

General Terms and Conditions of Esders GmbH, Hammer-Tannen-Str. 26-28, 49740 Haselünne

1. Preamble

Esders GmbH develops and manufactures measuring equipment, software and system solutions for the gas, water and wastewater industries. The following General Terms and Conditions (GTCs) apply to all legal relationships between Esders GmbH and contractors (hereinafter: customers) in addition to the written contractual agreements. GTCs (e.g. customer's terms and conditions of purchase) that conflict with or differ from these GTCs shall not apply unless Esders GmbH has expressly accepted their validity in writing. The following GTCs shall apply even if Esders GmbH performs the services for the Customer without reservation in awareness of the conflicting or differing terms and conditions of the Customer. These terms and conditions also apply to all future contracts without requiring reiteration.

2. Conclusion of contracts

2.1. Contract offers by Esders GmbH, particularly the service listings headed "Quote", are not binding. A contract between Esders GmbH and the Customer shall not be formed upon receipt of a relevant binding declaration by the Customer (e.g. order). The contract offer by Esders GmbH must be accepted (order confirmation or goods delivery), unless a separate contractual clause is drafted. By placing the order, the Customer is confirming its ability to pay and credit-worthiness.

2.2. Esders GmbH is entitled to accept a contract offer from the Customer (order) within 14 days of receipt. If the contract offer is made by the Customer electronically, the electronic confirmation of receipt shall not constitute a binding acceptance of the Customer's contract offer.

2.3. Insofar as Esders GmbH provides the technical documentation (operating instructions, maintenance instructions), illustrations, drawings, technical descriptions, production and functional diagrams as well as other documents to the Customer, the information contained therein shall not be binding for Esders GmbH until Esders GmbH expressly declares it a binding basis for the contract. This also applies for information contained in sales brochures. Any reference to technical standards only represents a performance description unless Esders GmbH expressly assumes the risk in the form of a warranty obligation for compliance with this technical standard. If a guarantee of quality or durability in relation to the object of the contract is given when concluding the contract, this must be done in writing. We reserve the right to make technical changes in catalogues, websites and technical documentation.

2.4. The contract is concluded with the reservation that Esders GmbH receives supplies correctly and in due time from any sub-suppliers. The Customer shall be informed of any non-availabilities immediately. Any payments shall be reimbursed immediately. However, Esders GmbH is entitled to close the contract by supplying otherwise obtainable components of adequate quality and price.

3. Supply and service

3.1. Unless agreed otherwise, Esders GmbH shall receive the service at its registered office. The risk of accidental loss and accidental deterioration shall in principle pass to the Customer once the latter has been notified that the goods are ready for collection.

3.2. If, by derogation, it is agreed to deliver to the Customer, the risk of accidental loss and accidental deterioration of the goods shall pass to the Customer when the item has been delivered to the carrier appointed by Esders GmbH. This also applies in the event that free delivery has been agreed. Esders GmbH only delivers ex works exclusive of packaging. The goods-services shall be delivered to the domestic address provided by the Customer in the service listing. Deliveries abroad shall be made subject to separate agreement regarding transportation costs. Esders GmbH is entitled to provide partial deliveries and partial services insofar as this is reasonable for the Customer. The Customer shall ensure that the product can be properly delivered at the agreed place of delivery at the agreed time of delivery. Unless agreed otherwise, delivery shall be made subject to our reasonable discretion and be without liability for the cheapest and fastest transport. Upon written request by the Customer, Esders GmbH shall take out appropriate cargo insurance at the cost of the Customer.

3.3. Unless agreed otherwise, Esders GmbH grants a deadline for acceptance of 3 months from the order date for call-off orders. If this deadline expires, Esders GmbH reserves the right to choose to either invoice the goods ordered or to cancel the part of the order not yet fulfilled.

3.4. There are no fixed deadlines for deliveries and services. Dates and deadlines shall only be binding if Esders GmbH describes these as fixed dates and guarantees them in writing. Compliance with deadlines is subject to the customer providing all the documents required from them and providing its own (preliminary) services. Insofar and as long as impediments (e.g. strike or lockout, operational disruptions), which make

it very difficult or impossible for Esders GmbH or contracted third parties to provide the service or insofar and as long as the Customer has not taken the necessary collaborative action required from it, Esders GmbH shall be released from complying with the fixed delivery and service deadlines. It shall also be entitled to delay the agreed fixed dates and deadlines for the foreseeable duration of the impediments. This shall not apply if the impediments were culpably caused by Esders GmbH. Esders GmbH shall inform the Customer immediately upon becoming aware of impediments and their impact on the delivery/service. If the period in which the impediment to the fixed date occurs is an extended one, both parties shall be entitled to withdraw from the contract. Upon request by Esders GmbH, the Customer must state within a reasonable time whether it intends to withdraw from the contract on the grounds of delayed performance or maintain its claim to the performance.

