

## CONDITIONS OF SALE

### 1) DEFINITIONS etc.

In these Conditions "the seller" shall mean Endress+Hauser Limited of Exchequer House, Embassy Office Park, Kill Co Kildare, Ireland. "The buyer" shall mean the person to whom the Goods (as hereinafter defined) are to be supplied. "The Goods" shall mean all the goods, to be supplied under the Contract and where the Contract is for the provision of services, the word "Goods" shall be read, where the context permits, as meaning the services which the Seller has contracted to provide. "The Contract" shall mean the agreement between the parties hereto comprising the Seller's Order Confirmation, these conditions and any other documents (or part thereof) incorporated by reference in the Seller's Order Confirmation and any terms and conditions relating to erection and installation of the Goods mutually agreed in writing between the parties hereto subsequent to the Seller's Order Confirmation.

### 2) 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 a receiving order in bankruptcy 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 order 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 by giving written notice to the Buyer.

### 3) 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:

- To suspend or delay despatch or delivery of the Goods until such time as it may be reasonably practicable to despatch or deliver the same.
- 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.
- 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 in relation to goods delivered prior to such cancellation.

### 4) DRAWINGS, TECHNICAL DATA, etc.

The Seller agrees to provide, at a nominal charge 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.

### 5) SPECIFICATION

- The Goods will be in conformity with Seller's specifications, drawings, samples or other description of the Goods.
- 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 the manufacturer considers necessary to correct defects, improve the Goods or to make the Goods safer, prevent delay or ensure compliance with these Conditions 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.

### 6) PRICE

Unless otherwise expressly provided in the Seller's Order Confirmation.

- The price stated therein in respect of Goods is, subject to sub-clause b) of this Clause, a fixed price and is calculated at the Seller's factory at Embassy Office Park and excludes all packing, carriage, loading, unloading, transport and any other ancillary costs and all taxes (including VAT). The Seller will arrange packing and carriage to the Buyer's instructions but at the risk and expense of the Buyer.
- The Seller reserves the right to amend the said price to cover any increase in costs and/or expenses of the Seller arising between the date of the Seller's offer and the despatch of goods not manufactured by the Seller or which may arise out of special requirements not indicated in the Buyer's order and it is agreed that the Seller's written certificate shall be conclusive evidence of any such increase and of the extent thereof.
- The Buyer shall not be released from the Contract by any such increase in the said price as is mentioned in sub-clause b) of this Clause.

### 7) CANCELLATION OF WORK

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

- If made in writing and
- If accepted in writing by the Seller and
- On payment by the Buyer of:
  - 75% of the price of the Goods stated in the Seller's Order Confirmation and any such increases in the said price as are mentioned in Clause 6(b) hereof and
  - Such expenses as may be notified to the Buyer by the Seller as the Seller may have incurred in connection with the Contract.

### 8) PASSING OF PROPERTY

Notwithstanding the provisions of Clause 15 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:

- 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.
- 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.
- 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.
- Without prejudice to the foregoing provisions of the 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.
- 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.

### 9) 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 authorised by the Buyer to take such possession whereafter the Buyer shall not be entitled to reject the same.

## 10) STORAGE

If the packing or despatch of the Goods is delayed by any act or omission of the Buyer and the Buyer does not arrange promptly for the Goods to be stored elsewhere the Seller shall be entitled to arrange for the Goods to be stored at the Seller's risk and the Buyer shall indemnify the Seller against all costs insurance and expenses arising out of such storage. Further, if the Goods are stored at the Seller's premises, the Buyer shall pay the current charges for the same. Charges for such storage shall be paid at the rates and in the manner provided for in the next clause.

### 11) TERMS OF PAYMENT

1) Any terms of payment specified in the Seller's Order Confirmation shall apply. Subject to any such terms payment of all sums payable under the Contract shall be made in full when the Goods are available for packing. Any further sums which shall become due to the Seller over and above the terms specified in the Seller's Order Confirmation, however arising, shall likewise be paid at the time when the Goods are available for packing or, if arising after that time, be payable on demand.

2) If for any reason the Buyer is unable or unwilling to give instructions for the packing of the Goods when the Goods are available for packing 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. In the event of special terms for payment having been arranged, then each of the respective instalments shall be paid by the date stipulated and agreed.

