



GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS BY MESSER POLSKA SP. Z O.O.

§ 1

Introductory provisions

1. Messer Polska Sp. z o.o. – the entity ordering goods and/or services or purchasing goods and/or services, hereinafter referred to as "MP", with its registered office in Chorzów, ul. Maciejkowicka 30, 41-503 Chorzów, which is entered into the National Court Register, kept by the District Court in Katowice, VIII Commercial Division under the registration number 0000064153, Tax Identification Number (NIP) 851-010-93-26, BDO number (*Product, packaging and waste management database*): 000006836, level of share capital: PLN 54,107,900.00.
2. These General Terms and Conditions of the purchase of goods by Messer Polska Sp. z o.o., hereinafter referred to as the GTC, apply to all agreements on the supply of goods, agreements on the sale of goods and agreements on the provision of services to Messer Polska Sp. z o.o., as well as to any other agreements which result in the ownership right to any item or any other proprietary right being transferred to MP.
3. These GTC constitute an integral part of the order placed by MP.
4. The detailed provisions contained in the agreement between MP and the Supplier, as well as the content of a written order prepared by MP shall prevail over the GTC. No other terms and conditions than those specified in the agreement, the order or the GTC, shall determine the legal relationship between MP and the Supplier, unless explicitly confirmed by MP in writing. MP shall not be bound by any standard contractual terms or any other terms and conditions provided or applied by the Supplier. Even if any such standard contractual terms are supplied to MP, they shall not be treated as the Supplier making an offer of sale / supply / provision of services on the terms and conditions specified by the Supplier.

§ 2

Definitions

Any reference in these GTC to:

1. **Supplier** – this shall mean a natural person, a legal person or an unincorporated organizational unit, including a commercial law company providing services and/or supplying / selling goods to MP.
2. **Goods** – this shall mean any chattels ordered by MP from the Supplier in accordance with the quantitative, qualitative and type specification, including the ownership right to any item or any other proprietary right.
3. **Services** – this shall mean any services, as well as any other actions, the performance of which was ordered from the Supplier by MP.
4. **Parties** – this shall mean the Supplier and MP.
5. Any reference in these GTC to "Goods" also refers respectively to a "Service".

§ 3

Orders

1. No offer made by the Supplier shall give rise to any costs or liabilities arising for MP, even if the offer is made at MP's request.
2. Any offer made by the Supplier must fully respond to MP's enquiry. The Supplier is required to clearly indicate any differences between the offer and MP's enquiry.
3. Goods shall be supplied / services shall be provided on the basis of an order prepared by MP in writing (including by fax or e-mail), an integral part of which shall be these GTC.
4. Whenever these General Terms and Conditions refer to the written form of declarations of intent expressed by MP, this shall mean declarations that do not require signatures of persons duly authorized to act on behalf of MP in order to be valid. Statements made in electronic or printed form shall be considered MP's declarations of intent if they contain an annotation confirming that they do not require a signature of a person(s) representing MP in order to be valid.
5. An order shall include at least the following components: date of order and order number, type of goods/service ordered with a detailed specification of the type(s) of goods/ service, the net price, the place to which the goods should be delivered / where the service should be performed, the basis for delivery, the timing of the delivery of the goods to MP / the performance of the service, the form of payment and payment term.

Furthermore, if required, the order shall also specify other elements, including in particular the method and type of packaging, approvals and certificates.

6. Unless specified otherwise in the order, an order should be accepted by the Supplier within 7 days from the date it is placed. If the Supplier fails to accept the order within this deadline, the order shall be deemed to have not been placed.
7. If the order is accepted, the Supplier is required to immediately confirm the terms and conditions of supply / provision of service in writing. By confirming order acceptance, the Supplier accepts the terms and conditions of supply / provision of the service contained in the order. Until MP receives the order confirmation, MP may withdraw from an order without any consequences. The confirmation of order acceptance must be signed by the Supplier's duly authorized representatives.
8. An order placed by MP may only be accepted without reservations, unless MP agrees in writing to be bound by terms and conditions other than those contained in the order, whereby such agreement must be given explicitly and in writing, otherwise being null and void.
9. The supply of all or any part of the goods / services ordered by the Supplier is also deemed to be the acceptance of the order without reservations on the terms and conditions specified in the order and in the GTC.
10. If a Supplier, who is a sole proprietor or a partner in a civil partnership, is married, he is required to present MP with written consent to the contracting of a liability from his spouse within 7 days of the date of acceptance of the order in the manner described above. Otherwise, MP will be entitled to withdraw from the agreement within 7 days of the passage of the deadline for presenting this consent.