3.5. In the event of delayed acceptance or refusal to accept without grounds, Esders GmbH is entitled to choose to withdraw from the contract or claim compensation for non-fulfilment of 20% of the invoice amount. The Customer has the right to prove that lesser damage was incurred.

4. Payments

4.1. Prices are quoted ex works plus applicable statutory VAT and plus any packaging and shipping/transport costs. Unless agreed otherwise, payments are due in full upon conclusion of the purchase contract.

4.2. The Customer shall default on payment 14 days after receiving the performance, but no later than 14 calendar days of receipt of the invoice, unless it is not responsible for the circumstances relevant to the delay. In the event of default in payment by a Customer, Esders GmbH is entitled to claim interest on arrears of 8 percentage points above the applicable base rate (Section 247 Civil Code (BGB)). Esders GmbH is entitled to claim higher interest on arrears if its amount has been proven.

4.3. In the event of default in payment by the Customer or if circumstances become known after concluding the contract which put the credit-worthiness of the Customer into question, Esders GmbH shall be entitled to make the entire residual debt of the Customer from all contracts payable and due, demand advance payments or security or to withdraw from the contract after the expiry of a reasonable period without prejudice to other rights.

4.4. The customer shall only have the right to retain payments or to set off against counterclaims to the extent that its counterclaims are undisputed or have been legally established.

5. Retention of title and securities

5.1. The items rendered (retained goods) shall remain the property of Esders GmbH until the Customer has fulfilled all claims resulting from the business relationship. As long as title is retained, the Customer may not pledge or transfer the retained goods as security. In the event of attachments or other third party interventions, the Customer must inform Esders GmbH of this in writing immediately. Without express written consent from Esders GmbH, the Customer is not entitled to alter or process the retained goods within the proper course of business. Should ownership extinguish following a legal transfer of title, specifically through combination, processing or mixing, the Customer undertakes to transfer a (co-)ownership share amounting to the invoice value to Esders GmbH upon conclusion of the contract.

5.2. In the event of breaches of duty, in particular default in payment by the Customer, Esders GmbH shall be entitled to take back the retained goods and to use the retained goods to settle secured claims or to request the assignment of rights to recovery from third parties. Taking back the retained goods does not require Esders GmbH to withdraw from the contract. The Customer must compensate Esders GmbH for use already made.

5.3. In the event that the Customer has already ceded the goods/services to its own buyers, it shall assign as of the conclusion of the contract between it and Esders GmbH the receivables owed to it by its buyers from the sale or other legal basis in the full amount and including all subsidiary rights. The assignment shall include any current account balance claims. Priority shall be given to satisfying the portion of the claim assigned to the supplier. The goods may only be resold by sellers in the ordinary course of business and only on the condition that the Supplier receives payment of the equivalent value of the delivery item. As long as title is retained, the Customer may not pledge or transfer the retained goods as security. The Customer must also agree with the buyer that the buyer shall only acquire ownership once it makes payment. The Customer is authorized to collect the claims assigned to Esders GmbH within the normal course of business for its own account and in its own name. This authorization may be revoked by Esders GmbH in the event that the Customer is in default of payment. If Esders GmbH revokes this

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authorization, the Customer must provide all information necessary for collection, hand over the related documents and advise the debtors of the assignment.

6. Warranty

6.1. Warranty claims for material defects or defects of title expire within one year of delivery collection, subject to the provisions of no. 7. By derogation, claims for defects and associated rights for used delivery items, except for reconditioned parts, are excluded. The warranty expressly does not extend to consumables such as filters, printer paper or wear parts (batteries, power packs, printed materials, electronic measuring cells) as well as the wear and tear of measuring probes through contact with the medium to be measured.

