

ODS METERING SYSTEMS

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY



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1. GENERAL

- 1.1. For the purpose of these Terms, "the Seller" means ODS Metering Systems B.V. (listed at the Dutch Chamber of Commerce at Rotterdam on 7-1-2015 under number 61950238) who, as provider, seller or performer, is party to the legal actions and agreements mentioned in paragraph 2. "The Buyer" means the prospective buyer, prospective client and generally the Seller's contract party to the legal acts and agreements referred to in paragraph 2.
- 1.2. These General Terms of Sale and Delivery are applicable to all offers, quotations, agreements concluded and yet to be concluded, and to all other (legal) acts of the Seller with respect to the sale and/or delivery of goods and the provision of services by the Seller.
- 1.3. Any trade terms used in these General Terms of Sale and Delivery, quotations, order confirmations 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 Buyer and the Seller is in conflict with a provision of these General Terms of Sale and Delivery or with a provision of an applicable Incoterm, the written provision of the agreement shall take precedence.
- 1.5. Where these General Terms of Sale and Delivery or the law stipulates the formal requirement that something must be in writing, this shall also include email messages.
- 1.6. For the purpose of these General Terms of Sale and Delivery, "force majeure" means: any defective performance arising from circumstances beyond the control of the defaulting party, including in any event defective performance as a result of power outage, disruption of telecommunications, cyber criminality, fire, sanction laws, restrictions on import and export, strikes, machine failure, and disruption of operations at or defective performance on the part of suppliers involved in the performance of the agreement and other third parties.



2. AGREEMENT

- 1.1. All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.
- 2.2. The Contract shall become effective only upon the date of Seller's return of the signed order of the Buyer.
- 2.3. Any verbal commitments, agreements and supplements, and amendments to an agreement concluded between the parties shall only be binding on the Seller if confirmed by Seller in writing.
- 2.4. Where, in the reasonable opinion of the Seller, the Buyer's financial situation so requires, the Buyer shall, at the Seller's first request, immediately prepay or provide security for the amount due to the Seller; the Seller may suspend performance of the agreement wholly or in part until he has received this.
- 2.5. If, due to an event of force majeure, the Seller is unable to timely perform an agreement, the applicable delivery period shall be extended with a period equal to the duration of the event of force majeure.
- 2.6. The Buyer shall keep confidential all information that comes to his knowledge in connection with the sale and/or delivery of goods and/or provision of services by the Seller, also in respect of prices and commercial matters, of which he can reasonably understand that it is confidential, and shall only use this information in the performance of the relevant agreement.
- 2.7. The Buyer warrants that (i) when disposing of the goods, irrespective in what manner (by way of sale, lease, processing, or otherwise) he shall comply with all applicable laws and regulations, specifically all EU and UN export controls and systems of sanctions, and (ii) that the goods are not directly or indirectly intended or might not be possibly intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorization to do so from a competent authority designated by the UN or EU. The Buyer shall include this warranty by way of a perpetual clause in any subsequent agreements under which the goods are disposed of.



3. DELIVERY PERIODS

- 3.1. Unless otherwise stated in Sellers quotation, all agreed delivery dates and times are at all times by way of approximation only.
- 3.2. If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly
- 3.3. If delivery cannot be made at the agreed date and time or, as the case may be, within the agreed period, the Seller shall be entitled to make partial deliveries and the Buyer shall allow the Seller a reasonable period of time to perform as yet by way of a formal notice.
- 3.4. If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for dispatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly
- 3.5. Unless otherwise stated in Sellers quotation, the Buyer shall not be entitled to any compensation if a delivery time is not met.
- 3.6. All deliveries are ex works (Incoterms), unless explicitly agreed otherwise.



4. FORCE MAJEURE

- 4.1. The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, 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), or labour trouble, strike, lockout or injunction. Seller shall have no obligation to supply any hardware, software, services or technology unless and until it has received any necessary licenses or authorizations or has qualified for general licenses or license exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time (including without limitation those of the Netherlands, the European Union and the jurisdiction in which Seller or Buyer is established or from which the items are supplied). If for any reason any such licenses, authorizations or approvals are denied or revoked, or if there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller from fulfilling the Contract, or would in the reasonable judgment of Seller otherwise expose Seller to a risk of liability under applicable laws, regulations, orders or requirements, Seller shall be relieved without liability of all obligations under the Contract.



