

Terms and Conditions of Purchase of the Endress+Hauser Companies in Germany

Unless other terms or conditions have been agreed upon in writing, solely the following terms and conditions of purchase apply to all present and future orders. The supplier's or contractor's (subsequently jointly referred to as „Supplier“) terms and conditions of business apply only to the extent to which we have agreed to them in writing.

1. Placing and Acceptance of Orders

1.1 Only written orders and agreements are binding. In particular, our employees are required to confirm oral supplementary agreements or commitments that go beyond the contents of the written contract or change these terms and conditions of purchase to our disadvantage.

1.2 The Supplier must confirm the order in writing without delay.

Should we have no order confirmation within 14 days after the order date, we may cancel the order without the Supplier deriving claims from the cancellation.

2. Period of Delivery

2.1 The agreed-upon deadlines are binding. Compliance with a delivery date or the delivery period depends on the arrival of the delivery at the delivery address. Should an acceptance procedure be required by law or have been agreed upon, compliance depends upon successful acceptance by a person authorized by us to accept the products. Within the sense of these general terms and conditions, the so-called Factory Acceptance Test (FAT) does not represent such an acceptance.

2.2 As soon as the Supplier realizes that punctual fulfillment of his delivery and/or service obligation (subsequently jointly referred to as „Delivery“) is wholly or partially impossible, he must notify us thereof in writing without delay and give the reasons for and the anticipated length of the delay.

2.3 Partial deliveries are allowed only when we agree to them in writing.

2.4 Should delivery be delayed and should the delay be attributable to the Supplier, we may charge a contractual penalty of 0.5% of the agreed-upon total price of the delivery for every full week of delay. This contractual penalty is limited to a maximum amount of 5% of the agreed-upon total price of the delivery. This contractual penalty may be claimed until the final payment has been made. Further statutory rights are not affected. The Supplier may prove that damages are less than the contractual penalty.

3. Delivery / Acceptance

3.1 When delivered, the products of every order must be separately packaged.

3.2 Every delivery must be accompanied by bills of delivery containing our purchase order number, our stock number, the packaging type, as well as the amount and the weight of the shipment. In case one delivery consists of several packages, the Supplier must indicate in the bill of delivery with regard to every product in which package it is packed.

3.3 Unless otherwise agreed, after delivery, two copies of the invoice must be sent by letter to our address for each individual shipment. The invoice may not accompany the shipments.

3.4 We may specify the shipment mode as well as the carrier. Otherwise, the Supplier must choose the mode of transportation most advantageous for us.

3.5 The Supplier has not completely fulfilled his delivery obligations until the proper delivery and shipping papers have arrived. Until we receive these documents, we may store the products at the Supplier's expense and risk. The delivery and shipping papers shall be also sent to us if the delivery address is the domicile of a third person (e. g., the domicile of our customer or another supplier).

4. PRICING AND PAYMENT

4.1 The agreed-upon prices are fixed prices, include packaging, and are DDP to the delivery address (Incoterms® 2010).

4.2 Unless other terms have been agreed upon, we may choose to pay either

- within 14 days with a 3% discount or
- within 30 days net.

We reserve the right to choose the means of payment. The payment period starts after the products have been received completely and according to the contract, and after receipt of the documents specified in Section 3, but not before the agreed-upon delivery date.

4.3 Payments are made with reservation of all rights concerning possibly defects. Should the delivered products be defective, we are entitled to the statutory rights concerning withholding and offsetting payment. Payment does not mean we admit fulfillment or waive warranty or compensation for damages. The same reservation applies to a receipt of delivery from our receiving department.

4.4 The products are covered by our transportation insurance and no additional insurance is

necessary. We are a customer exempted from forwarding, logistics and warehousing insurance (“SLVS-Verzichtskunde“).

5. PACKAGING

5.1 The products to be delivered are to be packaged as is customary in the trade, or, at our request, with special packaging according to our instructions.

