

## GENERAL TERMS AND CONDITIONS (GTC) FOR THE DELIVERY OF GOODS AND SERVICES OF ENDRESS+HAUSER INTERNATIONAL AG

### 1 SCOPE

All deliveries of goods and products (jointly “Goods”) and contractual services (“Services”) of Endress+Hauser International<sup>1</sup> shall be governed solely by these GTC unless differing conditions are agreed upon in writing.

**In addition to these GTC, special terms may apply if agreed upon in writing (as e.g. special terms for software or special services).**

We may amend these GTC at any time with effect for the future. The valid issue of the GTC is always published on our homepage (see: [www.easc.endress.com](http://www.easc.endress.com)).

The customer’s terms and conditions of business are valid only to the extent that we confirm them in writing.

Notifications by fax or e-mail qualify as written form under these GTC.

### 2 OFFERS AND CONTRACTS

Our offers remain revocable and are not binding.

The customer remains bound to his orders of Goods or Services for 15 days, calculated from the date of the order’s arrival at our place of business.

Contracts covered by these GTC do not come into force until we confirm the order in writing.

Technical data, illustrations, drawings, weights and dimensions accompanying the offer are not binding except we have confirmed this in writing.

We reserve the right to make technical changes.

### 3 DELIVERY

#### 3.1 DEADLINE

Unless a delivery deadline is agreed upon in writing (“Agreed Upon Delivery Deadline”), delivery deadlines and dates, as well as delivery delays we report, are only estimates without legal force. Correspondingly, with the reservation of Force Majeure according to Section 12 below, delays in delivery do not result in any rights to cancel the contract or to claim any other right to alter the legal relationship or to claim damages or penalties.

The Agreed Upon Delivery Deadline begins, at the earliest, when the order confirmation is sent, but not before all details concerning the execution of the contract are clear and all documents and authorizations to be supplied by the customer, as well as any agreed upon advanced payment have been received. An Agreed Upon Delivery Deadline is fulfilled when the Goods or Services are offered or delivered in time (see Section 4).

A customer’s modification request is only valid if accepted by us in writing. In any case it extends the delivery deadline until we have evaluated its feasibility and for the period of time necessary to manage the amended instructions.

#### 3.2 DELAYED DELIVERY

If we are in default of delivery under an Agreed Upon Delivery Deadline, our liability is limited to a maximum of 0.5% of the contract value of the delayed Goods or Services per completed week of delay. Our maximum liability in such cases is 5% of the contract value of the delayed Goods or Services. We shall be considered in default of delivery only after the written notification by the customer.

If an Agreed Upon Delivery Deadline cannot be met for reasons that are not our fault, we have the right to store the Goods at the customer’s risk and expense. After the fruitless expiration of a reasonable grace period we may withdraw from the contract and if the customer is liable for the delay claim for indemnification.

The customer is in default of acceptance if, for no valid reason, he does not accept, or refuses, or prevents, or in any other way obstructs the delivery of Goods or Services. In such cases we are at our own discretion entitled to either withdraw from the contract or to deliver again at customer’s expense. The right to indemnification for damages is reserved.

#### 3.3 PARTIAL DELIVERIES

We have the right to make reasonable partial deliveries.

### 4 SHIPMENT AND ASSUMPTION OF RISK

As a rule, delivery takes place based on the terms of delivery agreed upon and defined in the order confirmation (particularly INCOTERM).

Unless specific terms and conditions of delivery have been agreed and confirmed by us, the customer assumes risk and the delivery takes place as soon as we have turned the Goods over to the carrier, or, should shipment be delayed for reasons that are not our fault, as soon as we have notified the customer that the Goods are ready to ship.

### 5 PRICES

Unless other terms have been agreed upon in writing, prices are understood to be valid from our distributing warehouse, and in particular include neither packaging, transport costs, insurance, spare and wear parts, nor the applicable value added tax. We are entitled to reasonable price increases if the material and labor costs on which the calculation is based, significantly increased since our order confirmation.

