

ELSTER WATER METERING NV/SA
TERMS AND CONDITIONS OF PURCHASE FOR GOODS AND / OR SERVICES

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in these terms and conditions ("**Conditions**"):
- "**Company**": Elster Water Metering NV/SA (Company Number: BE0538729387).
- "**Company's Manager**": The person identified on the Purchase Order as the Company's representative or contact for the purpose of the Contract or such other person(s) notified to the Supplier from time to time.
- "**Contract**": The agreement between the Company and the Supplier consisting of the Purchase Order, any special terms and conditions, these Conditions, the Specification and any other Documents specified in the Purchase Order or otherwise expressly incorporating these Conditions.
- "**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.
- "**Elster Goods**": All goods that are manufactured and/or supplied by the Supplier to the Company's Specification and all goods which are designed or developed by the Supplier at the request of the Company and any improvements, modifications or changes thereto.
- "**Equipment**": Any equipment, tools, systems, cabling or facilities provided by the Company and/or the Supplier or the Supplier's sub-contractors.
- "**Goods**": Any goods (including Elster Goods) agreed in the Contract to be purchased by the Company from the Supplier (including any part(s) of them).
- "**Intellectual Property Rights**": All rights in patents inventions, utility models, copyright, discoveries, improvements, concepts, models, drawings, secret formulae and processes, trademarks, service marks, trade, business and domain names, trade dress or get-up, 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 or proprietary information (including know-how and trade secrets) and any other similar or equivalent rights or forms of protection of a similar nature in any part of the world, in each case whether registered or unregistered and including all rights to apply for, applications for and renewals or extensions of such rights.
- "**Purchase Order**": The Company's official purchase order form containing a written instruction to supply the Goods and/or Services.
- "**Services**": Any services agreed in the Contract to be purchased by the Company from the Supplier (including any part(s) of them).
- "**Service Levels**": The service levels for the Services, if any, specified in the Purchase Order or otherwise agreed in writing between the Company and the Supplier.
- "**Supplier**": The person, firm or company to whom the Purchase Order is issued.
- "**Supplier's Manager**": The Supplier's manager for the Services appointed under Condition 5.14.
- "**Supplier's Team**": The Supplier's Manager and any employees, consultants, agents and/or sub-contractors which the Supplier engages in relation to the Services.
- "**Specification**": Any plans, drawings, data, patterns, samples, raw materials, jigs, tools, fixtures, materials, information relating to the Goods and/or Services as referenced in the Purchase Order.
- 1.2 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, 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.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 Where the words '**include(s)**', '**including**' or '**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 the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 In the case of and to the extent of any conflict, inconsistency or ambiguity between any documents included in the Contract, the following order of precedence shall apply: (i) special terms and conditions; (ii) the Purchase Order ; (iii) these Conditions; (iv) the Specification; (v) the Service Levels and (vi) all other Documents that form part of the Contract.

2. APPLICATION OF CONDITIONS

- 2.1 Subject to any variation under Condition 2.4, these Conditions (as may be amended or augmented in the Purchase Order) shall apply to the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Purchase Order for Goods and/or Services issued by the Company shall be deemed to be an offer by the Company to buy the Goods and/or Services subject to these Conditions and the Purchase Order shall be accepted by the Supplier either (i) expressly by giving written notice of acceptance of the offer without amendment or (ii) impliedly by commencing performance of the Purchase Order in whole or in part.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of the Purchase Order, Specification or similar document, or any other terms or conditions which the Supplier seeks to incorporate or when are implied by trade, custom, practice or course of dealing shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.
- 2.5 In the event of conflict between any other language version of these Conditions and the original English language version, the original English language version shall prevail.