3) In all cases time of payment shall be of the essence of the Contract.

4) Should it be necessary for any reason to despatch any major item comprised in the Goods separately this will be invoiced and the invoice will be payable by the Buyer when such item is available for packing notwithstanding that any other items comprised in the Goods not essential for the work in hand shall not be available for packing.

5) Unless otherwise indicated in the Seller's Order Confirmation all payments shall be made by cash cheque bill of exchange or bank transfer to the Seller's at Kill free of any deductions whatsoever. Cheques and bills of exchange are to be treated as payment only after honour and the Seller shall not be responsible for presenting or protesting the same in due time. All discounts and transfer charges shall be for the account of the Buyer.

6) Without prejudice to the Seller's rights 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 Ulster Bank PLC from time to time computed from the date at which such sum becomes payable until the date of actual payment.

7) If the buyer fails to make any payment within 30 days 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. In the event of such failure as aforesaid, the Seller may in addition require payment in advance of any amount outstanding or to become payable under the Contract and of any such amount under any other contract between the Buyer and the Seller without regard to the terms of that contract.

8) Without prejudice to the provisions of Clause 15 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.

9) The Buyer shall not be entitled to withhold or set off payment for any reason whatsoever.

10) The Seller reserves the right to change payment terms at any time when, in the Seller's opinion, the Buyer's financial condition of previous payment record so warrant.

### 12) 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.

### 13) GUARANTEE

1) Subject to Clauses 14, 18 and 20, the Seller expressly guarantees for a period of 12 calendar months computed from the date the Goods are ready for despatch to repair or replace any defective parts in the Goods, the defect in which part has developed under proper use and arises solely from faulty material or workmanship, provided that the Seller's responsibility under this Clause shall be limited to the cost of repairing the part or the cost of the replacement part and provided also that the part or parts are returned to the Seller's factory by the Buyer carriage paid. Where the Seller is supplying services, the guarantee period shall be 6 calendar months from date of completion of the services.

2) The Seller shall be under no liability under the above guarantee or for any other warranty, condition or guarantee, if the total price for the Goods has not been paid by the due date for payment.

### 14) LIABILITY

1) 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.

2) Subject to the sub-clause (1) 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.

3) Subject to sub-clause (1) of this Clause, the Seller shall not be liable in any event at any time for any special, indirect, economic or consequential damages or losses such as, but not limited to, loss of revenue, loss of profit, loss of contract, loss of use of loss of production 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.

4) 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.

5) Each of the preceding sub-clauses of the Clause shall be deemed to be separate and severable and enforceable accordingly.

### 15) RISK

Subject to Clause 10 the risk in the Goods or any part thereof shall pass from the Seller to the Buyer immediately the same are ready for despatch irrespective of any duties which the Seller may have undertaken with regard to packing, delivery, erection, installation or assembly.

### 16) BUYER'S DEFAULT

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

### 17) INSURANCE

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

### 18) 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.

### 19) 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 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.

**20) GOODS NOT MANUFACTURED BY THE SELLER**

1) 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 13 and 14 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.

2) 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.

3) 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.

**21) 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 manufacturers operating manuals, bulletins and other directions.

**22) ARBITRATION**

In the event of any dispute arising out of the Contract the Buyer and the Seller undertake to make any effort to reach an amicable settlement. Failing such settlement, the dispute shall be referred to the Arbitration in Ireland of a single Arbitrator to be agreed upon by such parties or, in default of agreement for 28 days, to be appointed by the President for the time being of the Institute of Arbitrators, upon the application of either such party. Such Arbitrator shall have the powers conferred upon him by the Arbitration Act 1954, or any statutory amendment or re-enactment thereof for the time being in force, and his decision will be final and binding upon both such parties.

**23) GOVERNING LAW AND JURISDICTION**

The Contract shall in all respects be construed and operate as an Irish Contract and in conformity with Irish Law and the parties hereby submit themselves to the jurisdiction of the Irish Courts.

**24) 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 the 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.

**25) THIRD PARTIES**

For the avoidance of doubt nothing in the Contract shall confer on any third party any benefit or the right to enforce any term of the Contract.

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