



Utility Metering Solutions Ltd
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Utility Metering Solutions Ltd Standard Terms and Conditions: Published 23 July 2018

The following standard terms and conditions apply to every agreement made with the company for the supply of equipment and the provision of services. This document supersedes all previous versions of the company Terms and Conditions.

1. DEFINITIONS

1.1 The following words and expressions have the meanings indicated:

<i>Clause</i>	A subsection of these Terms and Conditions
<i>Conditions</i>	The contractual basis for the supply of equipment and the provision of services, as set out in this document, together with any special terms and conditions agreed in writing by the customer and company
<i>Company</i>	Utility Metering Solutions Limited. Also known as UMS Ltd
<i>Contract</i>	The written agreement for the supply of the equipment and the provision of the services entered into between the customer and the company. This is made up of the quotation and order which will include any agreed special arrangements. All contractual agreements to be in line with the Terms and Conditions in this document
<i>Customer</i>	The person specified in the quotation or the person whose order is accepted by the company
<i>Equipment</i>	The meters, ancillaries, logging and communication equipment and any other hardware devices specified in the quotation or the order
<i>Order</i>	The written agreement from the customer for the company to proceed with the provision of the equipment and services as outlined in the quotation, including any special arrangements
<i>Person</i>	Includes an individual, partnership, unincorporated association, council, government organization or body corporate
<i>Price</i>	The charge to the customer for the supply of the equipment and the performance of the services
<i>Quotation</i>	The written quotation or tender submitted by the company to the customer, outlining the detail and price of the company offer
<i>Services</i>	These include but are not limited to: the installation and / or commissioning of equipment, set-up and monitoring of data on behalf of the customer, and providing reports as required. All services are to be specified in the quotation or the order
<i>Site</i>	The site specified in the quotation or order where the equipment is to be delivered and / or at which the services are to be performed
<i>Written</i>	Written communication includes letter, fax and email (content and attachments)

1.2 The singular includes the plural and vice versa. Words implying any gender include all genders.

2. QUOTATIONS

2.1 All quotations are made and all orders are accepted subject to these Terms and Conditions.

2.2 The quotation is a summary of the price of all goods and services requested on the date of issue.

2.3 Quotations shall be available for acceptance for a maximum period of 60 days from the date of issue and may be withdrawn by the company within this period at any time by written notice.

2.4 All descriptive matters, specifications, performance ratings, capacities, prices, drawings and other data submitted by the company (whether in the quotation or in any catalogues, advertisements or price lists) are descriptive of the goods and / or services available from the company.

2.5 If any statement or representation (including the descriptive matters in 2.4) has been made to the customer by the company or its agents upon which the customer relies other than in the documents enclosed with the quotation or acknowledgement of order, then the customer must set out that statement or representation in a document to be attached to and endorsed on the order. In any such case the company may confirm, reject or clarify the point and submit a new quotation. This is the mechanism by which any special arrangements may be agreed in writing.

3. **PRICE**

3.1 The price for the supply of the equipment and the performance of the services shall be as set out in the quotation (or the order if accepted by the company).

3.2 All prices are exclusive of value added tax and similar taxes, levies or duties, which the customer shall be additionally liable to pay to the company.

3.3 The company reserves the right, by giving notice in writing to the customer at any time before delivery, to increase the price to reflect any increase in the cost to the company in executing the contract. This may be *due to*:

3.3.1 any factor beyond the reasonable control of the company (such as, without limitation, any increase in the cost of labour, raw materials, overheads, or currency)

3.3.2 any change in delivery dates, quantities, or specifications for the equipment arising as a result of any error or omission or changes deemed necessary by the customer

3.3.3 any delay or interruption in the contract not attributable to the company

3.4 The price excludes assembly, packaging, insurance, delivery and transport charges which the customer shall be liable to pay in addition to the price. These will be notified to the customer in the quotation or by separate communication from the company.

4. **ORDER**

4.1 The customer shall be responsible for ensuring the accuracy of the terms of the order and shall give the company any necessary information and access to premises to enable the company to proceed with the contract. Any failure to do so will allow the company to charge the customer an additional price for any delay and / or to terminate the contract immediately.

4.2 The quantity, quality and description / specifications for the equipment and / or service offer shall be those set out in the quotation (if accepted by the customer) or the order (if accepted by the company).

