Versie 01-01-2017

Endress+Hauser
People for Process Automation

# General Terms and Conditions for the Delivery of Goods and Services of Endress+Hauser B.V. ("GTC")

## 1 Scope

Offers, contracts and all deliveries of or relating to goods and products (jointly "Goods") and contractual services ("Services") as well as the delivery or the development of software ("Software") of the Endress+Hauser companies[1] in the Netherlands ("E+H") 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 (e.g. special terms for Software or special Services).**

E+H may amend these GTC at any time. The valid issue of the GTC is always published on our homepage (see: www.nl.endress.com).

The general terms and conditions of E+H's contracting party (the "Customer") are expressly rejected and are valid only to the extent that E+H confirms them in writing.

Notifications by fax or e-mail qualify as written form under these GTC.

## 2 Offers and Contracts

2.1

E+H's offers remain revocable and are not binding. The Customer remains bound to his orders of Goods or Services for 15 days, calculated from the date of the order's arrival at E+H's relevant place of business. Contracts covered by these GTC come into force when E+H confirms the order in writing.

Technical data, illustrations, drawings, weights and dimensions accompanying the offer are not binding except in so far as E+H has confirmed them in writing. E+H reserves the right to make technical changes in order to make improvements or apply newer software versions.

2.2

A modification of the contract, including contract variations relating to the amount of work, is only binding on E+H when it has been agreed with the Customer in writing. E+H is not required to perform work relating to a modification or a modification desired by the Customer as long as the modification has not been confirmed in writing.

If the parties agree on a modification of the contract, the agreed delivery deadline or delivery time will be extended with the number of days necessary to realize the modification of the contract. In addition, the provision of Section 3.1 final sentence applies to the delivery deadline. Additional work is deemed to be everything E+H performs in consultation with the Customer, whether stated in writing or not, in addition to the quantities or specifications expressly stated in the contract or order confirmation. If additional work has been performed, the performance of which is necessary or reasonably desirable, E+H is entitled to compensation of the additional work delivered, even if such work was not stated in writing. E+H is entitled to invoice additional work separately to the Customer after this additional work has been completed according to E+H, unless agreed otherwise. The provisions of Section 3.3 hereafter apply by analogy.

If in connection with the performance of work or instructions E+H deems a modification or extension of the order necessary or reasonably desirable, E+H shall inform the Customer accordingly. If the Customer does not agree with the proposed modifications within a reasonable term set by E+H, E+H is entitled to suspend the work. In that event, the Customer is required to compensate E+H for the work that has already been performed and the deliveries made, on the basis of the applicable or agreed rates, without prejudice to E+H's right to damages.

2.3

If the performance of work or instructions by E+H stagnates due to reasons that are not E+H's fault, E+H is entitled to invoice the additional hours caused by the stagnation to the Customer at E+H's customary rates.

2.4

If the Customer sends Goods to E+H for the purpose of inspection, repair, maintenance or otherwise, the Customer must comply with the cleaning and/or decontamination instructions provided by E+H.

## 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 reported by E+H, are only estimates without legal force. Correspondingly, with the exception of the provisions of Section 13 below, delays in delivery do not result in any rights to terminate the contract

[1] These terms and conditions are not applicable to any transactions between affiliated companies of the Endress+Hauser Group.



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or to claim any other right to alter the legal relationship or to claim damages or penalties.
A deadline is an Agreed Upon Delivery Deadline if the deadline is final and this follows unmistakably from the text of the contract or order confirmation.
The Agreed Upon Delivery Deadline begins, at the earliest, when the order confirmation is sent, but not before all details concerning the performance of the contract are clear and all documents and authorizations to be supplied by the Customer, as well as any agreed upon advanced payment have been received. An Agreed Upon Delivery Deadline is met 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 E+H in writing. In any case it extends the delivery deadline, without prejudice to the provisions of Section 2.2, until E+H has evaluated its feasibility and for the period of time necessary to manage the amended instructions.

### 3.2 Delayed Delivery

If E+H is in default of delivery under an Agreed Upon Delivery Deadline, E+H's liability is limited to a maximum of 0.5% of the contract value of the delayed Goods or Services per completed week of delay. The maximum liability in such cases is 5% of the contract value of the delayed Goods or Services. E+H shall be considered in default only after written notification by the Customer.
If an Agreed Upon Delivery Deadline cannot be met for reasons that are not E+H's fault, E+H has the right to store the Goods at the Customer's risk and expense. After the fruitless expiration of a reasonable grace period, E+H is allowed to cancel or terminate the contract early, without being held to further performance, and E+H is allowed, if the Customer is liable for the delay, to claim damages.
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, Services or Software. In such cases E+H is entitled to either terminate the contract with immediate effect or to deliver again at the Customer's expense. In the aforementioned cases, E+H is entitled to recover its damages from the Customer.

