

Estevan Meter Terms & Conditions

1. DEFINITIONS:

“Buyer” means the company, partnership, person or entity purchasing the Products and/or Services from the Seller identified in the Purchase Documents

“Products” means the equipment parts and materials being purchased by the Buyer as more particularly identified in the Purchase Documents

“Purchase Documents” means the documents accompanying these Terms and Conditions which more fully describe the Products and/or Services, including, as applicable, the Buyers’ request for quotation, purchase orders, and the Seller’s quotation;

“Seller” means Estevan Meter Services Ltd. and Virden Meter Services LP

“Services” means the services of any description or kind to be provided by the Seller in relation to the Products as more particularly identified in Purchase Documents

“Software” means the executable file of the computer programs, and not the source code, to be provided by the Seller to the Buyer which is more particularly described in the Purchase Documents

“Terms and Conditions” means these general terms and conditions.

2. APPLICATION:

These Terms and Conditions apply to every sale of Products and every supply of Services by the Seller to Buyer. The Buyer specifically agrees and acknowledges that, unless the Seller agrees in writing to a modification of these Terms and Conditions, these Terms and Conditions apply and supersede any of the Buyer’s standard terms and conditions whether set out in the sales and / or service order, or quotation.

3. PRICES:

Unless otherwise specified by the Seller, the Seller’s price for the sale of the Products will remain in effect for thirty (30) days from the date of the Seller’s quotation. Unless otherwise specified, the Services provided by the Seller will be charged at the prices quoted in the Seller’s quotation, if accepted within thirty (30) days from the date of the quotation, otherwise the prices charged will be at the rates set out in the Seller’s published rate schedule in effect at the time the Services are actually rendered. The Seller’s prices do not include applicable taxes which will be added to the price quoted and appear as a separate line item on the Seller’s invoice. The exception to this is materials installed during field services as the Saskatchewan Provincial Sales taxes may be added to this pricing and not appear as a separate line item. Prices for Products do not cover storing, installing, starting up or maintaining Products unless expressly stated in the Seller’s quotation.

4. TERMS OF PAYMENT:

The buyer shall pay the Seller the price of the Products and/or Services provided within thirty (30) days from the date of the Seller's invoice, subject to approval of the Seller's credit department. The Seller accepts payment on accounts with approved terms, by cheque, EFT and credit card (VISA only). Credit card payments are only accepted at point of sale (a surcharge will be applied) unless otherwise agreed to by the Seller in advance. In the event that the Seller and the Buyer have agreed to a milestone payment schedule, the payment specified in the milestone payment schedule shall be paid on the dates that each milestone is achieved. The Seller may charge interest on overdue payments, commencing on the day on which the amount became payable, calculated at the rate of 1.5% per month (18% per annum).

5. DELIVERY AND TRANSFER OF TITLE AND RISK:

All shipping dates for the Products and performance dates for the Services to be provided by the Seller are approximate only and are based on the Seller having received from the Buyer all information required by the Seller to provide the Products and/or Services. The Buyer agrees to accept shipment when Products are ready to ship or storage charges may apply. All Products shall be delivered to the Buyer at the location indicated in the Purchase Documents or, if no location is indicated, EX WORKS at the point of the manufacture of the Products. Transfer of risk of loss or damage to the Products shall be governed by the applicable Incoterm agreed to by the parties for the delivery of the Products and, if no Incoterm is specified, all risk of loss or damage to the Products while in transit shall be borne by the Buyer. Title to the Products shall pass to the Buyer on the Buyer making payment in full for the Products or on the Products being delivered to the Buyer, whichever occurs later.

6. DOCUMENTATION:

The Seller shall supply the Buyer with the documentation specified in the Seller's quotation. Any additional copies of the documentation or the supply of documentation on alternative media will be provided by the Seller to the Buyer at the Seller's price then in effect.

7. CONFIDENTIALITY:

Each party agrees to hold Confidential Information of the other party in confidence and to use Confidential Information solely related to the supply of the Products or performance of the Services in accordance with the Purchase Documents. The term "Confidential Information" shall include all technical, business, pricing, financial and other information of a confidential nature of, or related to, one party that is disclosed or made available to, or accessed by, the other party or its representatives, directly or indirectly, through any means of communication.

8. INSTALLATION:

The Buyer shall be responsible for transporting, receiving, storing, installing, starting up and maintaining all Products. If requested, the Seller may, at its option, provide Services to assist the Buyer in the installation of the Products at a price to be agreed to between the Buyer and the Seller or at the rates set out in the Seller's published rate schedule in effect at the time the Services are actually rendered.

9. EXCUSE OF PERFORMANCE:

The Seller shall be excused from the performance of any term or condition of this sale of the Products or the provision of Services when and to the extent that the performance is delayed or prevented by any cause beyond its reasonable control, including, without limitation, acts of God, wars, riots, fire, labour unrest, inability to obtain materials or components, explosions, accidents, government requests, laws, regulations, orders, actions, or interruption of computer or telecommunication systems. If such an event occurs, the shipping date and the price of the Products and/or Services to be provided by the Seller may be revised by agreement made between the Buyer and the Seller or the Seller may at its option cancel the sale of the Products or agreement to provide Services in which case the Buyer will pay the Seller any and all losses, damages, dismantling, restocking fees, and any other cost or expenses incurred by the Seller arising from such a termination.