5. COMPLAINTS, LIABILITIES, WARRANTY

- 5.1 Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods; (ii) that Goods manufactured by Seller or buyer shall conform with contractually agreed specifications therefore and be free of defects in materials and workmanship and (iii) that Services provided by Seller will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice. Seller will make good, by repair or at Seller's option by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance, appear in Goods of Seller's Affiliates' manufacture and which are reported to Seller within 12 calendar months from startup or 18 calendar months after their delivery, whichever comes first, (the "Warranty Period") and which arise solely from faulty materials or workmanship: provided always that defective items are returned to Seller at Buyer's cost carriage and insurance prepaid within the Warranty Period. Replaced items shall become the property of Seller. Repaired or replacement items will be delivered by Seller at Seller's cost to Buyer's mainland site in the Netherlands or, if Buyer is located outside the Netherlands, FCA in the Netherlands. Seller will correct defects in Services provided by Seller and reported to Seller within ninety (90) working days after completion of such Services. Goods or Services repaired, replaced or corrected in accordance with this Clause 5.1 shall be subject to the foregoing warranty for the unexpired portion of the Warranty Period or for ninety (90) days from the date of their return to Buyer (or completion of correction in the case of Services), whichever expires the later.
- 5.2 Notwithstanding Clause 5.1, Seller shall not be liable for any defects caused by: fair wear and tear; materials or workmanship made, furnished or specified by Buyer; non-compliance with Seller's storage, installation, operation or environmental requirements; lack of proper maintenance; any modification or repair not previously authorized by Seller in writing; nor the use of non-authorized software or spare or replacement parts. Seller's costs incurred in investigating and rectifying such defects shall be paid by Buyer upon demand. Buyer shall at all times remain solely responsible for the adequacy and accuracy of all information supplied by it.
- 5.3. If the Seller is not notified of any defect within the applicable term of warranty or in accordance with paragraph 2, the Buyer may no longer invoke this defective performance. Submitting a complaint does not entitle the Buyer to suspend his payment obligations. Any legal action on the part of the Buyer must be brought within one year after the timely filing of a complaint, on pain of forfeiture of rights.
- 5.4. Any advice the Seller gives in connection with the use, properties, or applicability of the goods, is given to the best of his abilities. The Seller shall not be liable for the inaccuracy and/or incompleteness of such advice. If an advice is erroneous, the Seller shall only be obliged, at his own discretion, to give a new advice, or, where the advice is invoiced separately, to refund the amount invoiced for the advice.
- 5.5. The Seller shall not be liable for any damage the Buyer has incurred, irrespective of whether such damage arises from defective performance, wrongful act, or any other legal ground, except to the extent that such claims were caused by gross negligence of Seller. Buyer further agrees to indemnify, defend and hold Seller harmless from and against any and all claims



based upon an agreement or delivery by Seller. In all cases, the liability of Seller is limited to the amount of the applicable order.

- 5.6. The Seller shall not be liable for any defective performance as a result of force majeure.
- 5.7. The Seller shall in no event be liable for any indirect loss, including loss of profit, loss of sales, installation costs, loss of goodwill, damages (including fines) owed to third parties, and loss caused by delays.



6. INSPECTION, TESTING AND CALIBRATION

- 6.1. Goods will be inspected by Seller and, where practicable, submitted to Seller's or manufacturer's standard tests before dispatch. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Seller's prior written agreement and Seller reserves the right to charge therefore; if Buyer or its representative fails to attend such tests, inspection and/or calibration after five (5) working days' notice that the Goods are ready therefore, the tests, inspection and/or calibration will proceed and shall be deemed to have been made in the presence of Buyer or its representative and the Seller's statement that the Goods have passed such testing and/or inspection and/or have been calibrated shall be conclusive.



