

## **I. General**

1. Delivery contracts of Elster Messtechnik GmbH (Supplier) with entrepreneurs (Customer) are exclusively concluded and executed in accordance with the following terms and conditions. By placing the order, the Customer shall acknowledge these terms as legally binding. Deviations from these conditions – including any provisions to the contrary on the part of the Customer – as well as changes and amendments to the delivery contracts shall be subject to confirmation and require written acknowledgement by the Supplier.
2. Images, drawings, weights and dimensions – unless they are specified as binding – shall only serve as approximate values for the execution. The Supplier reserves all intellectual property rights and copyrights pertaining to cost estimates, models, samples, designs, images, drawings and other documents. They may not be copied or in particular be made available to companies, which are directly or indirectly in competition with the Supplier. Upon request of the Supplier the Customer shall return the documents in case a sales contract is not concluded.
3. Insofar as changes are made to products of the Supplier in the course of continuous development, the Supplier shall be entitled to deliver the modified version. In doing so, the Supplier shall be authorised to deviate from models, samples, plans, images, drawings, descriptions, colours as well as weight, dimension, quality and other specifications if they are acceptable for the Customer.

## **II. Pricing, insurance**

1. The Supplier's prices shall be ex works, excluding all additional costs, in particular for packaging, shipping and transport insurance, plus value added tax.
2. Packaging will be invoiced at cost price and not taken back. The Supplier will not grant any credit for packaging sent back nevertheless.
3. In case of any changes regarding the cost basis, in particular the regulations governing calibration and certification, the Supplier shall be entitled to charge the fees in effect on the day of delivery. In particular, the Supplier reserves the right to pass on to the Customer price increases of 5% and more on the commodity market and in case of duration of two or more months.
4. The respectively current official regulations governing charges for calibrations, recalibrations, strip inspections and other official fees shall apply.
5. The Customer may set off only those claims that are undisputed or against which no legal recourse is possible. The same shall apply to the assertion of a right of retention on the part of the Customer.

## **III. Terms of payment**

1. The Supplier's invoices shall be payable within 30 days of invoice date/notification of readiness for delivery in cash without any discount or by submission of a discountable bill of exchange. In case of orders up to an order value of 500 - EUR, the Supplier shall be entitled to charge a handling flat rate of 50. - EUR. Invoices for installations and repairs shall be payable immediately.
2. Should the payment not be effected within 30 days in accordance with the terms of payment specified in para. 1 of this section, the Customer shall be in default with payment with the expiry of these terms without any reminder by the Supplier being required. In case of default with payment, interest on arrears of 5 % above the base lending rate of the Deutsche Bundesbank will be charged. A claim for further damages due to this delay remains reserved.
3. In case of non-compliance with terms of payment or circumstances suited to decrease the Customer's creditworthiness, all claims held by the Supplier shall become payable immediately. They shall entitle the Supplier to fulfill uncompleted contracts only against advance payment as well as to withdraw from the contract after a reasonable period of grace or to demand damages for breach of contract; moreover, the Supplier can prohibit the Customer from reselling the goods and can take them into possession of the Supplier.

## **IV. Delivery and default**

1. If non-observance of the terms is due to force majeure such as mobilisation, war, rebellion or similar events, e.g. strike or lockout, such terms of delivery shall be extended accordingly.
2. If the Supplier is in default, the Customer - insofar as he proves that he incurred damage as a result thereof - may claim a compensation as liquidated damages of 0.5 % for every completed week of delay but in no case more than a total of 5% of the price of that part of the supplies which due to the delay could not be put to the intended use.
3. Customer's claims for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding the limits specified in item 2 shall be excluded in all cases of delayed supplies even upon expiry of a time set to the Supplier to effect the supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence or due to injury of life, body or health; a change in the burden of proof to the disadvantage of the Customer is not associated herewith. Cancellation of the contract by the Customer based on statute shall be limited to cases where the Supplier is responsible for the delay.

4. At the Supplier's request the Customer shall be obligated to declare within a reasonable period of time whether he intends to cancel the contract due to the delay of delivery and/or claims damage instead of performance or insists on delivery .
5. If dispatch or shipment is delayed at the Customer's request by more than one month after notice of the readiness for dispatch was given, the Customer may be charged for every month commenced storage costs of 0.5% of the price of the items of supply but in no case more than a total of 5%. The contracting parties shall be free to provide proof of higher or lower storage costs.