10. TERMINATION:

The Buyer may terminate its purchase of any and all of the Products and/or Services, subject to advance written notice to the Seller, provided that it pays the Seller for all Products shipped and Services performed up to the date of termination and any and all losses, dismantling, cancellation, restocking charges and any other costs or expenses arising from such termination. The Seller shall have the right, in addition to any other remedy, to either terminate its agreement to sell the Products or provide the Services or suspend further deliveries of the Products or provision of the Services to the Buyer in the event the Buyer fails to make any payment required to be made to the Seller when due.

11. WARRANTY:

Subject to Sections 12 and 13, the Seller warrants its Products and/or Services as follows:

- a) The Seller will, at its option, repair or replace any defects in materials or workmanship in any Products which appear within the earlier of twelve (12) months from the date of the initial installation of such Products or eighteen (18) months from the date of shipment of such Products.
- b) Products manufactured by any third party provided by the Seller to the Buyer shall be subject to the manufacturer's standard warranty and, notwithstanding anything to the contrary, the Seller shall have no liability for correcting any defect in the materials and workmanship in such Products. The Seller's only obligation is to make a reasonable commercial effort to assist the Buyer in making a warranty claim as against the manufacturer's standard warranty.
- c) Any Services and consumables supplied by the Seller, including component integration, device configuration and the repair of Products are warranted against defects in workmanship for a period of the earlier of ninety (90) days from the date of the installation of the Products or completion of the Services, or one hundred and twenty (120) days from the date of shipment of the Products to the Buyer. Any interpretative services provided by the Seller are not warranted either as to the accuracy or correctness of any such interpretations or any recommendations made by the Seller based upon these interpretations.

12. WARRANTY LIMITATIONS AND EXCLUSIONS:

a) The Seller does not warrant the performance of any Products and/ or Services provided by it to the extent that the actual operating or other conditions differ from the specifications, information, representation of operating conditions or other data supplied by the Buyer for the purpose of the selection or design of the Products and/or Services;

b) This limited warranty shall not apply to any repair or replacement of Products caused by abuse, accidental damage, misuse, improper installation, use of unauthorized parts, unsuitable power sources or environmental conditions, improper application, corrosion or inadequate or improper preventative maintenance of the Products;

c) The Seller does not warrant the performance of any Software or Products controlled by the Software provided by the Seller unless the Buyer attends a site acceptance test and completes the site acceptance test documentation when the Purchase Documents require a site acceptance test of the Software and Products;

d) All costs of dismantling, reinstallation and freight and the time and expenses of the Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by the Buyer unless accepted in writing by the Seller;

e) The warranties and remedies set forth in Section 11, Warranty, are exclusive. Seller's liability for warranty related claims shall be limited to the purchase price of the Products or Services triggering such claim. Notwithstanding anything to the contrary, there are no other representations, conditions or warranties of any kind, express or implied, either in fact or by operation of law, by statute or otherwise, as to merchantability, fitness for particular purpose, or any other matter with respect to the Products, Software or Services, and the Seller specifically disclaims any and all implied or statutory representations, warranties or conditions.

13. LIMITATION OF REMEDY AND LIABILITY:

The Seller shall not be liable for damages caused by delay in performance. The remedies of the Buyer set forth herein are exclusive. Notwithstanding anything to the contrary contained herein or any other related documents, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), (a) in no event shall the Seller's liability exceed the price to the Buyer of the specific Products and/or Services provided by the Seller giving rise to the claim or cause of action, and (b) in no event shall the Seller be liable for loss of profits, loss of production, loss of use, indirect, special, incidental, punitive or consequential damages.

14. SOFTWARE LICENSE:

Notwithstanding any other provision to the contrary, the Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, the Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Products only in conjunction with such Products and only at the Buyer's plant site where the Products are first used. The Buyer's use of certain firmware (as specified by the Seller) and all other software shall be governed exclusively by the Seller's and/or third party owner's applicable license terms.

15. GENERAL PROVISIONS:

(a) The Buyer shall not assign its rights or obligations under these Terms and Conditions and the Purchase Documents without the Seller's prior written consent;

(b) There are no understandings, agreements or representations, express or implied, not specified in these Terms and Conditions and the Purchase Documents and these Terms and Conditions supersede any previous agreements related to the purchase of Products or Services.

(c) No action, regardless of form, arising out of transactions under these Terms and Conditions and the Purchase Documents, may be brought by either party more than two (2) years after the cause of action arose;

(d) If any of the provisions of these Terms and Conditions, or portions thereof, are found to be illegal or unenforceable they are to that extent only deemed to be omitted and the remaining provisions of these Terms and Conditions shall remain in full force and effect and may be enforced nonetheless to protect and reflect the original intent of the parties hereunder;

(e) Any modification of these Terms and Conditions and the Purchase Documents must be set forth in a written instrument signed by a duly authorized representative of the Seller;

(f) These Terms and Conditions and the Purchase Documents do not create any partnership, agency or further relationship between the parties hereto;

(g) These Terms and Conditions and the Purchase Documents are governed by, and are to be construed and interpreted in accordance with, the laws of the Province of Saskatchewan and the laws of Canada applicable in that Province, and, in respect of any dispute arising in connection with the Purchase Documents, the parties hereto submit to the exclusive jurisdiction of the Saskatchewan courts.

