

CONDITIONAL ACCEPTANCE AND TERMS OF SALE

This document acknowledges the receipt by Endress+Hauser, Inc. ("Seller") of the purchase order/offer ("Purchase Order") of the buyer named on the face hereof ("Buyer").

- Acceptance.** Seller hereby accepts Buyer's Purchase Order *but EXPRESSLY CONDITIONS ITS ACCEPTANCE ON BUYER'S ASSENT TO ALL OF THE TERMS CONTAINED HEREIN.*
- Buyer's Assent.** Shipment by Seller and acceptance by Buyer of, or payment for, all or any part of the goods covered by the Buyer's Purchase Order (the "Purchased Items") and services shall constitute Buyer's assent to all of the terms hereof. Prior to acceptance of Purchased Items by Buyer, Seller may withdraw or modify this conditional acceptance of the Buyer's Purchase Order.
- Complete Agreement.** This agreement between Seller and Buyer (the "Sales Contract") contains the complete and exclusive agreement between Seller and Buyer with respect to the Purchased Items and supersedes all prior agreements with respect to the Purchased Items whether written or oral.
- Modification.** No modification, amendment, extension, renewal, rescission, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable or binding on Seller unless agreed to in writing by Seller. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's Purchase Order, or any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. Prior courses of dealing, usages of the trade, and verbal agreements not reduced to writing and signed by Seller, to the extent that they modify, add to, or detract from the Sales Contract, shall not be binding on the Seller. Seller may, at its option, treat any attempted modification, termination or repudiation by Buyer to which Seller does not assent as a breach of the entire Sales Contract and claim all proper damages.
- Termination.** If all or part of the Sales Contract is terminated by agreement of the parties, and if there is no contrary written agreement between Seller and Buyer, Buyer shall pay termination charges in the amount equal to the greater of (I) ten (10) percent of the net sales price or (II) (a) the price provided in the Sales Contract for all Purchased Items assembled prior to the agreement by Seller to terminate, plus (b) the actual expenditures made and liabilities incurred by Seller in connection with any portion of the Purchased Items not yet completed, plus (c) reasonable estimated profit on the not yet completed portion of the Purchased Items.
- Payment Terms and Security Interest.** Unless provided otherwise on the face of this Sales Contract, Buyer shall pay the purchase price in full within 30 days from date of shipment. Services not covered by the applicable warranty for the Purchased Items will be billed to Buyer at Seller's current rates, per invoice. Buyer shall pay all charges for Services within 30 days from the date of invoice. All invoices not paid when due will thereafter be subject to a monthly service charge of one and a half percent (1½%) of the unpaid balance. If, in Seller's opinion, there is a material, adverse change in Buyer's financial condition or if Buyer has not, within the agreed time, fully paid for Purchased Items shipped under this or any other agreement with Seller, Seller reserves the right to revoke Buyer's credit, to require shipment C.O.D., and/or suspend performance on this and/or other Sales Contracts and/or future shipments. Buyer hereby grants Seller a purchase money security interest in the equipment until the full purchase price is paid, and Buyer appoints Seller as its attorney-in-fact for the purpose of filing any documents necessary or desirable to perfect such security interest in any applicable jurisdiction.
- Shipment.** Terms are F.O.B. Seller's place of business at Greenwood, Indiana. Buyer shall pay all shipping, packing and handling costs and shall bear the risk of loss after Seller completes delivery of the Purchased Items to the carrier. Buyer shall have five (5) days after any full or partial delivery to notify Seller if Buyer's count of delivered Purchased Items does not comport with Seller's count as identified in the itemized packing list accompanying the shipment.
- Sales or Use Taxes.** The price shown on the face hereof does not include any tax or other governmental charge upon the sale, shipment or use of the Purchased Items which Seller is required to pay or collect from the Buyer. Any such tax or charge shall be paid by Buyer unless Buyer furnishes Seller with exemption certificates acceptable to the appropriate taxing authority.
- Time of Delivery.** Shipment schedules are approximate and are based on conditions existing at the time of Seller's conditional acceptance of Buyer's Purchase Order. Seller shall in good faith attempt to effect delivery by the date specified, but Buyer agrees that Seller shall not be responsible or liable for any damages, including special or consequential damages, arising from any shipment of nonconforming Purchased Items, or any delay in delivery, or any failure to deliver Purchased Items in quantities and at times specified. In such cases, Seller reserves the right to terminate the Sales Contract or to reschedule delivery within a reasonable time, and Buyer agrees that such termination or rescheduling shall not be considered a breach of the Sales Contract. In no event shall Seller be liable for incidental or consequential damages resulting from failure to meet requested delivery schedules.
- Returns.** All returns of Purchased Items shall be made in strict compliance with Seller's Return Policy as may be in effect from time to time, a written copy of which is available to Buyer upon request.