3. QUALITY OF GOODS

- 3.1 The Supplier warrants that the Goods shall be of the best available design, quality, material and workmanship and that throughout the Warranty Period (as defined below) the Goods shall:
- 3.1.1 conform in all respects with the Contract;
- 3.1.2 be fit for any purpose intended by the Company;
- 3.1.3 be without fault and free from defects; and
- 3.1.4 comply with all applicable statutory, regulatory requirements and industry standards relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 For all Goods the warranty period begins on the date of acceptance and expires on the later of (i) the expiry of any warranty provided by the Company or its customers to end-users of the Goods or of products into which the Goods are incorporated; or (ii) the second (2nd) anniversary of the date of acceptance ("**Warranty Period**").
- 3.3 The Company shall notify the Supplier in writing of any breach of the warranties given under Condition 3.1 and the Supplier shall within thirty (30) days of the date of the Company's notice at its own cost and risk repair or replace the Goods which are not in compliance with the warranties given and carry out any other necessary work to ensure that the terms of the Contract are fulfilled. If the Supplier requires the return of any Goods to perform a repair, any and all costs including transportation and packing shall be borne by the Supplier. Any repaired or replaced Goods shall be delivered, inspected and accepted in accordance with the terms of the Contract as if never previously delivered under the Contract and shall be subject to the same warranties and Warranty Period as stated in the Contract.
- 3.4 The terms of Condition 3.2 are subject to any longer warranty period or additional warranties prescribed by the laws of any territory, into which the Goods, or products into which the Goods have been incorporated, are supplied.
- 3.5 The Company's rights under these Conditions are in addition to implied conditions or guarantees given in favour of the Company and any other rights conferred on the Company by any applicable legislation, statute, regulation or directive from time to time in force.
- 3.6 **REMEDIES:**
 If any of the Goods fail to conform to the Contract the Company may at its discretion and without prejudice to any other rights it may have, whether or not any part of the Goods have been accepted by the Company:
- 3.6.1 terminate the Contract in whole or in part;

