

General Terms and Conditions of Purchase of Messer Schweiz AG

1. Scope of application

- 1.1 These Terms and Conditions of Purchase shall apply to any procurement of goods and services. They shall also cover assembly, spare parts and maintenance.
- 1.2 Deviating or additional terms and conditions, in particular also general terms and conditions of sale of our suppliers, shall only apply if they are accepted by us in writing.

2. Offer

- 2.1 By means of the inquiry, the supplier is requested to submit a cost-free, economically optimized offer. In the offer, he must adhere exactly to the request and, in the event of deviations, expressly point them out. Any possibilities for improvement shall be indicated separately.

3. Order and partial invalidity

- 3.1 Orders shall only be valid if they have been placed or confirmed in writing by the responsible purchasing department.
- 3.2 If the conclusion of a contract is made dependent on an order confirmation, we shall only be bound if this confirmation does not show any deviation from the order.
- 3.3 We reserve the right to make changes to the scope of delivery or the delivery item. Such changes shall be deemed to be agreed if (i) they do not give rise to any additional costs, (ii) in the event of a cost-relevant change, the Supplier does not send a written and detailed cost breakdown within three (3) working days after receipt of the change notification, or (iii) we confirm the sent detailed cost breakdown in writing.
- 3.4 Should individual provisions of the order be invalid or void, the remaining provisions shall nevertheless remain binding. The parties undertake to replace any invalid provision by a provision which comes as close as possible to the original intention.

4. Prices

- 4.1 Unless otherwise agreed, the set prices per unit shall be deemed to be fixed prices. They include all ancillary costs, such as packaging, insurance, delivery costs, import duties and taxes, i.e. free domicile (DDP according to Incoterms 2020).

5. Deliveries, delivery time and consequences of delay

- 5.1 Delivery shall be due at the place of destination on the agreed delivery date, which shall be deemed to be the fixed date. If the Supplier is unable to accept the stipulated delivery date, it shall notify the Purchaser thereof immediately upon receipt of the order. If the Supplier fails to give such immediate notice, the delivery date (fixed date) shall become binding.
- 5.2 In the event of a delay in delivery, the Purchaser shall be entitled to demand a contractual penalty of 1% of the order value for each commenced week of delay, but no more than 5% of the order value; the right to assert further statutory claims shall be reserved. The Purchaser is obliged to declare the reservation of the contractual penalty at the latest upon payment of the invoice following the delayed delivery.
- 5.3 In the event of a delay in delivery, or if the delivery date is clearly exceeded, the Purchaser reserves the right to withdraw from the contract.
- 5.4 The goods and services shall be delivered or rendered to the specified delivery address with an accompanying delivery bill in triplicate. The delivery bill must contain at least the following information: Order number, complete delivery address, including department and/or contact person, designation of the material and/or article number of the material, number of pieces and weight.

Deliveries and services must always be made during our opening hours. These are in each case from Monday to Friday from 07.30 to 11.45 and 13.15 to 16.00 o'clock. Otherwise, the purchaser must be informed in good time.

Deliveries may only be unloaded within the premises; only such deliveries shall be deemed to have been delivered.

6. Transport, bearing of risk, insurance and packaging

- 6.1 The modes and routes of transport shall be agreed upon.
- 6.2 The supplier shall be obliged to comply with the statutory provisions applicable to transport, if applicable, in particular ADR/SDR and the relevant directives, and to use the necessary equipment.
- 6.3 The transfer of risk shall take place after delivery at the place of destination by signing the delivery bill.
- 6.4 Each consignment shall be accompanied by three delivery bills giving information on the respective contents.

7. Warranty

- 7.1 The Supplier warrants as a specialist that the subject of the contract does not have any defects impairing its value or its suitability for the intended use, that it has the warranted characteristics and that it complies with the prescribed performance and specifications. The subject of the contract must comply with the public regulations at the place of destination. Test reports shall be supplied free of charge at the request of the Purchaser. Unless otherwise agreed, the incoming goods shall not be inspected, which means that the Supplier shall be responsible for all inspection obligations and outgoing inspections.
- 7.2 Upon our request, the Supplier shall assure and prove that it complies with the requirements and conditions of the contract in accordance with the currently valid editions of ISO 9001, ISO 14001 and OHSAS 18001, as well as the valid EU regulations and the UN Global Compact. We reserve the right to verify this within a reasonable scope by means of an evaluation procedure (F self-assessment/audit, etc.) and to terminate the contract without any obligation to pay damages or costs in the event of not only insignificant deviations.
- 7.3 The supplier shall report all deviations of the ordered or delivered goods or ordered or rendered services from our specification or from applicable statutory provisions to the contact person named in the order. This shall also apply to deliveries and services of sub-suppliers of the Supplier.
- 7.4 The warranty period shall be at least 12 (twelve) months from successful commissioning, installation or use. This shall also apply to replacement deliveries and rework.
- 7.5 In urgent cases, defects may be remedied by the Purchaser or by third parties at cost price.
- 7.6 The Supplier shall be liable for its employees, agents and subcontractors as for its own performance.

