

## **GENERAL CONDITIONS OF PURCHASE AND PROVISION OF SERVICES**

### **1- Definitions**

In this document, "Supplier" shall mean the entity from which the order is placed and "Messergas - Distribuição de Gases Industriais, Unipessoal Lda" (also referred to as "Messer") shall be the "Buyer" or "Customer" who acquires the goods or contracts the service, as the case may be. The general conditions specified below shall be the only ones governing operations between the Supplier and Messer, unless otherwise agreed in writing or unless they are reflected in the particular conditions of the order.

These General Conditions of Purchase and Provision of Services (the "General Conditions") replace and prevail over the general conditions prior to this date, as well as any previous agreements in force between the parties (unless expressly agreed otherwise) and any other general conditions of the Supplier, regardless of the date of their creation or adoption.

### **2 - Offers**

With regard to quantities, technical specifications and services, the Supplier must strictly comply with the contents of the quotation request. In the event of any discrepancies, these must be expressly notified to Messer. The quotation is not binding and is free of charge for Messer. All documentation that has been made available to the Supplier to facilitate the execution of the tender must be returned with the tender.

The Supplier is informed that one of the criteria followed by Messer in evaluating the purchase of the material or the contracting of the service requested is energy saving.

### **3 - Orders**

Only orders placed in writing shall be considered valid. Orders placed in any other form will only become valid when Messer has given its written consent.

The Supplier shall return the duplicate of the order within fifteen (15) days from the date of the order, whenever Messer so requests. The commencement of the execution of the supply or provision of services contained in the order prior to the fulfillment of the aforementioned requirement implies the automatic and unreserved acceptance of all the stipulations contained therein.

The Supplier's acceptance of the order, expressly or tacitly, implies the Supplier's automatic waiver of the application of any other general conditions (even its own) and the application of these general conditions of Messer, unless otherwise agreed in writing or unless these are reflected in the particular conditions of the order.

### **4 - Prices**

The prices indicated in the order are final and include all costs and expenses resulting from the execution of the order, including, but not limited to, packaging costs, transportation, insurance, among others, until delivery at the destination indicated in the order, or until the provision of the service. It is understood that the transport insurance, borne by the Supplier, covers at least the total value of the goods transported, Messer being exempt from any incident or cost arising therefrom.

Invoices containing any changes to the prices indicated in the order will not be accepted unless Messer expressly authorizes this in writing prior to the date of issue of the corresponding invoice.

The supplier is responsible for any difference in freight, postage and other charges resulting from failure to comply with the shipping instructions specified in the order.

### **5 - Delivery time**

Delivery conditions and deadlines are considered essential and therefore binding and obligatory for

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the Supplier. The delivery time is that indicated on the order. If the Supplier considers that it will not be able to carry out the provision of services or the supply, in whole or in part, within the established timeframe, it must immediately notify this in writing, indicating the causes and duration of the delay, without this exempting it from any liability.

During the period of delay, Messer shall be entitled to obtain the supplies or the performance of the services from another supplier, upon prior notification to the Supplier, and shall be entitled to reduce the quantity of supplies specified in the order or the reduction of the services not performed to the same extent, without waiving the right to claim compensation for any damages incurred. The Supplier shall be liable for all damages resulting from a delay in the time agreed in its contractual relationship with Messer, including additional transportation costs, restart costs or additional costs for the purchase of the ordered products from third parties or for the provision of services.

In the event of failure to meet the deadline without Messer's express acceptance, Messer reserves the right, at its discretion, to:

- a) Consider the order cancelled, in whole or in part, simply by communicating this decision in writing to the Supplier; and/or
- b) Apply a penalty of two percent (2%) of the value of the order not delivered on time for each week of delay, without this penalty exceeding ten percent (10%) of the value of the order.

An order shall not be deemed to have been delivered until Messer has received the goods and all documents necessary for final acceptance of the goods or the service has been completed to Messer's satisfaction.