- 3.6.2 reject the Goods (in whole or in part) and return them to the Supplier at Supplier's own risk and expense and a full refund for the returned Goods (and for the costs incurred by the Company in returning those Goods) shall be paid immediately by the Supplier;
- 3.6.3 require the Supplier, without charge to the Company, either to remedy any defect in the Goods or supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 3.6.4 refuse to accept any further deliveries of the Goods the Supplier attempts to make, in each case without any liability to the Supplier;
- 3.6.5 obtain substitute Goods from a third party and recover the costs of doing so from the Supplier;
- 3.6.6 carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract;
- 3.6.7 withhold payment in whole or in part regardless of whether the Goods have been delivered and/or accepted; and/or
- 3.6.8 claim damages for any costs, losses or expenses incurred by the Company which are a consequence of the Supplier's failure to carry out its obligations under the Contract.
- 4. STANDARD OF SERVICES**
- 4.1 The Supplier warrants that any Services performed by the Supplier or the Supplier's Team shall:
- 4.1.1 be performed with reasonable care and skill;
- 4.1.2 be carried out in accordance with generally recognised commercial practices and standards; and
- 4.1.3 conform to the Contract and the Service Levels.
- 4.2 The Supplier shall provide the Services in accordance with the Contract and shall ensure that sufficient resources are allocated to the Services to enable it to comply with this obligation.
- 4.3 The Supplier shall ensure that all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to lawfully carry out its obligations under the Contract.
- 4.4 The Company shall have the right exercisable during the provision of the Services to suspend any payment obligation if performance of the Services does not conform in quality with the stipulations of the Contract or if the performance is delayed.
- 4.5 The Company's right under the Contract are in addition to the implied conditions or guarantees given in favour of the Company and any other rights conferred on the Company by any applicable legislation, statute, regulation or directive from time to time in force.
- 4.6 **REMEDIES:**
If the Services do not conform to the Contract, the Company shall have the right (without prejudice to any other rights it may have) to:
- 4.6.1 terminate the Contract in whole or in part;
- 4.6.2 reject the Services (in whole or in part) and a full refund shall be paid immediately by the Supplier;
- 4.6.3 refuse to accept any subsequent performance of the Services which the Supplier attempts to make, but without any liability to the Supplier;
- 4.6.4 require the Supplier to re-perform the Services at the Supplier's cost;
- 4.6.5 obtain substitute services from a third party and recover the costs of doing so from the Supplier;
- 4.6.6 claim damages for any costs, losses or expenses the Company incurs which are a consequence of the Supplier's failure to carry out its obligations under the Contract;
- 4.6.7 withhold payment in whole or in part regardless of whether the Services have been completed and/or accepted; and/or
- 4.6.8 have refunded by the Supplier all sums previously paid by the Company to the Supplier under the Contract.
- 5. DELIVERY OF GOODS AND PROVISION OF SERVICES**
- 5.1 Unless otherwise instructed in writing by the Company, the Goods and/or Services shall be delivered or performed at the time and place specified in the Purchase Order. If no date of delivery is specified then delivery shall take place within twenty eight (28) days of the date of the Purchase Order in accordance with Condition 2.2.
- 5.2 The Supplier shall deliver the Goods to the Company or to such other place of delivery as agreed by the Company in writing prior to delivery of the Goods, carriage paid, in accordance with the applicable delivery method under the Incoterms 2010 as set out in the Purchase Order. The point at which delivery takes place shall be in accordance with the applicable delivery method.
- 5.3 All deliveries of Goods must be accompanied by a delivery note which sets out the Contract details including the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.4 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and if the Supplier requires the Company to return any packaging material to the Supplier 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 Supplier at the cost of the Supplier.
- 5.5 Unless otherwise stipulated by the Company in the Purchase Order, the supply of the Goods and/or Services shall only be provided to the Company in normal business hours.
- 5.6 The Supplier shall invoice the Company upon, but separately from, delivery of the Goods and/or completion of the Services to the Company.
- 5.7 Time for delivery of the Goods and/or provision of the Services shall be of the essence.
- 5.8 If the Goods and/or Services are not delivered or performed on the due date then, without prejudice to any other rights which it may have, the Company shall have the right to exercise any one or more of the remedies in respect of the Goods (Condition 3.6) and/or Services (Condition 4.6).
- 5.9 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall, without prejudice to any other rights which it may have, entitle the Company to exercise any one or more of the remedies listed in Condition 3.6.
- 5.10 The quantity of Goods and/or Services specified in a Purchase Order may not be changed without the Company's written consent. If the Goods and/or Services are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and in the case of Goods any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 5.11 The Company shall not be deemed to have accepted the Goods until it has had seven (7) working days to inspect them following the date of delivery to confirm compliance with the Contract. The Company has the right to reject any or all of the Goods that are defective or not in accordance with the Contract. The Company shall also have the right to reject the Goods as though they had not been accepted within twenty-eight (28) days after any latent defect in the Goods has become apparent.
- 5.12 Without prejudice to any other remedies it may have, the Company, at its option, shall make the rejected Goods available for the Supplier's collection at the Supplier's risk. The Company shall be entitled to charge the Supplier for the storage costs of rejected and the Company may dispose of any rejected Goods not collected by the Supplier after thirty (30) days at the Supplier's expense. The Goods shall be repaired or replaced by the Supplier within such time as the Company shall specify after rejection of the Goods.
- 5.13 In respect of Services, the Supplier shall ensure that the Supplier's Team is suitably skilled, experienced and qualified to undertake and perform the Services.
- 5.14 The Supplier shall appoint the Supplier's Manager, who shall have authority under the Contract to bind the Supplier on all matters related to the Services and to the extent reasonably within the Supplier's control, the Supplier shall not replace or reassign the Supplier's Manager or Supplier's Team without the prior written approval of the Company (which will not be unreasonably withheld or delayed).
- 5.15 The Company reserves the right and on giving the Supplier written notice, to request the removal and/or the replacement of any of the Supplier's Team engaged in providing the Services.
- 5.16 The Supplier shall procure the availability of the Supplier's Team to provide the Services on such days and at such times as the Company may require during the term of the Contract and 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.
- 6. TITLE AND RISK**
- 6.1 Unless Incoterms are agreed (in which case risk shall pass to the Company in accordance with the agreed Incoterms), the Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking, as applicable). Title to the Goods shall pass to the Company upon the earlier of:
- 6.1.1 acceptance of the Goods in accordance with Condition 5.11; or
- 6.1.2 payment for the Goods being made by the Company.