#### **V. Reservation of ownership**

1. Deliveries shall be effected under reservation of ownership until all claims, including future ones – in case of open accounts also an established and acknowledged balance – have been settled as well as contingent liabilities have been fully compensated .
2. As far as the delivered items and services have become essential components of real estate property in accordance with §946 German Civil Code, the Customer - in the event of non-compliance with the agreed terms of payment - shall undertake to allow the Supplier to dismantle those items that can be removed without causing a substantial impediment to the structure and to return the right of ownership of these items to the Supplier. If the Customer impairs the aforementioned rights, he shall be liable for payment of damages to the Supplier. The Customer shall bear costs for disassembly and other reasons.
3. Conditionally delivered goods are to be retained and stored separately from other goods. The Customer shall be authorised to sell conditionally delivered goods only in the ordinary course of business, however not e.g. to pledge such goods or transfer ownership thereof by way of security. The Customer shall be obligated to immediately notify the Supplier in case of an imminent and executed seizure or any other violation of the rights of the Supplier by third parties.
4. Effective immediately, the Customer assigns all claims incl. subsidiary rights from further sales of conditionally delivered goods to the Supplier as security. Upon the Supplier's request, the Customer shall inform his customers of the cession and provide the Supplier with the documents required for the assertion of the Supplier's rights. As long as the Supplier does not make use of the right to collect the claim, which he may exercise at any time, the Customer shall be entitled and obligated to do so and will have to transfer the amount collected to the Supplier immediately.
5. If the value of the securities exceeds the value of the receivables to be secured by more than 25%, the Supplier shall be obligated at the request of the Customer to release securities at his own discretion .

#### **VI. Warranty**

1. All parts or services where a defect becomes apparent within the period of limitation shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge - irrespective of the hours of operation elapsed -, provided that the reason for the defect already existed at the time of transfer of the risk.
2. Claims based on material defects shall become statute-barred twelve months from the date of delivery or, if an acceptance is required, after the acceptance. This shall not apply if longer periods are stipulated by law in accordance with §§ 438 par 1 no. 2 (constructions and items used for constructions), 479 par 1 (claim to recourse) and 634 a par 1 no. 2 (construction defects) German Civil Code.
3. The Customer will have to inform the Supplier immediately in writing of any material defects. The items delivered shall be deemed to have been approved if the Supplier has not received a written notice of defects - with regard to obvious or other defects that would have been ascertained by a prompt and thorough inspection - within seven working days after supply of the delivery item or otherwise within seven working days after discovery of the defect. Upon the Supplier's request, the rejected delivery item is to be sent back to the Supplier free of delivery charges. The Supplier shall refund the costs for the most efficient route of dispatch in case of a legitimate notice of defects; this shall not apply insofar as the costs are increased due to the fact that the delivery item is situated at a different location than the location of intended use. The Supplier shall be entitled to charge a fee of 42 EUR from the Customer if the notice of defects is unjustified. The Supplier shall first of all always be given the opportunity for subsequent fulfilment within a reasonable period of time. If the subsequent performance fails (impossibility, unreasonableness, refusal or undue delay of subsequent improvement or replacement), the Customer - without prejudice to any claims for damages under para. 5 of this section - may withdraw from the contract or reduce the remuneration appropriately.
4. The Customer shall not be entitled to assert any claim for defects in case of only minor deviation from the agreed condition of the deliveries or in case of inconsiderable impairment of serviceability or for damages that have occurred after passage of risk through incorrect or negligent handling, excessive use, inappropriate operating materials, defective construction works, or inappropriate building ground or owing to particular exterior influences that had not been provided in this contract, as well as in case of non-reproducible software defects. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof shall be likewise excluded .

5. If a defect is attributable to the fault of the Supplier, the Customer may claim damages under the conditions specified in section VII.