§ 4

The supply of goods and the provision of services

1. The goods shall be supplies / services shall be provided in accordance with the order placed by MP.
2. MP shall specify the persons authorized to accept specific goods or services.
3. Goods / service shall be delivered at the time and to/at the place specified in the order, using the Supplier's own means of transport.
4. The Supplier is required to immediately inform MP of any circumstances which may affect the punctual supply of the goods / provision of the service, especially if there is any delay. The Supplier shall then specify a new delivery term, which shall be binding after it is confirmed in writing by MP. The foregoing shall not release the Supplier from liability for the failure to perform or the improper performance of an obligation.
5. The Supplier shall send information by fax no later than 7 days before the agreed date for supplying the goods / providing the service, specifying the order number, the method and date of dispatch and unloading instructions.
6. Unless specified otherwise in MP's order, partial supplies require MP's written consent.
7. The Supplier bears the risk of loss or damage of the goods and is fully responsible for the goods until they are supplied to the place specified in the order and the certificate of receipt of the goods is signed by a person authorized by MP.
8. The Supplier may fulfil its obligation using third parties only with MP's consent, which shall be granted in writing, otherwise being null and void.
9. The Supplier declares that the goods / services do not breach any third party industrial property rights and, in particular, regarding patents, trademarks, copyrights or any other similar rights. Should any entity raise a claim against MP for a breach of these rights, the Supplier shall cover all of MP's potentially arising costs and losses, including, in particular, any awarded damages and costs of legal services.
10. Any legal constraints related to the transfer of ownership of goods and/or services to MP (including the reservation of ownership title) shall be deemed absolutely invalid, even if there is no explicit objection from MP.
11. Any models, designs, drawings, documents, technical documentation or other assets arising in connection with the fulfilment of the order and any intellectual property rights related thereto shall become MP's property no later than at the time of the transfer of ownership of the goods / services to MP. The Supplier shall deliver the foregoing to MP forthwith at MP's request. Furthermore, the Supplier shall return to MP any documents and/or other materials provided by MP for making the supply forthwith on completion of the supply.

§ 5

Proof of supply / performance of the service

1. Unless otherwise specified in the order, goods / the services shall be supplied on a DDP basis to MP's warehouse specified in the order, in accordance with Incoterms 2010 at the Supplier's risk and cost.
2. The goods / services will not be deemed delivered if any documents, including all the required documentation and certificates are not be delivered to MP. All documentation must be delivered together with the goods, no later than on the date of supply.

3. Separate documentation shall be prepared for each of the goods / services.
4. A certificate of receipt of the goods / completion of the service issued by MP in accordance with the provisions of this paragraph, shall constitute proof of fulfilment of the order. The certificate of receipt of the goods / fulfilment of the service shall be prepared in duplicate, one copy for the Supplier and one for MP.
5. The signature of the bill of lading by MP's representative shall not be a substitute for the receipt of the goods / fulfilment of the service, and is not equivalent to confirming that the goods / services have been accepted without reservations and/or have been supplied in compliance with the order.
6. The certificate of receipt of the goods / performance of the service referred to above shall contain at least the following data: the Supplier's name and address; the order No.; the person placing the order; the type of goods / service; the quantity.
7. In the event of any doubts regarding the proper performance of the obligation by the Supplier, at MP's request, the Supplier shall present the following at the Supplier's exclusive cost: the analyses, tests, models, certificates of conformity, proof of inspection of the material, or any other required documents and/or shall take steps to demonstrate that the supply is in compliance with the order. Until conformity of the supply with the order is confirmed, the supply is deemed not effected or the service is not fulfilled.
8. The goods / fulfilment of the service shall be accepted by a duly authorized representative of MP.
9. The goods / service shall be checked by MP upon receipt. The certificate of receipt of the goods / fulfilment of the service prepared after such an inspection shall constitute the only evidence that the goods / services satisfy the terms and conditions of the order, subject to clause 10 below. The Supplier has the right to take part in such an acceptance procedure at its own expense, subject to giving prior notice to MP no later than on the date of dispatch of the goods.
10. In the absence of ability to inspect the goods / services at the time of delivery, MP shall report its reservations and/or any existing irregularities forthwith after they are discovered.
11. The sole basis for raising the VAT invoice will be the proof of acceptance of the goods / services prepared after the aforementioned inspection without any reservations from MP.
12. MP may refuse to accept a surplus of goods in excess of the quantity specified in the order. The Supplier shall collect any excess Supplier at its sole expense and with the use of its own transport. MP shall then notify the Supplier where the goods are left for collection and the timing of their collection by the Supplier. If the Supplier fails to collect the goods within the deadline specified by MP, MP will be entitled to place the goods in storage at the Supplier's expense and risk, of which MP shall notify the Supplier.