In the event of early or excess deliveries by the Supplier in relation to that indicated in the order

or quotation, Messer may choose either to return the early or excess quantities, or to accept them and deposit them in its warehouses. In the first case, the Supplier shall bear the risks and costs of the return. In the second case, acceptance shall not imply any modification of Messer's payment obligations, which shall become effective in the terms and amounts provided for in the order or quotation.

### 6 - Packaging, marking and shipping

All products supplied by the Supplier shall be packaged, marked and shipped in accordance with Messer's particular requirements, as well as in compliance with all laws, rules, regulations, orders, conventions, ordinances or standards applicable in the country or countries of destination or in relation to labeling, marking and packaging. In any event, and without prejudice to any guidelines or requirements that may be issued by Messer, the Supplier shall guarantee the integrity and safety of the goods and products to be supplied, establishing for this purpose all appropriate measures to guarantee the shipment of the goods and products subject to the order in conditions of quality and in accordance with the highest market standards. The Supplier shall make available all necessary information (including written documentation and electronic transaction records) to enable Messer to comply with its customs obligations, origin marking or labeling requirements and local content origin requirements, if applicable. Unless otherwise agreed between the parties, or otherwise stated in the order, the export licenses or authorizations required for export shall be the responsibility of the Supplier, in which case the Supplier shall provide the information necessary to enable the Supplier to obtain the required licenses or authorizations.

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### 7 - Delivery of goods

The goods will be delivered to the place indicated in the order, without packaging (not including the cost of packaging and with postage paid by the Supplier. All packages must be labeled or tagged with an indication of their contents, order number, destination section, location and other Messer references.

The goods must be accompanied by a delivery note specifying their characteristics, the order number and Messer's details and, where applicable, their detailed breakdown into boxes or any other packaging, as well as the number of packages and their gross and net weights, as well as any other document necessary to effect final acceptance.

The Supplier must guarantee the traceability of the Products and their components and associated materials, where applicable, as well as all operations (transport, process, maintenance, etc.) carried out during the life of the product. The goods must always be accompanied by the corresponding documents, such as plans, certificates, guidelines, etc., requested either in the order or by virtue of the applicable regulations. Without these documents, the acceptance process will not begin.

### 8 - Receipt of goods or services

Goods: Delivery of the goods shall be made at the place of destination and in accordance with the conditions stipulated by the parties and shall be received by Messer, or by the consignee designated by Messer, with the indication "provisional receipt" on the delivery note. Messer shall inspect the goods and the corresponding documentation. If, within fifteen (15) days from the date of provisional acceptance, Messer has not made any express observations, the acceptance shall be deemed final, without

prejudice to the provisions of the guarantee conditions.

Services: The services shall be provided on site and in accordance with the conditions stipulated by the parties and shall only be deemed completed and in conformity after payment of the price by Messer to the Supplier, without prejudice to the stipulations of the guarantee conditions.

### 9 - Transfer of ownership and risks

The transfer of risk, as well as the ownership of the goods, products and results derived from the provision of services subject to the order to Messer, occurs at the time of their actual delivery and after written acceptance by Messer, unless otherwise agreed in writing.

### 10 - Guarantees

The Supplier warrants to Messer, for a period of twenty-four (24) months after final receipt, that the products or services supplied under any order:

- (a) are free from defects in manufacture, materials or workmanship.
- (b) They comply with the specifications and are fit for purpose.
- (c) They are top quality.

The Supplier undertakes, upon prior notification, to promptly replace, repair or correct, at its own expense and risk, any materials or services that do not comply with the above requirements or have errors, faults, deficiencies, malfunctions and/or incompatibilities with the order or applicable legal rules and regulations, providing Messer with a detailed occurrence report and bearing all costs thereof. In the event of non-compliance with this obligation, Messer may replace, repair or correct such materials or services at the Supplier's risk and expense.

