

STANDARD CONDITIONS OF AGREEMENT

1. The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and Endress + Hauser (Pty) Ltd (hereinafter called Endress + Hauser) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of Endress + Hauser; (b) this Agreement will govern all future contractual relationships between the parties; (c) this Agreement is applicable to all existing debts and future debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive terms or conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of Agreement without prejudice to any securities or guarantees held by Endress + Hauser and (g) these terms apply to all servants and subcontractors of Endress + Hauser.
- 2.1 This Agreement only becomes final and binding on receipt and acceptance of this offer by Endress + Hauser at its business address in Sandton.
- 2.2 Any order only becomes final and binding on receipt and acceptance of such order by Endress + Hauser at its business address per clause 2.1.
3. The signatory hereby binds himself / herself in his / her personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner or Partner as surety and co-principal debtor jointly and severally for the full amount due to Endress + Hauser and agrees that these Standard Conditions will apply in the exact same way to him / her.
4. The Customer acknowledges that it does not rely on any representations made by Endress + Hauser in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Endress + Hauser in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by Endress + Hauser.
- 5.1 The Customer agrees that neither Endress + Hauser nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- 5.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 5.3 The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 5.4 Endress + Hauser reserves the right at its sole discretion to provide alternative goods of the same quality and quantity at the prevailing prices to those ordered by the Customer should such goods be superseded, replaced or their manufacture terminated.
- 6.1 All quotations will remain valid for a period of 21 days from the date of the quotation or until the date of issue of a new Price List, whichever occurs first.
- 6.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by Endress + Hauser and any price quoted shall be subject to variation up to the time of delivery in relation to any fluctuations of the cost price of the goods or forex fluctuations.
- 6.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.
- 6.4 The Customer hereby confirms that the goods or services on any Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
- 6.5 Notwithstanding the provisions of clause 1 above, all orders or agreed variations to orders, whether orally or in writing, shall be binding and subject to these Standard Conditions of Agreement and may not be revoked by the Customer.
- 6.6 The Customer agrees that under no circumstances may the Customer cancel special orders placed with Endress + Hauser and Endress + Hauser will invoice special orders at full price.
- 6.7 Endress + Hauser shall be entitled in its sole discretion to split the delivery / performance of the goods or services ordered in the quantities and on the dates it decides.
- 6.8 Endress + Hauser shall be entitled to invoice each delivery / performance actually made separately.
- 6.9 Any delivery note, waybill, time sheet, Installation Certificate or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Endress + Hauser shall be prima facie proof that delivery was made to the Customer.
- 6.10 The risk of damage to, destruction or theft of goods shall pass to the Customer on acceptance of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the goods until paid for in full. Endress + Hauser may recover insurance premiums from the Customer for such ordered and uninsured goods.
- 6.11 Installation and Commissioning costs are not included in the price of the goods, unless specified in writing and signed by a duly authorised officer of Endress + Hauser.
- 6.12 Delivery, installation and performance times quoted are merely estimates and are not binding on Endress + Hauser.
- 6.13 If Endress + Hauser agrees to engage a third party to transport the goods, Endress + Hauser is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by Endress + Hauser.
- 6.14 The Customer indemnifies Endress + Hauser against any claims against Endress + Hauser that may arise from such agreement in clause 6.13.
- 6.15 Repair times and repair costs given are merely estimates and are not binding on Endress + Hauser
- 6.16 Any item handed in for repair may be sold by Endress + Hauser to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.
- 6.17 All goods taken on an evaluation or demonstration basis by the Customer are deemed sold if not returned within 30 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- 7.1 New goods are guaranteed for a period of 12 months, goods not manufactured by Endress + Hauser are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services are guaranteed for a period of 90 days against faulty workmanship and parts are guaranteed for a period of 12 months.
- 7.2 Liability under clause 7.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of Endress + Hauser.
- 7.3 No claim under this Agreement shall arise unless the Customer has, within 3 days of an alleged breach of contract and/or defect occurring, given Endress + Hauser written notice by prepaid registered post of such breach or defect, and has afforded Endress + Hauser at least 30 days to rectify such defect or breach.
- 7.4 To be valid, claims must be supported by the original Tax Invoice.
- 7.5 The Customer shall return any defective moveable goods to the premises of Endress + Hauser at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.
- 7.6 All guarantees are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than Endress + Hauser or should the goods be used or stored outside the Manufacturer's specifications.
- 7.7 Any item delivered to Endress + Hauser shall serve as pledge in favour of Endress + Hauser for present and past debts and Endress + Hauser shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in clause 15.1. The sworn or realised value of pledged goods will be offset against the Customer's debts any excess balance will be paid to the Customer.
- 8.1 Under no circumstances shall Endress + Hauser be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever whether caused negligently or innocently.
- 8.2 Under no circumstances shall Endress + Hauser be liable for any damage arising from any misuse, abuse or neglect of the goods or services.
