

## Standard Terms and Conditions

### ENDRESS+HAUSER GENERAL CONDITIONS OF SALE

#### 1. DEFINITIONS

In these Conditions of Sale:-

"Acknowledgement of Order" means the Seller's Acknowledgement of Order or such other similar document of the Seller confirming acceptance by the Seller of the Buyer's order of Goods;

"Buyer" means the person who buys or agrees to buy the Goods from the Seller and shall include personal representatives or successors and assigns of the Buyer.

"Contract" means the agreement between the Buyer and Seller and shall include the Acknowledgement of Order, these Conditions of Sale, any other documents (or parts thereof) incorporated by reference in the Acknowledgement of Order and any other documents, terms and conditions relating to the supply, erection and installation of Goods mutually agreed in writing between the Buyer and Seller subsequent to the Acknowledgement of Order.

"Goods" means goods which the Buyer agrees to buy from the Seller.

"Seller" means Endress & Hauser (SEA) Pte Ltd and shall include its successors and assigns.

"Services" means the services to be performed by the Seller, as agreed between the Seller and Buyer.

These Conditions of Sale shall be integral part of any contract resulting from a purchase order for Goods placed upon the Seller and shall not be excluded or varied by any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or other form or document, unless specifically agreed upon in writing by the Seller.

These Conditions of Sale shall be an integral part of any contract resulting from a purchase order placed upon the Seller. Any statement made on any form issued by Buyer shall not operate to defeat the intent of these conditions unless specifically agreed upon in writing by the Seller.

**ADDITIONAL CONDITIONS OF SALE:** The Seller may impose additional specific conditions in the Contract and those additional specific conditions shall apply to that Contract in addition to these General Conditions of Sale. The additional specific conditions of sale shall govern wherever the two may be inconsistent.

## **2. DRAWING, TECHNICAL DATA, etc**

The Seller agrees to provide, at a charge to be specified by the Seller and at the written request of the Buyer, certified drawings of the Goods. All other sketches, drawings, descriptive matters, weights, dimensions and shipping specifications provided by the Seller and the descriptions and illustrations contained in the Seller's catalogues, price lists and other advertising matter are approximate only, and are intended merely to represent a general idea of the Goods and shall not form part of the Contract.

## **3. ALTERATION TO SPECIFICATION**

Notwithstanding anything to the contrary contained in these Conditions, or mutually agreed in writing between the Seller and the Buyer, the Goods or any part thereof may be altered by the Seller or the manufacturer thereof without the Buyer's prior consent to incorporate such changes as the Seller or manufacturer considers necessary to correct defects, improve the Goods or to make the Goods safer, prevent delay or ensure compliance with these Conditions or with any applicable safety or other statutory requirements and which have no materially adverse effect on any of the matters which might affect any application to which the Seller is aware that the Buyer wishes to put the Goods provided always that the Seller shall notify the Buyer of such changes if, in the opinion of the Seller, they alter materially the specifications of the Goods.

## **4. PRICE**

Unless otherwise expressly provided in the Seller's Acknowledgement of Order, all prices pertaining to an order quoted and/or confirmed (in cases where prices have been quoted earlier) by the Seller in writing to the Buyer are in Singapore Dollars.

- i. **FIRM OFFER:** Except as otherwise provided in the offer, all quoted prices are firm for thirty (30) days from date of offer. All prices are calculated ex- the Seller in Singapore excludes insurance and other ancillary costs and goods and services tax and all other taxes and duties. Where the Seller agrees to arrange for packing and carriage in accordance with the Buyer's instructions, the same will be at the risk and expense of the Buyer.
- ii. **ERRORS:** The Seller reserves the right to correct all typographical or clerical errors or omissions, in its prices or specifications.
- iii. **PARTIAL DELIVERIES:** All prices quoted are based on deliveries as defined in the offer. The Seller reserves the right to make partial deliveries of equipment as it becomes available, unless otherwise agreed upon in writing by the Seller.
- iv. **PRICE VARIATION:** The Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller. The Buyer shall not be released from the Contract by any such increase in the said price.
- v. **TESTING:** Any additional tests or inspections requested by Buyer beyond the Seller's standard manufacturing procedures shall be to Buyer's account, unless specified agreed in writing by the Seller.