Supplier may not make any modifications (i) to the goods and products (including engineering,

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design, pricing, etc.), (ii) to the manufacturing process, (iii) changes to subcontractors or suppliers, etc. without Messer's prior consent. Modifications made without Messer's prior consent shall be deemed to have been made unilaterally by Supplier and shall not be valid and therefore unenforceable, nor may they have any impact on the Price.

### 11 - Invoicing and payment

In order to be accepted without incident, invoices must meet the following conditions:

- a) All of the Supplier's and Messer's mandatory tax data must be provided.
- b) They will be sent to the following address: " Avenida D. João II, n.º 20, 1º andar- 1990-095, Lisboa, Portugal or, in the case of an electronic invoice, to the address indicated on the Order: [invoice.pt@messergroup.com](mailto:invoice.pt@messergroup.com) or [signature.pt@messergroup.com](mailto:signature.pt@messergroup.com) . It is essential that delivery notes are valued and that the order number is indicated on both delivery notes and invoices.
- c) In order to collect any advances agreed upon, the corresponding partial invoices must be sent, accompanied by the guarantee, if applicable.
- d) Messer reserves the right to defer, to the extent appropriate, payment of invoices that are received by Messer more than fifteen (15) days after the date of the invoice itself.
- e) Under no circumstances may an invoice dated before the final receipt of the supply or service be accepted.
- f) The invoice must be accompanied by a copy of the delivery notes received or indicate their reference.
- g) Payments will be made on the payday established by Messer.

In the event of non-compliance with any of the above requirements, Messer reserves the right to

return the invoice and, consequently, to postpone the due date of the invoice.

### 12 - Civil and labor liability

In the event that the purchase of goods or provision of services governed by these conditions involves the Supplier's personnel entering Messer's premises, said personnel must, prior to entering, justify their employment relationship with the Supplier and have their social security and tax status duly regularized. This requirement will be indispensable for issuing the corresponding permits at the factory before work begins.

The Supplier shall be responsible for complying with current legislation on Occupational Health and Safety, providing its staff with the elements established by said legislation in each case and adopting the measures that each situation requires.

Likewise, the work carried out by the Supplier on the factory premises must be insured by civil liability insurance taken out by the Supplier, with a minimum cover of three hundred thousand euros (€300,000.00).

### 13 - Compensation

Messer, as well as any of the companies that make up the Group to which it belongs in accordance with the provisions of Articles 488 et seq. of the Companies Code, may deduct or offset any amount owed to the Supplier by any of the said companies against any amount owed by the Supplier to any of the said companies. In this regard, Messer reserves the right to set off any net, due and payable debt against any net, due and payable debt it owes to the Supplier by directly offsetting the applicable amounts against the invoices payable to the Supplier.

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### 14 - Force majeure

For the purposes of this clause, "Force Majeure" events include: wars (declared or not); serious disturbances; total strikes; lockouts; health pandemics (declared by the competent international body); embargoes, omissions or delays in the action of a government authority; extraordinary natural events; or any other unforeseeable or unavoidable circumstance that alters the conditions of the obligations provided for in these general conditions. Notwithstanding the above, and for the purposes of clarification, events of Force Majeure shall not be considered to be those which were already known to the parties and existing on the date of acceptance of the order by the Supplier, and therefore the provisions of this Clause shall not apply to them.

Neither party shall be liable for failure to comply with its obligations, provided that such failure is due to an event of Force Majeure duly notified to the other party. The party affected by the Force Majeure event must notify the other party as soon as possible, indicating the facts it is facing, the estimated duration of the Force Majeure event and the measures it will take to mitigate its effects. If the Force Majeure event affecting the Supplier extends beyond twenty (20) calendar days after Messer has been informed, Messer may terminate the order, in whole or in part, by registered letter with acknowledgment of receipt and provided that it has not been possible to reach a joint solution to resolve the problems caused by the Force Majeure event. For as long as the Force Majeure event occurs, the parties may adopt the measures they deem appropriate to avoid the damage caused by the Supplier's inability to fulfill its obligations.