6.2 Neither payment by, nor passing of title or risk in the Goods to the Company shall be deemed to constitute acceptance of the Goods and/or Services.

7. INSPECTION

7.1 At any time prior to delivery of the Goods to the Company or completion of the Services, the Company shall have the right to inspect and test the Goods and/or inspect the work being carried out in performance of the Services. The Company upon giving prior written notice to the Supplier shall have the right to enter the Supplier's premises during normal business hours for the purpose of carrying out such inspection and testing.

7.2 If the results of such inspection or testing cause the Company to be of the opinion that the Goods and/or Services do not conform or are unlikely to conform with the Contract, the Company shall inform the Supplier and the Supplier 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.

7.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and/or Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations or the Company's rights under the Contract.

8. LIABILITY, INDEMNITY AND INSURANCE

8.1 The Supplier shall indemnify the Company in full on demand against any and all claims, liabilities, losses, damages, injury, costs, fees and expenses and any interest thereon (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company, its employees, representatives, agents, customers or other third parties as a result of or in connection with:

8.1.1 breach by the Supplier of the warranties contained in Condition 3 and/or Condition 4;

8.1.2 any infringement or alleged infringement of any third party Intellectual Property Rights by the Supplier related to the Goods and/or Services;

8.1.3 death or personal injury resulting from the Supplier's negligence, or that of its employees, representatives, agents or subcontractors;

8.1.4 damage to property caused by the Goods and/or Services or the Supplier, its employees, representatives, agents or subcontractors; and

8.1.5 any breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

8.2 Nothing in the Contract limits or excludes the liability of either party for:

8.2.1 death or personal injury resulting from its negligence or that of its employees, representatives, agents or subcontractors; or

8.2.2 fraud or fraudulent misrepresentation; or

8.2.3 any intentional breach or wilful misconduct.

8.3 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover all potential liabilities that may arise under or in connection with the Contract and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9. PRICE

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

9.2 Unless agreed in writing, no variation in the price or extra charges shall be accepted by the Company.

10. PAYMENT

10.1 Unless otherwise agreed in writing by the Company, the Company shall pay the price of the Goods and/or Services within sixty (60) days after the date of issuance of the invoice subject to receipt of a valid invoice, but time for payment shall not be of the essence.

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

10.3 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 three times the legal interest rate. The Supplier is not entitled to suspend deliveries of the Goods and/or performance of the Services as a result of any sums being outstanding.

11. CHARGES FOR SERVICES

11.1 Condition 11.2 shall apply if the Supplier provides the Services on a time and materials basis. Condition 11.3 shall apply if the Supplier provides the Services for a fixed price.

11.2 For Services provided on a time and materials basis:

11.2.1 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 the Purchase Order;

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

11.2.3 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;

11.2.4 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 11.2.5; and

11.2.5 the Supplier shall invoice the Company monthly in arrears for its charges for time, expenses and materials for the month concerned, calculated as provided in this Condition 11.2 and Condition 11.4. 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.

11.3 For Services provided for a fixed price, the total price shall be the amount stated in the Purchase Order and shall be paid to the Supplier in instalments, as set out in the Purchase 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 the Purchase 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 and the costs of the materials calculated as provided in Condition 11.4.

11.4 Unless otherwise agreed in writing by the Company, any price contained in the Contract includes the cost of hotel, subsistence, travelling and any other ancillary expenses incurred by members of the Supplier's Team and the cost of any materials or services provided by third parties and required by the Supplier for the supply of the Services.