5.2 We may return the packaging to the point of departure at the Supplier's expense and may claim a credit of 1/3 of the cost originally charged for this packaging for its return.

6. Assumption of Risk

We assume risk according to DDP at the delivery address (Incoterms® 2010). This condition also applies when we, by way of an exception, use our own transportation personnel. Should an acceptance procedure have been agreed upon or be required by law, we assume risk upon the successful acceptance of the products by a person we have authorized to do so.

7. Liability for Defects

7.1 The period of limitations for claims due to defects is 36 months. The statutory period of limitations applies to buildings and building materials. The period of limitations begins with delivery or if – an acceptance procedure has been agreed upon or is required by law – upon final acceptance.

7.2 The Supplier warrants that the products are free of defects of title and of material defects at assumption of risk and conform to the accepted state of the art, the relevant laws, safety and accident prevention regulations, as well as to the accepted and technical quality assurance standards (e.g., DIN, VDE, VDI, TÜV, explosion danger guidelines of the appropriate professional organization). Should there be differences between these standards, the version valid in the Federal Republic of Germany is authoritative.

7.3 The Supplier must perform a full outgoing goods inspection. Should the Supplier manufacture the products himself, he must also carry out inspections during production. Our incoming goods inspection is limited to inspection for obvious defects, for externally visible transportation and packaging damage, as well as for identity or quantity based on the comparison of the Supplier's shipping documents and the information in our order. There is no obligation to further examine the products. We will report defects discovered during this inspection to the Supplier without undue delay. In this respect, the Supplier waives objections based upon the delayed notification of defects.

7.4 Should there be defects, we may choose between demanding rectification of defects or delivery of replacement goods.

After a reasonable additional extension period has expired without results, or, should, because there is particular urgency, it no longer be possible to set an additional extension period, we may, after notifying the Supplier, ourselves undertake to remedy the defect, to have the defect remedied by a third party, or to obtain replacement goods elsewhere. Unless the Supplier is not responsible for the defect, he must bear the resulting costs.

7.5 The Supplier must bear all expenses caused by remedy at or delivery of replacement goods to the place at which the products are in use. At the Supplier's request, we will inform the Supplier of the place at which the products are in use.

7.6 Unless the effort for the supplementary performance is negligible or the supplementary performance is an explicit act of goodwill by the Supplier, should the Supplier repair the delivered products or replace them either partially or wholly, the period of limitations according to Subsection 8.1 with respect to this defect begins anew.

8. LIABILITY

8.1 In order to cover his general risk of liability, the Supplier must conclude a general liability insurance policy with an insured sum of at least 5 million EUR and prove that this coverage exists.

8.2 Should claims based on product liability be made against us, the Supplier must exempt us from such claims at our first written request if and insofar as the damage has been caused or contributed to by a defect in the products provided by the Supplier. This term does not apply in those cases of fault-dependent liability in which the Supplier is not to blame.

8.3 If the cause of the damage lies in the Supplier's area of responsibility, proof that the defect caused the damage is sufficient; otherwise, the Supplier carries the burden of proof.

8.4 In any case, the Supplier always assumes the costs and expenses, including the costs of possible litigation or recall, corresponding to his proportion of the cause or fault. This condition also applies in cases of discernible or imminent serial defects.

8.5 The Supplier must bear damages arising from noncompliance with these terms and conditions, the Supplier is as liable for the negligent or intentional acts of his vicarious agents as he is for his own faults.

9. WORK AT OUR OR OUR CUSTOMERS' PREMISES

9.1 Should the Supplier's employees or agents work at our or a customer's premises, they must observe the accident prevention regulations and all other safety rules, as well as the applicable

plant regulations. They may not begin work without knowledge of these regulations.

9.2 There must be an acceptance procedure with regard to assembly and installation. Acceptance has occurred when our authorized representative has accepted the Supplier's services expressly and in writing as conforming to the contract. We may still assert a claim based on defects at the time of final payment. Should we not fulfill our duty to accept the services, the Supplier must allow us a grace period of at least 3 weeks.

