

## Supplementary Terms for the Supply of Customized Systems

### 1. General

The following regulations shall be applied for the supply and use of any customized systems ("Customized System" or "Customized Systems"), including the related documentation ("Documentation" or "Documentations") in addition to the individual supply agreement between the Parties and further terms and conditions of Landis+Gyr possibly declared exercisable.

### 2. Customized Systems

2.1 Customized Systems may include third party supplies and services. With respect to such third party supplies and services and relating documentation, the relevant terms of delivery and licensing conditions of the third party suppliers concerned shall apply. In terms of the "Supplementary Terms for the Supply of Customized Systems" affiliated companies, holding companies and group companies of Landis+Gyr are considered to be third parties as well.

2.2 Landis+Gyr shall without prior notice be entitled to have works executed and/or elements of the Customized Systems and/or Documentation supplied by subcontractors.

2.3 Landis+Gyr shall, to the extent necessary, enter into license and maintenance agreements with third party suppliers concerned, stipulating at the same time that said agreements shall pass to the Purchaser on actual delivery of the Standard Software. Actual delivery of the Standard Software shall mean integration of Standard Software into any equipment as the case may be. For the purpose of the "Supplementary Terms for the Supply of Customized Systems" customized supplies and services shall mean not only supplies and services individually customized for the Purchaser but any kind of adaptation of standardized supplies and services as well.

2.4 License and maintenance fees specified separately in Landis+Gyr's tender or order confirmation and due until the time of actual delivery are included in the purchase price; all further license and maintenance fees, especially but not limited to those due after delivery, shall be on account of and paid by the Purchaser.

### 3. Intellectual Property Rights and Copyrights; Defects of Title

3.1 Landis+Gyr and/or third party suppliers respectively reserve all rights to the Customized System and/or Documentation made available to the Purchaser. The Purchaser shall acknowledge these rights and without the prior written consent of Landis+Gyr will not use nor make available to any third party the Customized System and/or Documentation for any other purpose than that for which they were issued.

3.2 Customized Systems and/or Documentations are and remain Landis+Gyr's or a third party's intellectual property regardless of its protection capability.

3.3 The Purchaser's right to use Customized System and/or Documentation is limited to the terms of the "Supplementary Terms for the Supply of Customized System". The Purchaser shall only be entitled to use Customized Systems and related Documentation to the extent explicitly allowed by Landis+Gyr in writing. Section 2.1 remains unaffected.

3.4 Unless explicitly agreed otherwise, the Purchaser is not entitled to directly or indirectly, modify all or part, make available, copy, publish and/or exploit the Customized System and/or Documentation for any third party.

3.5 If the Purchaser passes the Customized Systems and related Documentation on to another recipient, the Purchaser shall assign to the latter all rights and obligations arising from the "Supplementary Terms for the Supply of Customized Systems".

3.6 Customized Systems shall be in conformity with regulations, standards and specifications applicable in Switzerland at the time the respective contract becomes effective.

3.7 The source code will only be provided if this has been explicitly agreed.

3.8 Customized Systems and/or Documentation are provided only as they exist and in the format and on the data medium as made available.

3.9 If incidents change the economic importance or the content of the Supply or adversely affect the operation of Landis+Gyr, Landis+Gyr is entitled according to its own choice to either withdraw from the contract and demand compensation instead of adapting the prices. If Landis+Gyr wants to make use of its right to withdraw from the contract, this has to be reported immediately to the Purchaser.

3.10 Customized Systems and/or Documentation need to be free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If set by unappealable legal title judgement that Customized Systems and/or Documentation used by the Purchaser in conformity with the contract infringe third parties' IPR in the country of the place of delivery, Landis+Gyr shall be liable to the Purchaser within the time period stipulated in Section 4.7 as follows:

a) Landis+Gyr shall choose whether (i) to acquire the right to use the IPR with respect to the Customized Systems and/or Documentation concerned or (ii) whether to modify the Customized Systems and/or Documentation such that they no longer infringe the IPR or (iii) replace them. If this would be impossible for Landis+Gyr under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to Section 4.

b) The above obligations of Landis+Gyr shall apply only if the Purchaser (i) immediately notifies Landis+Gyr of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to Landis+Gyr's discretion. If the Purchaser stops using the Customized Systems and/or Documentation in order to reduce the damage or for other good reasons, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

3.11 Purchaser claims shall be excluded if it is responsible for the infringement of an IPR, if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseen by Landis+Gyr or by the Customized Systems and/or Documentation being modified by the Purchaser or being used together with products not provided by Landis+Gyr.

3.12 Further rights and remedies of the Purchaser based on an infringement of third parties' Intellectual Property Rights than those as per this Section 3 shall be excluded, in particular the Purchaser's right to claim further damages.