## 5. TERMS OF PAYMENT

- i. Only terms of payment specified in the Seller's Acknowledgement of Order shall apply. Subject to any such terms payment of all sums payable under the Contract shall be made in full when the Goods are delivered to the Buyer in Singapore or ready for packing or collection as the case may be. In the case of Contract for Services, payment of all sums under the Contract shall be made in full when the Services are rendered or upon substantial completion, as agreed. Any further sums which shall become due to the Seller over and above the terms specified in the Seller's Acknowledgement of Order, however arising, shall likewise be paid at the time when the Goods are delivered to the Buyer in Singapore or ready for packing or collection as the case may be or, if arising after that time, be payable on demand.
- ii. If for any reason the Buyer is unable or unwilling to give instructions for the packing or collection of the Goods when ready for packing or collection or if delays of any account arise through causes beyond the Seller's control, or if there be minor defects in the Goods which do not substantially affect their commercial use, then payment shall not be withheld or deferred.
- iii. Where Goods/Services are to be delivered/rendered in installments payment of each installment shall be immediately due upon such delivery or completion of Services.
- iv. In all cases time of payment shall be of the essence of the Contract.
- v. Should it be necessary for any reason to dispatch any major item comprised in the Goods separately this will be payable by the Buyer when such item is ready for packing or delivery notwithstanding that any other items comprised in the Goods not essential (in the opinion of every Seller) for the work in hand shall not be ready for packing or delivery.
- vi. Without prejudice to the Seller's right for immediate payment, there shall be paid to the Seller interest on any sum payable to it in accordance with the agreed terms of payment at the rate of 3% above the base lending rate of DBS Bank Limited from time to time computed from the date at which such sum becomes payable until the date of actual payment.
- vii. If the Buyer fails to make any payment within 4 weeks of the due date for that payment all sums payable to the Seller under the Contract and any other contract between the Buyer and the Seller shall become immediately due for payment without regard to the time of payment of any outstanding bill of exchange or other deferred terms for that other contract.
- viii. Without prejudice to the provisions of Clause 14 all liability of whatsoever account of the Seller under the Contract is subject to the above mentioned terms of payment and in particular and without prejudice to any other right it may have the Seller may suspend the performance of all or any of its obligations under the Contract whilst any amount due from the Buyer to the Seller remains unpaid.
- ix. The Buyer shall not be entitled to withhold or set off payment for any reason whatsoever.

## 6. ACCEPTANCE

The Buyer shall be deemed to have accepted the Goods or any of them immediately the same are delivered into the Buyer's possession or that of any person, firm or company authorized by the Buyer to take such possession whereafter the Buyer shall not be entitled to reject the same.

## 7. WARRANTY

- i. Subject to Clauses 11, 9 and 18 and the conditions set below, the Seller warrants that the Goods will be free from defective material and workmanship for a period of 18 months from date of delivery or the date on which the Seller notifies the Buyer that the Goods are ready for packing or delivery or 12 month from the date of commissioning whichever is earlier. In the case of Services, Seller warrants for a period of 6 months, from the date on which Seller notifies the Buyer of completion of Services. Provided that:-
  - a) the Seller shall be under no liability in respect of any defect from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - b) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods or the payment of Services rendered has not been paid by the due date for payment;
  - c) the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller. The Seller shall have no responsibility for the functioning of Resale or Compatible Products specified by Purchaser or it's agent unless otherwise agreed in writing by the Seller;
  - d) the above warranty does not extend to consumable parts sold by the Seller;
  - e) the Purchaser has to make all tools or resources available to help the Seller to diagnose the defect without any back charge. Warranty does not include transport.
  - f) the Seller's responsibility under this warranty shall be limited to the cost of repairing or cost of replacing the part or if in the case of Contract for Services, the cost of repairing the defective workmanship, and provided further that the part or parts are returned to the Seller's factory by the Buyer carriage paid.

## 8. DELIVERY/STORAGE

- i. The Seller will endeavour to deliver the Goods to or render the Services at (as the case may be) the Buyer's address in Singapore as stated in the Acknowledgement of Order (or at such other address in Singapore as the Buyer may otherwise notify in writing) within reasonable time. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay of the Goods howsoever caused.
- ii. Where the Goods are supplied for export from Singapore, then delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises immediately after the Seller has notified the Buyer that the Goods are ready for packing and collection. The Buyer shall at the Buyer's own expense arrange for transport, packaging and insurance of the Goods.