### 6 PAYMENTS

Unless other terms have been agreed upon in writing, our invoices have to be paid within 30 days after the date of the invoice.

If no payment is made by the end of this payment period (value date of the full invoice amount credited to our account), the customer is automatically in default of payment. Default of payment has the following consequences:

<sup>1</sup> These terms and conditions are not applicable to any transactions between affiliated companies of the Endress+Hauser Group.

- The customer must pay the legal default interest but at least LIBOR plus 5 percent p.a. In addition, the customer must reimburse us for all expenses associated with the default of payment, e.g. expenses for notification and legal expenses.
- We may require payment in advance or securities before further performance. This term also applies when there is no default of payment, but when justified doubt in the customer's ability to pay exists.
- Upon written notice we may withdraw from the concerned as well as from all not-yet-performed individual transactions and claim indemnification.
- All not-yet-due invoices for deliveries from which we have not withdrawn become due immediately, even when the default of payment does not apply to other contracts with the customer.

The customer must not set off any amounts due for payment to us unless accepted by us in writing.

## 7 RETENTION OF TITLE

The Goods remain our property until the price and all costs associated with the delivery have been paid in full.

We are authorized and empowered to register retention of title with the competent agency in the applicable location at any time. Upon request, the customer must assist in the registration process.

The customer must ensure that the delivered Goods are maintained and appropriately insured for the duration of the retention of title period.

## 8 WARRANTY

### 8.1 SUBJECT AND PERIOD

We warrant that on delivery and for a period of 12 months after delivery ("Warranty Period")

- the Goods are free from substantial defects in design, material and workmanship; and
- the Services have been carried out in a professional manner consistent with general accepted industry standards.

We do not warrant the fitness of our Goods or Services for a specific application or purpose.

### 8.2 INSPECTION, NOTIFICATION OF DEFECTS AND ACCEPTANCE OF THE GOODS AND SERVICES

It is the customer's duty to inspect the delivered Goods or Services for substantial defects, completeness and correctness immediately after delivery. The customer must immediately notify us in writing and in details of any obvious defects, but not later than 8 days after delivery. The customer must notify us of hidden defects in writing and in detail immediately after their discovery, but within the Warranty Period. Any failure to give notice in due time and due form results in an approval of the Goods or Services.

With the approval of the Goods or Services or with the expiration of the Warranty Period all of the customer's

warranty rights expire.

The terms of this Section apply also to all other customer complaints, as e.g. incorrect or delayed delivery, quantity variance, and all other complaints about Goods or Services provided by us.

### 8.3 WARRANTY OF GOODS

Any warranty and liability for defects is subject to the customer having fully complied with his contractual obligations and the requirements of Section 8.2.

We are responsible only for those defects that already existed at the time at which the customer assumed risk.

At our request, the customer must return at his own expense the rejected Goods in the original or equivalent packaging for testing of the claimed defect (for decontamination see Section 14 below). Should the complaint be justified, we reimburse the customer for the shipping and transportation expenses.

We may replace or repair defective Goods or refund the price at our option. Any price reduction and redhibitory action, as well as any claims for direct and indirect damages are excluded to the extent allowed by applicable law.

This Section applies to each delivery of defective Goods irrespective of the legal basis of a possible claim.

### 8.4 SERVICE WARRANTY

Any warranty and liability for Services is subject to the customer having fully complied with his contractual obligations and the requirements of Section 8.2 as well as to the customer's full cooperation with us in all matters relating to Services as particularly but not limited to providing the necessary access to premises and facilities, providing the relevant information and materials and obtaining and maintaining all necessary licenses and permissions.

We provide Services in accordance with the service specifications agreed upon with the customer. We are entitled to subcontract these Services to third parties (subcontractors).

For Internet-based Services, the continuous availability of such Services and any data involved may not be guaranteed.

