

## **General Purchase Conditions Messer Belgium nv**

### **1. Definitions**

In this document : (a) “Agreement” means the binding contract formed as described in Section 2.1 hereunder; (b) “Goods” means both tangible and intangible goods, including software and related documentation. References to Goods will, where appropriate, be deemed to include Services; (c) “Messer” means the legal entity Messer Belgium nv and its affiliated companies; (d) “Services” means the services to be performed by the Supplier for Messer under the Agreement; (e) “Supplier” means each person or entity (including, where relevant, its affiliates) that enters into an Agreement. These General Purchase Terms and Conditions will be handed over at the conclusion of the contract.

### **2. Conclusion of Contract**

2.1 These General Conditions of Purchase, together with the relevant purchase order issued by Messer, contain the terms of Messer’s purchase order to the Supplier. When the Supplier accepts Messer’s terms of purchase conditions, either by acknowledgment, delivery of any Goods and/or commencement of the performance of any Services, a binding contract is formed (“this Agreement”). This Agreement is limited to these General Purchase Conditions as specified on the face and reverse of this document, the relevant Purchase Order and any attachments to the Purchase Order. Messer does not agree to any proposed amendments, alterations, or additions by the Supplier. This Agreement may only be amended in writing and this amendment is only valid if it is signed by Messer. Any other verbal or written statement by the Supplier will not alter, add to, or otherwise affect this Agreement.

2.2 Any Agreement between Messer and the Supplier is formed only once Messer has signed a Messer Purchase Order form.

2.3 Messer is not bound by and hereby expressly rejects the Supplier’s General Conditions of Sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by the Supplier. A course of performance, course of dealing, and usage of trade will not modify these General Purchase Conditions. Messer explicitly rejects deviating general sales conditions of the supplier.

2.4 All costs incurred by the Supplier in preparing and submitting any acceptance to Messer’s offer are for the account of the Supplier.

### **3. Time of Performance**

3.1 In the event that the Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under this Agreement, the Supplier shall notify Messer in writing within 7 calendar days after receiving the Purchase Order.

3.2 The delivery dates and deadlines in the Purchase order shall be strictly complied with. In the event of delay, a penalty of 2% per week will automatically apply. The penalty will be calculated on the total amount of the order and will be deducted from the amount to be paid by Messer, in accordance with the compensation mechanism of article 1289 of the Belgian Civil Code. The penalty will be due automatically, without Messer having to prove any damage. Alternatively, in the event that the delivery deadlines are not respected, Messer may unilaterally rescind the Agreement without the Supplier being able to claim damages.

In any event, Messer may claim compensation from the Supplier for any penalties and damages Messer has to pay to a third party, as well as for the additional costs related to a purchase of goods from a third party supplier as a consequence of the delay.

### **4. Delivery of Goods**

4.1 Unless expressly agreed otherwise in writing, all Goods will be delivered DDP (Incoterms 2010) final destination determined by Messer.

4.2 Delivery will be deemed completed once receipt of delivery has been acknowledged by Messer in writing but this will not constitute acceptance of the Goods.

4.3 The Supplier shall, concurrently with the delivery of the Goods, provide Messer with copies of all applicable licenses. Each delivery of the Goods to Messer shall also include a packing list which contains at least (i) the applicable order number, (ii) the Messer part number, (iii) the quantity shipped and (iv) the date of shipment.

4.4 If the Supplier defaults in the manner and time of delivery or in the rate of shipment, Messer reserves the right to refuse delivery of the Goods and to return the same to the Supplier at the Supplier’s risk and expense. Messer is not liable for any costs incurred by the Supplier in relation to the production, installation, assembly or in relation to any other work related to the

Goods prior to their delivery in accordance with this Agreement.

4.5 Any design, manufacturing, installation or other work to be performed by or on behalf of Supplier under this Agreement shall be executed with good workmanship and using proper materials.

4.6 The Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and Messer's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all the Goods shall be clearly marked as destined for Messer. The Supplier is responsible for any loss or damage due to its failure to properly preserve, package, handle, or pack the Goods; Messer is not required to assert any claims for such loss or damage against the common carrier involved.

## **5. Performance of Services**

5.1 The Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff. The Supplier has an obligation to achieve a result and must hold Messer harmless for any defaults regarding the design, materials, building and assembly.

5.2 The Supplier is fully liable for any and all third parties with which it has contracted in connection with the Services

5.3 Delivery will be deemed completed once receipt of delivery has been acknowledged by Messer in writing but this will not constitute acceptance of the Services.

## **6. Inspection, Rejection and Acceptance of Goods/Services**

6.1 Inspection of or payment for the Goods by Messer will not constitute acceptance. Inspection or acceptance of or payment for the Goods by Messer will not release the Supplier from any of its obligations, representations or warranties under this Agreement.