### 3.3 Partial Deliveries

E+H has the right to make partial deliveries, within the limits of reasonableness. In the case of partial deliveries, E+H is entitled to invoice the delivered part and the Customer is required to pay the invoice within the applicable payment period.

## 4 Shipment and Assumption of Risk

As a rule, delivery takes place based on the terms of delivery agreed upon and defined in the contract or order confirmation (particularly any agreed method of delivery provided for in the INCOTERMS 2010, if one of the methods of delivery specified therein has been agreed upon).
Unless specific terms and conditions of delivery have been agreed upon and confirmed by E+H in writing, and if delivery takes place within the Netherlands, the Customer assumes risk and the delivery takes place as soon as the carrier chosen by E+H has delivered the Goods to the Customer. In case of delivery outside of the Netherlands, delivery takes place as soon as E+H has turned the Goods over to the carrier or, should shipment be delayed for reasons that are not E+H's fault, as soon as E+H has notified the Customer that the Goods are ready for shipment.

Shipping costs within the Netherlands are borne by E+H, with E+H being entitled to apply a small-order surcharge. In case of delivery outside of the Netherlands, the full shipping costs are borne by the Customer.

## 5 Prices

Unless other terms have been agreed upon in writing, prices are understood to be valid including standard packaging and delivery in the Netherlands, or from the distributing warehouse in the case of delivery outside of the Netherlands. E+H is entitled to apply a small-order surcharge.

Prices are exclusive of insurance, spare and wear parts, the applicable value added tax and other applicable levies, taxes or excise duties. E+H is entitled to reasonable price increases if the material or labor costs on which the calculation is based, have increased since the order confirmation or if its purchasing costs have increased as a result of exchange rate fluctuations.

## 6 Payments

Unless other terms have been agreed upon in writing, E+H's invoices have to be paid within 30 days after the date of the invoice.
If no payment is made by the end of this payment period (value date of the full invoice amount credited to E+H's account) the Customer is automatically in default. Default in relation to the obligation to pay in due time has the following consequences:

- The Customer must pay the statutory commercial interest but at least LIBOR plus 5 percent per year. In addition, the Customer must reimburse E+H for all expenses associated with the default of payment, e.g., expenses for notification, full legal expenses and/or other costs of legal assistance.



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- E+H is allowed to require payment in advance or securities before further performance is needed. This term also applies when there is no default of payment, but when justified doubt regarding the Customer's ability or willingness to pay (in due time) exists.
- E+H is allowed to terminate the contract in whole or in part and claim damages.
- All of E+H's not-yet-due invoices with regard to Goods or Software already delivered or Services already provided become due immediately, even when the default of payment does not apply to other contracts with the Customer.

The Customer is not allowed to set off or suspend payment of any amounts payable to E+H unless accepted by E+H in writing.

## 7 Retention of Title

The Goods remain E+H's property until the Customer has performed all of its obligations to E+H. Until such time, the Customer must keep the Goods separate from other goods and keep in place the identifying labels etc. evidencing that they were delivered by E+H, until all obligations due to E+H have been performed.
The Customer must ensure that the delivered Goods are appropriately insured for the duration of the retention of title period.

In case of non-payment by the Customer of any amount due and payable to E+H, as well as in case the contract ends other than by completion, E+H is entitled to recover the Goods subject to retention of title as its property and take the related measures or cause these to be taken, setting off any amounts already paid with regard to those goods, without prejudice to E+H's right to demand compensation for any loss or damage. In case of such non-payment or termination of the contract, any claim that E+H has against the Customer becomes immediately payable in full.

The Customer undertakes to cooperate upon E+H's first request in order to enable E+H to execute its retention of title, including any disassembly, removal, shut off, disconnection, etc.

The Customer is entitled to sell or use Goods, subject to a retention of title for the benefit of E+H, in the course of ordinary business as long as E+H has not requested their surrender. However, no pledges or other security right can or may be established on those Goods, and such a creation of security or pledge is deemed to be invalid and has no effect under the law of property and the Customer is to refrain from performing acts with regard to these Goods or having such acts performed that cause the Goods to become a part or component of one or more other goods. If Goods that are still subject to a retention of title for the benefit of E+H are supplied to a third party, it is the Customer's own duty to retain the title to such Goods and pledge to E+H all claims against the Customer's debtor up to the amount due, upon E+H's first request.

