

GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICES OF ENDRESS+HAUSER COMPANIES IN GERMANY

Unless differing conditions have been agreed upon in writing, all present and future deliveries and services (hereinafter “deliveries”) are governed solely by the following terms and conditions.¹ The customer’s conditions and terms of business are valid only to the extent that we have confirmed them in writing.

1. OFFERS

Our offers are not binding. Contracts come into being only upon our written confirmation or by delivery. Our employees are not authorized to make oral collateral agreements or promises going beyond the contents of the written contract, or to change these general terms and conditions of delivery and services to our disadvantage.

The technical data, illustrations, drawings, and weights and dimensions accompanying the offer are binding only to the extent that this has been confirmed in writing. We reserve the right to make technical changes. The customer is responsible for confirming the suitability of our goods.

2. DELIVERY DEADLINE

The delivery period begins when the contract confirmation is sent, however, not before all details concerning the execution of the contract have been settled, and all documents and authorizations to be supplied by the customer, as well as any advanced payment to which has been agreed have been received. The delivery deadline has been met when, before its expiration, the goods have been placed at the customer’s disposal in the applicable plant or the customer has been notified that the goods are ready to ship.

Customer’s modification requests extend the delivery period appropriately until we have evaluated their feasibility and for the period of time necessary to incorporate the new instructions into the manufacturing process.

Should delivery be delayed and we, our lawful representatives, or our vicarious agents have acted with ordinary negligence, our liability is limited to a maximum of 0.5% of the contract value of the delayed goods per completed week of delay. Our maximum liability in such cases is 5% of the contract value of the delayed goods. Claims for damages instead of

performance according to clause 12 are not affected by this clause.

3. FORCE MAJEURE

Events that are unforeseen, unavoidable and beyond our control (e.g., in particular force majeure, strikes, lockouts, stoppages, difficulties in obtaining materials or energy, transportation delays, actions by administrative bodies and disturbances due to national or international regulations as well as difficulties in obtaining authorizations, in particular import and export licenses) extend the delivery period for the length of the disturbance and its effects. This extension of the delivery period also applies when the difficulties occur by our suppliers or during an existing delay.

Should the difficulty not only be temporary, we have the right to withdraw from the contract. To the extent that, due to the delay, the delivery is unacceptable for the customer, he may withdraw from the contract by means of a written statement. Should this be done, claims for damages according to the cases in the previous clause are excluded.

4. RESERVATION

If we are responsible for obtaining licences, particularly but not limited to the export/shipment/import of goods, our deliveries (performance of contract) are subject to the reservation that there are no impediments opposing to such licence due to national or international regulations, particularly export control regulations, embargo or other sanctions. The customer shall provide us with all information and documents required for the export/shipment/import of goods. If a necessary licence is not granted, the contract shall with regard to the concerned delivery be deemed to be not concluded; to this extent claims for damages against us shall be excluded.

5. PARTIAL DELIVERIES

We have the right to make reasonable partial deliveries.

6. SHIPMENT AND ASSUMPTION OF RISK

We choose the shipping solution that is, in our judgment, the safest and most reasonably priced.

The customer assumes risk as soon as we have turned the goods over to the carrier, or, should shipment be

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

delayed for reasons that are not our fault, as soon as we have notified the customer that the goods are ready to ship. This condition applies even in those cases in which we perform other services, e.g., the assumption of shipping expenses or delivery and installation by our own transportation personnel.

Should delivery be delayed due to circumstances that are not our responsibility,

- we have the right to store the goods at the customer's expense. Should we store the goods in the applicable plant, we have the right to charge at least 0,5% of the invoiced value of the stored goods monthly.
- we have the right, after an appropriate extension has been granted and this extension has expired without action by the customer, to withdraw from the contract and to demand claims for damages instead of performance.
- in particular, the customer must bear expenses and risks arising from his failure to punctually carry out instructions or to take care of formalities that are his responsibility.

7. PRICES

Prices are valid from the appropriate supply depot, and include neither packaging, freight, insurance, nor the applicable value added tax.

We are entitled to reasonable price increases when the material and labor costs used to calculate the price have significantly increased since the order was accepted.

8. PAYMENT

Payments must be made to our bank within 30 days after the invoice date without deductions. Payments are valid only to the extent that we can freely dispose of them at a bank. We accept checks and bills of exchange only on account. Discount and fees are borne by the customer. They are due at once.

Should payment be delayed, we will charge interest at 8% above the basis interest rate, or of 10%, whichever is greater, without notification.

Should there be valid reasons to doubt the customer's ability to pay, e.g., a history of delay in payments, current delay in payment, or bill or check protest, we are entitled to demand collateral or cash payment for contemporaneous performance. Should the customer not fulfill this demand within an appropriate time limit, we may withdraw from the unfulfilled part of the delivery contract. We are not required to set a time limit when it is apparent that the customer is not able to provide collateral, e.g., when a decree of insolvency for the customer's assets has been applied for.

