

## GENERAL TERMS AND CONDITIONS FOR THE DELIVERY OF GOODS AND SERVICES OF ENDRESS+HAUSER (FULL COMPANY NAME) IN COUNTRY ("GTC")

### 1 SCOPE

All deliveries of goods and products (jointly "Goods") and contractual services ("Services") of Endress+Hauser India Pvt. Limited<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.in.endress.com](http://www.in.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

2.1 Our offers remain revocable and are not binding. Subject to our accepting the orders of Goods or Services, the customer remains bound to his orders of Goods or Services from the date of the order's arrival at our place of business.

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

2.3 Technical data, illustrations, drawings, weights and dimensions accompanying the offer are not binding unless 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 13 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 custom-

er, 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

E + H shall endeavour to meet the Agreed Upon Delivery Deadline, however the customer agrees and accepts that it will not be entitled to any penalty/ compensation/ damages for default of delivery beyond Agreed Upon Delivery Deadline unless otherwise expressly agreed in writing by us. We shall be considered in default of delivery only after the written notification of the delay 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 of 1% of the contract value of the Goods and/ or Services per week subject to grace period of the maximum of 4 weeks. The customer hereby agrees and understands that after the expiration of a reasonable grace period of 4 weeks, we may, at our discretion, dismantle and/ or sell the Goods, ordered and manufactured/ customized in accordance with the specification provided by the customer, as scrap, or resale, part or all of the Goods and withdraw from the contract and if the customer is liable for the delay, we may claim the compensation as more particularly contemplated under Section 6.2 and 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 will, at our own discretion, be 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.

#### 3.4 CHANGES

Any technical changes/ amendments made in the order subsequent to acceptance but before

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

processing of the order by us, will attract additional 30% change/ amendment charges, in addition to the costs of the new instruments added. The customer agrees and understands that once the order is processed, it is not possible to make changes/ amendments in the order. Any cancellation, after processing will attract a compulsory 100 % cancellation charge on the P.O, which shall be due and payable immediately on cancellation and the provisions of Section 6 shall become operative.

### 3.5 CANCELLATION

Any arbitrary cancellation of the order after acceptance but before processing will also attract a compulsory 30% cancellation charge on the P.O. value. Any cancellation, after processing will attract a compulsory 100 % cancellation charge on the P.O, which shall be due and payable immediately on cancellation and the provisions of Section 6 shall become operative.

### 3.6 DEEMED DELIVERY

The customer hereby agrees and accepts that if the customer fails to accept or take delivery of the Goods and/ or Services within 8 days of us notifying the customer that the Goods and/ or Services are ready, then except where such failure or delay is caused by a Force Majeure or by our failure to comply with its obligations under the GTC in respect of the Goods and/ or Services:

- delivery of the Goods shall be deemed to have been completed at 9:00am on the 9th day following the day on which we had notified the customer that the Goods and/ or Services were ready and we shall be entitled to raise an invoice in respect of the Goods and/ or Services deemed delivered; and/or
- we will store the Goods until delivery takes place, and charge the customer for all related costs and expenses including default interest, storage charges, insurance, dismantling charges, etc. after such delay.
- On the customer's failure to take delivery, the payment for the Goods and/ or Services shall become due and payable immediately and the provision of Section 6 shall become operative.

### 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 rea-

sons 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, storage costs, insurance, spare and wear parts, nor the applicable taxes, duties, value added tax, GST and/ or similar taxes and/ or exchange rate of the imported components used in manufacturing/ customizing the Goods and/ or Services. In addition to the increases in cost due to above-mentioned reasons, 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. Such price increase would be intimated to the customer before the dispatch of the Goods and/ or services.

### 6 PAYMENTS

#### 6.1 TERMS OF PAYMENT AND CONSEQUENCES ON DEFAULT

Unless other terms have been agreed upon in writing, our invoices have to be paid in accordance with the payment date on 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:

- The customer must pay the legal default interest but at least SBI Base Rate plus 8 percent p.a. prevailing on the date of the default. In addition, the customer must reimburse us for all expenses associated with the default of payment, storage charges, insurance, e.g., expenses for notification and legal expenses.
- We may require payment in advance or securities before further performance without stating any reasons.
- Upon written notice, we may withdraw from the confirmed 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 in 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.

