

1. General Scope, Offers, Conclusion of Contract

1.1 These general terms and conditions shall apply to the sale of machinery and technical equipment (in the following "Machinery and Equipment") by the Messer Industriegase GmbH (in the following "MESSER") and to the performance of technical services related to installation, commissioning, maintenance and repair of Machinery and Equipment (in the following "Technical Services"). Deviating general terms and conditions used by the customer may only be deemed as accepted to the extent as they do not contradict to these general terms and conditions and relevant rights of the customer granted by law have not been extended to the disadvantage of MESSER. This shall even apply if Messer does not explicitly contradict to its contractual partners' general terms and conditions or deliveries are performed although MESSER has not expressly objected to such deviating general terms and conditions.

1.2 MESSER's offers are non-binding unless expressly marked as binding. Written and oral orders and the other oral agreements as well as oral side agreements and promises will become binding through MESSER's written confirmation only. In the event of immediate delivery, the order confirmation may be substituted by the delivery of the goods. Contractual obligations shall be deemed agreed only if documented in writing. Changes and amendments to the contract require written form. The same shall apply to any waiver of the requirement of written form.

2. Payment Terms, Prices

2.1 Payments of Machinery and Equipment shall become due upon receipt of invoice and shall be paid in advance to the delivery. Deviating payment terms may be agreed between the parties in writing only. In any case MESSER may request before dispatch or handover of any unpaid goods securities for payment, such as delivery of an irrevocable and confirmed letter of credit or the presentation of a bank guarantee issued by an internationally recognized bank. The costs for providing such securities shall be borne by the customer. There shall be no obligation to handover any unpaid goods to the customer before receipt of any such requested securities.

2.2 Payment of Technical Services shall be due upon receipt of invoice after performance of the agreed services. If Technical-Services are to be performed abroad, MESSER may at its discretion request either advance payment equal to the expected remuneration or a bank guarantee in the same amount. The costs and fees for the bank guarantee shall be paid by customer.

2.3 Unless otherwise stated in our order confirmation the prices are to be understood as ex works prices (EXW Incoterms® 2010) from our premise in Germany as agreed respectively or, in case the parties have agreed on shipping from any other production location from the respective other production location. The ex works prices do not include cost for packaging and freight. Unless otherwise agreed between the parties MESSER will charge Technical Services at the agreed current daily rate and the actually accrued travel expenses. The customer shall bear additional costs of local accommodations, European style meals, local transport and any reasonable incidental expenses incurred locally or en-route.

2.4 The customer has no right of set-off, unless the customer's claims are approved by the relevant courts, undisputed or acknowledged in writing by MESSER.

3. Packaging and Freight

3.1 In case MESSER is obliged to send the goods to the customer's premises MESSER will handover supplies properly packed to the carrier. Unless otherwise agreed expressly, all goods will be dispatched uninsured. Costs of freight and for the packing as well as freight insurance, if any, will be invoiced to the customer in addition to the ex works prices.

3.2 If MESSER is obliged to send goods abroad, MESSER will also handle the customs clearance in Germany. Import and transit regulations including any related costs shall be within the responsibility of the customer.

3.3 Insofar as Machinery and Equipment is over-large for shipment in one piece, MESSER may split the machinery system into different components for boxing.

4. Transfer of Risk

The risk of the supplies shall pass to the customer upon delivery at MESSER's premise as agreed respectively. In case the parties have agreed on any other place of loading, the risk shall transfer with dispatch at such other location. If dispatch is delayed at the request of the customer or due to reasons within the responsibility of the customer, the risk of the supplies shall pass to the customer at the time originally foreseen for their dispatch. From this moment on, the supplies shall be stored on the account and the risk of the customer.

5. Retention of Title

5.1 MESSER retains title to all goods delivered until the payment is fully paid. The customer shall not be entitled to sell or encumberance the goods before full payment without MESSER's written approval.