12. CONFIDENTIALITY

12.1 The Supplier shall keep the Company's Confidential Information (as defined below) in strict confidence. Except with the prior written consent of the Company, the Supplier shall, and shall procure that its employees, officers and advisers shall:

12.1.1 not use or exploit the Confidential Information in any way except for the purposes of performing the Contract;

12.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by the Company;

12.1.3 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purposes of performing the Contract (and any such copies, reductions to writing and records shall be the property of the Company);

12.1.4 not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;

12.1.5 keep separate the Confidential Information from all documents and other records of the Supplier;

12.1.6 apply the same security measures and degree of care to the Confidential Information as the Supplier applies to its own confidential information, which the Supplier warrants as providing adequate protection from unauthorised disclosure, copying or use;

12.1.7 keep a written record of:(i) any document or other Confidential Information received from the other in tangible form; and (ii) any copy made of the Confidential Information; and

12.1.8 ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow to be removed such document or records from its premises.

12.2 The obligations of confidentiality contained in this Condition 12 shall not apply to any Confidential Information which the Supplier can show by documentary evidence:

12.2.1 is or becomes generally available to the public other than as a result of its disclosure by the Supplier in breach of this Condition 12 or of any other undertaking of confidentiality addressed to the Company

- (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- 12.2.2 was available to the Supplier on a non-confidential basis prior to disclosure by the Company; or
- 12.2.3 was, is or becomes available to the Supplier on a non-confidential basis from a person who, to the Supplier's knowledge, is not bound by a confidentiality agreement with the Company or otherwise prohibited from disclosing the information to the Supplier; or
- 12.2.4 was lawfully in the possession of the Supplier before the information was disclosed to it by the Company; or
- 12.2.5 the Company agrees in writing is not confidential or may be disclosed; or
- 12.2.6 is developed by or for the Supplier independently of the information disclosed by the Company.
- 12.3 The Supplier may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Supplier gives the Company as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Condition 12.3, it takes into account the reasonable requests of the Company in relation to the content of this disclosure.
- 12.4 The obligations of confidentiality contained herein shall survive expiry or termination of the Contract.
- 12.5 For the purposes of this Condition 12, **Confidential Information** means all confidential information (however recorded, preserved or disclosed) disclosed by the Company or on its behalf directly or indirectly to the Supplier including but not limited to:
- 12.5.1 any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Company or of its group; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software and any other Company Materials or Intellectual Property Rights of the Company or its group; and
- 12.5.2 any information or analysis derived from such information.
- 13. THE COMPANY'S PROPERTY AND INTELLECTUAL PROPERTY RIGHTS**
- 13.1 All Documents, Equipment, materials, dies, moulds, Specifications and data supplied by the Company to the Supplier in connection with the Contract, including any Confidential Information as referenced in Condition 12 ("**Company Materials**"), shall at all times be and remain the exclusive property of the Company. The Company may demand the return of any or all Company Materials at any time by giving the Supplier prior written notice.
- 13.2 Except as otherwise authorised by the Company in writing, the Supplier shall ensure that all Company Materials are:
- 13.2.1 located on the Supplier's premises;
- 13.2.2 fully identified as the exclusive property of the Company;
- 13.2.3 held by the Supplier in safe custody at its own risk; and
- 13.2.4 maintained and kept in good condition by the Supplier, until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such Company Materials be used otherwise than as authorised by the Contract or the Company in writing.
- 13.3 The Supplier shall permit the Company or its duly authorised representative to inspect the Company Materials at all reasonable times upon request and for such purpose to enter upon any premises at which the Company Materials may be located, and the Supplier shall grant reasonable access and facilities and ensure that all Company Materials are made available for the purpose of such inspection.