## **6.2 PAYMENT ON CANCELLATION/ FAILURE TO TAKE DELIVERY**

The customer agrees and acknowledges that the Goods and/ or Services provided under this GTC and/ or PO are manufactured and/ or customized in accordance with the specification provided by the customer. In the event, the customer delays or fails to take delivery of the Goods and/ or Services for any reasons whatsoever beyond the grace period, we shall be entitled to claim compensation / liquidated damages and not penalty, which the customer accepts and agrees to immediately pay irrespective of the payment terms and without any demur or protest:

- 100% of the value of the Goods or Services under this GTC and/ or PO; and
- Default interest; and
- Storage / warehousing charges @ 1%/ week;
- Insurance, etc.; and
- Dismantling charges, if any.

## **7 RETENTION OF TITLE**

The Goods remain our property until the price and all costs including but not limited to default interest, storage charges, insurance, etc., if any, associated with the delivery have been paid in full to our complete satisfaction.

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**

The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on our behalf that is not set out in this GTC. Any samples, drawings, descriptive matter or advertising issued by us and/ or any descriptions of the Goods or illustrations or descriptions of the Services contained in our catalogues and/ or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. The customer agrees and accepts that they shall not form part of GTC or have any contractual force.

We warrant that on delivery and for a limited period of 12 months from date of Invoice or deemed 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.

This limited warranty is void if failure of the Goods and/ or Services has resulted from failure to follow our instructions as to the storage, installation, commissioning, use or maintenance of the Goods and/ or Services, as the case maybe, accident, abuse including but not limited to misapplication, negligence, abnormal use or improper and/ or inadequate maintenance by the customer and/ or unauthorized maintenance or repair, interfacing or supplies, unauthorized modification, improper use and/ or operation outside the specifications for the Goods and/ or Services, disregard to our technical instruction, improper handling, defects caused due to repair/ alterations or intervention by customers or third party. Any replacement Goods and/ or Services will be warranted for the remainder of the original Warranty Period.

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

All our Goods go through stringent quality checks and no prior inspection is necessary, however, on special request inspection may be held at our Service centre located in Bhiwandi, as per condition mentioned hereunder: A right of inspection is applicable only for order exceeding value of more than Rs.5,00,000. Any inspection permitted would be offered as a onetime inspection only and would be limited to a physical and functional check, which involves powering on the Goods at the service centre at Bhiwandi. It is the customer's duty to inspect the Goods or Services for substantial defects, completeness and correctness immediately. Inspection should be carried out within 7 days from the inspection call notice. In the event there is no response to an inspection call to be conducted by the customer within 7 days of the inspection call notice, the Goods will be dispatched presuming that the right to inspection has been waived off. The customer must immediately notify us in writing and in details of any obvious defects, but not later than 8 days after inspection. Inspection release note to be issued within 8 days of the actual in-

spection date, failing, which Goods will be dispatched on the basis that the inspection was satisfactory and customer has accepted Goods devoid of the defects, incompleteness and/ or incorrectness. Our inspection charges of Rs.10,000 per day + service tax will be applicable. If third party inspections have to be arranged, then it would be borne by the customer at actuals. For the avoidance of doubt, it is clarified that a waiver of inspection would in no way affect our right to be paid the amounts as agreed hereinabove by the parties with respect to our inspection charges. 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 15 below).

We may, at our sole option, either repair or replace defective Goods only for reasons attributable to manufacturing defect. The customer shall receive the remedy elected by us including repair or replacement of the defective Goods without charge, except that the customer shall be responsible for any expenses it may incur for shipping/ transport the Goods to us. If repair or replacement is not feasible, we will provide/offer alternative product at our option subject to price differential. Any price reduction and retributory action, as well as any claims for direct and indirect damages are expressly excluded. Further, any Good or part thereof which is repaired or replaced under this provision shall be warranted

for the remainder of the original Warranty Period

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

The customer agrees that we will co-operate only for corresponding with the complainants associated with the manufacturing and/ or quality of the Goods or Services. The customer will deal with any compensation or damages sought by the complainant attributable to customer's responsibility in warehousing, transporting from the warehouse to the customer's site, storage and/ or distribution of the Goods including installation and other reasons attributable to the customer.

