

## TERMS OF LICENSE AS REGARDS "enSuite"

**Elster GmbH, Steinern Straße 19-21, 55252 Mainz-Kastel, Germany** (hereinafter referred to as "**Licensor**") is sole proprietor of the rights to the software tool "enSuite". enSuite is provided by the Licensor free of charge and can be used for configuration and parameterisation of equipment of the Licensor Elster GmbH. The terms of license as set forth hereinafter shall be applicable to the use of enSuite by the Licensor's respective customers (hereinafter referred to as "**User**"):

### § 1 PROVISION OF THE PROGRAM, TRAINING

- (1) The User shall receive the software tool enSuite, provided by download, (hereinafter referred as "**Program**") for autonomous configuration and parameterisation of equipment. Each new Program version (e.g. patches, bug-fixes, updates, upgrades, etc.), which is made available to the User as a service or supplementary performance, shall be deemed to be a component of the respectively provided Program and shall be subject to these terms of license, if nothing to the contrary should be agreed in individual cases.
- (2) The Program includes a User manual in the form of an online manual, which can be retrieved via the help function of the Program.
- (3) In order to operate the Program for configuration and parameterisation of the equipment successfully, it shall be essential to take part in training courses offered by the Licensor at a fee. Such training courses are offered by the Licensor on the basis of a separate agreement.
- (4) For a sustainable and uninterrupted operation, the creation of regular backups is highly recommended. The procedure is taught in the course of a mandatory training by Elster GmbH.

### § 2 UTILISATION RIGHTS

- (1) The User shall be granted a non-exclusive right by the Licensor, which right shall unlimited in time, to use the Program supplied in object code in the country of point of delivery of the relevant equipment for purposes of

configuration and parameterisation. Said right shall include the right to copy the Program, insofar as the respective copying should be necessary in order to fulfil the before mentioned purpose. Furthermore, the User shall solely be permitted to utilise the Program to the contractually laid down extent.

- (2) The User shall be permitted to make copies for back-up purposes. Such back-up copy has to be marked as back-up copy of the Program provided.
- (3) The User shall be under the obligation to avoid unauthorised access to the Program by third parties through taking suitable precautionary measures. The original data carriers delivered as well as the back-up copies have to be kept in safe custody in a place secured against unauthorised access by third parties. The User's employees shall be instructed as regards compliance with these contractual terms and conditions as well as the provisions set forth under the German Copyright Act (*Urheberrechtsgesetz*).
- (4) The User shall not be permitted to make any additional copies; this shall also include output of the Program code to printer. Any claim for surrender of the source code of the Elster GmbH shall be excluded.
- (5) Unless otherwise agreed, the User shall solely be permitted to use the Program for own internal purposes as contractually agreed or have same used by third party service providers to the same extent.
- (6) The User may solely adapt the Program, in particular carry out changes and upgrades, if this should expressly be permitted under statutory laws or the underlying licence conditions or if such activities have been contractually agreed. The Licensor points out that even minor changes could lead to major, unpredictable disturbances in the running of the Program and equipment. The User is therefore emphatically warned against carrying out any changes to the Program, which have not been agreed. The User shall bear the sole risk.
- (7) The User may not reverse engineer or decode the Program, nor extract Program elements. The User shall neither decompile nor disassemble the Program, carry out any reverse engineering or in any other way attempt to deviate the source code
- (8) The Program is protected under both national copyright law and international regulations regarding the protection of copyrights as well as by other laws and agreements concerning intellectual property rights.

- (9) The program uses open source components whose license agreements are defined by the authors, and are listed and can be viewed in the attached file enSuite\_Third\_Party\_Licenses

### **§ 3 MULTIPLE USE**

The program is a single user application, the User shall be entitled to install the Program on each hardware system available to him. However, in the event that the User should exchange the hardware, he shall be under the obligation to irreversibly remove the Program from the hardware used up to such point in time.

### **§ 4 RESALE AND RENTING OUT TO THIRD PARTIES**

- (1) Sale and rental of the program are not permitted.

### **§ 5 CLAIMS BASED ON DEFECT**

- (1) Defects to the Program and user manual:
- (a) A defect shall be deemed as being prevalent, if (i) when operated as provided under the contract, the Program should not provide the specified functional features as defined in the Program product/performance specifications, respectively as far as a feature of the Program has not been agreed, (ii) if it should not be suited for use as provided for under this agreement or otherwise (iii) if it should not be suited for customary use and does not possess the characteristics, which are common in Programs of similar type and the User can expect such characteristics based on the nature of the Program.

A defect in terms of this provision shall (particularly) not be prevalent, if

- any of the before mentioned requirements as set forth hereinbefore (i) - (iii) merely has a insignificant effect on the use of the Program, or
- the disturbance has been caused due to improper handling of the Program. Improper handling of the Program for example exists, if the User does not follow the instructions set forth under the user manual.