- iii. Where Goods/Services are to be delivered/rendered in installments, each installment shall constitute a separate contract and failure by the Seller to deliver or complete any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole.
- iv. If the Buyer fails to collect or take delivery of the Goods at the time stated for delivery and available for delivery, then the Seller shall be entitled to, without prejudice to any other right or remedy available to the Seller, payment:
  - (a) The delivery shall be deemed to have taken place and payment to the Seller for the Goods becomes due according to the agreed payment terms. The Buyer shall arrange or agree for the Goods to be stored at the Buyer's risk and the Buyer shall indemnify the Seller against all costs insurance and expenses arising out of such storage. Charges for such storage shall be paid at such rate(s) specified by the Seller and in the manner provided in Clause 5. In case of no instructions from the Buyer, the Seller shall arrange, at the Buyer's cost and risk to store the Goods; or
  - (b) The Seller will arrange to sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **9. DAMAGE IN TRANSIT**

The Seller shall not be liable for loss or damage to the Goods after the risk in them has passed to the Buyer.

## **10. EXCUSABLE DELAY**

Should the Seller directly or indirectly be prevented from carrying out its obligations under the Contract before or after the due date for delivery owing to any cause whatsoever which is not within the control of the Seller, (whether in the Seller's business or that of any of its suppliers or sub-contractors) the Seller reserves the right (without prejudice to any other rights it may have) in its absolute discretion and at the Seller's election, to do one or more of the following:-

- i. To suspend delay dispatch or delivery of the Goods or Services (as the case may be) until such time as it may be reasonably practicable to resume dispatch or deliver the same.
- ii. To use substituted materials for any specified in the Contract provided that such substituted materials are in the Seller's view an adequate substitute for the materials so specified.
- iii. To cancel the Contract, or any uncompleted portion thereof and on such cancellation neither party shall have any claim of whatever nature against the other save in respect of work done and services rendered and/or Goods delivered prior to such cancellation.

## **11. LIMITATION OF LIABILITIES**

- i. The Seller does not exclude liability for damages for death or personal injury resulting from negligence proved against the Seller in the performance of its duties under the Contract.
- ii. Subject to the sub-clause (i) of this Clause the Seller's total liability whether in contract tort or otherwise and whether in respect of one claim or in the aggregate shall be limited to the amount of the purchase price of the Goods payable under the Contract/Contract value of Services.
- iii. Subject to sub-clause (i) of this Clause, the Seller shall not be liable in any event at any time for any indirect or consequential loss or damage (including but not limited to any loss of production or of profits) howsoever caused suffered by the Buyer or any other person firm or company. The Buyer shall keep the Seller fully and effectively indemnified against all or any liability mentioned in the last preceding sentence.
- iv. Without prejudice to the foregoing provisions of this Clause, the Buyer shall in particular keep the Seller indemnified against any liability the Seller may incur at any time whether in tort or otherwise to any servant or agent of the Buyer in respect of any defect or failure of the Goods or any part thereof or replacement therefor howsoever caused.
- v. Each of the preceding sub-clauses of the Clause shall be deemed to be separate and severable and enforceable accordingly

## **12. PASSING OF PROPERTY**

Notwithstanding the provisions of Clause 14 hereof, the Seller and the Buyer expressly agree for the purposes of this Clause only that until the Seller has been paid in full for the Goods comprised in this or any other sale contract between them:

- i. property in the Goods shall remain in the Seller and the Goods shall be received and held by the Buyer as agent of and bailee for the Seller and the Buyer shall store the Goods without charge to the Seller in such manner that they are clearly identified as the property of the Seller.
- ii. the Seller may recover all or any of the Goods from the Buyer without notice at any time they are in the possession of the Buyer and for that purpose the Seller and its servants and agents may enter upon any land or building upon which the Goods are situated/Contract values of Services.
- iii. if the Buyer incorporates any of the Goods into other products, the property in those other products shall, upon such incorporation, ipso facto be transferred to the Seller, and the Buyer as bailee of them for the Seller will store the same for the Seller without charge to the Seller in such manner that they are clearly identified as the property of the Seller.
- iv. without prejudice to the foregoing provisions of this Clause the Buyer has the right to dispose of the Goods or such other products but only for the account of and as agent for the Seller and in the event of such disposal, the Buyer has the fiduciary duty to the Seller to account to the Seller for the proceeds of the sale, but may retain therefrom any excess of such proceeds over the total amount outstanding under this and any other sale contract between the parties hereto.