## 8 Warranty

### 8.1 Subject and Period

E+H warrants that on delivery and for a period of 12 months after 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.

E+H does not warrant the fitness of delivered Goods or Services for a specific application or purpose.

### 8.2 Inspection, Notification of Defects and Acceptance of the Goods and Services

It is the Customer's duty to inspect the delivered Goods or Services for substantial defects, completeness and correctness immediately after delivery. The Customer must immediate notify E+H in writing and in detail of any obvious defects, but not later than 8 days after delivery. The Customer must notify E+H 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.

The terms of this Section apply also to all other Customer complaints, e.g. incorrect or delayed delivery, quantity variance, and all other complaints about Goods or Services provided by E+H, including Software delivered or developed on the instructions of the Customer.

### 8.3

E+H shall remedy a defect that manifests itself during the inspection period referred to in Section 8.2 free of charge if a fixed price has been agreed upon. If no fixed price has been agreed upon, E+H is entitled to a reasonable compensation according to the agreed prices and rates for the efforts involved in remedying the defect. The work delivered or the service provided is deemed to be completed when the Customer has examined or could or should have examined the work or the service after the tests and inspections as referred to in Section 8.2 and has not detected any essential defect, as well as when the Customer actually



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started using the work delivered, the service provided or the installation of which the work delivered or the service provided is a part.

8.4
In any event, the warranty does not cover defects that occur in, or are wholly or partly the result of:
a) the non-observance of cleaning and/or decontamination instructions, operation and maintenance instructions or other than anticipated normal use;
b) normal wear and tear;
c) assembly/installation, modification or repair by the Customer or third parties;
d) the application of any government regulation regarding the nature or quality of the materials used;
e) materials or items used in consultation with or on the instructions of the Customer;
f) materials, items, working methods and constructions in so far as applied at the explicit request of the Customer, as well as materials and items supplied by or on behalf of the Customer;
g) the connection of the delivered products to a supply system or digital network that does not meet the standards set by E+H;
h) the Customer's use of unsuitable and/or contaminated oil types/lubricants, the use of contaminated and wet compressed air, contamination of the product, or application in an aggressive or otherwise unsuitable environment.

8.5 WARRANTY OF GOODS
Any warranty and liability for defects is subject to the Customer having fully complied with his contractual obligations and the provisions of Section 8.2.
E+H is only responsible for defects that already existed when delivery took place or when the risk transferred to the Customer under the provisions of Section 4, if the risk under this provision or any other provision in the contract or these GTC transfers at an earlier time.
At E+H's 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 cleaning and decontamination see Section 2.4). Should the complaint be justified, E+H reimburses the Customer for the shipping and transportation expenses.
E+H may replace or repair defective Goods or refund the price at its option. Any claims with regard to termination, including partial termination and termination as regards the price, as well as any claims for direct and indirect damages are excluded to the extent allowed by law.
This Section applies to each delivery of defective Goods irrespective of the legal basis of a possible claim.

8.6 SERVICE WARRANTY
Any warranty and liability for Services is subject to the Customer having fully complied with his contractual obligations and the provisions of Section 8.2 as well as to the Customer's full cooperation with E+H in all matters relating to Services, in particular 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.
E+H provides Services in accordance with the service specifications agreed upon with the Customer. E+H is allowed to subcontract these Services to third parties (subcontractors).
For Internet-based Services, the continuous availability of such Services and any data involved cannot not be guaranteed.
This Section applies to each delivery of Services irrespective of the legal basis of a possible claim.

8.7 WARRANTY OF THE DEVELOPMENT AND DELIVERY OF SOFTWARE
At variance with the term referred to in Section 8.1, the Warranty Period applicable to Software is three months as from delivery, unless agreed otherwise. Unless expressly agreed otherwise, E+H does not warrant the fitness of the Software provided by it for the intended and/or actual use by the Customer. With regard to the software delivered or developed or any work performed in that connection, the work has the character of a best-efforts obligation, unless it has expressly been agreed upon that the work has the character of a result obligation and the intended result has been described in the contract or order with sufficient determinability.

E+H does not warrant that the Software is free from errors, will operate without interruptions or defects nor that all defects will be remedied or improved. E+H's warranty obligation lapses if the Software has been changed or modified by parties other than E+H. In this contract, "Software" is deemed to include both standard software packages and customized software, meaning software, websites, protocols or operating systems or modifications of already existing software, websites, protocols or operating systems, developed by E+H on the instructions of the Customer.