### 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 and/ or Services from which the claim arises. Any liability (whether in contract, tort (including, but not limited to negligence, infringement, product liability or other theory), to customer or any third party for cost and/ or any indirect incidental, special, consequential punitive and/ or exemplary loss and/ or damages (including damages for loss of profit, business, revenues, goodwill, opportunity, use and/ or data and/ or costs of procurement of substitute goods and/ or services, incurred by the customer) arising out of this GTC and/ or PO under any cause of action, whether or not we have been advised

of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose is expressly excluded. The customer also agrees and acknowledges that any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in this GTC including but not limited to the liability for our auxiliary persons and subcontractors as well as in cases of Force Majeure (see Section 13) is excluded.

In the event of loss or damage of customer's data or programs for reasons attributable to us, our liability is limited to the typical costs and efforts of recovery, which are necessary if appropriate and provided regular backups had been made by the customer.

Notwithstanding anything contained herein, our total liabilities are limited to the value of the Goods and/ or Services from which the claim arises.

Should the Customer withdraw from the Contract or fails to take delivery of the Goods and /or Services except for reasons attributable to us or for force majeure, not fulfill the Contract, the provisions of Section 6.2 shall become operative.

## 10. CUSTOMER'S OBLIGATIONS

The Customer shall:

- co-operate with us in all matters relating to the Services;
- provide us, our employees, agents, consultants and subcontractors, with access to the customer's premises, office accommodation and other facilities as reasonably required by us to render the Services in accordance with the GTC and/ or Service Order;
- provide us with such information and materials as we may reasonably require to render the Services, and ensure that such information is accurate in all material respects;
- prepare the customer's premises for the rendering of the Services;
- obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- keep and maintain all our materials, equipment, documents and other property at the customer's premises in safe custody at its own risk, maintain the our materials in good condition until returned to us, and not dispose of or use our materials other than in accordance

with our written instructions or authorisation.

If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by the customer or failure by the customer to perform any relevant obligation (customer default):

- we shall have, without limiting our other rights or remedies, the right to suspend performance of the Services until the customer remedies its default, and to rely on the customer default to relieve us from the performance of any of its obligations to the extent the customer default prevents or delays our performance of any of its obligations;
- we shall not be liable for any costs or losses sustained or incurred by the customer arising directly or indirectly from the customer default; and
- the Customer shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the customer default.

## 11. COMPLIANCE

### 11.1 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.

### 11.2 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.

### 11.3 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.

## 12 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 which should not be withheld unreasonably, 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.

### **13 FORCE MAJEURE**

Events that are beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), invasion, act of foreign enemies, terrorism, hostilities whether war be declared or not, rebellion, or revolution, insurrection, explosion or sabotage, accident or casualty, 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 or restrictions imposed by government or any other public authority such that it is impossible to perform the obligations under this GTC and/ or PO, difficulties in obtaining authorizations, in particular import and export licenses, accident, breakdown of plant or machinery, energy shortage, fire, heavy rains, flood, earthquake, wind-storm or other natural disaster, non-availability, shortage or delay in the supply of materials, 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.

### **14 RIGHTS TO THE DOCUMENTS**

The customer shall resell the Goods only after obtaining our prior written consent and together with the original documentation.

We and/or our licensor retain all proprietary and intellectual property rights to documents, drawings, models, cost estimates, prototypes, samples, trade secrets, inventions, know-how, specification, circuit diagram, technical, technological, electronical data, formulae, processes, algorithms, ideas, plans, procedures, processes, schematics, software computer program, magnetic medium, or designs, sketches, photographs, strategies, inventions, data, network configurations, hardware configuration information, system architecture, designs, flow charts, drawings, source code, methods, and/ or any other infor-

mation either commercially valuable or non-commercial and/ or similar items, whether or not protectable by any form ("**Documents**") we provide the customer in connection with the delivery of Goods or Services and that the customer will not acquire any rights in the proprietary and intellectual property rights by reason of sale of Goods and/ or Services under this GTC and/ or PO. These Documents must not be made available to third parties unless such written permission is evident based on the particular purpose of the contract between us and the customer.

The customer will not, directly or indirectly, either by itself and/ or through third party, modify, resale, create derivative works of, decompile, disassemble, decrypt, extract, translate, reverse engineer, or otherwise recreate or gain access or otherwise attempt to learn the source code, structure, algorithms or ideas of any proprietary and intellectual property rights belonging to us and/ or our licensors.

### **15 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.

### **16 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.

This GTC and/ or PO will be governed and interpreted in accordance with the Indian law.

Exclusive place of jurisdiction is the Mumbai Courts. However, we reserve the right to sue at the customer's place of business.