6.2. The Customer must examine the goods received for defects immediately and notify Esders GmbH in writing specifically. The notification period as defined by Section 277 of the German Commercial Code (HGB) shall in this case be 5 days, whereby the assertion of warranty claims shall otherwise be excluded. The timely dispatch of the notice of defects shall suffice to comply with this deadline. In the event of transport damage, a record of the damage must be prepared in order to secure any compensation claims from the transport company. The above deadline does not apply for hidden defects which were not identifiable during the inspection. Hidden defects must be notified immediately upon discovery.

6.3. If the Customer did not follow the instructions for use and/or has made interventions, changes or repair works on the goods, then it shall have to prove that the defect is not due to such actions.

7. Liability and compensation

7.1. Esders GmbH shall not accept liability unless damages arising from injury to life, body or health are based on a negligent breach of duty by Esders GmbH or an intentional or negligent breach of duty by a legal representative or vicarious agent of Esders GmbH. Contrary to sentence 1, Esders GmbH shall also be liable for other damages based on gross negligent breach of duty by Esders GmbH or an intentional or gross negligent breach of duty by a legal representative or vicarious agent of Esders GmbH. In the event of liability of simple agents, this shall be limited to typically foreseeable losses. Contrary to sentence 1, Esders GmbH shall be held liable in accordance with legal provisions if it culpably breaches a major contractual obligation; in this case, liability for compensation shall, however, be limited to the foreseeable and typically occurring damage, unless the damage is based on a gross negligent breach of duty by Esders GmbH or an intentional or gross negligent breach of duty by a legal representative or vicarious agent of Esders GmbH.

7.2. For all claims against Esders GmbH for damages or compensation of wasted costs in cases of contractual and non-contractual liability - apart from cases of unrestricted liability - a period of limitation of one year will be effective. The period of limitation shall begin at the time defined in Section 199(2) of the German Civil Code (BGB). It shall begin no later than at the end of the limited time periods as described in Section 199(3) and (4) BGB. The deviating limitation period for claims regarding material defects remains unaffected by the provisions of this paragraph. The limitation under this paragraph shall also not apply to the extent that Section 438(1)(2) BGB (buildings and things used for buildings) provides for longer limitation periods.

7.3. Esders GmbH shall be liable according to statutory provisions for delayed performance in cases of intent or gross negligence by Esders GmbH or of a representative or vicarious agent. In other cases of delayed performance, the supplier's liability shall be limited to 5% of the value of the the delivery for damages in addition to performance and to 10% for damages in lieu of performance. Any further claims by the customer, even after expiry of any period set for Esders GmbH to perform, are excluded.

7.4. A change to the burden of proof to the disadvantage of the Customer is not associated with the above rules.

7.5. The Customer is responsible for compliance with national law, ordinances and safety-relevant regulations, in particular with regard to approvals, installation, operation, maintenance and repairs to the object of performance, and must fulfil them. The Customer must indemnify and hold Esders GmbH harmless from all claims arising from non-compliance with such regulations by the Customer.

8. Copyright

Esders GmbH reserves unlimited property and copyright trademark rights to all drawings, technical documents and other physical and non-physical information, including in electronic form; access to them may not be granted without consent.

9. Data protection

9.1. In accordance with Section 28 of the Data Protection Act, Esders GmbH advises that the customer data acquired in connection with the business relationship is stored for internal purposes of Esders GmbH. The Customer hereby agrees that Esders GmbH may cite the services sold as a reference.

10. Technical consultancy

10.1. Any technical advice - whether verbal, in writing or by way of trials - is given by Esders GmbH in good faith outside a separate consultancy agreement (remunerated consultancy agreement), but without warranty, and this also applies where proprietary rights of third parties are involved. It does not release the Customer from the obligation to test the products supplied by Esders GmbH as to their suitability for the intended processes and uses.

10.2. The application, use and processing of the products are beyond the control of Esders GmbH and therefore entirely the Customer's own responsibility.

11. Further provisions

11.1. The laws of the Federal Republic of Germany apply. The place of performance and jurisdiction for claims arising from this contract is the seat of Esders GmbH, insofar as the Customer is a merchant. In this case, Esders GmbH shall be entitled to take recourse against the Customer at its place of residence.

11.2. Subsequent amendments or supplements to contracts must be made in written form.

11.3. Should individual provisions of these terms and conditions be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions.

11.4. Changes to these GTCs shall be notified to the Customer in writing and shall be considered approved if the Customer does not object to the change in writing. Esders GmbH shall make specific reference to this consequence upon such notice. The Customer must send Esders GmbH the objection within six weeks of notification of the change.