The customer may offset claims only with undisputed or legally binding counterclaims. He is not entitled to

hold back or to reduce due payments for disputed complaints about the goods.

9. RETENTION OF TITLE

We retain title to the delivered goods until all payments have been received and all checks and bills of exchange arising from the business relationship with the customer have been irrevocably credited to our account. Should an open account relationship with the customer exist, retention of title applies to the acknowledged balance.

Treatment and processing of the conditional goods are carried out by the customer on our behalf without creating any liability on our part. Should the conditional goods be mixed with or incorporated into other goods, we acquire title to the new goods in the proportion of the invoiced value of the conditional goods to the invoiced value of the other materials.

The customer may sell the conditional goods only in the course of normal business transactions and may neither pledge the conditional goods as security nor transfer ownership of the conditional goods by way of security. The customer must notify us without delay of any actions against the conditional goods by third parties. To the extent that he cannot recover these expenses from the third party, expenses resulting from protecting the conditional goods against an action are borne by the customer.

The customer must insure the conditional goods against loss and damage for their replacement value at his own expense. The insurance policy as well as proof of payment of the insurance premiums must be shown to us on request. The customer cedes any claims arising from the insurance policies to us in advance.

The customer assigns his claims arising from further sales of the conditional goods in full to us in advance as collateral.

The customer is authorized to himself collect the claims assigned to us. The authorization to collect the claims expires when the customer is in delay of payment, when a decree of insolvency is applied for, or when he suspends payments. In these cases, the customer also may no longer process the goods.

In the cases listed in the previous paragraph, the customer must enable us to recover the conditional goods, inform us about his assigned claims and debtors, inform us about the assignment of claims by his customers, and to give us all information and documents necessary to collect the claims. We have the right to disclose the assignment of claims to his customers. Repossession of the conditional goods does not constitute withdrawal from the contract. Should we withdraw from the contract, we may sell the goods on the open market.

Should the value of the collateral exceed our claims by more as 10% and the customer so request, we will release collateral of our choice to this extent.

10. RIGHTS TO THE DOCUMENTS AND SECRECY

We retain property and intellectual property rights to our drawings and other documents at all times. Neither drawings nor other documents may be made available to third parties.

11. LIABILITY FOR DEFECTS

Defects in the delivered goods must be reported to us in writing without delay, in any case within 7 days after receipt of the goods; hidden defects, within three days after the defect has been discovered. Should these deadlines be exceeded, all claims and rights arising from liability for defects expire. The period of limitation is 12 months after delivery of the goods.

Should there be legitimate complaints, we have the choice between repairing the goods or delivering replacements. Should we not act within an reasonable period of time, should the replacement goods also be defective, or should the repair be unsuccessful, the customer can, after a reasonable extension has expired, demand a reduction in price or, should the defect not be insignificant, withdraw from the contract and demand damages instead of performance according to clause 12. Supplementary performance expenses arising because the purchased item has been moved to a location other than the customer's place of business will not be assumed.

The violation of third party Intellectual Property Rights is a defect only when such rights are valid in the Federal Republic of Germany.

12. GENERAL LIABILITY

Claims for damages of any sort are excluded when we, our lawful representatives or our vicarious agents have acted with ordinary negligence. This exclusion of liability does not apply should there be bodily damage, nor should a contractual guarantee have been assumed, nor should a material contractual guarantee have been violated in a way that endangers the fulfillment of the contract. In such cases, our liability is limited to the extent of the guarantee or, by ordinarily negligent violation of material contractual obligations, to customary and foreseeable damages. Claims arising from product liability law are not affected by this paragraph.

With the exception of claims arising from liability for defects, claims arising from product liability law, and claims due to death, bodily injury, or damages to health, claims for damages expire one year after the customer learns about the damage and our liability for this damage or, should, without gross negligence, have learned about our liability for this damage.

Should the customer withdraw from the contract without valid reason, or should he fail to fulfill his obligations arising from the contract, we can claim

25% of the value of the order as damages. Both parties have the right to claim provable damages deviating from this sum.

13. TRANSPORT PACKAGING AND OLD EQUIPMENT

Unless the customer waives this service, we will take these items back at the customer's expense. Transport packaging and old equipment must be returned clean, free of foreign substances, and sorted according to type. Should that not be the case, the customer assumes the additional expenses.

14. PLACE OF PERFORMANCE, CHOICE OF LAW, PLACE OF JURISDICTION

The place of fulfillment for all services resulting from the supply contracts is our relevant supply depot; for payments, our place of business.

German law applies. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

The place of jurisdiction for all disputes arising from the underlying contract is our place of business. However, we also have the right to sue at the customer's place of business.

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