing, this shall also include email messages.



2. **AGREEMENT**

- 2.1. All orders must be in writing and are accepted subject to these General Terms and Conditions for Procurement of Goods and Services. No terms or conditions put forward by Supplier and no representations, warranties, guarantees or other statements not contained in Supplier's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Purchaser shall be binding on Purchaser.
- 2.2. The Agreement shall become effective upon the date of issuing a written Purchase order.
- 2.3. Any verbal commitments, agreements and supplements, and amendments to an agreement concluded between the parties shall only be binding on the Supplier if confirmed by Purchaser in writing.



3. DELIVERY PERIODS

- 3.1. Unless otherwise stated in Purchasers order, all mentioned delivery dates and times are fixed.
- 3.2. The mere fact of exceeding the delivery time by the Supplier results in the Supplier being in default.
- 3.3. Delivery will take place at the agreed place and time, and in accordance with the prevailing Incoterm DDP
- 3.4. Without prejudice to the provision in the previous article, the Supplier is obliged to inform the Purchaser immediately of any delay or foreseeable delay in the execution of the Agreement.
- 3.5. Unless otherwise agreed in writing, the Supplier is not entitled to make partial deliveries. If the execution of partial deliveries has been agreed, then delivery is, for the purposes of these General Terms and Conditions, also deemed to mean a partial delivery
- 3.6. The delivery is conditionally complete at the moment when the goods have been received by or on behalf of the Purchaser and the Purchaser has signed for delivery. The latter signing does not affect the fact that the goods delivered can be rejected later under the terms of article 7 of these General Terms and Conditions.
- 3.7. The Supplier is not entitled to suspend its delivery obligation if the Purchaser fails to perform one or more of its obligations.



4. FORCE MAJEURE

- 4.1. In the event of force majeure, including but not limited to: Armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses) on the part of one of the parties, the fulfillment of the Agreement shall be suspended for the duration of the force majeure period, without any of the parties being liable for compensation as regards the other party. If the situation of force majeure should last longer than Sixty (60) working days, Purchaser shall have the right to terminate the Agreement with immediate effect and without court intervention by giving notice in writing, without any right to damages arising. In case of advance payment, refund will be paid back within five (5) working days without further notice. Force majeure on the part of the Supplier shall in no. event be understood to mean: staff shortage, strikes, non-performance by any third party engaged by the Supplier, transport problems on the part of the Supplier or any third parties engaged by the Supplier, failure of equipment, liquidity and/or solvency problems at the Supplier or government measures affecting the Supplier.



5. WARRANTY

- 5.1. Supplier warrants (i) that Goods manufactured by Supplier shall conform with contractually agreed specifications therefore and be free of defects in materials and workmanship and are free of third party rights; (ii) that Services provided by Supplier will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice; (iii) the goods or services are compliant with any requirements set by or by virtue of the law and/or applicable rules of self-regulation and/or requirements set by the Buyer, including requirements as to quality, health, safety, environment and advertising, both in the country of delivery as in the country for which they are destined; (iv) the goods are complete with and accompanied by all data and instructions required for correct and safe usage
- 5.2. Supplier will make good, by repair or at Purchaser's option by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance and which are reported to Supplier within 12 calendar months from startup or 18 calendar months after their delivery, whichever comes first, (the "Warranty Period"). Repaired or replacement items will be delivered by Supplier at Supplier's cost to Purchaser site in the Netherlands. Supplier will correct defects in Services provided by Supplier and reported to Supplier within thirty (30) working days after completion of such Services. Goods or Services repaired, replaced or corrected in accordance with this Clause shall be subject to the same warranty as in the Agreement as from the date of repair, replacement or correction.
- 5.3. In urgent cases and in cases where it has to be assumed in all reasonableness after consultation with the Supplier that the Supplier will fail to meet its guarantee obligations, then the Buyer is entitled to effect repair or replacement itself at the expense of the Supplier or to have a third party effect such repair or replacement, without the Supplier being discharged from its obligations under the Agreement.



6. LIABILITY

- 6.1. Any failure of the Supplier to meet its obligations entitles the Purchaser to oblige the Supplier to undo partially or fully the failure and/or its consequences at the risk and expense of the Supplier.
- 6.2. The Supplier is liable for any loss that is suffered by the Purchaser and/or any subsequent user, including – eventually – the end user of the goods delivered due to a failure of the Supplier to meet its obligations and/or due to any act or failure to act by the Supplier or by the Supplier's staff or any third parties engaged by the Supplier. The Supplier shall be liable for both direct and indirect losses.
- 6.3. The Supplier shall indemnify the Purchaser against any possible claims by third parties with respect to the Agreement concluded between the Supplier and the Purchaser.
- 6.4. The Supplier is obliged to take out sufficient insurance against the losses referred to in article 6.2. This insurance obligation also applies to any means which are in any way used in the execution of the Agreement. The Supplier shall have a remark made on its insurance policies that any payout by the insurance company shall be made direct to the Purchaser. The Supplier shall, at the Purchaser's first request, allow the Purchaser to inspect the relevant policies.
- 6.5. The Purchaser is not liable for any losses suffered on the part of the Supplier, unless the loss has been caused by deliberate intent or willful recklessness on the part of solely the supervisory staff of the Purchaser. Deliberate intent or willful recklessness as referred to in the previous sentence of this paragraph shall solely be understood to mean an act in which the supervisory staff of the Purchaser has (subjective) knowledge of the fact that the chance that the act may cause a loss is considerably greater than the chance that such action may not cause a loss.



