Endress+Hauser

People for Process Automation

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

Unless differing conditions have been agreed upon in writing, all present and future purchases are governed solely by the following Terms and Conditions of Purchase. The supplier's terms and conditions of business are valid only to the extent that we have confirmed 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 in writing oral collateral agreements or commitments going beyond the contents of the written contract or changing these Terms and Conditions of Purchase to our disadvantage.

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

1.3 If an order confirmation is not received within 5 days after the date of the order, we have the right to cancel the order without the supplier deriving claims from the cancellation.

2. Period of Delivery

2.1 Agreed-upon delivery dates are binding. For the fulfillment of the delivery deadline, receipt of the delivery at the destination is decisive.

2.2 As soon as the supplier realizes that punctual partial or complete delivery / performance of a service (hereinafter jointly "delivery") is not possible, he must inform us thereof without delay, giving the reason and the probable duration of the delay. The supplier is obliged to make every effort to meet the agreed delivery date. Any costs arising therefrom shall be borne by the supplier.

2.3 Partial deliveries are permitted only when we have agreed to them in writing.

2.4 In cases of force majeure, labor disputes, stoppages, shortages of energy or raw materials, disturbances, or other unforeseeable or unavoidable events for which we are not responsible, the period of time within which we must fulfill our contractual obligations is extended for the duration of the interruption and to the extent of the interruption's effects. We will inform the supplier without delay of the beginning and the end of the above-mentioned hindrances. No claims based on delays in acceptance or payment resulting from such an interruption may be made against us.

2.5 Should there be a delay in delivery, we have the right to demand a contractual penalty of 0.2% of the agreed total price of the delivery for each day of delay, but not more than a total of 10% of the price. This contractual penalty can be claimed up to time of the final payment. Further legal rights remain unaffected. The supplier is free to prove that the damages were less than the contractual penalty.

3. Supplier's Obligation to Inform

The supplier must inform us far enough in advance of changes in the manufacturing processes, materials, or supplied parts for the products; of relocations of the places of manufacture; as well as of changes in procedures and equipment for testing the products or in other quality assurance measures that we can determine whether the changes might have adverse effects. The supplier must also require third parties with which he has contracted to fulfil his obligations to us to do the same. While he is supplying goods to us, the supplier must also notify us of changes in his suppliers and service providers. If adverse effects cannot be excluded, the supplier must ensure that we are delivered unmodified parts until we have found an alternative solution.

4. Delivery / Acceptance

4.1 Each delivery must be accompanied by a bill of delivery giving our order number, our order identification code and the type of packaging, as well as the quantity and weight of the shipment.

For services, we must confirm the number of hours worked as well as the materials provided by the supplier in writing within a reasonable period of time

4.2 The invoice must be sent to our address and must always include the Endress+Hauser order number and the order designation.

4.3 We have the right to specify the shipment method as well as the carrier. Otherwise, the supplier is required to select the shipment method that is most economical for us.

4.4 The supplier has not fulfilled his delivery obligations until we receive the proper delivery and shipping documents. We have the right to store the delivery at the supplier's expense and risk until we receive the documents.

5. Prices and payment

5.1 The prices which have been agreed are fixed prices including transport-safe packaging and delivery free domicile, unless otherwise agreed.

5.2 Unless otherwise agreed upon, payment will be made, at our discretion, either

- within 30 days with 3 % discount, or
- within 60 days net.

We reserve the right to select the method of payment. The period of payment begins with the complete receipt of the goods as per agreement and receipt of the documents given in Clauses 4.1

and 4.2, but not before the delivery date upon which was agreed.

5.3 All payments are made with the reservation of rights with regard to possible defects. Should the delivered goods be defective, we have the right to withhold payment. Payments do not signify acknowledgement of fulfillment, or waiver of warranty or the right to recover damages. The same reservation applies to the confirmation of receipt by our receiving department.

5.4 The goods are covered by our transportation insurance and require no further transportation insurance.

6. Packaging

6.1 The goods to be delivered must be packaged in the customary manner or, at our request, in special packaging according to our instructions.