- v. the Buyer shall without charge to the Seller ensure that the Goods and any products in which they are incorporated are kept in good condition and repair and shall keep such goods and products insured against all risks to their full replacement cost under a policy which provides for all monies payable thereunder to be paid to the Seller as agent for the Buyer for the purpose of satisfying from such monies any outstanding claims by the Seller against the Buyer and paying the balance (if any) to the Buyer.
- vi. Goods belonging to the Buyer which are sent to the Seller's work for the Services shall be at the risk of the Seller from the time that they are handed over to the Seller until they are ready for dispatch. Risk in such goods will pass from Seller to the Buyer when the Seller notifies the Buyer that the goods are ready for dispatch. The property in such goods shall at all times remain with the Buyer and the Seller shall clearly mark such goods as belonging to the Buyer and keep them separate from all other goods in the Seller's possession.

### **13. SELLER'S RIGHT OF RESALE**

In the event of the Buyer failing to pay in full the whole or any part of the price payable under the Contract when due the Seller shall be released from the Contract and shall be entitled to re-sell the Goods or any part thereof without notice to the Buyer and to recover from the Buyer any loss occasioned by the Buyer's default. The rights conferred on the Seller in this Clause shall not prejudice any other right it may have under the Contract or any common law or statutory remedy which the Seller may have.

### **14. RISK**

Subject to Clause 8 the risk in the Goods or any part thereof shall pass from the Seller to the Buyer immediately the same are ready for dispatch irrespective of any duties which the Seller may have undertaken with regard to packing, delivery, erection, installation or assembly.

### **15. BUYER'S DEFAULT**

If the Buyer makes default in or commits any breach of its obligations to the Seller, then the Seller shall immediately become entitled (without prejudice to any other rights or claims which it may have) to suspend further performance of or to terminate the Contract.

### **16. INSURANCE**

The responsibility for insuring the Goods after the risk in them has passed to the Buyer shall be that of the Buyer.

## **17. PATENTS etc**

The Seller shall indemnify the Buyer against any claim for infringement of any rights of Letters Patent, Registered Design, Trade Mark or Copyright by the use of or the sale of the Goods and against all costs and charges which the Buyer may incur in any action for such infringement or alleged infringement of any rights or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer to the use of the Goods in a manner or a purpose or in a foreign country not specified by or disclosed to the Seller or to any infringement which is due to the use of the Goods in association or combination with any other goods not supplied by the Seller, and provided also that this indemnity is conditional upon the Buyer giving to the Seller as soon as reasonably possible notice in writing of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at the Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim

## **18. GOODS NOT MANUFACTURED BY SELLER**

- i. The Seller shall be entitled to the benefit of any restriction or exclusion of liability more restricted than the liability of the Seller to the Buyer under Clauses 7 and 11 or under any other obligation subject to which any part of the Goods not manufactured by the Seller are supplied to the Seller and accordingly the said Clauses or other obligations shall apply to the Contract and be further restricted in the same terms as the liability of the supplier to the Seller is restricted.
- ii. Sub-clause (1) above shall not apply if as a result of such application any restriction or exclusion of liability by the Seller is unenforceable.
- iii. Without prejudice to the generality of the remainder of the Contract the Seller shall not be responsible for ensuring that any combination of equipment included in the Goods of which all or part has been selected or nominated by the Buyer and not manufactured by the Seller is in any way satisfactory or fit for the purpose for which it is intended and the onus of ensuring this shall be on the Buyer.

## **19. SAFETY AND TECHNICAL INSTRUCTIONS**

The Buyer undertakes to ensure that it and all its servants and agents will observe all safety and technical instructions in the Seller's or manufacturer's operating manuals, bulletins and other directions.