4.3 The company reserves the right, without notice and where the equipment is to be supplied to the company's specification, to make any changes in the specification of the equipment which does not materially affect the quality or performance.

4.4 No order which has been accepted by the company may be cancelled by the customer except with the written agreement of the company and on the terms that the customer shall indemnify the company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the company as a result of cancellation.

4.5 Any plans, drawings or technical documents prepared by the company and submitted to the customer prior to or following the formation of the contract shall remain the property of the company and shall be returned to the company on demand. The customer shall not without the company's written consent copy the said plans, drawings or technical documents or any part of them or part with possession of them or disclose them or any part of them to others or allow others to use them or copy them. Nor will the customer use or allow any third party to use the said plans, drawings or technical documents other than in connection with the installation or assembly of the equipment by the company or its representatives.

5. **CONTRACT**

5.1 No contract shall have been formed until either the customer has accepted the quotation in writing or the company has accepted the order in writing. If acceptance is made verbally, then written confirmation of such acceptance should be provided as soon thereafter as is reasonably practicable.

5.2 Only these terms conditions apply to the contract, and shall override any other terms, conditions or warranties which the customer may seek to impose. Acceptance of the equipment and of the performance of the services by or on behalf of the customer shall be conclusive evidence that these conditions are accepted by the customer and apply to the contract.

5.3 No variation of the contract shall apply unless agreed in writing by an authorised representative of the company.

6. **ASSIGNMENT**

The customer shall not without the prior written consent of the company assign the contract or any part of it.

7. NOTICES

7.1 Where either party intends to terminate the contract for the provision of equipment or services delivered on a continuing basis they shall in all circumstances provide a minimum of 3 months advanced notice of the proposed contract end date.

7.2 Any notices to be given by either party shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.

7.3 The party giving notice should obtain confirmation of receipt of that notice from the other party.

8. DELIVERY

8.1 The equipment will be delivered to, and the services performed at, the address specified in the quotation (or the order, if accepted by the company).

8.2 Whilst the company shall make every reasonable effort to deliver the equipment and perform the services within the times specified in the quotation (or the order, if accepted by the company), the company cannot guarantee that those times will be achieved due to circumstances beyond its reasonable control. The customer has no right to cancel the contract or withhold payment because of the failure of the company to meet any stipulated delivery time.

8.3 The customer is required to acknowledge receipt of all equipment by signing the delivery note supplied by the company or its agents.

8.4 If the customer fails or refuses to take delivery of the equipment on the due date, or fails to give the company adequate instructions for delivery at the time stated, then the customer shall be liable to the company or any loss or costs arising from such failure or refusal and for a reasonable charge by the company for the care, custody, storage and insurance of the equipment until actual delivery. This provision shall be in addition to and not in substitution of any other payment or damages for which the customer may become liable in respect of failure to take delivery at the appropriate time.

8.5 It is the responsibility of the customer to inspect the equipment on delivery. Any claim by the customer which is based on the quality or condition of the equipment or their failure to correspond with the order shall (irrespective of whether delivery is refused by the customer) be notified to the company within 3 days from the delivery date. If delivery is not refused, and the company is not so notified within the time limit, the customer shall not be entitled to reject the equipment, the company shall have no liability for such defect or failure, and the customer shall be bound to pay the price as if the equipment had been delivered in accordance with the contract.

9. TERMS OF PAYMENT

9.1 Unless otherwise agreed in writing, the company shall be entitled to invoice the customer for the price on or at any time after delivery of the equipment. Where the delivery of the equipment or service has been delayed at the request of or through the action or inaction of the customer, the company may submit its invoice at any time after the original date for delivery.

9.2 The company reserves the right to require payment in part or in full of the price prior to dispatch of the equipment and reserves the right to withhold delivery of the equipment or performance of the services until such payment is received.

9.3 Unless otherwise agreed by the Company in the quotation, the terms of payment shall be 30 days from the date of invoice notwithstanding that delivery may not have taken place and the property in the equipment has not passed to the customer. Receipts for payment will only be issued on request.

9.4 The time of payment of the price shall be of the essence of the contract.

9.5 Where equipment is delivered by installments the company may invoice each installment separately and the customer shall pay such invoices in accordance with these conditions.

9.6 No right of set-off shall exist in respect of any claims by the customer against the company unless and until such claims are accepted in full by the company in writing. The customer shall not withhold all or any part of any sum which has become due for payment under the contract.