- 13.4 The Company reserves the right upon the termination or expiry of the Contract and/or the Supplier's failure to fulfil its obligations under this Condition 13 to enter the Supplier's premises, upon reasonable notice and during normal business hours, to recover the Company Materials which is/are in the Supplier's possession.
- 13.5 The Company is the sole owner of, or has the right to use, all Intellectual Property Rights (current and future) in the Company Materials. The Supplier agrees that the Company is also the sole and exclusive owner of all Intellectual Property Rights arising out of work performed by the Supplier under the Contract, including but not limited to Elster Goods, any Goods and/or Services produced to any Specification (or part thereof), supplied or advised by the Company to the Supplier, and in any process developed using the Company Materials or for the purpose of the manufacture of the Elster Goods ("**Company IPRs**"). Company IPRs shall vest in the Company on creation and the Supplier shall do all such acts and things, including the signature and execution of documents, to assign all right, title and interest in the Company IPRs to the Company.
- 13.6 Nothing in the Contract shall be deemed to transfer title or grant any rights of use in any of the Company IPRs to the Supplier.
- 13.7 The Supplier hereby grants to the Company a non-exclusive, irrevocable, royalty-free, perpetual, worldwide licence to use any pre-existing Intellectual Property Rights belonging to the Supplier and comprised in the Goods and/or Services as required by the Company for its normal business purposes.
- 13.8 The Supplier hereby warrants, represents and undertakes on a continuing basis that the Goods and/or Services do not infringe any third party rights, including any third party Intellectual Property Rights, and shall not cause the Company to be in breach of any applicable laws, regulations or other statutory requirements.
- 13.9 In the event that the Goods and/or Services infringe any third party rights, including any third party Intellectual Property Rights, the Supplier shall at its own cost procure for the Company the right to continue to use and sell the Goods or shall at its own cost modify the Goods and/or Services to ensure that any third party rights and/or Intellectual Property Rights are not infringed by the Company's use or sale of the Goods.
- 14. SITE REQUIREMENTS**
- 14.1 Where the Supplier requires access to the Company's premises for the provision of Goods and/or Services, the Company shall provide office accommodation and other facilities as may reasonably be required by the Supplier in connection with the delivery of the Goods and/or performance of the Services.
- 14.2 The Company shall inform the Supplier of all health and safety rules and regulations, relevant Company policies and any other security requirements that apply at any of the Company's premises. The Supplier shall observe and ensure that the Supplier's Team comply with the Company's site requirements. The Supplier shall notify the Company as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the delivery of the Goods and/or performance of the Services on the premises.
- 14.3 The Company reserves the right to refuse the Supplier's Team access to the Company's premises, and access will only be given to the extent necessary for the provision of the Goods and/or Services.
- 15. TERMINATION**
- 15.1 The Company shall have the right at any time and without reason to terminate the Contract in full or in part immediately on giving thirty (30) days' written notice to the Supplier, whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier a fair and reasonable compensation for work-in-progress at the time of termination which compensation:
- 15.1.1 shall not exceed the price of the Goods as stated on the Purchase Order or in the case of Services shall not exceed the amount which would have been payable to the Supplier prior to such termination of the Contract; and
- 15.1.2 shall not include any loss of anticipated profits, loss of business, depletion of goodwill, loss and/or corruption of data or information, loss of anticipated savings, loss of goods, loss of contract, loss of use or pure economic loss suffered by the Supplier in connection with such termination regardless of whether such loss is direct, indirect, special or consequential.
- 15.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 15.2.1 the Supplier commits a material or persistent breach of the Contract which breach, if capable of remedy, is not rectified within a period of thirty (30) days after the date of the Company's notice;
- 15.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier;
- 15.2.3 the Supplier enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure in the territory where the Supplier is incorporated, or is otherwise insolvent or ceases or threatens to cease to trade;
- 15.2.4 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