- (b) A defect in the user manual in the form of online-help is prevalent, if with the aid of the user manual, a knowledgeable user, bearing a basic knowledge of the handling of the Program, which was taught to him within the scope of mandatory training by Elster GmbH, should not be able to deduce the operation of individual functions by applying reasonable efforts or solve problems arising by applying reasonable efforts.
- (2) Defects to the Program supplied as well as to the User manual shall be rectified by the Licensor within the defect warranty period of one year, which period shall commence upon provision of the download by the licensor, after appropriate notification by the User. Such rectification shall be carried out by way of elimination of defect (remedy) or by way of delivering a Program copy free of defects (substitute delivery), as the Licensor may select.
- (3) Rectification or substitute delivery shall only be deemed as having failed, once the Licensor has been granted sufficient opportunity to rectify or make substitute delivery, without the required success being achieved, if rectification or substitute delivery should be impossible, if the Licensor should refuse same or if same should be unreasonably delayed, if there should be justified doubt as to the prospects of success or if any unreasonable circumstances should be prevalent due to other reasons.

To the extent that it should be reasonable upon the User, the Licensor shall be entitled to make available to the User patches, bug-fixes, a new Program version or Program components, etc., towards elimination of defect, which no longer contain the reprimanded defect respectively eliminates same.

- (4) In order to carry out defect analysis and bug fixing, the User shall make available to the Licensor all necessary documentation and information, IT facilities, premises and telecommunication facilities to an adequate extent free of charge. The User shall be under the obligation to install transmitted patches, bug fixes, new Program versions or Program components, etc. without delay. The User's employees shall supply comprehensive information to the Licensor for purposes of troubleshooting - if necessary, verbally or detailed in writing.

## **§ 6 INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS**

- (1) If nothing to the contrary has been agreed, the Licensor shall be under the obligation to merely deliver the Program in the country where point of delivery of the equipment is located, free from intellectual property rights of third parties and free from third party copyrights (hereinafter referred to as:

Proprietary Rights). In the event that it should be established by final declaratory judgement that Proprietary Rights of any third party should be infringed through contractual use of the Program by the User, the Licensor shall be entitled to select either to procure, at its own costs, the necessary right of use on behalf of the User or to change the Program in such a way that such Proprietary Rights are no longer infringed, but still complies with the contractual agreements.

- (2) The before mentioned obligations of the Licensor shall solely exist, to the extent that the User reports any claims raised by third parties in the written form, does not acknowledge infringement and the Licensor reserves right to all defence measures and settlement negotiations. In the event that the User should discontinue use of the Program for reasons of mitigation of damages or other important reasons, the User shall be obliged to point out to the third party that discontinuance of use does not constitute acknowledgement of any infringement of Proprietary Rights.
- (3) Claims by the User shall be precluded if the User should be responsible for infringement of Proprietary Rights as well as in the event that the infringement of Proprietary Rights should be caused through specific specifications by the User, through use not foreseen by the Licensor or if caused by the fact that the delivered product is changed by the User or operated together with products not supplied by the Licensor.
- (4) Further claims or other claims by the User than those as set forth under this § 6 against the Licensor and its vicarious agents based on infringement of proprietary rights shall be precluded, irrespective of its legal basis, if liability is not given due to intentional or grossly negligent violation of obligation or due to loss of life, bodily harm or damage to health or due to taking over a guarantee for warranted properties. The before mentioned provisions do not affect the burden of proof to the detriment of the user.

## **§ 7 LIABILITY**

- (1) The Licensor shall be liable to an unlimited extent for damages, which are caused by the Licensor intentionally or grossly negligent as well as for personal damages, i.e. pertaining to loss of life, bodily harm or damage to health.
- (2) Further claims for damages and reimbursement for expenses by the User (hereinafter referred to as: claims for compensation of damages), irrespective of its legal basis, in particular based on violation of obligations arising from and in connection with contractual obligation and tort shall be precluded.

This shall not apply, in the case of compulsory liability, e.g. in accordance with the German Act regarding Product Liability (*Produkthaftungsgesetz*), in cases of intent, gross negligence, due to wilful concealment of defect or culpable violation of cardinal contractual obligations by the Licensor. Cardinal contractual obligations shall be deemed to be goods, service and protective obligations, whereby compliance therewith is vital towards due and proper accomplishment of the contractual purpose or which any user typically relies upon and may rely upon and non-compliance therewith would lead to the fact that the user is deprived of rights and legal positions to such an extent or is restricted to the extent that the purpose of the contract can no longer be accomplished. However claims for compensation of damages for violation of cardinal contractual obligations shall be limited to predictable damages, typical to this kind of contract, if intent or gross negligence should not be prevalent.