9.7 If the customer fails to make any payment due to the company (whether under the contract or otherwise) on the due date then, without prejudice to any other right or remedy available to the company, the company shall be *entitled to*:

9.7.1 cancel the contract so far as any equipment remains to be delivered or services performed under it, or suspend any further delivery of the equipment or performance of any service

9.7.2 charge the customer interest (both before and after any judgment) on the amount unpaid, at the prevailing County Court Judgment rate per annum until payment in full is made (a part of a month being treated as a full month for calculation of interest)

10. RISK AND TITLE

10.1 The risk of damage to or loss of the equipment shall pass to the customer when delivered to the site.

10.2 Title to the equipment (or any part of it) shall not pass to the customer until the customer has paid the price in full.

10.3 If the customer shall be in breach of any of the terms of the contract then all monies owed by the customer to the company, whether under the contract or otherwise, shall become immediately due and payable.

10.4 In addition, the customer shall grant to the company and its employees or agents an irrevocable license to enter upon the site to recover and / or resell such equipment (irrespective of whether any part of the equipment has become a fixture) as the company may deem necessary to recover all sums owing to it by the customer together with any reasonable costs of the company so incurred.

10.5 Furthermore, if the customer is *not the legal owner of the site*:

10.5.1 the customer shall ensure that the company's employees or agents are granted access to the site by its owner to make such recovery. This right shall continue to subsist notwithstanding the termination of the contract through the happening of any of the events specified in these Terms and Conditions or otherwise and without prejudice to any accrued rights of the company under the contract

10.5.2 until all monies owing to the company (whether under this contract or otherwise) have been paid in full the equipment shall remain the absolute property of the company and the customer shall only be entitled to possession of the equipment on behalf of the company and the equipment will not become part of the site property. Until all monies owed are paid to the company, any information regarding the equipment at the property may be detached and removed by the company

10.5.3 the customer shall keep the equipment in good condition and shall maintain full insurance in respect thereof on the company's behalf in an amount which is not less than the price payable to the company for the equipment, and all proceeds of such insurance shall be held on trust for the company

10.6 Notwithstanding the provisions of this clause 10, the company may bring an action for the price due under the contract at any time after the price has become payable under these conditions.

11. GUARANTEES

Any components or parts not of the company's own manufacture incorporated in the goods or sold by the company are not guaranteed by the company, but carry the maker's guarantee only.

12. WARRANTY

12.1 The company warrants that the equipment will be of satisfactory quality for the period of 12 months following delivery, ("the Warranty Period").

12.2 If the equipment, or the workmanship used in providing the services, is proved to be defective or in need of repair during the warranty period, then the company undertakes at its sole discretion for the duration of the warranty period to replace, repair or rectify the equipment free of charge and subject to any intervening wear and tear to the condition originally specified by the customer *provided that*:

12.2.1 the customer notifies the company in writing of its claim within 14 days of discovering the alleged defect giving full details of the alleged defect

12.2.2 the company shall be entitled and shall be offered the facilities to inspect and test the equipment

12.2.3 upon examination the equipment proves to be defective due to defective workmanship of the company or their suppliers

12.2.4 a person other than the company has not dismantled, repaired or so attempted or otherwise tampered with the equipment or any part of the equipment

12.2.5 the equipment has been used, maintained, stored and serviced (where appropriate) in accordance with its operating instructions and in a proper manner

12.2.6 the equipment has not been used whilst allegedly defective, in need of repair or otherwise not in accordance with the order or the operating instructions of the company

12.2.7 the total price of the equipment has been paid by the due date for payment

12.3 If such notice is not received and such proof not forthcoming within the warranty period then the equipment shall be deemed to be free from any defect.

12.4 The equipment is sold explicitly on the condition that it will be used only in the prescribed manner and in accordance with the technical specification (as set out in the quotation or as notified to the customer by the company) and for the purpose for which it was designed. The customer must be satisfied that the intended use of the equipment is in the prescribed manner and for the purpose for which the equipment was designed. The company shall be under no liability for any damage, loss or injury resulting from any misuse of the equipment which is not in accordance with its prescribed manner or design.

12.5 The company's liability does not cover defects arising from the negligence of any party (other than the company's representatives), willful damage, or from maintenance or alterations carried out without the company's written consent or from repairs carried out improperly by any party (other than the company's representatives), nor does it cover normally expected depreciation.