6.2 Messer may, at any time, inspect the Goods or the manufacturing process for the Goods. If any inspection or test by Messer is made on the premises of the Supplier, the Supplier shall provide reasonable facilities and assistance for the safety and convenience of Messer's inspection personnel.

6.3 If Messer does not accept any of the Goods or Services, Messer shall promptly notify the Supplier of such rejection, and Section 10 below shall apply. Within two (2) weeks after such notification, the Supplier shall collect the Goods from Messer at its own expense or the Supplier shall perform the Services in accordance with

Messer's instructions within 24 hours. If the Supplier does not collect the Goods within the said two (2) week-period, Messer may have the Goods delivered to the Supplier at the Supplier's cost, or with the Supplier's prior consent, destroy the Goods, without prejudice to any other right or remedy Messer may have under this Agreement or at law.

6.4 If, as a result of a sampling inspection, any portion of a lot or shipment is found not to conform with this Agreement, Messer may reject and return the entire shipment or lot without further inspection or, at its option, complete the inspection of all nonconforming units (or accept them at a reduced price) and charge the Supplier the cost of such inspection. The Supplier shall also bear the transportation costs in the event of a return of the Goods.

6.5 Only written confirmation by Messer will constitute acceptance of the Goods and Services performed.

## **7. Legal Title, Price and payment**

7.1 Title to the Goods will pass to Messer on delivery.

7.2 All prices quoted in this Agreement are fixed prices. All prices are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax. Any license fees are also to be included in the price.

7.3 Unless otherwise specified in the Purchase Order, and subject to the acceptance of the Goods and/or Services by Messer, payment shall be made by Messer within sixty (60) days after the end of the month in which Messer receives the correct invoice in the proper form. The invoice shall contain the Purchase Order number in order to be valid. The Supplier may only send the invoice after full delivery of the Goods and Services.

7.4 If the Supplier fails to fulfil any of its obligations under this Agreement, Messer may suspend payment to the Supplier in full or in part.

## **8. Warranty**

8.1 The Supplier represents and warrants to Messer that : (a) the Goods are suitable for the intended purpose and are new, merchantable, of good quality and free from all defects in design, materials, construction and workmanship; (b) the Goods strictly comply with the specifications, approved samples and all other requirements under this Agreement; (c) the Goods are free from any and all liens and encumbrances; (d) the Goods have been designed, manufactured and delivered, and all Services have been provided in

compliance with all applicable laws; (ii) the Goods and Services are provided with and accompanied by all information and instructions necessary for the proper and safe use, and (iii) all information and instructions are provided in the Dutch language; (d) all required licenses in relation to the Goods are valid and remain in place, that the scope of such licenses properly covers the intended use of the Goods and all such licenses include the right to transfer and the right to grant sublicenses; (e) where the Goods or Services incorporate or contain chemicals or dangerous hazardous goods or substances, these are accompanied by written and detailed specifications of the composition and characteristics of such goods or substances and of all laws, regulations and other requirements relating to such goods or substances in order to enable Messer to transport, store, process, use and dispose of such Goods properly and in a safe manner; and (f) the Goods do not breach or infringe any third party domestic or foreign patent, copyright (including portrait rights and moral rights), trade secret, trademark or other intellectual property rights.

8.2 These warranties will not be deemed to exclude the Supplier's standard warranties or other rights or warranties which Messer may have obtained or shall obtain, shall survive any delivery, inspection, acceptance, payment or resale of the Goods, and shall extend to Messer and its customers. Acceptance of, or payment for, all or any part of the Goods or Services furnished under this Agreement will not be deemed to be a waiver of Messer's right to cancel or return or reject all or any part thereof because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranties, or to make any claim for damages, including manufacturing costs and loss of profits or other special damage incurred by Messer.

8.3 The Supplier undertakes to have general liability insurance in place after delivery covering all liability for personal injuries to Messer's employees and any third party, as well as property damage for a minimum amount of EUR 2.000.000,- per claim. The Supplier must provide a copy of his insurance policy and proof of payment of the premium to Messer at first demand.

8.4 The warranty period for the Goods, including installation and assembly, will be two (2) years, commencing on the date Messer first uses the Goods. The expiry of the warranty period is without prejudice to Messer's rights under Agreement or the applicable law.

Any defect notified by Messer to the Supplier within the warranty period will be remedied by the Supplier as soon as possible. Any repairs, replacement and additional costs such as working hours and assembly hours will be borne by the Supplier.

## **9. Non-conformity of Goods or Services**

9.1 If any Goods or Service is defective or otherwise not in conformity with the requirements of this Agreement, Messer shall notify the Supplier and may, without prejudice to any other right or remedy available to it under this Agreement or at law, at its sole discretion: (i) claim a full refund of the price paid under this Agreement; or (ii) require the Supplier to remedy the non-conformance or to replace the nonconforming Goods with Goods meeting the required specifications within 24 hours.