7. INSPECTION, TESTING AND CALIBRATION

- 7.1. Purchaser and/or any subsequent user, including – eventually – the end user of the goods to be delivered is entitled at all times to inspect/test the goods, or have them inspected, during production, processing and storage as well as after delivery. The Supplier must offer all assistance required for this, at no extra charge.
- 7.2. The Supplier is not entitled to invoke rights from the results of an inspection before-hand.
- 7.3. Purchaser is entitled to inspect the goods upon delivery at the agreed place, prior to accepting them.
- 7.4. If the delivered goods are rejected, the Supplier will be responsible, at Purchaser's discretion, for the repair or replacement of the delivered goods, or be requested to deliver missing goods, within 5(five) working days. This does not affect Purchaser's option to terminate the Agreement, nor does it affect Purchaser's right to claim damages.
- 7.5. Goods that have been rejected will be deemed to be undelivered.
- 7.6. If the Supplier does not retrieve the rejected goods that have been delivered within 20 (twenty) working days, Purchaser has the right to store or return the goods to the Supplier at the Supplier's expense.



8. PRICE AND PAYMENT

- 8.1. Prices are fixed, unless the Agreement stipulates the circumstances that may lead to an amendment in prices, as well as the manner in which the amendment is to take place.
- 8.2. Price increases as a result of additional work on the part of the Supplier can only be charged if Purchaser has agreed in advance to the execution of this additional work in writing. Additional work in any event excludes any additional activities that the Supplier could or should have foreseen upon entering the Agreement for the purposes of fulfilling the agreed obligations or those that are the result of shortcomings on the part of the Supplier.
- 8.3. Prices are stated in the agreed currency.
- 8.4. Prices are excluding VAT [Dutch BTW] and include all costs related to the performance of the Supplier's obligations, in any event including, but not limited to, import and export duties, excise duties, as well as all other levies or taxes imposed or levied in connection with the goods and/or services, documentation, packaging, packing, loading and shipping and dispatch
- 8.5. Payment of invoices, including VAT [Dutch BTW], will take place within 60 working days upon receipt of the invoice and approval by Purchaser of goods and/or services.
- 8.6. Invoices must be delivered digitally, in PDF. Invoices must state Purchaser's order number. As long as this information is missing, Purchaser is entitled to suspend its payment obligations.
- 8.7. Payment and discount terms commence upon receipt of the invoice, but not before (i) receipt of the goods or (ii) approval in the case of services and/or (iii) delivery of documentation to Purchaser in accordance with the Agreement. Purchaser reserves the right to release the invoice for payment only after all the correct documents have been received, including but not limited to certificates.
- 8.8. Purchaser is entitled to set off the amount on the invoice against amounts that the Supplier owes Purchaser.
- 8.9. If the Supplier is in default, Purchaser is entitled to set off statutory interest over advance payments against outstanding invoices during the period of default.
- 8.10. Payment by Purchaser does not in any way entail relinquishment of the rights to reconsider the performance of the Agreement.
- 8.11. The Supplier may not assign or pledge accounts receivable without the purchaser's prior written consent.
- 8.12. If Purchaser has made an advance payment and Purchaser has good reason to believe that the Supplier will be in breach of contract or specifically agreed upon in the Agreement, the Supplier is obliged to provide Purchaser with an unconditional and irrevocable bank guarantee as security against Purchaser's advance payment, even if the Supplier declares that he is willing to meet his obligations in terms of the Agreement.



9. **OWNERSHIP**

- 9.1. The ownership of the goods passes to Purchaser after they have been delivered and accepted at the agreed place of delivery and have been approved by Purchaser.
- 9.2. The risk of the goods passes to when delivery and subsequent approval of the goods have taken place, in accordance with Article 7 of these Terms and conditions.
- 9.3. Despite clause 9.1: If (partial) advance payment has been agreed, relating to the amount that Purchaser owes in terms of the Agreement, all materials, raw materials and semi-finished goods, that the Supplier uses for the performance of the Agreement, or those intended for this, as well as all goods (in progress) at the time of the advance payment, become the property of Purchaser. If necessary, the Supplier will declare in advance the transfer of ownership to Purchaser of all the goods, at the time that the Supplier receives the advance payment. The Supplier is obliged to take care of the goods, clearly marked as Purchaser property, and, if required, to provide Purchaser with a statement of ownership for them.