- Storage Fees.** If Buyer requests deferral of shipment, or fails to provide information, material, or documentation required by this Sales Contract and as a result Purchased Items are placed in storage, storage fees will commence immediately following the scheduled ship date unless extended in writing. The Buyer will be charged a storage fee at Seller's prevailing rate at the time. These charges will be invoiced to Buyer separately from the actual shipment, and shall be paid in full by Buyer within thirty (30) days of date of invoice.
- Specifications.** Purchased Items shall be deemed to be in conformity herewith if they conform to the specifications provided by Buyer. In the event ambiguities, discrepancies, or express conflicts exist between the specifications and any other item purporting to describe or define the Purchased Items, including, but not limited to, any drawings, photographs, models or other documentation, the specifications shall control unless otherwise agreed to in writing by Seller. Buyer agrees that Seller shall have no responsibility to identify, or notify Buyer of, any such ambiguity, discrepancy, or conflict.
- Nonconforming Goods.** Seller reserves the right to cure any shipment of nonconforming Purchased Items, and Buyer's remedies for nonconforming Purchased Items shall be limited to, at the option of the Seller, return of the goods and repayment of any portion of the purchase price paid or the repair or replacement of the nonconforming Purchased Items. Purchased Items shall be deemed accepted when received by Buyer and any revocation of acceptance must be made in writing within five (5) days after receipt of the Purchased Items, specifying the reason for revocation of acceptance.
- Services.** If specified on the face of this Sales Contract or otherwise agreed by the parties in writing, Seller will provide services to Buyer from time to time at Buyer's request, in accordance with the terms and conditions of this Sales Contract. However, Seller shall not be obligated to perform services as a result of malfunctions of the Purchased Items caused by: (i) the deliberate or negligent acts of persons other than Seller, (ii) inadequate facilities of Buyer, (iii) systems or equipment outside Seller's control (such as provided by vendors of utilities), and (iv) modifications to the Purchased Items made by a party other than Seller. Buyer shall provide Seller with access to its premises as necessary for Seller to perform the Services.
- Confidentiality.** Buyer shall keep confidential and not disclose any information of Seller to which it has access as a result of performance of Services by Seller, including, but not limited to Seller's and its parent and subsidiary companies' plans, programs, processes, equipment, instruments, costs, operations, customers, materials, and the like.
- Seller's Express Warranty.** Seller warrants the Purchased Items to be free from defects in materials and workmanship under normal use and service for a period of one year from time of purchase. Seller further warrants that it will perform the Services in a professional and workmanlike manner. Buyer agrees that it has the sole responsibility for the proper selection, application, installation and/or use of the Purchased Items and for instructions to ultimate users, if any, concerning use, application, periodic maintenance, and cautions regarding the Purchased Items. Buyer agrees that the warranties provided herein shall not apply to any Purchased Item which: (1) has been repaired or altered outside of Seller's factory in any way so as, in Seller's judgment, to affect such Purchased Item's reliability; (2) has been subject to misuse, negligence, or accident; (3) has been operated other than in accordance with the applicable printed instructions provided by Seller; or (4) has been subject to wear of wetted parts caused by Buyer's application of the Purchased Items.
- Seller's Exclusive Obligations Under Warranty.** Seller may, at its option, repair or replace, or refund the purchase price of Purchased Items which shall be returned to Seller, no later than one month after the expiration of the applicable warranty period in the manner set forth in this clause, and which Seller's examination shall disclose to Seller's satisfaction to be defective as specified in the warranty clause hereof. All allegedly defective Purchased Items shall be returned to the Seller at Buyer's expense and risk. All such Purchased Items shall be returned to Seller at Greenwood, Indiana, freight prepaid, accompanied or preceded by a particularized statement of the claimed defect. Under such circumstances, freight charges, both to and from Seller, and risk of loss shall be borne by Buyer, but Seller shall bear the cost of repair or replacement and the risk of loss while the Purchased Items are in Seller's possession at Seller's plant. If Purchased Items are returned without being preceded or accompanied by a statement of the claimed defect, Seller shall hold the Purchased Items pending receipt of Buyer's a statement of defect, *provided* that, prior to such receipt, risk of loss of the Purchased Items shall remain with the Buyer. SELLER'S OPTION TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE FOR PURCHASED ITEMS IS BUYER'S EXCLUSIVE REMEDY AGAINST SELLER WITH RESPECT TO THE PURCHASED ITEMS. SELLER SHALL NOT BE LIABLE TO BUYER, ITS AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS, FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSS OF REVENUE OR PROFIT, OR ANY OTHER INDIRECT DAMAGES RELATED TO THE PURCHASED ITEMS OR SERVICES.
- Seller's Disclaimer of Implied Warranties.** SELLER'S LIMITED EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR GUARANTIES AND SELLER HEREBY DISCLAIMS ALL OTHER SUCH WARRANTIES WITH RESPECT TO THE PURCHASED ITEMS AND SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. BUYER AGREES THAT MODELS OR SAMPLES SHOWN TO BUYER, IF ANY, WERE USED MERELY TO ILLUSTRATE THE PURCHASED ITEMS AND NOT TO REPRESENT, PROMISE, OR GUARANTEE THAT ANY PURCHASED ITEMS DELIVERED HEREUNDER WOULD CONFORM TO SUCH MODELS OR SAMPLES. SELLER'S AGENTS HAVE NO AUTHORITY TO GIVE WARRANTIES BEYOND THOSE PROVIDED IN THIS LIMITED EXPRESS WARRANTY.