This Section applies to each delivery of Services irrespective of the legal basis of a possible claim.

## 9 LIABILITY

Any liability is subject to the customer having properly fulfilled his obligations under Section 8.2.

As a rule, our liability is limited to the value of the Goods or Services from which the claim arises. Any liability for indirect and consequential damages is excluded. Also, liability for our auxiliary persons and subcontractors as well as in cases of Force Majeure (see Section 12) is excluded.

In the event of loss or damage of customer's data or programs, our liability is limited to the typical costs and efforts of recovery, which are necessary if appropriate and

regularly backups had been made by the customer.

In cases of gross negligence and willful misconduct our liability is determined in accordance with the applicable law.

Should the customer withdraw from the contract without good reason or, for his part, not fulfill the contract, we may demand 25% of the value of the order as contractual damages. We reserve the right to demand compensation for damages exceeding this amount.

## **10 COMPLIANCE**

### **10.1 ANTI-BRIBERY AND ANTI-CORRUPTION**

We comply with all applicable laws and regulations relating to anti-bribery and anti-corruption.

Customer shall comply with such laws and regulations as well and undertake all necessary actions to do so.

### **10.2 IMPORT AND EXPORT CONTROL REGULATIONS**

We comply with all applicable laws and regulations relating to import and export control.

Customer shall comply with such laws and regulations as well and undertake all necessary actions to do so.

### **10.3 INDEMNIFICATION**

Customer shall indemnify and hold us harmless against all damages, costs and expenses arising from any violation, alleged violation, or failure to comply with above mentioned laws and regulations by customer or any person for whom customer may be responsible.

## **11 DATA PRIVACY**

We fully comply with the applicable regulations in the field of data privacy. The customer is aware of and agrees with the automated transfer, use, storage and evaluation of personal data in the course of the contractually agreed purpose.

If required for reasons concerning data privacy rights, the customer will upon our request sign an appropriate, written declaration of consent for the organizational and technical protective measures under the terms of the applicable data privacy laws. At any rate, we shall only use the transferred personal data in order to fulfill our contractual obligations as well as anonymously for evaluations and quality assurance measures.

## **12 FORCE MAJEURE**

Events that are beyond our reasonable control, including but not limited to strikes, lockouts or other industrial disputes (whether involving our workforce or any other party), epidemics, plague, quarantine, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, difficulties in obtaining authorizations, in particular import and export licenses, accident, breakdown of plant or machinery, energy shortage, fire, flood, storm or default of suppliers or subcontractors that prevent delivery of the Goods or Services at the agreed upon date ("Force Majeure"), extend the delivery deadlines for the duration

of the Force Majeure and its impact. The customer will be notified of this delay in delivery.

After having notified the customer of the reason for the delay, we may at any time withdraw from the contract.

Should delivery be delayed for at least 6 months past the original delivery date and the customer can in good faith not be expected to take delivery, the customer may withdraw from the contract.

## **13 RESALE; RIGHTS TO THE DOCUMENTS**

The customer shall resell the Goods only together with the original documentation.

We and/or our licensor retain all proprietary and intellectual property rights to documents, drawings, models, cost estimates, electronical data, and similar items ("Documents") we provide the customer in connection with the delivery of Goods or Services. These Documents must not be made available to third parties unless such permission is evident based on the particular purpose of the contract between us and the customer.

## **14 DECONTAMINATION OF RETURNED GOODS**

We may only accept returned Goods if our decontamination instructions are strictly complied with. In default of such compliance we reserve the right to resend the Goods at the customer's expense.

## **15 FINAL PROVISIONS**

Should individual provisions of these GTC be completely or partially invalid, the remaining conditions remain valid.

The place of fulfillment for deliveries is our distributing warehouse, for payments the place of business of the contracting Endress+Hauser company.

Swiss law applies. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

Exclusive place of jurisdiction is the registered place of business of the contracting Endress+Hauser company. However, we reserve the right to sue at the customer's place of business.