

## General Terms and Conditions of Purchase for the Sale of Machines, Plants and Equipment and technical equipment as well as the provision of services

### 1. General scope, Offers, Conclusion of Contract

These general terms and conditions of contract apply to the sale of machinery, plant and equipment and technical equipment (hereinafter "**products**") of MESSER Industriegase GmbH (hereinafter referred to as "**Messer**") and services provided in connection with the installation, commissioning, maintenance or repair (hereinafter referred to as "**services**"). Other terms and conditions shall only be accepted if they are in accordance with these terms and conditions, do not contradict and the legal rights of the customer do not expand. This also applies if MESSER does not agree to other terms and conditions or expressly contradicts or executes and provides deliveries or services without contradiction.

### 2. Offer, conclusion of contract, prices

2.1. Offers by Messer are subject to change without notice, unless expressly stated as binding offer marked. Written and oral orders and other agreements as well as verbal collateral agreements and assurances shall only be made effective and binding by written confirmation of Messer. In case of immediate delivery of the products or provision of the service, the order confirmation can be replaced by the transmission of the products or the provision of the service. The contractual obligations result exclusively from the written contractual documentation.

2.2. Unless otherwise stated in the order confirmation, the prices offered shall apply ex works (EXW Incoterms®2020) from the respective agreed location of Messer or the otherwise agreed production site, plus the respectively valid statutory value added tax. The ex works price does not include packaging costs and shipping services are charged at the agreed, current daily rate, plus the respective applicable statutory value-added tax. In addition, accrued travel expenses are invoiced as expenses. The customer is obliged to pay the additional costs for accommodation on site, continental meals and transport as well as all ancillary costs of an appropriate amount, which are to be paid on site or at the arrival or departure.

### 3. Terms of payment

3.1. Invoices for the delivery of the products are payable immediately upon receipt without deduction. Payment is due and can be made before delivery of the products. A deviating payment agreement can only be made between the parties in writing. In all cases, Messer is entitled to refuse dispatch or handover of unpaid products, depending from the provision of a security, such as the handing over of the goods with an irrevocable and confirmed letter of credit or the handing over of a bank guarantee by an internationally recognized bank. The costs for the provision of such security shall bear the customer. There is no obligation to hand over the goods to the customer prior to receipt of the required securities.

3.2. Invoices for services rendered are payable immediately upon receipt without deduction due. If services are provided abroad, Messer may at its own discretion request either advance payment of the expected remuneration or a bank guarantee. The costs are to be borne by the customer, in the same amount.

3.3. The customer agrees to receive invoices electronically. Electronic invoices are sent to the customer by e-mail in PDF format.

3.4. Objections to the invoiced claims are to be raised by the customer within 14 days from the date of invoice, otherwise the claim shall be deemed accepted. Such objections do not prevent the undisputed invoice amount from becoming due.

3.5. In the event of default in payment, Messer is entitled to charge default interest in the amount of 10%, unless the customer proves to Messer that no damage whatsoever has occurred or substantially lower than the above interest rate. Messer is entitled, to claim demonstrably higher damages.

3.6. Payments shall always be offset against the oldest outstanding claims, even if the customer has made another provision. A set-off by the customer is only possible if his counterclaims have been legally established, are undisputed or are accepted in writing by Messer.

### 4. Packing and shipping

4.1. In case Messer is obliged to ship products to the customer, Messer will handover supplies properly packed to the carrier. The products are shipped without transport insurance cover, unless the insurance has been taken out at the customer's request. The costs for shipping as well as for the packaging and insurance shall be charged to the customer in addition to the prices calculated.

4.2. Insofar as Messer undertakes to ship the products abroad, Messer shall provide ensure compliance with legal export regulations. Compliance with import and transit regulations are the responsibility of the customer.

4.3. If machines are unsuitable for shipment due to oversize, Messer is entitled to ship machines in individual components.

### 5. Transfer of risk

The risk of accidental loss of the products shall pass to the customer upon delivery to the agreed plant or production site to the customer. If the shipment of the products is delayed at the request of the customer or if a delay occurs due to circumstances that are within the customer's area of responsibility, the risk of accidental loss is transferred to the customer from the point in time at which the customer was originally intended for receiving the products. From this time on the products shall be stored on the account and the risk of the customer.

### 6. Reservation of proprietary rights

6.1. The products remain the property of Messer until full payment has been received. The customer is not entitled to sell delivered products without written consent or before full payment for the products has been made.

6.2. If products owned by Messer become an essential component of an item other than the main item, Messer shall be entitled to co-ownership of the main item in proportion of the invoice value of the products to the value of the main item.

### 7. Construction, installation and commissioning of plants

7.1. Insofar as the offer of sale does not include the construction and installation of the products, they are not included in the scope of services provided to the customer.