7. PROJECT EXECUTION

- 7.1. All prices quoted by the Seller are based on the information, if any, provided with the request and are exclusive of VAT and other charges and are based on delivery ex works.
- 7.2. In the event of an increase of one or more cost price factors after the date of concluding the agreement but before the delivery date, the Seller shall be entitled to increase the agreed price accordingly, even if this is due to foreseeable circumstances.
- 7.3. All payments are due within thirty (30) working days after delivery, net in cash or by way of prepayment, and without the Buyer being entitled to any discount or set-off that has not been explicitly agreed upon. Different payment conditions must be agreed in writing. The Buyer's right to set off any claims he may have on the Seller or to suspend his obligations is explicitly excluded.
- 7.4. All payment periods are firm periods. The Buyer shall be deemed to be in default immediately on expiry of this period. If the Seller has reason to believe that the Buyer is in a dire financial state or if a moratorium or bankruptcy has been applied for, or is pronounced, the Buyer shall be immediately in default and all debts of Buyer shall become immediately payable.
- 7.5. If the Buyer is in default he shall owe the statutory commercial interest. If the Seller has to take (extra) judicial measures in connection with late payment, including sending a demand for payment, the relevant costs shall be for the Buyer's account.
- 7.6. The Seller may suspend the delivery of goods if and for as long as the Buyer fails to fulfill any of his obligations to the Seller under the agreement, or to fulfill these in full, properly, or on time.



8. OWNERSHIP AND RETENTION OF TITLE

- 8.1. Any goods delivered shall remain the Seller's property until such time as the Buyer has complied with all his obligations in consideration for the goods delivered or to be delivered by the Seller to the Buyer under any agreement, or in respect of any work also conducted or to be conducted on behalf of the Buyer under such agreement, and any amounts due to failure to perform such agreements. Until such time the Buyer shall be required to keep the goods which the Seller has delivered separated from other goods, clearly identified as the Seller's property, and to properly insure the goods and keep them properly insured and may not proceed to treat or process the goods.
- 8.2. If the Buyer fails to fulfill any of his obligations towards the Seller under Article 8.1 or if the Seller has reason to fear that the Buyer will not fulfill the aforesaid obligations, the Seller shall be entitled, without any notice of default being required, to repossess the delivered goods forthwith, regardless of where they are located. The related costs shall be for the Buyer's account.
- 8.3. The Buyer shall not be entitled to dispose of the goods in question or to create a lien or pledge, either possessory or non-possessory, on them or to encumber them in any other way until the above-mentioned amounts are paid.



9. TERMINATION

- 9.1. In addition to his statutory rights, the Seller may terminate any agreement with the Buyer with immediate effect and without judicial intervention being required, and without owing any compensation of any loss, if:
- a. The Buyer applies for a moratorium, files a petition for bankruptcy or if a petition for bankruptcy is filed against the Buyer;
 - b. the Buyer (being a natural person) dies, or (being a legal entity or undertaking) is wound up and/or dissolved; and/or
 - c. the Seller has reason to suspect that the goods are directly or indirectly intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorization to do so from a competent authority designated by the UN or EU.
- 9.2. In addition, both the Buyer and the Seller may terminate the agreement by written notice in the event that the force majeure on the part of the Seller as referred to in article 4.1 has lasted for more than 180 consecutive calendar days, but solely for that part of the agreement that has not yet been performed. In that event the parties shall not be entitled to any compensation as a result of the loss they have suffered or will suffer due to the termination.
- 9.3. Buyer may cancel the Order only upon written notice and payment to Seller of reasonable and proper cancellation charges. Notwithstanding the foregoing, Buyer reserves the right to cancel any portion of an Order affected by any insolvency or suspension of Seller's operations or any petition filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.



10. DISPUTES

- 10.1. All agreements and (legal) acts to which these General Terms of Sale and Delivery are applicable are governed by and shall be interpreted in accordance with Dutch law. The provisions of the UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) shall not apply, nor any existing or future international regulations for the sale of goods the applicability of which can be excluded by the parties.
- 10.2. All disputes related to agreements and (legal) acts to which these General Terms of Sale and Delivery are applicable that may arise between the parties shall be exclusively settled by the competent court in the Netherlands in whose area of jurisdiction the Seller has his domicile, on the understanding that the Seller may still submit a dispute to the court that would have been competent in the absence of this provision.
- 10.3. In so far as these General Terms of Sale and Delivery are also available in a language other than English, the English version shall take precedence at all times in the event of any discrepancy.

