

General Terms and Conditions for the Sale of Products and the Provision of Services of Messer Schweiz AG

1 Scope

These General Terms and Conditions of Messer Schweiz AG (hereinafter referred to as "MESSER") shall apply to entrepreneurs for the sale of hardware as well as for the provision of services such as installation, commissioning, maintenance or repair. These general terms and conditions shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the contractual partner shall only become part of the contract if and to the extent that MESSER has expressly agreed to their validity. This shall also apply if MESSER does not expressly object to the other terms and conditions or performs or renders deliveries or services without objection. Unless otherwise agreed, these General Terms and Conditions shall also apply as a framework agreement to similar future contracts without our having to refer to them again in each individual case.

2 Offer and conclusion of contract, prices

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

2.2 Unless otherwise stated in the order confirmation, quoted prices shall be ex works from the respective agreed location of MESSER or the otherwise agreed production site, plus the applicable statutory value added tax. The ex-works price does not include costs for packaging and shipping.

Services shall be charged at the agreed daily rate plus the applicable statutory value added tax. In the absence of an agreement, the daily rates currently applicable at MESSER shall apply. In addition, travel expenses incurred shall be invoiced. The customer shall be obliged to bear the costs of on-site accommodation, customary meals and on-site transport as well as all ancillary costs in a reasonable amount incurred on site or on arrival or departure.

2.3 If work is carried out on Customer's systems that pose a risk (including toxic, radioactive, biohazardous) to MESSER's personnel, Customer shall confirm in writing prior to commencement of the work that the system does not contain any substances that may lead to contagious diseases or other damage to health (decontamination declaration).

2.4 For hardware orders with a net goods value of less than CHF 100, a small quantity surcharge of CHF 50 will be invoiced.

2.5 MESSER reserves the right to adjust prices if the delivery period is subsequently extended for one of the reasons stated in section 5.2, if the documents supplied by the Customer do not correspond to the actual conditions or are incomplete, or if laws, regulations, interpretation or application principles have changed.

3 Terms of Payment

3.1 Invoices shall be due for payment immediately upon receipt without deduction and may already be issued prior to provision, performance or delivery (advance payment).

3.2 MESSER shall be entitled to make the shipment or handover of unpaid products or the provision of services dependent on the provision of security, such as the issue of an irrevocable and confirmed letter of credit or the provision of a bank guarantee by an internationally recognized bank. The cost of ordering such security shall be borne by the customer. There is no obligation to hand over or provide unpaid products or services to the customer prior to receipt of the required collateral.

3.3 The Customer agrees to receive invoices electronically. Electronic invoices shall be sent to the Customer by e-mail in PDF format.

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

3.5 In the event of default in payment, MESSER shall be entitled to charge default interest at the statutory default interest rate applicable at the time. MESSER shall be entitled to claim demonstrably higher damages.

3.6 Payments shall always be credited against the oldest outstanding claims, even if the Customer has made a different provision. Offsetting by the Customer shall only be possible if its counterclaims have been legally established, are undisputed or have been acknowledged by MESSER in writing.

4 Packaging and Shipping

4.1 Unless otherwise agreed, delivery shall be EXW Incoterms® 2020 at the respective agreed location of MESSER or the otherwise agreed production site.

4.2 Insofar as MESSER undertakes to ship products to the Customer, MESSER shall be entitled to determine the type of shipment (in particular carrier, shipping route, packaging) itself. In this case, the risk shall pass to the Customer upon handover to the carrier. If, at the Customer's request, shipment of the Products takes place later than originally agreed or if a delay occurs due to circumstances for which the Customer is responsible, the risk of accidental loss shall pass to the Customer as of the date originally scheduled for shipment of the Products. From this point in time, the Products shall be deemed to be stored for the Customer at the Customer's risk.

4.3 The shipment of the Products shall in principle take place without transport insurance cover, unless insurance has been expressly agreed upon at the Customer's request. The costs for shipping as well as for packaging and insurance shall be charged to the customer in addition to the ex-works price.

4.4 If MESSER undertakes to ship the products abroad, MESSER shall ensure compliance with the statutory export regulations. Compliance with import and transit regulations shall be the responsibility of the customer.

4.5 Insofar as machines are unsuitable for shipment due to oversize, MESSER shall be entitled to ship machines in individual components.

5 Delivery term

5.1 The delivery period shall commence as soon as the order placed by the customer has been confirmed by MESSER, all official formalities have been obtained, the payments to be made and any securities to be provided at the time of the order have been furnished and the main technical points have been settled. The delivery period shall be deemed to have been met if notification of readiness for shipment has been sent to the customer by the time the delivery period expires.

5.2 The delivery period shall be extended appropriately

- If MESSER does not receive the information necessary for the fulfillment of the order in time or if the Customer subsequently changes it and thus causes delays in delivery or performance;
- If obstacles occur according to point 13;
- If the customer or third parties are in arrears with the work to be performed by them or are in default with the performance of their contractual obligations, in particular if the customer fails to comply with the payment terms.