13. LIMITATION OF LIABILITY

13.1 The customer agrees with the company that if the customer shall suffer loss or damage by any breach of any of the terms of the contract by the company or its agents, or from the negligence of the company or its agents, then the liability of the company in respect of such loss or damage shall be limited to the lowest monetary value of the following options, as appropriate to the degree of loss or damage:

13.1.1 the actual amount of any loss or damage suffered by the customer

13.1.2 the sum which is equal to ten times the cost of the equipment

13.1.3 the sum of one million pounds (£1,000,000.00)

13.2 The limitation on the amount of the liability of the company as referred to in clause 13.1 shall subsist indefinitely notwithstanding the termination of the contract.

13.3 The limitation of liability contained in clause 13.1 shall extend and apply not only to the company but also to its duly authorised agents.

13.4 The company's liability under clause 13.1 shall be to the exclusion of all other liability to the customer, whether contractual or otherwise and all conditions or warranties whatsoever concerning the equipment and / or the services (whether express or implied) are excluded to the extent permitted by law.

13.5 Without prejudice to the generality of the foregoing, in no circumstances shall the company be liable for any loss by the customer of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential damage of any nature whatsoever.

13.6 The customer agrees with and accepts that the limitations of liability set out in clauses 13.1 to 13.5 (inclusive) are perfectly fair and reasonably *having regard (amongst other things) to the following circumstances:*

13.6.1 that the potential losses which could or might be caused by the breach or negligence as referred to in clauses 13.1 to 13.5 (inclusive) are greatly in excess and wholly disproportionate to the amount which is being charged by the company in respect of the equipment or the services

13.6.2 that the company is anxious to keep its charges in respect of the equipment and services provided to as low a level as reasonably possible, for the benefit of the customer, and all the company's other customers

13.7 The customer confirms that the terms of clauses 12 and 13 have been read and fully understood and the customer accepts the limitation of liability in this clause 13.

14. **DEFAULT OR INSOLVENCY OF CUSTOMER**

14.1 This clause applies in *any of the following circumstances*:

14.1.1 the customer defaults in any of its commitments with the company

14.1.2 the customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt; or (being a company) goes into liquidation (other than for the purposes of amalgamation or reconstruction)

14.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property and assets of the customer

14.1.4 the customer ceases, or threatens to cease, continuation of business

14.1.5 the company reasonably apprehends that any of the events mentioned above is about to occur in relation to the customer and notifies the customer accordingly.

14.2 If this clause applies then, without prejudice to any other right or remedy available to the company, the company shall be entitled to cancel any uncompleted order or to withhold or suspend delivery of any equipment or performance of any services.

14.3 In the event of an occurrence as outlined in clause 14.1, then the customer shall indemnify the company against all loss including loss of profit, costs (including the costs of labour and materials used and overheads incurred) and all other expenses and damages connected with the order and its cancellation (the company giving credit to the value of any materials sold or used for other purposes).

14.4 If the customer becomes aware that any of the circumstances mentioned in clause 14.1 has or is likely to occur, then the customer must inform the company of the occurrence or likely occurrence of such event immediately.

14.5 The customer shall indemnify the company in respect of all legal administration and other costs and expenses resulting from any breach by the customer of these Terms and Conditions, or the contract.

15. **FORCE MAJEURE**

The company shall not be liable for any delay in performing or failure to perform its obligations under the contract if such delay or failure results from an act of God, war, strike, lock-out, industrial action, default of suppliers or sub-contractors, fire, flood, drought, tempest or other event beyond its reasonable control. Such delay or failure shall not constitute a breach of the contract and the company shall be entitled to a reasonable extension of time for performing its obligations under the contract in the event of an occurrence as referred to in this clause.

16. **GENERAL**

16.1 The contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts in the interpretation of the contract or the resolution of any dispute arising under its terms.

16.2 The failure to exercise, or the delay in exercising, any right or remedy provided by this contract or by law, does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.

16.3 A waiver of a breach of any of the conditions, or of a default under this contract, does not constitute a waiver of any other breach or default, and shall not affect the other terms of the contract.

16.4 A waiver or the breach of any of the terms of the contract, or of a default under the contract, will not prevent a party from subsequently requiring compliance with the waived obligation.

16.5 The rights and remedies provided by the contract are cumulative and (subject as otherwise provided in the contract) are not exclusive of any right or remedy provided by law.

16.6 If any of the provisions of the contract are held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in question shall not be affected thereby.