## **20. INCOTERMS**

The Incoterms in force at the date of formation of the Contract shall apply save to the extent they are inconsistent with any of the terms of the Contract.

## **21. GOVERNING LAW AND JURISDICTION**

The validity extent and performance of the Contract and any variation thereof, or any agreement entered into by the parties hereto ancillary to the Contract shall be governed by the laws of Singapore. Insofar as the Buyer is not already subject to the jurisdiction of the courts of Singapore, it shall subject to clause 22 be deemed to submit itself to the jurisdiction of the courts of Singapore in any dispute or proceedings relating to the validity, extent or performance of the Contract and any variation thereof, or any agreement entered into by the parties hereto ancillary to the Contract, including any claim for damages for breach thereof. Subject to the provisions of Clause 22 no action or proceeding in relation to the Contract or arising therefrom shall be initiated against the Seller except in the courts of Singapore.

## **22. ARBITRATION**

In the event of any dispute arising out of the Contract the Buyer and the Seller undertake to make every effort to reach an amicable settlement. Failing such settlement, the dispute shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this clause. The arbitration tribunal shall consist of one (1) arbitrator to be mutually agreed between the parties to the dispute or in default of agreement for 28 days, to be appointed by the Chairman of the Singapore International Arbitration Centre.

## **23. NOTICES**

Where these terms and conditions provide that a notice from either party to the other is required, such notice must be served in writing and conveyed by the fastest reasonable means, having regard to the content thereof, provided that where there is in these Conditions, a specified period within which such a notice is to be given to ensure its validity, such notice must reach the party to whom it is addressed within the period stipulated.

## **24. CANCELLATION OF WORK**

Any purported cancellation of the Contract by the Buyer shall be effective only

- i. if made in writing;
- ii. if accepted in writing by the Seller; and
- iii. on payment by the Buyer of
  - (a) Up to 100% of the price of the Goods stated in the Seller's Acknowledgement of Order (the actual percentage of the price payable by the Buyer in respect of the cancellation will be notified to the Buyer in the Seller's written acceptance of cancellation).
  - (b) any increases in the price of Goods as may be notified to the Buyer by the Seller and
  - (c) such costs and expenses as may be notified to the Buyer by the Seller as the Seller may have incurred in connection with the Contract or the cancellation thereof.

## **25. CANCELLATION ON ACCOUNT OF INSOLVENCY**

If before all the monies payable under the Contract are paid, the Buyer (being an individual or individuals) shall be the subject of bankruptcy proceedings or shall make any assignment or deed of arrangement for, or any composition with creditors generally, or (being a company) shall become the subject of a winding-up or of the appointment of a receiver or receiver and manager, or shall make any arrangement with its creditors generally, or if any execution is levied or any distress is threatened or made at any premises occupied by the Buyer, or if the Buyer ceases to carry on business, then without prejudice to the rights of the Seller to exercise any other remedies, the Seller shall be entitled to rescind the Contract and suspend any further deliveries under the Contract without any liability to the Seller, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **26. SITE WORK**

- i. If the Services are to be carried out at the premises of the Buyer or at his request at the premises of any other person, then the Buyer undertakes to provide or to procure the provision free of charge of:
  - (a) proper and safe and protection of all goods, tool, plant and equipment and materials on site;
  - (b) free and safe access to the site and to the point at which the work is to be executed;
  - (c) all facilities and services necessary to enable such work to be carried out safely and expeditiously including but not limited to adequate supervision;
  - (d) If such work includes the installation of any goods, all builder's work, foundations, cutting away and making good required and ready availability of all plant and equipment so as to permit such goods to be tested forthwith on completion of such work and the Buyer shall pay to the Seller the amount of any expenses incurred by the Seller by reason of any breach by the Buyer of any of its undertakings in this sub-clause.
- ii. If arriving at the Buyer's site on the agreed Contract date, the Seller is unable to carry out the Service, due to on site delays beyond the Seller's Control, the Seller reserves the right to invoice the Buyer for additional "waiting time?", at the current service rates.
- iii. Where the goods and services are to be supplied on site, they shall at all times be at the sole risk of the Buyer.

## **27. CLAUSE HEADING**

Clause headings have been inserted in these Conditions merely to facilitate reference and shall have no bearing on the interpretation of any of the provisions.