## **VII. Liability to render compensation due to fault**

1. The liability of the Supplier for damages, irrespective of the legal basis, in particular for impossibility, delay, faulty or incorrect delivery, violation of contract, violation of obligations during contract negotiations and from illicit action shall be restricted in accordance with this section VII as far as it depends in each case on Supplier's fault.
2. The Supplier shall not be liable in cases of ordinary negligence of his executive organs, legal representatives, employees or other vicarious agents as far as it is not a matter of violation of contractually relevant duties. Contractually relevant are the obligation for timely delivery and installation of delivery items free from significant defects as well as advisory, protection and care duties which are meant to facilitate the use of the delivery in accordance with the contract or are intended for the protection of life and limb of members of the Customer's staff or the protection of his property from considerable damages.
3. As far as the Supplier is basically liable for damages in accordance with the preceding paragraph, this liability shall be restricted to damages foreseeable by the Supplier upon conclusion of the contract as the possible consequence of a breach of contract or that he should have foreseen by employing due care and diligence. Furthermore, indirect and consequential damages which are the result of defects of the delivered item(s) are only eligible for compensation as far as such damages are typically to be expected if the delivered item is properly used.
4. In the event of liability in case of ordinary negligence, the Supplier's liability to pay damages for damage to property and resulting further financial losses shall be limited to an amount of 50,000.- EUR for each case of damage, even in case of a violation of contractually relevant duties.
5. The previously mentioned liability exclusions and limitations shall apply to executive organs, legal representatives, employees and other vicarious agents of the Supplier in the same manner.
6. As far as the Supplier provides technical information or performs consulting work and this information or advice is not included in the scope of services owed by him and contractually agreed this shall be free of charge and under exclusion of any liability.
7. The limitations of this section VII shall not apply to any liability of the Supplier due to intent or gross negligent breach of duties, for guarantees, injury of life, body or health or in accordance with the Product Liability Act.

## **VIII. Redemption**

1. The redemption of goods due to circumstances the Supplier is not liable for shall only be admissible if the Supplier approved this in the run-up of the return of the goods.
2. In case of such redemption, the Supplier shall be authorised to deduct 10% from the purchase price, however at least 80 EUR, to cover his processing costs. The Customer shall bear costs of freight and postage.
3. There will be no credit for the calibration fee in case of the return of calibrated instruments.
4. In case of redemptions with a value of goods (including calibration fee, excluding VAT) up to 80 EUR there will be no credit for cost-related reasons.

## **IX. Delivery, passage of risk**

1. The Supplier shall deliver uninsured ex works. Part deliveries shall be admissible.
2. The risk of accidental loss and damage shall be passed to the Customer with dispatch and/or readiness for shipment of the delivery parts at the latest, even if part deliveries are made and we have taken over further services, e.g. dispatch costs or delivery and installation. When requested by the customer the Supplier will insure the consignment at Customer's expense.
3. If the delivery is delayed due to circumstances the Customer is liable for, the risk shall be passed to the Customer on the day of readiness for shipment.

## **X. Default of acceptance, order on call**

1. Should the Customer fail to accept the subject of the contract within the proper period, the Supplier shall be entitled to establish an additional delivery period of reasonable length, to dispose of the items in any other manner following the end of this period and to supply the Customer within a suitably extended period. In this case, the Supplier shall be authorised to demand compensation for the damages accrued thus far, including possible additional expenses, which were objectively necessary for the ineffective delivery as well as for storage and maintenance of the delivery item, and to adjust the price correspondingly. The Supplier's right to withdraw from the contract after a reasonable extension of delay shall remain unaffected. Should the Supplier request damages instead of performance, he shall be entitled to claim 20% of the agreed price as compensation without evidence, unless there is evidence of a considerably smaller damage. The Supplier reserves the right to assert claims for higher actual damages.
2. Unless otherwise agreed, orders confirmed by the Supplier on call will have to be accepted at the latest within one year subsequent to the date of the order. The same shall apply in case of delivery

postponements or subsequent conversion to >>on-call orders<<. In case of failure to call down a delivery within the agreed period, para. 1. shall apply accordingly.

**XI. Tools, samples, drawings, secrecy**

1. Tools manufactured in connection with the manufacture of products for the Customer as well as all associated rights are the property of the Supplier. Any transfer of related rights to the Customer must be agreed in writing.
2. Regarding drawings, samples and other documentation - with the exception of advertising materials -, the supplier reserves his rights of ownership and copyright. They must not be disclosed to unauthorised third parties and will have to be returned by the Customer to the Supplier upon his request.
3. The Customer shall undertake to treat all information that becomes known to him as a result of the business relationship with the Supplier as trade secrets.

**XII. Place of performance, place of jurisdiction, applicable law**

1. Both parties agree that the place of performance for all obligations resulting from the contractual relationship shall be the Supplier's place of business.
2. Place of jurisdiction shall, at the option of the Supplier, either be Mannheim or the competent court at the Customer's place of business.
3. The contractual relations shall be governed solely by German law. The application of the Vienna Treaty of the United Nations on Contracts for the International Sale of Goods (CISG) shall be excluded.

October 2010