- 15.2.5 there is a change of control of the Supplier. For the purposes of this Condition, 'control' means the power of a person to secure (i) by means of the holding of shares or the possession of voting power in relation to the Supplier or any other body corporate, or (ii) as a result of any powers conferred by the articles of association or other document regulating the Supplier or any other body corporate, that the affairs of the Supplier are conducted in accordance with that person's wishes.
- 15.3 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.
- 16. ANTI-CORRUPTION**
- 16.1 The Supplier shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption as amended from time to time including but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention Against Corruption, and shall not engage in any of the following activities, practices or conduct ("**Relevant Requirements**"):
- 16.1.1 offer, promise or give directly or indirectly a financial or other advantage to another person (i) with the intention to induce a person to perform improperly any relevant function or activity; or (ii) to reward a person for the improper performance of such relevant function or activity;
- 16.1.2 offer, promise or give directly or indirectly a financial or other advantage to another person where the Supplier knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity;
- 16.1.3 request, agree to receive or accept directly or indirectly a financial or other advantage (i) intending that in consequence a relevant function or activity should be performed improperly, whether by the Supplier or another person; or (ii) where the request, agreement or acceptance itself constitutes the improper performance of a relevant function or activity as a reward for the improper performance (by the Supplier or another person) of a relevant function or activity. It is also an offence where, in anticipation of or in consequence of the Supplier requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by the Supplier or another person at the Supplier's request or with its acquiescence or assent;
- 16.1.4 bribe a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. For the purposes of this Condition 16.1.4, a 'bribe' is the offer, promise or giving of any financial or other advantage directly or indirectly to the foreign public official or another person at the foreign public official's request, or with his/her assent or acquiescence; and, a 'foreign public official' is an individual who holds a legislative, administrative or judicial position of any kind of a country or territory outside Belgium or who exercises a public function for or on behalf of (i) a country or territory outside Belgium or (ii) any public entity or public enterprise of that country or territory; or is an official or agent of a public international organisation.
- 16.2 The Supplier shall further:
- 16.2.1 comply with the Company's codes of conduct related to ethical behaviour, available on request and as the Company may update them from time to time ("**Relevant Policies**");
- 16.2.2 have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate;
- 16.2.3 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
- 16.2.4 immediately notify the Company in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees.
- 16.3 The Supplier shall ensure that any person associated with it that is providing Goods and/or performing Services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.
- 16.4 A 'person associated with the Supplier' is a person who performs services for or on behalf of the Supplier and can therefore include an employee, agent, subsidiary, sub-contractor or supplier.
- 16.5 Breach of this Condition shall be deemed a material breach under Condition 15.2.1.
- 17. ASSIGNMENT**
- 17.1 The Supplier shall not be entitled to assign, sub-contract, charge or otherwise transfer to a third party any of its rights or obligations under the Contract without the prior written consent of the Company.
- 17.2 The Company may assign, transfer or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 18. GENERAL**
- 18.1 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 at law.
- 18.2 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.
- 18.3 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 that or any of its other rights or remedies under the Contract nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 18.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.
- 18.5 No variation of the Contract will be valid unless recorded in writing and signed by or on behalf of each party.
- 18.6 Nothing in the Contract will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name of, or on behalf of or otherwise to bind the other party in any way.
- 18.7 Each party will, at the request of the other party and at its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of the Contract.
- 18.8 Any notice given under the Contract:
- 18.8.1 shall be made in writing and either delivered personally or sent by recorded delivery to the party to whom the notice is addressed at its address as set out in the Purchase Order or such other address as a party may specify by notice in writing to the other party; and
- 18.8.2 in the absence of evidence of earlier receipt notice will be deemed to have been duly given (i) if delivered personally, when left at the address referred to in Condition 18.8.1; or (ii) if sent by recorded delivery, at the time recorded by the delivery agent.
- 18.9 For the avoidance of doubt electronic mail will be deemed to be "writing" for the purpose of the Contract but this will not prejudice the express requirements for delivery of notices under Condition 18.8.
- 18.10 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of the Contract.
- 18.11 The Contract contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them, and the parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract. Nothing in the Contract will operate to limit or exclude any liability for fraud.
- 18.12 The formation, existence, construction, performance, validity and all aspects of the Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by Belgium law. In the event of any dispute, matter or claim of the Supplier against the Company, the parties irrevocably submit to the exclusive jurisdiction of the Belgium courts. In the event of any dispute, matter or claim of the Company against the Supplier, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the country in which the Supplier is incorporated or conducts its main business.

A full size copy of these Conditions is available on request.