7.2. Insofar as Messer supervises the commissioning of the products at the customer's premises the areas of responsibility of Messer include the following activities:

- check for obvious assembly and installation errors;
- check whether the specifications of the supply connections comply with the minimum specifications of the installation;
- monitoring the start-up of the plants and
- Initial instruction of the responsible employees with regard to the use of the facilities, regular maintenance and servicing as well as regular inspection the operability of the systems.

### 8. Warranty

8.1. Messer warrants that, upon delivery, the products comply with the conditions in the offer and the order confirmation and that the services are provided professionally and with a high degree of care and skill, as can usually be expected in the industry under similar conditions.

8.2. Messer shall, upon written request of the customer (hereinafter referred to as "notice of defects"), all parts of the deliveries made before the expiry of the warranty period due to of poor material, constructional faults or poor workmanship are found to be defective, as soon as possible at the discretion of Messer or replace it. Unless otherwise agreed, the customer shall send the defective products or their defective parts back to Messer. The shipping costs are paid by Messer, unless it later turns out that the product was free of defects. If the remedy of defects fails in whole or in part, the customer shall be entitled to reduction of the purchase price or to withdrawal from the contract. If the defects are so serious that repair will not be completed within a reasonable time frame and the products are not usable for the intended purpose or use is only possible to a limited extent, the customer shall be entitled to refuse the right to rectification of defects.

8.3. Notification of defects must be made immediately after discovery of the defect. If the customer asserts a notice of defect, however, no defect for which Messer is responsible, Messer is entitled to claim reimbursement of the costs arising from the notice of defects by the customer.

8.4. Warranty claims are excluded in the case of defects caused by (i) natural damage, (ii) use for purposes other than the actual wear and tear, (iii) incorrect or improper setup, assembly or installation, (iv) deviations from the installation or assembly instructions or the product documentation, (v) improper assembly or handling, (vi) non-compliance with the operating instructions or (vii) improper modification or maintenance measures arise or have arisen are.

8.5. The limitation period for warranty claims is 12 months beginning with the delivery date of the product or the acceptance of a work performance.

8.6. Claims for damages due to defects shall be excluded in the event of the existence of statutory the conditions of the offence are limited to the framework laid down in Clause 9.

### 9. Liability

9.1. For claims for damages of the customer - on whatever legal grounds - MESSER is liable up to the amount of typically foreseeable damage. This also applies to the culpable breach of an obligation, the fulfillment of which is essential for the proper performance of the contract of the contract in the first place and the customer can rely on ("cardinal obligation"). Deviating from this, liability shall be limited up to 5% of the value of the delayed delivery or service. Liability for loss of production or loss of profit is excluded.

9.2. The limitations of liability in clause 9.1 do not apply:

- intentional or grossly negligent cause of damage and fraudulent concealment of defects;
- culpable injury to life, body or health;
- violation of warranties;
- claims of the customer under the Product Liability Act;

9.3. Messer's liability in the event of the use of gases in the nuclear industry, aviation and aeronautics is excluded.

9.4. The above liability regulations also apply to the benefit of employees, statutory representatives and vicarious agents of Messer.

### 10. Unavoidable events

In case of unforeseen circumstances, with reasonable means for Messer or their subcontractors, events that cannot be avoided - including strikes, lockouts, disruptions to operations, and including acts of government -, delivery, performance and purchase obligations shall be suspended, as long as and insofar as such obstacles exist. Prementioned circumstances are also not justifiable if they occur during a delay.

### 11. Deliveries by third parties

Messer may have its delivery and service obligations fulfilled by another company.

### 12. Data Protection

12.1. Messer works with personal data provided by customers. Personal data are information which concern a living individual who can be identified with the data.

12.2. The personal data provided by customers is used:

- to deliver the agreed goods and to provide the agreed services;
- for invoicing, account maintenance, inventory management, telemetry, statistical assessment and for internal accounting;
- to check creditworthiness and prevention of abuse.

12.3. Messer will transfer personal data for data processing facilities working for Messer, and to affiliated companies, or forwarded to licensed business information services or attorneys.

12.4. If in Messer's view it is required by law or is in the interest of public safety and order, or the customer has consented to it, Messer will also provide personal data to government officials, public institutions or third parties.

12.5. Information to process the personal data of the customer is found in Messer's data protection declaration, which can be provided to the customer at any time upon request, and which can be downloaded from Messer's Internet site ([www.messer.de](http://www.messer.de)) at any time in its current version.

### 13. Severability Clause

Should individual provisions of these terms and conditions or other contractual components are or become invalid, the remaining provisions shall remain effective. The contracting parties undertake to replace ineffective provisions with effective ones which come as close as possible to the ineffective ones in economic terms.

### 14. Applicable law and place of jurisdiction

The contractual relationship is subject to the law of the Federal Republic of Germany legal venue for all contractual claims or claims in connection with this contract is Frankfurt a. M.