3.13 Where other defects in the title occur, Section 3 shall apply mutatis mutandis.

### 4. Exclusion of Warranty and Limitation of Liability

4.1 Landis+Gyr makes no representations whatsoever of warranties or remedies in excess of Section 3. Landis+Gyr has no further obligations with respect to Customized Systems and/or Documentation.

4.2 Warranty claims with respect to Customized Systems and/or Documentations may be raised only if the deficiency can be reproduced using the unaltered original Customized System and/or Documentation, supported by documentary evidence as detailed as possible.

4.3 Except where explicitly stated in Section 3.6 and 3.10 above, all rights and remedies of the Purchaser – for whatever legal reasons – against Landis+Gyr, any of its officers, directors, stockholders, owners, employees, affiliates, agents or any persons with whom it performs its obligations, its subcontractors,

suppliers and designees, shall be excluded to the maximum extent permitted by applicable law, especially, but not limited to, claims based on loss or damage of data and/or data media, costs for recovery of lost or damaged data, loss of production, loss of use, loss of orders or profit and other direct, indirect or consequential damages, even if Landis+Gyr has been explicitly advised of the possibility of such damages.

- 4.4 The aforesaid limitations of liability shall not apply if liability is mandatory, for example in accordance with product liability, in cases of intent, gross negligence, loss of life, bodily injury or damage to health or in case of a general product liability.
- 4.5 Enforceable Purchaser claims shall be limited to 3% (three percent) of the Purchaser's payments to Landis+Gyr during the last 6 (six) months for the specific supply and/or service under the respective individual contract. Parties are free to give evidence of lower damage.
- 4.6 Amicable arrangements of a Party with third parties are binding for the other Party only when subject to prior written approval.
- 4.7 If the Purchaser has a claim for damages it shall be time-barred upon an expiration of 12 (twelve) months from accrument. The same shall apply to the Purchaser's claims in connection with actions undertaken to avoid any damages (for example, a callback).
- 4.8 Landis+Gyr shall be entitled to charge the Purchaser's account for all expenses related to the tracing of defects or deficiencies if defects or deficiencies notified by the Purchaser are not found and/or cannot be reproduced.

#### **5. Cooperation of the Parties**

- 5.1 The Purchaser, or the ultimate recipient as the case may be, shall make available on the premises, in due course and free of charge according to Landis+Gyr's requirements, adequately equipped work places (including necessary power supply and access to safe data transmission) as requested by Landis+Gyr to be used by Landis+Gyr and/or any persons whom it uses to perform its obligations.
- 5.2 If either the Purchaser and/or the ultimate recipient requests Landis+Gyr to provide additional supplies, assistance, services and/or instruction, this shall be subject to a separate agreement and additional payment. Landis+Gyr does not need to provide such additional supplies and/or services prior to a respective additional agreement and advanced payment.

#### **6. Auxiliary material, deliverables and services supplied by the Purchaser**

- 6.1 The Purchaser shall, by way of a loan, put at Landis+Gyr's disposal in due course such auxiliary material (including necessary soft- and hardware) and/or test data (the latter on appropriate data storage media and data format) and/or documents as requested by Landis+Gyr.
- 6.2 Landis+Gyr is entitled to keep all auxiliary material, data and documents that have been made available to Landis+Gyr according to [Section 6.1](#) above until the warranty period has expired.

#### **7. Confidentiality and Data Protection**

- 7.1 Parties shall comply with all applicable Data Protection Acts if processing personal data when performing work in relation to Customized Systems.
- 7.2 Further confidentiality obligations may be set up in a separate confidentiality and non-disclosure agreement which, as the case may be, shall be amended in the "Supplementary Terms for Supply of Customized Systems".

#### **8. Miscellaneous**

- 8.1 If the Purchaser exports the Customized System and/or Documentation, all export regulations must be adhered to by the Purchaser at its sole risk and responsibility.
- 8.2 Confidential information of Landis+Gyr and/or its licensors contained in any software and documentation is protected by copyright. The Purchaser must observe this and neither delete copyright notices nor make any other modifications in violation of such rights.
- 8.3 No modification to this Agreement nor any legally relevant declarations of the Parties shall be binding, unless in writing and signed by a duly authorized representative of the Party to be bound thereby. This procedure may only be waived by written instrument.
- 8.4 If any provision contained in this "Supplementary Terms for the Supply of Customized Systems" proves to be invalid or impracticable for legal reasons, all other provisions of these "Supplementary Terms for the Supply of Customized Systems" shall remain in full force and effect. Parties shall substitute such invalid provisions by a valid provision having an economic effect as similar as possible to the original provision and submit for substitution.
- 8.5 The "Supplementary Terms for the Supply of Customized Systems" shall be governed by Swiss Law without any reference to the conflict of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded. The venue for both Parties shall be Zug, Switzerland. However, Landis+Gyr may also bring an action to the Purchaser's place of business.