6.2 We have the right to return packaging carriage paid to the point of departure or to charge the supplier for the disposal costs if the supplier does not take back the packaging free of charge at our request.

7. Assumption of Risk

Unless otherwise agreed, risk passes to us when the delivery has been properly turned over to us at the specified destination or has been accepted by us.

The same condition applies when we provide our own transportation personnel.

8. Warranty

8.1 The period of limitations for claims for damages due to defects is 36 months. For construction and construction supplies, the statutory period of limitations applies. For components, this period begins with our acceptance (work contract) or delivery to us (sales contract); for machines or plant parts, with the signing of the final acceptance report.

8.2 The supplier warrants that the delivered goods, at the time of delivery to us or to our customers, are of good title and quality and correspond to the best available technology, the applicable laws and protection and accident prevention regulations, as well as the customary and technical quality assurance standards (e.g., DIN, VDE, VDI, TÜV, Berufsgenossenschaft Ex-guidelines,). Should there be different versions of these standards, the German version is valid.

8.3 After arrival, we will inspect the goods for obvious defects, identity, and shortfall quantities, as well as for transportation damage. An obligation for further inspection does not exist. We will report any defects or other deviations to the supplier within a reasonable period of time. In this respect, the supplier waives objections based upon the delayed notification of defects.

8.4 Should the goods be defective, we have the choice of demanding either rectification of the defects or replacement delivery of the defective goods or withdraw from the contract. After a reasonable additional delivery period has expired without remedy, or, when due to exceptional urgency it is no longer possible to set an additional delivery deadline, after notification of the supplier, we also have the right to, at the supplier's expense, undertake correction of faults ourselves, have a third party undertake the correction of faults, or obtain replacement goods elsewhere.

8.5 The supplier must bear all rectification expenses or expenses for delivering replacement goods to the place at which the article is in use. On request, we will inform the supplier of this location.

8.6 Should the supplier rectify delivered goods or replace them partially or wholly, the period of limitations according to Clause 8.1 begins again, unless the remedy is an explicit act of goodwill by the supplier or involves only insignificant effort.

9. Liability

9.1 To cover the general liability risk, the supplier must obtain liability insurance for at least five (5) million Euro and to provide proof that this coverage exists.

9.2 Should we be subject to product liability claims, the supplier must indemnify us, to the extent that a defect in the goods delivered by the supplier caused the damage, from such claims upon the first written request. In cases of fault-dependent liability, this clause applies only if the supplier is at fault.

9.3 To the extent that the cause of the damage lies in the supplier's area of responsibility, proof that the fault is the cause of the damage is sufficient;, for the rest, the supplier carries the burden of proof.

9.4 In any case, the supplier assumes the expenses corresponding to his extent of cause or fault, including the expenses of any court actions or recalls. This clause also applies in cases of a discernable or imminent epidemic failure.

9.5 The supplier bears all damages caused by non-compliance with these Terms and Conditions of Purchase. Apart from that, he is liable for every even ordinarily negligent action of his employees or representatives.

9.6 Claims for damages of any sort are excluded when we, our lawful representatives, or our vicarious agents have caused the damages by ordinary negligence. This exclusion of liability does not apply should there be bodily damage nor should a material contractual obligation have been violated in a way that endangers the fulfillment of the contract. In such cases, our

liability is limited to customary and foreseeable damages.

10. Work at our or at a customer's location

10.1 Should the supplier's employees or representatives work on our or a customer's business premises, they must always observe accident prevention and all other safety regulations, as well as applicable plant rules. They may not start work without knowledge of these rules and regulations.

10.2 Assembly and installation must be accepted. The work is accepted when our representative has explicitly accepted in writing the supplier's performance as being according to contract. However, we may still claim defects at the time of the final account. Should we not fulfill our obligation to accept the work, the supplier must allow us a fulfillment period of at least 3 weeks.