If E+H does not provide a standard package developed by E+H but grants the right to use a standard package in accordance with the provisions of a user or license contract of or with a third party, or if the maintenance with regard to a standard package is performed on the basis of or in accordance with the provisions in a contract of the Customer with a third party, the provisions of the



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relevant contract(s) of E+H with that third party or third parties apply. By entering into the contract, the Customer authorizes E+H to purchase the software necessary for the performance of the order and to agree to the relevant license terms. Upon its request, E+H will inform the Customer of the relevant applicable provisions.

## 9 LIABILITY

Any liability is subject to the Customer having properly performed his obligations under Section 8.2. E+H's liability is limited to performing the warranty obligations in Section 8 of these GTC. Any liability for damages suffered by the Customer is excluded except in cases involving gross negligence or willful misconduct of employees belonging to E+H's management.
In addition, liability is limited to the value of the Goods, Services or Software from which the claim arises. Any liability for indirect and consequential damages is excluded. Also, liability for E+H's auxiliary persons and subcontractors as well as liability in case of Force Majeure (see Section 13) is excluded.
In the event of loss or damage of Customer's data or programs, liability is limited to the typical costs and efforts of recovery which are necessary if appropriate and regularly backups had been made by the Customer.
In cases of gross negligence or willful misconduct of employees belonging to E+H's management, E+H's liability is determined in accordance with the applicable Dutch law.

Should the Customer cancel, terminate or revoke the contract without valid reason or fail to perform his part of the contract in whole or in part, E+H is entitled to demand 25% of the value (as shown on the invoice or the contract) of the order as contractual damages. E+H reserves the right to demand compensation for damages exceeding this amount.

If E+H is liable to the Customer based on attributable breach of contract or based on any legal basis whatsoever and required to compensate his damages, the obligation to pay damages is limited to the compensation of direct damages for the maximum amount involved in the contract (exclusive of VAT). If the contract is (mainly) a continuing performance contract with a term of more than a year, the amount involved in the contract is set at the total of the compensations (exclusive of VAT) stipulated for a year. In any event, the obligation to pay damages is limited to a maximum of € 500,000 (five hundred thousand euros).
If the insurance company pays out an amount in connection with E+H's liability as referred to above, the obligation to pay damages is, moreover, limited to either the amount paid out by the insurance company in the relevant case or to the amount covered by the insurance.

The provisions of this Section and any other limitations and exclusions of liability laid down in these GTC or included in the contract also apply on behalf of employees working for E+H and all natural persons and legal entities used by E+H in the performance of the contract as well as the group to which E+H belongs.

With regard to goods and services procured by E+H from a third party, the provisions regarding warranty, spare and wear parts and liability applicable to the relevant contract also apply to the contract between E+H and the Customer, if and to the extent that E+H invokes these. By entering into the contract, the Customer authorizes E+H to accept a limitation of the liability of this third party.

## 10 COMPLIANCE

### 10.1 ANTI-BRIBERY AND ANTI-CORRUPTION

E+H complies with all applicable laws and regulations relating to anti-bribery and anti-corruption.
The Customer shall comply with such laws and regulations as well and undertake all necessary actions to do so.

### 10.2 IMPORT AND EXPORT CONTROL REGULATIONS

E+H complies with all applicable laws and regulations relating to import and export control.
The Customer shall comply with such laws and regulations as well and undertake all necessary actions to do so.

### 10.3 INDEMNIFICATION

The Customer shall indemnify and hold E+H harmless against all damages, costs and expenses arising from any violation, alleged violation, or failure to comply with the aforementioned laws and regulations by the Customer or any person for whom the Customer may be responsible.

## 11 DATA PRIVACY

E+H fully complies 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 E+H's request sign an appropriate, written declaration of consent for the organizational and technical protective measures under the terms of the applicable data privacy laws.



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E+H will only process the personal data it obtains from the Customer for the purpose of providing and selling Goods, Services and Software and will not share such personal data with third parties unless the Customer has given express consent to do so or if this is necessary for the aforementioned purpose.

## 12 INTELLECTUAL PROPERTY

All intellectual property rights vested in Goods, Services and Software are vested solely in E+H and/or its suppliers and licensors, unless expressly agreed otherwise in writing. This reservation qualifies as a reservation within the meaning of Article 15(1)(4) of the Copyright Act ("*Auteurswet*").
E+H does not waive personality rights within the meaning of Article 25 of the Copyright Act.
The Customer is not allowed to change or remove any mark or type designation without E+H's written permission.
If intellectual property rights to (part of) the Goods, Services or Software are vested in E+H's suppliers and/or licensors, the Customer authorizes E+H to accept the license terms and provisions of these parties on his behalf and indemnifies E+H against any and all liability on that basis.