8. Product liability

- 8.1 The Supplier shall indemnify us against all liability claims for damages arising from product liability. He shall take out and maintain sufficient liability insurance against damage claims.
- 8.2 The Supplier shall provide the required documents at the same time as the price quotation or the delivery of the goods. In particular, clear specifications of the product and the permissible purposes of use must be defined.
- 8.3 The Supplier shall draw the Purchaser's attention to any defects in the Contractual Objects occurring at a later date in order to prevent any recognizable possibility of damage in accordance with the applicable Product Liability Act at the place of destination, even after the Contractual Object has been put into circulation.
- 8.4 The Supplier, as a specialist, shall immediately draw the Purchaser's attention to new laws or findings in the field of product liability in the case of further orders or ongoing deliveries.

9. Confidentiality

- 9.1 All information, drawings, etc. which the Purchaser provides to the Supplier for the manufacture of the subject of the contract may not be used for other purposes, reproduced or made available to third parties.
- 9.2 The Supplier shall also impose these obligations on its own employees, agents and subcontractors and shall be responsible for compliance therewith. This shall also apply to assembly and maintenance personnel.
- 9.3 Technical documents of the Supplier or its sub-suppliers shall be treated confidentially by the Purchaser. They shall remain the intellectual property of the Supplier or its sub-suppliers.

10. Right of inspection

- 10.1 The Purchaser shall be entitled to inspect the progress of the work. This shall neither change nor restrict the Supplier's obligation to fulfill the contract. The Purchaser may carry out quality and terminal audits at the Supplier's premises or at the premises of its sub-suppliers after prior notification.
- 10.2 In addition to these General Terms and Conditions of Contract, the safety instructions of the Purchaser must also be followed when working at the Purchaser's premises.

11. Invoices and certificates

- 11.1 Invoices shall be submitted separately for each order in duplicate, verifiable for us, stating the order number and the customer.
- 11.2 Payment shall generally be made within 45 days. The periods shall commence upon receipt of the invoice or, if the goods arrive after the invoice, upon receipt of the goods, but in no case before the agreed date of receipt of the goods.
- 11.3 The Supplier shall send all certificates and testimonials to the following address: Zertifikate-at.ch@messergroup.com.
Certificates for medical gases shall be sent to the following address: batchrelease.ch@messergroup.com.

12. Place of performance, applicable law and jurisdiction

- 12.1 The place of performance for delivery and payment shall be the Purchaser's place of business, in this case Lenzburg, Switzerland, or the place of destination specified in the order.
- 12.2 Swiss law shall be applicable.
- 12.3 The place of jurisdiction shall be the Purchaser's place of business, currently Lenzburg, Switzerland.

13. Data protection

- 13.1 The Purchaser processes personal data provided by the Supplier. Personal data is information concerning a living individual who can be identified by the data.

The personal data provided by the Supplier shall be used:

- To accept the agreed goods and to accept the agreed services,
- For payment of invoices, account maintenance, inventory management, statistical analysis and internal accounting,
- For quality and credit checks

For this purpose, the Purchaser shall also transmit personal data to data processing institutions and affiliated companies acting on behalf of the Purchaser or to licensed business information services or lawyers.

Insofar as this is required by law or in the interests of public safety and order from the Purchaser's point of view, or the Supplier has consented to this, the Purchaser shall also make the personal data available to government authorities, public bodies or third parties. Further information on the processing of personal data is contained in Messer's data protection notice, which shall be made available to the supplier at any time upon request and which is available on Messer's website (www.messer.ch/dataprotectionnotice) in its current version at any time.

14. Miscellaneous

- 14.1 The General Terms and Conditions of Purchase have been drawn up in four (4) language versions, German, English, French and Italian. In the event of any discrepancies between the language versions, the German version shall prevail.

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