§ 6

Payments for goods supplied or services provided

1. MP shall only accept an invoice if the Supplier has supplied the goods / completed the service in accordance with the order, and has delivered the required documentation, and only after MP signs the certificate of acceptance of the goods / completion of the service in accordance with the provisions of § 5.
2. Apart from the information required by the applicable provisions of the law, the order number and the name of the person who ordered the given goods or service should be included on each invoice.
3. The Supplier shall advise MP in writing of any changes to its bank account. The lack of this information shall not result in any negative consequences for MP; in particular, it cannot be a reason for an obligation to arise for MP to pay statutory default interest.

§ 7

Price

1. The price of the goods / service shall be agreed upon by the Parties in writing and shall be confirmed in the order.
2. If the price is denominated in a foreign currency, payment shall be made in Polish zlotys after conversion into Polish zlotys using the mid exchange rate quoted by the National Bank of Poland on the invoice date.
3. Unless otherwise specified in the order, the price shall be fixed. If reference is made to the Supplier's price list, the price as at the date on which the order is placed shall be effective. If the Supplier reduces its prices, the lower price shall apply.
4. The price referred to above is a net price, to which VAT will be added at the applicable rate.
5. The price includes all costs related to the delivery of the goods to / performance of the service at the place specified in the order, in particular, the cost of dispatching, packing, shipping and insuring the goods in transit, as well as the costs of plans, models, dies etc., operating instructions and costs of training of an appropriate number of MP's employees.
6. Unless the Parties agree otherwise in writing and provided that the invoice is delivered within seven days of the invoice date, the payment term for the goods supplied / service performed shall be 30 days from the invoice date, on condition that the invoice is correct in substantive and formal terms.

§ 8

Quality of goods supplied / services performed

1. The Supplier guarantees that the goods it supplies and the services it provides are its exclusive property and are free of any encumbrances. Furthermore, they shall be produced in accordance with the latest standards, in particular in compliance with the Polish regulations and standards, the current state of technical knowledge and with special care. The goods and the services shall have all materials approvals and declarations of conformity required by law and shall satisfy the conditions of safe use (CE), which will be confirmed by the relevant documents. The goods shall be new, of the highest quality, and their characteristics shall guarantee appropriate performance, accuracy and correct and safe operation, ensuring their long-term use.
2. The Supplier warrants that its goods and services are suitable for use in MP's business.
3. MP is entitled to statutory warranty for physical defects in accordance with the applicable provisions of the law. The warranty period is one year from the completion of the service / acceptance of the goods.
4. The Supplier warrants that it obtained all permits, certificates, approvals and other documents required for correctly and lawfully conducting business which are necessary to properly perform their obligations with respect to MP.