10. TERMINATION

- 10.1. If the Supplier, after having been given notice of default in writing, continues to be in breach of his obligations in terms of the Agreement, Purchaser is entitled to terminate the Agreement by way of registered letter without court intervention. In this case, the Supplier is obliged to compensate Purchaser for damages arising from this.
- 10.2. Purchaser is also entitled to terminate the Agreement with immediate effect, without court intervention, and without prior notice of default, if:
- (i) the Supplier is declared bankrupt or has filed a petition for bankruptcy, or if the Supplier has requested suspension of payment or this has been granted to Supplier;
 - (ii) the Supplier's company is liquidated or is closed down, or a significant portion of its assets is attached, or it transfers the company to a third party;
 - (iii) if the Supplier, or one of his subordinates or representatives, offers or gives any kind of incentive to a person who is part of Purchaser's company or one of its subordinates or representatives;
 - (iv) Purchaser rejects goods after inspection;
 - (v) The Supplier violates the provisions of the Code of Conduct (Article 22.2)
- 10.3. In the event of termination, the risk of goods already delivered remains with the Supplier. The goods will then be made available to the Supplier and must be retrieved at the Supplier's own expense. The Supplier will immediately reimburse any payment made by Purchaser in relation to the terminated Agreement. Should Purchaser choose to keep goods, entirely or in part, that have already been delivered, Purchaser will pay a reasonable portion of the agreed price.
- 10.4. After termination of the Agreement, both Parties will immediately return any information exchanged in the context of the Agreement, without keeping copies of these.
- 10.5. Unless explicitly provided otherwise, the provisions of Articles 6:265 et seq. of the Dutch Civil Code [Burgerlijk Wetboek] apply to all cases of termination referred to in Article 4 and this Article.
- 10.6. Article 7:411 of the Dutch Civil Code does not apply.



11. DISPUTES

- 11.1. The Agreement, of which these Terms of Purchase are part, is governed exclusively by Dutch law. Foreign laws and treaties, such as the Vienna Sales Convention, are expressly excluded.
- 11.2. Disputes arising between the Parties will be submitted to the competent court in Rotterdam.
- 11.3. In so far as these General Terms and Conditions of Procurement of Goods and Services are also available in a language other than English, the English version shall take precedence at all times in the event of any discrepancy.



12. CONFIDENTIALITY

- 12.1. The Supplier acknowledges that in the context of (the execution of) this Agreement it may come into possession of confidential information of the Buyer. Such confidential information (including information regarding products, results of business activities, etc.) shall remain the exclusive property of the Purchaser and must not be disclosed to any third party or be used in any other way for any purpose other than the execution of the Agreement without prior written consent.
- 12.2. Also, the Supplier shall not disclose any information about its relationship with the Purchaser to any third party without express written consent from the Purchaser.
- 12.3. The Supplier is obliged to impose the same obligation as referred to article 12.1 upon its employees or any third parties it engages in the execution of the Agreement. The Supplier warrants that such employees / third parties shall not act in breach of the duty of secrecy.
- 12.4. In the event of failure to perform the obligations of this Article, Purchaser is entitled to unilaterally terminate the Agreement, entirely or in part, without prior notice of default and without court intervention. Termination will take place by registered letter or by means of a writ addressed to the Supplier. In addition to this, the Supplier will owe a penalty of EUR 25,000 for each violation, without prejudice to any right Purchaser has to full compensation of damages.



13. ORDER, SAFETY ENVIRONMENT

- 13.1. The Supplier and his members of staff, as well as third parties engaged by the Supplier, will pay due regard to statutory safety, health and environmental regulations.
- 13.2. Supplier will perform her obligations in accordance with Dutch law, where under but not limited to the 'Wet Ketenaansprakelijkheid'. All income, employment and other similar taxes required to be withheld and/or paid with respect to all services provided under this Agreement, will be paid in due time by Supplier directly to the appropriate governmental agency. Supplier agrees to defend, indemnify and hold Buyer harmless against any claim for which buyer is jointly or severally liable, or obligated to Supplier's employees on the bases of a statute, regulation or common law duty relating to the order. On first request, Supplier will prove its obligations are fulfilled.
- 13.3. The Code of Conduct of Klöckner & Co. SE contains fundamental principles and rules for the application of these principles, that apply to the entire Klöckner & Co. SE group, as well as to the way business is conducted with the Purchaser business partners and third parties. By accepting these Terms of Purchase, the Supplier confirms that he also acknowledges this Code of Conduct. The full text of the Code of Conduct can be found on Purchaser's website: www.odsbv.nl.
- 13.4. In the event of infringement of the Code of Conduct, Purchaser is entitled to terminate the Agreement in accordance with the provisions of Article 10.

