

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 Group 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 against such deviating general terms and conditions.
- 1.2 MESSER's offers are non-binding unless expressly marked as binding. Written and oral orders and declarations as well as oral side agreements and covenants 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 with 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 performance of an irrevocable and confirmed letter of credit or the receipt of a bank guarantee issued by an internationally recognized bank. 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 with receipt of invoice after performance of the agreed services. If Technical-Services are performed abroad, MESSER may at its discretion request either advance payment of the expected service compensation or performance of a bank guarantee in the same amount.
- 2.3 Unless otherwise stated in our order confirmation the prices are to be understood as ex works prices from our premises in Krefeld, Germany 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 or acknowledged in writing by MESSER.

3. Packaging and Freight

- 3.1 In case MESSER has accepted to send the goods to the customer's premises MESSER will handover supplies properly packed to the carrier. Unless otherwise agreed, all goods will be dispatched uninsured. Costs of freight and freight insurance, if any, will be invoiced to the customer in addition to the ex works prices.
- 3.2 If MESSER has accepted sending 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 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 by the date of their leaving MESSER's premises. In case the parties have agreed on any other place of loading, the risk shall transfer with dispatch from 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 full payment. The customer shall not be entitled to sell or encumbrance the goods before full payment without MESSER's written approval.
- 5.2 In case goods within MESSER's ownership 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 in contradiction to the installation instructions will exclude any warranty for the goods in as far as the goods have been damaged 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 complies 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.

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

8. Liability

- 8.1 MESSER shall be liable under the statutory provisions for any damages caused by wilful intent or gross negligence.
- 8.2 To the extent as MESSER has negligently breached a material contractual obligation of the contract ("cardinal obligation"), the liability shall be limited to damages typically foreseeable. A material contractual obligation in this sense shall be regarded as any obligation on which fulfilment the customer relies upon or is entitled to rely upon as its fulfilment significantly characterizes the contract.
- 8.3 Any further liability of MESSER shall be excluded. In the event of damages caused by simple negligence (German legal term: "einfache Fahrlässigkeit") MESSER shall in particular not be liable to the customer for any damages which have occurred outside the delivery item itself, as well as for loss of use, loss of profit or any other financial loss.
- 8.4 The above named limitations and exclusions of liability shall not apply to damage claims related to personal injuries or property damages to goods mainly used for private purposes which have been caused by MESSER's faulty products.
- 8.5 To the extent that liability is limited or excluded the same shall apply to all legal representatives, employees and auxiliary persons working on behalf of MESSER.

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 expressing 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 bring action against the customer at its registered seat of business.