§ 9

Quality guarantee of the goods / services

1. The Supplier shall provide MP with a warranty on the quality, suitability and reliability of the services / goods it supplies for a term of two years from the date of completion of the service / acceptance of the goods, unless the Parties agree on a longer term, in writing, otherwise being null and void. The following provisions are respectively applicable to the Services.
2. All costs related to the MP exercising its rights under the warranty shall be borne by the Supplier.
3. The warranty document shall be provided to MP no later than at the time of delivery of the goods / completion of the service, with the reservation that the warranty document shall not specify the conditions of the warranty provided in a manner which is less advantageous than described in these GTC, unless MP agrees to less advantageous conditions explicitly and in writing, otherwise being null and void. The provisions of the warranty document, which is less favourable than described in these GTC, and which are not agreed upon in the above form ineffective with respect to MP. The Supplier's failure to present the guarantee document shall not, in any way, does not repeal its warranty obligations with respect to MP. In such a case, the warranty conditions described in these GTC shall be fully applicable.
4. During the warranty period, as a part of the obligation to fix physical defects in the goods, as referred to above, the Supplier shall fix all failures or defects which have appeared in the operation of the goods that were delivered free of charge and shall replace any parts that became defective during the warranty period free of charge, except for the consumables (fuses, batteries, wires, power supplies).
5. The Guarantor – Supplier – shall, according to MP's choice, fix physical defects in the goods (repair) or deliver goods which are free of defects, within no longer than 7 days from the date of the written notice from MP, if the defects appear during the term specified in the warranty.
6. In the event of a failure appearing, or a defect being found in the functioning of the goods, the Supplier will proceed to fix them within 2 days of the date on which MP notified the Supplier of the failure or defect.
7. The defect/failure shall be fixed at the place where the goods were located at the time it appeared. If this is impossible, the Supplier shall transport the goods at its own expense and risk to the place where the defect / failure can be fixed. Immediately after the defect / failure is fixed, the goods shall be transported back to the place where the defect appeared, at the Supplier's cost.
8. The Supplier undertakes to fix failures or defects within 5 days of the date on which it should have started to fix them. If, for reasons which are beyond the Supplier's control, the defect or failure cannot be fixed within the deadline specified in the foregoing sentence, the Supplier shall immediately notify MP about this in writing, proposing another deadline for fixing the defect or failure, which however shall not exceed the next 14 days from the moment when the defect or failure was originally reported. This deadline shall be binding after its prior written acceptance by MP.
9. If the Supplier fails to fix a failure or defect within the prescribed period or incorrectly fixes the failure or defect, MP may – at its sole discretion – either make the necessary repairs at the Supplier's cost and liability, while simultaneously retaining its right to the warranty, or withdraw from the agreement with immediate effect. MP is entitled to exercise the above right to withdraw from the agreement within 45 days of the date of expiry of the deadline for the Supplier to fix the failures/defects on the principles described in clause 5 or 8, or within 45 days from the date on which MP learns that the defect / failure has been improperly fixed by the Supplier.

10. In the event of a delay in fixing the failure or defect during the warranty period, the Supplier shall pay MP a penalty towards possible liquidated damages at the amount of 2% of the net value of the agreement for every day of delay from the deadline set for fixing the failure or defect.
11. The warranty period shall restart after the physical defect is fixed (repaired).
12. The Supplier shall make every effort to ensure normal operation of MP's facilities and avoid any disruption of work and/or production. Any additional costs/losses which may arise from the disruption of the work and/or production shall be fully refunded by the Supplier to the extent to which it contributed to such costs being incurred.

§ 10

Penalties for the failure to fulfil / improper fulfilment of orders

1. If the Supplier fails to fulfil an order or is unable to fulfil an order within the agreed deadline, MP may, at its sole discretion, cancel the order (in whole or in part), demand the substitute fulfilment of the supply (in whole or in part) or withdraw from the agreement. MP is entitled to exercise a right to withdraw from the agreement within 45 days from the date on which the deadline passed within which the order should have been fulfilled or within 45 days of the date on which MP learns about the inability to fulfil the order within the agreed deadline. If MP withdraws from the agreement, it will be entitled to charge the costs of substitute fulfilment of the order by an alternative Supplier. The foregoing shall not release the Supplier from liability for the failure to perform or the improper performance of an obligation.
2. The Supplier shall pay a penalty towards possible liquidated damages at the amount of 2% of the order value per day of delay in the fulfilment of the order.
3. If the goods supplied / service provided does not satisfy the terms specified in the order, MP may, at its sole discretion, either withdraw from the agreement or demand a price reduction or demand the supply of goods / services which fully reflect the order. In the event of the demand to supply goods / services which fully reflect the order, MP shall place the goods at the Supplier's disposal and the Supplier shall be required – depending on MP's demand – to either supply goods which comply with the order, covering the all costs of transport in both directions, or it shall not charge MP for such a supply and shall cover all losses and/or costs incurred by MP. If MP exercises the right to withdraw from the agreement, it is entitled to exercise this right within 45 days of the date of finding that the goods / services do not satisfy the conditions specified in the order.
4. If the Supplier provides services defectively or services which do not comply with the order, MP shall demand the Supplier to change the method of performance of the services. If, after 10 days of service of MP's demand as above, the Supplier continues to provide services in a manner which is inconsistent with the order, MP will be entitled, at its sole discretion, to withdraw from the agreement and/or contract for the further performance of the services to another contractor at the Supplier's expense and risk. MP is entitled to exercise the right to withdraw from the agreement within 45 days of the unsuccessful passage of the 10-day deadline set in the demand to change the method of providing the services.