## 13 FORCE MAJEURE

Events that are reasonably beyond E+H's control ("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.

Force Majeure includes (I) stagnation at suppliers of E+H, (II) the inadequate performance on the part of suppliers of obligations prescribed by the Customer to E+H for the performance of the contract, (III) defective condition of items, equipment, software or materials provided by third parties, the use of which was prescribed by the Customer to E+H, (IV) government measures, (V) power failure, or failure of other utilities, (VI) malfunction of Internet, service providers, computer network or telecommunications facilities or other transport networks, (VII) war, riot, civil commotion, malicious damage, (VIII) compliance with any law or governmental order, rule, regulation or direction, (IX) strikes, sit-ins, lock-outs or other industrial disputes (whether involving E+H's workforce or that of another party), (X) general transport issues, (XI) difficulties in obtaining authorizations, in particular import and export licenses, (XII) terrorist attacks or occupations, (XIII) epidemics and pandemics, (XIV) financial crises, (XV) breakdown of the payment network of the relevant banks, (XVI) acts of God and (XVII) fire.

After having notified the Customer of the reason for the delay, E+H is at any time entitled to terminate the contract with regard to the obligations that have not yet been performed.
Should delivery be delayed for at least 3 months past the original delivery date and the Customer cannot reasonably be required to take delivery, the Customer is entitled to terminate the contract with regard to the obligations that have not yet been performed.

## 14 RESALE; RIGHTS TO THE DOCUMENTS

The Customer shall resell the Goods only together with the original documentation.
E+H and/or E+H's licensor retain all proprietary and intellectual property rights to documents, drawings, models, cost estimates, electronic data, and similar items ("Documents") E+H provides to the Customer in connection with the delivery of Goods or Services. These Documents must not be made available to third parties unless such permission is evident based on the particular purpose of the contract between E+H and the Customer.

## 15 CONDITIONS REGARDING RETURNED GOODS

15.1
The return conditions pertain solely to Goods that have either been incorrectly delivered by E+H or incorrectly ordered by the Customer.
A return shipment must be notified to E+H in advance, preferably to the salesperson who processed the order. After notification and acceptance, E+H will send a return form to the Customer. The Goods must be received within two months after the date of the return form.
Any certificates, documentation, verification and calibration certificates and/or other Documents originally delivered with the Goods must also be returned.
The returned Goods must be new and in unused condition; products that are used or not new are not eligible for reimbursement.
Goods must be returned carriage paid in their original packaging. If the Goods are returned in packaging other than their original packaging, the costs for repair are passed on to the Customer.



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15.2
E+H is entitled to send back Goods returned contrary to Section 15.1 at the Customer's expense.

15.3
If E+H has delivered Goods incorrectly, it will reimburse 100% of the amount charged, as well as all freight charges.
If the Customer placed an incorrect order, E+H reserves the right to refuse a return shipment without stating reasons. If E+H has accepted the return shipment and the Customer has returned the Goods in strict compliance with Section 15.1, E+H will reimburse a maximum of 75% of the (net) invoice amount after deduction of inspection, disassembly and treatment costs.

## 16 EARLY TERMINATION

E+H may terminate the contract with immediate effect without notice of default in the event that the Customer is declared bankrupt, files for (temporary) suspension of payments, a resolution has been adopted to dissolve the company with regard to the Customer, the Customer otherwise decides to end its activities or the Customer or its board is in the situation that it is required to report insolvency within the meaning of Article 36(2) of the Collection of State Taxes Act ("*Invorderingswet*"). If one of the aforementioned situations occurs, the Customer is required to forthwith notify E+H accordingly in writing.

## 17 FINAL PROVISIONS

Should individual provisions of these GTC be completely or partially invalid, the remaining conditions remain valid.
Dutch law applies. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall expressly be excluded.
Exclusive place of jurisdiction is the registered place of business of the contracting Endress+Hauser company. However, E+H reserves the right to sue at the Customer's place of business.

## 18 ORIGINAL LANGUAGE/TRANSLATION

This is a translation of the original Dutch document which is published on E+H's homepage (www.nl.endress.com). In case of any discrepancies between the Dutch and the English version the Dutch original shall prevail.



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