6 Acceptance by the customer

Acceptance of the installation or service is made by signing the acceptance or order protocol.

7 Reservation of ownership

- 7.1 The products shall remain the property of MESSER until full payment of all present and future claims arising from the contract and the ongoing business relationship.
- 7.2 If products owned by MESSER become an integral part of another item as the main item, MESSER shall be entitled to co-ownership of the main item in the ratio of the invoice value of the products to the value of the main item.

8 Plans and technical documents

Each contracting party reserves all rights to plans and technical documents which it has handed over to the other party. The receiving party shall not make the documents available to third parties, in whole or in part, or use them outside the purpose for which they were handed over to it without the prior written authorization of the handing over party.

9 Assembly, installation and commissioning of equipment

Unless expressly included in the sales offer, the assembly and installation of the products at the customer's premises is not part of the scope of services.

10 Unfinished Work / Premature Termination of Contract by the Customer

If the customer withdraws from the contract before completion / acceptance of the work, this shall not release him from the obligation to pay the total sum of the agreed price, less the external costs demonstrably saved by MESSER (costs for third-party products or services). In the event that the customer's withdrawal is due to a grossly negligent or intentional breach of duty by MESSER, instead of claiming damages, the customer may reduce this total sum in proportion to the share of the product or service concerned.

11 Warranty

- 11.1 MESSER warrants that, upon delivery, the products will comply with the conditions and specifications in the offer and the order confirmation and that the services will be performed in a professional and workmanlike manner as can usually be expected in the industry under similar conditions. No warranty is given for any other product characteristics or requirements. In particular, no warranty is made as to the suitability of the product for any particular use.
- 11.2 A notice of defect must be given promptly and in writing after discovery of the defect. MESSER shall repair or replace as soon as possible, at MESSER's option, all parts of the Supplies found to be defective before the expiry of the warranty period due to bad material, a design defect or poor workmanship. Unless otherwise agreed, Customer shall return the defective Products or their defective parts to MESSER. Shipping costs shall be borne 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 reduce the purchase price or to withdraw from the contract. If the defects are so serious that repair is not possible within a reasonable period of time and the products can thus not be used for the intended purpose or the use is only possible to a limited extent, the customer is entitled to refuse to remedy the defect.
- 11.3 If the Customer makes a claim but no defect for which MESSER is responsible is found, MESSER shall be entitled to claim reimbursement from the Customer for the costs incurred as a result of the claim.
- 11.4 Warranty claims shall be excluded in case of defects which arise or have arisen due to (i) natural wear and tear, (ii) use for purposes other than the actual use, (iii) incorrect or improper setup, assembly or installation, (iv) deviations from the installation or assembly instructions or the product documentation, (v) improper handling or treatment, (vi) non-compliance with the operating instructions or (vii) improper modification or maintenance measures.

- 11.5 The limitation period for warranty claims is 12 months beginning with the date of delivery of the product and 3 months from the date of performance of the service.
- 11.6 Claims for damages due to defects shall be limited to the scope set forth in Section 11 if the statutory prerequisites for the facts are met.

12 Liability

- 12.1 MESSER shall be liable for the customer's claims for damages - irrespective of the legal grounds - up to the amount of the order value. This shall also apply to the culpable breach of an obligation the fulfillment of which is a prerequisite for the proper performance of the contract and on the fulfillment of which the customer could reasonably rely ("cardinal obligation"). Notwithstanding the above, in the event of delay, liability shall be limited to 5% of the value of the delayed delivery or service. Liability for loss of production or loss of profit is excluded.
- 12.2 The limitations of liability in Section 11.1 shall not apply in the event of:
 - a) intentional or grossly negligent causation of damage and fraudulent concealment of defects;
 - b) culpable injury to life, body or health;
 - c) breach of warranties;
 - d) claims of the customer under the Product Liability Act.
- 12.3 MESSER's liability in case of deliveries to or service work for the nuclear industry, aerospace industry is excluded.
- 12.4 The above liability provisions shall also apply in favor of MESSER's employees, legal representatives and vicarious agents.

13 Unavoidable events

In the event of unforeseen circumstances that cannot be averted by reasonable means by MESSER or its subcontractors, including strikes, lockouts, operational disruptions and acts of God, the delivery, performance and acceptance obligations shall be suspended for as long as and insofar as such hindrances exist. The aforementioned circumstances shall also not be our responsibility if they occur during a delay.

14 Deliveries and services by third parties

MESSER may have its delivery and performance obligations fulfilled by another company.

15 Data protection

MESSER processes personal data provided by the customer. Further information on the processing of personal data is contained in MESSER's data protection notice, which is available on request at any time and which can be accessed on MESSER's website (<https://www.messer.ch/datenschutz>) in its current version at any time.

16 Other

The GTC have been drawn up in three (3) language versions, German, French and English. In case of discrepancies between the language versions, the German version shall prevail.

17 Jurisdiction

The contractual relationship shall be governed by Swiss substantive law. The exclusive place of jurisdiction for all contractual claims or claims in connection with this contract is Lenzburg.