9.2 The Supplier shall bear all costs of repair, replacement and transportation of the nonconforming Goods, and shall reimburse Messer in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs), as well as all consequential damage reasonably incurred by Messer or its customers in connection therewith.

9.3 Supplier shall be liable for all damages resulting from the non-conformity of the Goods or Services delivered.

## **10. Indemnification**

The Supplier shall indemnify and hold Messer, its agents and employees and anyone selling or using any of Messer's products, harmless from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interests, attorney's fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by this Agreement, in any manner caused or claimed to be caused by the acts, omissions, fault, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of the Supplier, or of anyone acting under its direction or control or on its behalf, in connection with the Goods or the Services furnished by the Supplier to Messer under this Agreement.

## **11. Force majeure**

In the event that the Supplier is prevented from performing any of its obligations under this Agreement

for reason of force majeure, the performance of the obligation concerned will be suspended for the duration of the force majeure event. If the circumstance constituting force majeure endures for more than thirty (30) days, starting from the date of the written notice of this event, Messer shall be entitled to terminate this Agreement with immediate effect by giving written notice to Supplier, and upon such notice, the Supplier will not be entitled to any form of compensation. The Supplier shall notify Messer in writing of the occurrence of such a force majeure event within four (4) days of the occurrence of that event. Force majeure on the part of Supplier will in any event not include shortage of personnel or production materials or resources, strikes, breach of contract by third parties contracted by the Supplier, financial problems of the Supplier, of the inability of the Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.

## **12. Suspension and termination**

12.1 Without prejudice to any other right or remedy available to Messer under this Agreement or at law, Messer may at its discretion suspend the performance of its obligations under this Agreement in whole or in part or terminate this Agreement in whole or in part by means of written notice to the Supplier in the event that :

(a) the Supplier files a voluntary petition in bankruptcy or any voluntary proceedings relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding, (b) the Supplier becomes the subject of a petition in bankruptcy or any proceedings relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceedings and such petition or proceedings is not dismissed within thirty (30) days after the filing of such petition or proceedings;

(c) the Supplier ceases or threatens to cease to carry on business in the ordinary course; or

(d) the Supplier breaches any of its obligations under this Agreement or Messer, in its reasonable discretion, determines that the Supplier cannot or will not deliver the Goods or perform the Services as required.

12.2 Messer is not liable to the Supplier by virtue of such termination.

## **13. Confidentiality**

13.1 The Supplier shall treat all information provided by or on behalf of Messer under this Agreement as confidential. All such information shall be used by the Supplier only for the purposes of this Agreement. The Supplier shall protect Messer's information using not less than the same degree of care with which it treats its own confidential information, but at all times using at least reasonable care. All such information shall remain the property of Messer and the Supplier shall, upon Messer's first demand, promptly return to Messer all such information and shall not retain any copy thereof.

In particular, all drawings, plans, models, measurements, tools and all documents provided to the Supplier by Messer remain the property of Messer and shall be returned to Messer upon delivery of the Goods. These documents cannot be provided to a third party without Messer's prior written approval.

In the event of a breach of this confidentiality clause, the Supplier shall pay Messer a non-refundable penalty of 5.000,- Euro per breach.

13.2 The existence and the contents of this Agreement shall be treated confidential by the Supplier.

## **14. Miscellaneous**

14.1 The Supplier shall provide Goods and render Services hereunder as an independent Contractor and not as an agent of Messer and nothing contained in this Agreement is intended to create a partnership, joint venture or employment relationship between the parties.

14.2 The Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under this Agreement without the prior written consent of Messer. Any such pre-approved subcontracting, transfer, pledge or assignment will not release the Supplier from its obligations under this Agreement.

14.3 The rights and remedies reserved to Messer are cumulative and are in addition to any other or future rights and remedies available under this Agreement, at law or in equity.

14.4 Neither the failure nor delay on the part of Messer to enforce any provision of this Agreement will constitute a waiver of such provision or of the right of Messer to enforce each and every provision of this Agreement. No course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of this Agreement. No waiver, consent, modification or amendment of the terms of this Agreement will be binding unless made in a writing

specifically referring to this Agreement signed by Messer and the Supplier.

14.5 In the event that any provision(s) of these General Conditions of Purchase are found invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such finding or action shall not negate the validity or enforceability of any other provisions hereof. Any provision found invalid, unlawful or unenforceable, will be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

14.6 The contractual relationship is exclusively governed by the laws of Belgium and excludes the United Conventions on Contracts for the International Sale of Goods (CISG) and the regulations for conflicts of laws. The exclusive place of jurisdiction for all contractual or related claims between the parties is Antwerp. However, Messer may also choose to bring any action against the Supplier at its registered seat of business.