- Buyer's Indemnification of Seller for Infringement.** Buyer agrees to indemnify and hold harmless Seller against all damages, costs, expenses and attorney's fees arising from claims of infringement of patents, designs, copyrights or trademarks with respect to all Purchased Items manufactured or assembled either in whole or in part to Buyer's specifications, and agrees that such infringement shall be deemed a breach of the Sales Contract. Seller further reserves the right to terminate the Sales Contract for Purchased Items which, in the opinion of Seller, infringe upon any patent, design, copyright or trademark in their manufacture, sale and/or use, and Buyer agrees that such termination shall not be considered a breach by Seller of the Sales Contract.
- Seller's Indemnification of Buyer for Infringement.** Seller shall indemnify and hold harmless Buyer against any rightful claim of a third person for infringement of a United States Patent by the Purchased Items covered by the Sales Contract which are not, either in whole or in part, manufactured or assembled to the Buyer's specifications: *provided, however,* that the foregoing undertaking of Seller shall not apply unless Seller shall have been informed as soon as practicable by Buyer of the charge or suit alleging such infringement and shall have been given the opportunity to take over the defense thereof, *and provided,* further, that it shall not apply if the alleged infringement results from the use of the Purchased Items in combination with equipment which is not part of the Purchased Items where such infringement would not have occurred from the use of the Purchased Items not in combination with such equipment. Except as provided in this paragraph, Seller makes no warranty that the Purchased Items will be delivered free of the rightful claim of any third party by way of infringement or the like.
- Indemnification.** Seller shall indemnify and hold harmless Buyer from and against all personal or property injuries, losses or damages to third parties (specifically excluding claims of Buyer and all of its present or future agents, employees, officers, servants, representatives, directors, and affiliates) solely caused by the negligence of Seller *provided that* Buyer notifies Seller in writing within ten (10) days of Buyer's receipt of notice of any claim or action alleging that any injury, loss or damage to a third party was caused by the negligence of Seller. Seller reserves the right to assume responsibility for the defense of any such claim or action, and upon assumption by Seller of its right to defend, Seller shall have control of the defense of such claim or action. Seller shall be relieved from its obligation to indemnify if Buyer fails to cooperate fully in the defense of any such action. Buyer agrees, however, that Seller shall not in any case be liable to Buyer, its present or future agents, employees, officers, servants, representatives, directors or affiliates for loss of use, revenue, or profit or for injury to person or property, or for any other consequential or incidental damages caused by the negligence of Seller. Buyer agrees that Seller shall not be liable under this provision if the Purchased Items are altered or modified in any manner after Seller delivers such Purchased Items to the carrier for delivery to Buyer. Buyer shall indemnify and hold harmless Seller from and against all personal or property injuries, losses or damages to Seller, its employees or agents, arising out of the performance of the Services and caused by the negligence of Buyer.
- Default.** Seller shall have the unrestricted right, upon written notice to Buyer, to declare a default hereunder and to terminate this Sales Contract if any of the following events occur:
 - Buyer's failure to comply with any of the provisions, terms and conditions of this Sales Contract, including without limitation, Buyer's failure to timely pay for any Purchased Items delivered to Buyer;
 - Dissolution, insolvency, appointment of a receiver, assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Buyer; or
 - Seller's determination, in its sole discretion, that Buyer's financial condition is such as to endanger Buyer's performance hereunder.
- Remedies Upon Buyer's Default.** Upon Buyer's default and Seller's written notice thereof to Buyer, every obligation of Seller hereunder shall immediately terminate and Seller shall have all rights and remedies existing at law or in equity, including but not limited to those provided by the Uniform Commercial Code as adopted in Indiana.
- Independent Contractors.** In performing its obligations to Buyer hereunder, Seller is acting as an independent contractor, and neither party is an agent or representative of the other or is authorized to make any representations or assume or create any obligations on behalf of the other.
- Preservation of Rights.** Buyer agrees that Seller's forbearance, delay or failure to exercise any right or remedy hereunder shall not constitute a waiver of such right or remedy and that Seller's exercise or partial exercise of any right or remedy shall not preclude further exercise of such right or remedy or any other right or remedy.
- Costs of Enforcement.** Buyer agrees to pay Seller's reasonable expenses, including reasonable attorney's fees, incurred in enforcing the terms herein.
- Applicable Law.** The Sales Contract shall be governed by the laws of the State of Indiana.
- Severability of Clauses.** Buyer agrees that the invalidity or unenforceability of any of the clauses or terms herein shall not affect the validity or enforceability of any other clauses or terms hereof.

ENDRESS+HAUSER, INC. ("Seller")

_____ ("Buyer")

Buyer expressly assents to all terms contained herein

By: _____
Title: _____ Date: _____

By: _____
Title: _____ Date: _____

Endress+Hauser, Inc. Greenwood, IN 46143