9. Delivery of the goods or services to the Customer shall take place at the place of business of Endress + Hauser.
- 10.1 The Customer agrees that the amount contained in a Tax Invoice issued by Endress + Hauser shall be due and payable unconditionally (a) cash on order; or (b) if the Customer is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by Endress + Hauser.
- 10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of Endress + Hauser.
- 10.3 The risk of payment by cheque through the post rests with the Customer.
- 11.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Endress + Hauser, reduced to writing and signed by the Customer and a duly authorised representative of Endress + Hauser.
- 11.2 The Customer is not entitled to set off any amount due to the Customer by Endress + Hauser against this debt.
- 11.3 All discounts shall be forfeited if payment in full is not made on the due date.
- 12.1 The Customer agrees that the amount due and payable to Endress + Hauser may be determined and proven by a certificate issued and signed by any director or manager of Endress + Hauser, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 12.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Electronic Communications and Transactions Act 25 of 2002 have not been met.
- 13.1 The Customer agrees that interest shall be payable at the annualised prime rate plus 2%.
- 13.2 The Customer expressly agrees that no debt owed to Endress + Hauser by the Customer shall become prescribed before the passing of a period of six years from the date the debt falls due.
- 14.1 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Customer; Endress + Hauser is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the Agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right Endress + Hauser may be entitled to in terms of this Agreement or in law. Endress + Hauser reserves its right to stop supply immediately on cancellation or on non-payment.
- 14.2 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of clause 10.1(b) and all amounts then outstanding shall immediately become due and payable.
- 14.3 Endress + Hauser shall be entitled to withdraw credit facilities at any time within its sole discretion.
- 15.1 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
- 15.2 In the event of cancellation of the Agreement by Endress + Hauser, it shall be entitled to repossess any goods that have been delivered to the Customer and remains unpaid by the due date.
- 15.3 In the event of cancellation of the Agreement by Endress + Hauser, it is entitled not to produce any unmade balance of a contract and to recover any loss sustained thereby from the Customer.
- 16.1 All goods supplied by Endress + Hauser remain the property of Endress + Hauser until such goods have been fully paid for whether such goods are attached to other property or not.
- 16.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Endress + Hauser. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Endress + Hauser in the goods.
- 16.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (**confusio or commixtio**) the Customer shall be obliged on notice of cancellation of the Agreement to retransfer the same quantity of goods in ownership to Endress + Hauser.
- 17.1 The Customer shall be liable to Endress + Hauser for all legal expenses on the attorney-and-own-client scale incurred by Endress + Hauser in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Endress + Hauser may demand.
- 17.2 The Customer agrees that Endress + Hauser will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
18. The Customer agrees that no indulgence whatsoever by Endress + Hauser will affect the terms of this Agreement or any of the rights of Endress + Hauser and such indulgence shall not constitute a waiver by Endress + Hauser in respect of any of its rights herein. Under no circumstances will Endress + Hauser be estopped from exercising any of its rights in terms of this Agreement.
19. The Customer hereby consents that Endress + Hauser shall have the right to institute any legal action in either the Magistrate's Court or the South Gauteng High Court at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.
- 20.1 Any document shall be deemed duly presented to and accepted by the Customer (i) within 5 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier or (v) within 7 days of being sent by surface mail; or (vi) within 24 hours of being e-mailed to any e-mail address provided by the Customer.
- 20.2 The Customer chooses its address for any notification or service of legal documents or processes as the business address or the physical addresses (domicilium citandi et executandi) of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).
- 20.3 The Customer undertakes to inform Endress + Hauser in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, Endress + Hauser reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- 20.4 The Customer hereby consents to the storage and use by Endress + Hauser of the personal information that it has provided to Endress + Hauser for establishing its credit rating and to Endress + Hauser disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Endress + Hauser will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
- 20.5 The Customer hereby consents that Endress + Hauser can provide personal information of the Customer to third parties, if the Customer has indicated Endress + Hauser as a trade reference to third parties and the Customer agrees that Endress + Hauser will not be liable for the good faith disclosure of any of this information to such third parties.
- 20.6 The Customer hereby agrees that the credit facility is a variable credit facility and that Endress + Hauser shall be entitled to increase its credit limit from time to time.
21. The Customer agrees to the Standard Rates of Endress + Hauser for any goods or services rendered, which rates may be obtained on request.
22. Each provision of this Agreement is severable from the other provisions. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.
23. Any order is subject to cancellation by Endress + Hauser due to acts of God or any circumstance beyond the control of Endress + Hauser, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
24. Any order is subject to cancellation by Endress + Hauser if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.
25. The Customer agrees that Endress + Hauser will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 23 or 24 occur.
26. If the National Credit Act 34 of 2005 is applicable the following clauses shall not be applicable to this Agreement: clause 5.1, clause 19 and clause 20.6.
27. If the Consumer Protection Act 68 of 2009 is applicable the following clauses shall not be applicable to this Agreement: clauses 5.1, 6.2, 6.4, 6.9, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, 11.2, 13.2, 17.1, 19, 20.1, 20.2, 20.6.
28. This Agreement and its interpretation is subject to South African law.