§ 11

Non-disclosure

1. The Parties undertake not to disclose any confidential information which comes to their possession during their collaboration.
2. The non-disclosure obligation referred to above shall be imposed on the Parties both during the period of their business collaboration and indefinitely thereafter.
3. In particular, the parties understand confidential information to be, in particular, a trade secret is understood to be any of the enterprise's technical, technological or organizational information or other information with commercial value, which is not disclosed to the public, with respect to which MP has taken the necessary steps to secure its confidentiality. In addition, the parties also understand confidential information to mean the prices of the goods, the value of the transactions between the parties, as well as any information and/or documents received from MP which are necessary to properly make the supply.

§12

Compliance, Anti-Corruption and Anti-Bribery

1. The relationship between MP and the Supplier is based on high standards of integrity determined by the applicable laws and regulations. MP expects all its suppliers helping to fulfil this commitment by actively supporting and respecting Messer's values and principles laid down in Messer's Code of Conduct which

outlines those key principles that Messer deems to be the most relevant its business relationships. The Messer Code of Conduct is available on Messer's website.

2. Supplier ensures (i) not to tolerate any form of and (ii) not to engage in any form of corruption or bribery, including any facilitation payment or other form of benefit conferred on any government official, for the purpose of influencing decision making in violation of law.
3. Supplier agrees that, at all times in connection with and throughout the course of the contract, (i) he will comply with, and (ii) will take reasonable measures to ensure that his subcontractors, agents or other third parties subject to his control or determining influence will comply with the principles laid down in Messer's Code of Conduct and the applicable laws and regulations with regard to:
 - mandatory labour conditions
 - export and trade sanctions
 - environment protection
 - anti-trust and cartels
4. MP prefers a continuous improvement approach with its suppliers to achieve compliance to the key principles of its Code of Conduct. If cases when any non-compliance situations are found, MP and Supplier will develop ways and means to correct the non-compliance, and afterwards the Supplier will provide MP with the commitment to immediately correct the given non-compliance.

§ 13

Final provisions

1. MP hereby declares that it has the status of a large enterprise in the meaning of Article 4c of the Act on counteracting excessive payment delays in commercial transactions of 8 March 2013 (Journal of Laws of 2020, item 935 as amended).
2. No reference to the Supplier's offers or proposals shall mean approval or acceptance, in whole or in part, of the terms contained in such documents, unless such terms have been explicitly accepted in an order placed by MP.
3. The Supplier shall comply with all internal regulations and procedures which are applicable at MP's plant. The Supplier is solely responsible for becoming familiar with such regulations and procedures.
4. Any amendments to the legal relationship binding the Parties and to these GTC shall be made in writing, otherwise being null and void.
5. If any provisions of these GTC and/or an agreement and/or an order become invalid, the validity of the entire legal relationship binding MP and the Supplier shall not be affected, unless one of the Parties would not have entered into the agreement without these provisions and specifies and justifies in writing that the invalid or ineffective provisions are provisions which protect its legitimate interests and, despite having acted with due care, it could not have foreseen losing such protection. If any provision of these GTC and/or an agreement and/or an order is found to be invalid or ineffective with respect to at least one of the parties, the Parties hereby resolve to undertake the following actions, in the order specified below:
 - a) they shall take steps in good faith to amend the wording of these GTC and/or the agreement and/or the order so that the invalid or ineffective provisions become effective;
 - b) if such amendment is not possible, the parties, acknowledging the invalid or ineffective provisions as being excluded from the legal relationship between them, shall perform the remaining provisions of these GTC and/or the agreement and/or the order in accordance with their wording and shall agree on such new provisions which will enable them to fulfil their obligations in accordance with their objective and the joint intentions of the parties which they pursued at the time of concluding the agreement, while, with respect to the protection of their legitimate interests, they shall agree on such new provisions which will offer them the ability to apply equivalent and comparable measures of protection and security;
 - c) if no new provisions of these GTC and/or the agreement and/or the order can be agreed upon on the principles specified in item b), the respective provisions of the law shall apply in place of the invalid or ineffective provisions.
6. Matters not provided for herein shall be governed by the applicable provisions of the law. The legal relationship between the parties shall be governed by Polish law. Any disputes shall be settled by the court of general jurisdiction over the place of MP's registered office.
7. The assignment of any receivables arising under the legal relationship between the parties requires the consent of the other Party, given in writing, otherwise being null and void. MP shall have the right to assign its rights to an entity from the Messer Group without being required to obtain such consent.
8. Pursuant to Article 6 of the United Nations Convention on the International Sale of Goods of 11 April 1980, the parties exclude the application of the Convention to the legal relationship between them.