5.2 In case the goods subject to MESSER's ownership retention become an essential part of another good which is regarded as the main good, then MESSER shall become proportional co-owner of this main good. The proportion of co-ownership shall be the same relation as the open invoice towards the customer compared to the market value of the main good.

6. Setup, Installation and Commissioning of Machinery and Equipment

6.1 Unless otherwise agreed, setup and installation of Machinery and Equipment at customers' premises is not part of MESSER's contractual obligations. Damages due to incorrect installation or in contradiction to the installation instructions will exclude any warranty for the goods insofar the goods have been damaged due to incorrect installation or by the non-compliance with the installation instructions.

6.2 To the extent as MESSER is contracted for supervision of the commissioning of Machinery and Equipment at the customer's premises, MESSER's responsibility shall be limited to the following activities:

- a) To check obvious setup- and installation mistakes;
- b) To check if the utilities installed for the machinery comply with the minimum utility specifications required for the machinery;
- c) The supervision of the first start-up of the machinery; and
- d) The initial training of the responsible staff regarding use of the machinery, regular surveillance, maintenance and regular checks on proper performance of the machinery and Equipment.

7. Warranty

7.1 Upon written request of the customer, MESSER will undertake at its expense to repair or replace non-conforming or faulty supplies or any parts of supplies. Any warranty claim of the customer is subject to the customer's examination of the goods after receipt and due notification of MESSER about the non-conformity in accordance with the applicable laws. It is within MESSER's discretion whether faulty parts will be repaired or replaced. Replaced parts shall become MESSER's property after replacement. Unless otherwise agreed, the customer shall send defective supplies or parts thereof back to the place of dispatch. Shipping costs will be borne by MESSER, unless the returned goods turn out not to be faulty. If subsequent improvements fail completely or in part, the customer may claim a reasonable reduction of price or declare the withdrawal from the contract. If, however, the defects are of such importance that they cannot be remedied within reasonable time and provided the supplies and services cannot be used for their specified purpose, or only to a limited extent, then the customer shall be entitled to refuse subsequent improvement.

7.2 Any further liability claims related to the delivery of faulty or non-conforming goods are limited to the extent as set forth in Chapter 8, provided that all legal prerequisites are fulfilled in accordance with the laws.

8. Liability

8.1 For the customer's damage claims, on any legal grounds whatever, MESSER shall be liable only up to the amount of the typically foreseeable damage. The foregoing shall also apply to negligent breach of an obligation whose fulfillment is a prerequisite to proper performance of the contract and that the customer is entitled to rely upon ("cardinal obligation"). Notwithstanding the foregoing, in the event of delay the liability shall be limited to 5% of the amount of the delayed delivery or service. Liability for lost production or lost profit is hereby excluded.

8.2 The limitations of liability under sub-section 8.1 shall not apply in the following cases:

- a) damage caused intentionally or through gross negligence and fraudulent concealment of defects
- b) culpable injury to life, limb or health
- c) breach of warranties
- d) defects in a gas delivery that cause personal injury or property damage in excess of EUR 500 to privately used objects.

8.3 MESSER's liability in event that the gases are used in nuclear industry, aviation and aeronautics is hereby excluded.

8.4 The foregoing liability provisions shall also apply to MESSER's employees and legal representatives.

9. Severability

The legal invalidity of a provision within these general terms or any other agreed wording of the contractual relationship shall not affect the validity of the remaining provisions. The contractual partners will replace such invalid provisions by a valid provision which comes nearest to the economic aim intended by the parties.

10. Applicable Laws and Place of Jurisdiction

The contractual relationship is exclusively governed by the laws of the Federal Republic of Germany under exclusion of the United Conventions on Contracts for the International Sale of Goods (CISG) and the regulations for conflicts of laws. Exclusive place of jurisdiction for all contractual or related claims between the parties shall be Frankfurt a.M., Germany. However, MESSER shall also be entitled to choose the place of jurisdiction at the customer's registered seat of business.