- (3) The Licensor's before mentioned liability as regards predictable damages, typical to this kind of contract shall be limited to a maximum of 50,000 EUR per event of damage.
- (4) In the event of loss of data, respectively destruction of data, the Licensor shall solely, be liable if it has caused destruction intentionally or grossly negligent or based on violation of cardinal contractual obligations and the User has at the same time ensured, that the destructed data can be recovered by applying reasonable efforts from data material, which is available in machine readable format.
- (5) The Licensor shall not be held liable for damages, which are caused due to improper use of the Program and/or faulty parameterisation or Programming of the Equipment, as far as such damages are not based on a Program defect.
- (6) If the User should be entitled to claims for compensation of damages in terms of this § 7, such claims shall become statute barred upon expiry of the statute limitation period applicable to warranty claims pursuant to § 5.2. This shall not apply in the event of intent, gross negligence, in the event of loss of life, bodily harm or damage to health as well as wilful concealment of defect or claims under the product liability laws.

#### **§ 8 INSPECTION OBLIGATION AND DUTY TO GIVE NOTICE OF DEFECT**

- (1) The User is under the obligation to carry out a thorough test to ensure that the Program is free of defects and fit for use in the concrete situation before it commences productive use of the Program.

- (2) The User shall inspect and test the Program within 14 working days after the download, in particular with regard to completeness of data carriers as well as functional capacity of fundamental Program functions. Defects that are identified or can be identified during such procedures have to be notified to the Licensor within a further time period of 14 working days. Notification of defect has to include a detailed description of defect. In the event of breach of inspection and notification of defect obligations, the Program shall be deemed as having been approved in consideration of the relevant defect.

#### **§ 9 WRITTEN FORM REQUIREMENT, GENERAL TERMS AND CONDITIONS OF THE USER**

- (1) Amendments and supplements to these Terms of License have to be in the written form. This shall also apply to amendment of the written form requirement.
- (2) The User's general terms and conditions shall also then not be binding, if the Licensor should not once more expressly contradict same. The general terms and conditions of the User shall also not become a part of the agreement through rendering of services.
- (3) The underlying applicable terms and conditions of the licensor are available at: <https://www.elster-instromet.com/en/general-terms-of-business>

#### **§ 10 CHOICE OF LAW, VENUE OF JURISDICTION**

- (1) This agreement shall be governed by the laws of the Federal Republic of Germany. Applicability of the United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11<sup>th</sup> April 1980 shall be precluded.
- (2) Place of performance and venue of jurisdiction shall be Wiesbaden, Federal Republic of Germany. In the event that any disputes should arise between the parties, which can not be solved by mutual agreement, conciliation proceedings shall be entered into before resorting to the due process of law.

The Parties agree that in the event of any differences of opinion, which may arise from or in connection with this agreement, contractual extensions or supplements thereto, which the Parties are not able to solve amongst each other, the Parties shall call upon the Conciliation Board of the *Deutschen Gesellschaft für Recht und Informatik e.V.* in order to entirely or partially, provisionally or finally settle the dispute in accordance with their conciliation

rules in its respectively valid version at the point in time of institution of conciliation proceedings. Statute barring limitation periods as regards all claims arising from and in connection with the subject matter of conciliation shall be suspended as of filing conciliation request until finalisation of conciliation procedures. § 203 of the Germany Civil Code (*Bürgerliches Gesetzbuch*) shall correspondingly apply. The award issued by the Conciliation Board shall not be final and binding upon the parties. Each party shall be entitled to seek remedy within the due process of law. The right of any one of the Parties to apply for injunctive relief shall remain unaffected.

#### § 11 EXPORT REGULATIONS, MISCELLANEOUS

- (1) All deliveries and other performances by the Licensor shall be subject to the required export permits being granted, respectively no barriers based on German or any other export regulations to be complied with should be in conflict.
- (2) Irrespective thereof whether the User informs the Licensor as regards the final place of destination of the delivered Programme, it shall be incumbent upon the User to procure the required permits at its own responsibility from the *Bundesamt für Wirtschaft*, the American Department of Commerce and other competent authorities, before the User exports the Program from the country to which the Licensor delivered such Program. The User shall be under the obligation to notify the Licensor of the final destination of the Program.
- (3) In the event that any provision set forth under this agreement should be ineffective or become ineffective, the effectiveness of the remaining part of this agreement shall not be affected thereby. A provision shall be deemed as having been agreed in replacement of such ineffective provision, which comes as close to the economic purpose of the ineffective provision as possible. The same shall apply in the event that the Parties should subsequently establish that this agreement contains any gaps.
- (4) Assignment of any rights and claims arising from or in connection with this agreement requires the prior consent of the respectively other contractual party.
- (5) The Licensor reserves the right to make changes to the Program, which do not impair the functional capacity and serve purposes of product improvement.



- (6) In case of any ambiguities between the wording of this translation and the original German version of this agreement, the original German wording shall be decisive.