10.3 We must confirm the hours worked as well as the material provided by the supplier in writing within an appropriate period of time after the work has been completed.

11. Compliance

11.1 The supplier is obliged to comply with all applicable laws, in particular concerning anti-bribery and anti-corruption, import and export control, environmental protection, health and safety at work.

11.2 The supplier undertakes to indemnify us against all damages, costs and expenses resulting from a violation, alleged violation or non-compliance with the aforementioned laws and regulations, irrespective of whether the supplier itself or a person for whom he bears responsibility has caused it.

11.3 Upon request, the supplier shall provide evidence of compliance with the applicable laws in its own company or in its supply chain. The supplier must also inform us of possible violations and the measures taken.

12. Third-Party Property Rights

12.1 The supplier warrants that, by the use of the goods delivered to us, no property rights (e.g., patents or registered design rights, or other third party rights or business or trade secrets) are violated, neither in the country of origin nor in the country of use. In this respect, he must indemnify us from any third-party claims.

12.2 The supplier is liable for every further direct or indirect damage that we incur by the violation of such rights.

12.3 This condition does not apply to the extent that the supplier manufactures goods exclusively according to our drawings or models and he did not know or needed not to know that the manufacture of these goods violated third-party rights.

13. Means of Manufacture, patterns, Drawings

13.1 Tools or other means of manufacture made on order for us and paid for by us become our property when the final payment is made. Our taking possession of the tools is supplanted by the supplier holding the articles in safe custody free of charge and with the due care and diligence of a prudent businessman. The supplier must keep the articles belonging to us separate from articles not belonging to us. Our property must be clearly identified as such on the articles themselves as well as in company records. After the conclusion of the business relationship, the tools must be handed over to us if so requested.

13.2 In every sort of contract for work and labor (e.g., research and development contracts), we alone are legally entitled to all results of the activities as well as the resulting immaterial property rights. The decision concerning applying for industrial property rights is ours alone. Should copyrights result from a contract, the supplier grants us exclusive rights of use unlimited in time and space.

13.3 Products made according to our documents (such as drawings, models, and similar items), or according to our confidential specifications, or with our tools or reproductions of our tools may neither be used by the supplier himself nor offered or delivered to third parties.

14. Nondisclosure

14.1 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. The placing of our company on a reference list or use of our order for advertising purposes is permitted only after obtaining our written permission.

14.2 Documents, as well as articles of all types (e.g., patterns, drawings, tools, models, and similar items) that we have made available to the supplier are to be returned to us without charge and without being requested as soon as they are no longer required for the execution of the order. Such documents may neither be used by the supplier for his own purposes nor be made accessible to third parties.

14.3 Except for those cases in which he is not at fault, the supplier obligates himself to pay a contractual penalty of 20% of the order value for violation(s) of this confidentiality obligation. In addition, for especially severe violations, we have the right to terminate the complete contractual relationship with the supplier without notice and without compensation, and, when appropriate,

demand return of payments already made. An especially severe violation of the obligation has been committed when the supplier gives knowledge obtained from us or provided by us to competing third parties.

15. Provision of Materials

15.1 Materials provided by us remain our property. They are to be stored in an orderly manner, separately, and clearly marked as our property. The supplier is liable for damage or loss of provided materials even when this is not his fault. The supplier must provide adequate insurance against fire and water damage, as well as against theft, at his own expense.

15.2 The material may be used only as intended and is to be returned to us if it is not required for the order.

15.3 Upon processing of the provided materials, we acquire joint ownership in the manufactured articles in the relationship of the value of the provided goods to the value of the article.

16. Assignment

Rights granted to the supplier under this contract may be assigned or pledged only with our written agreement. This condition does not apply to monetary claims. However, we can perform to the supplier with the effect of a full discharge.

17. Place of Performance, Place of Jurisdiction, and Applicable Law

17.1 The place of performance for all deliveries, services and payments is the destination we specify.

17.2 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.

17.3 Swiss law applies to the exclusion of the UN convention on contracts for the international sale of Goods (CISG).