9.3 The hours worked, as well as the material provided by the Supplier, must be confirmed by us in writing within a reasonable period of time after the work has been done.

10. THIRD-PARTY INDUSTRIAL PROPERTY RIGHTS

10.1 The Supplier warrants that no third-party industrial property rights, e.g., patents, utility patents, or other rights; or business or trade secrets, will be violated by the use of the delivered products, even in the country of end use. He must exempt us to this extent from any possible third party claims.

10.2 The supplier is liable for every direct or indirect damages occurring to us due to his violation of such rights.

10.3 The Supplier is not liable to the extent that he manufactures the products exclusively according to our drawings and/or models and he did not know or could not have known that the manufacture of these products violated third-party rights.

11. MANUFACTURING EQUIPMENT; RIGHTS TO PROTOTYPES, DRAWINGS, AND MODELS

11.1 Tools and other manufacturing equipment made on our behalf and paid for by us become our property as soon as payment is completed. Transfer of possession will be replaced by the Supplier borrowing the item from us. The Supplier must store the items owned by us separately from items not belonging to us. Our ownership of the items must be noted on the items themselves and in the Supplier's account books. After the business association has ended, the manufacturing equipment must be surrendered upon our request. These tools and manufacturing equipment may neither be used by the Supplier for his own purposes nor be made available to third parties.

11.2 We are solely and exclusively entitled to the results of the services as well as the intellectual property rights deriving from awarding contracts for services of any kind (i. e., research and development contracts). The decision as to whether industrial property rights are to be registered is solely ours. Should copyrights result from a contract, the Supplier grants us temporal-

ly and geographically unlimited sole usage rights to the work.

11.3 Items manufactured according to documentation created by us (such as drawings, models, etc.) or according to our confidential information or with our tools or copied tools may neither be used by the Supplier for his own purposes nor offered or delivered to third parties.

12. CONFIDENTIALITY

12.1 The Supplier obligates himself to maintain confidentiality with respect to third parties regarding all details of our order (e. g., number of pieces, technical construction details, commercial conditions, etc.), as well as all further information requiring confidentiality he has deliberately or accidentally received from us. The Supplier may include our company in a reference list or use our order for advertising purposes only after obtaining our written permission.

12.2 Documents as well as objects of any sort (i. e., prototypes, drawings, manufacturing equipment, models, etc.) that we place at the Supplier's disposal must be returned to us without charge and without having been requested as soon as they are no longer needed to carry out the order. The Supplier may neither use these items for his own purposes nor make them available to third parties.

13. PROVISION OF MATERIALS

13.1 Materials we provide remain our property. These materials must be stored properly and separately, and must be clearly marked as our property.

13.2 The Supplier must inform us of all defects which the provided materials have at the time at which they are transferred to him in writing without delay. This information must be sent to the responsible purchasing agent. The Supplier is liable for all other damage to or lost of materials we provide.

13.3 The Supplier must conclude an adequate insurance policy (particularly against fire and water damage as well as against theft) at his own expense.

13.4 The material provided by us may be used only for the designated purpose and is, to the extent it is not necessary for the order, returned to us.

13.5 After processing of the provided materials, we acquire title to the new goods in the proportion of the value of the provided materials in the item manufactured.

14. ASSIGNMENT

Rights accruing to the Supplier under this contract may be assigned or pledged only with our prior written consent. This condition does not apply to monetary claims. However, we may

perform to the Supplier with the effect of a full discharge.

15. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, AND APPLICABLE LAW

15.1 The place of performance for all payments is the place of business of the ordering company. The place of performance for all deliveries is the destination we specify.

15.2 The place of jurisdiction is the court that is competent at our place of business. However, we have the right to initiate legal proceedings in the court of competent jurisdiction for the Supplier's place of business.

15.3 German law applies.