### 15 - Requirements

All supplies and services provided must comply with the regulations and legal provisions established for this purpose, and the

corresponding documentation must be provided to justify this.

### 16 - Corporate social responsibility and compliance with regulations

1. Messer has a Compliance Management System ('*Compliance Management System*') that reflects its commitment to quality, socially responsible work in strict compliance with current legislation, as well as to reducing the risk of committing crimes. This commitment is implemented through its Code of Conduct and its Code of Conduct for Business Partners, as well as through the various applicable policies available on the website <https://www.messer.pt/compliance>.
2. In line with these principles, Messer requires its suppliers to act in accordance with the same ethical, responsible and legal standards. The Supplier declares that it has read and expressly agrees to comply with Messer's Code of Conduct and the Code of Conduct for Business Partners by accepting these General Terms and Conditions of Purchase.
3. The relationship between Messer and the Supplier is based on high standards of integrity determined by applicable law. The Supplier undertakes to:
  - Not tolerate or participate in any form of corruption or bribery, including facilitation payments or any other type of benefit offered to public officials or third parties to unlawfully influence decisions.
  - Comply with and enforce compliance by its employees, subcontractors, agents or any third party subject to its control or influence with the principles set out in Messer's Code of Conduct and applicable legislation in the following areas:
    - Employment conditions.
    - Exports and international sanctions.
    - Environmental protection.
    - Defence of competition law and antitrust.

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4. The Supplier shall provide Messer, at any time and upon request, with the information necessary to verify compliance with the Messer Code of Conduct and the Compliance Management System.
5. Messer is committed to a process of continuous improvement with its suppliers in order to achieve compliance with the key principles of its Code of Conduct. In the event of non-compliance, Messer and the Supplier shall work together to define and implement the necessary corrective measures, provided that the Supplier formally undertakes to correct such deficiencies within a reasonable period of time. Otherwise, Messer reserves the right to terminate the contractual relationship.

### 17 - Supplier liability

Messer reserves the right to cancel any order for failure to comply with the obligations and duties assumed by the Supplier under these General Terms and Conditions, as well as the right to claim compensation for direct, indirect, consequential and reputational damages suffered. The Supplier shall hold Messer harmless from any liability which may be claimed from it and which arises and/or results from acts directly and/or indirectly attributable to the Supplier.

### 18 - Assignment of the contractual position

The Supplier may not, under any circumstances, and without Messer's prior written consent, assign or transfer its contractual position under these General Terms and Conditions to a third party.

Any assignment or subcontracting made outside the terms of this clause shall be null and void and shall have no effect against Messer.

In the event of subcontracting part of the supplies and/or services which are the subject of an order under the terms of this clause, the Supplier shall

be solely responsible to Messer for the correct execution of that order.

### 19 - Insurance

The Supplier shall be responsible for concluding and maintaining in force, at its own risk, all the insurance required and necessary for the full fulfillment of each order, including civil liability insurance during the term of these General Conditions to cover any damage, both personal and material, arising from its activity, with a minimum cover of €300,000.00 per claim.

The Supplier shall send Messer a copy of the policy(ies) taken out, as well as any subsequent amendments thereto, all within fifteen (15) calendar days of taking out these General Conditions or amending the policy(ies).

### 20 - Ineffectiveness or invalidity

If any of the provisions of these General Conditions or any of the terms and/or conditions of the order are deemed invalid or ineffective, in whole or in part, this shall not affect the validity of the remaining contractual documents, which shall remain valid and effective. The titles and headings of these General Conditions are for ease of reference only and shall not affect the interpretation of the provisions contained therein.

### 21 - Confidentiality

Confidential Information means all information, whatever its nature, that may be provided by one of the parties, verbally, in writing or by any other means or medium, tangible or intangible, relating to the provision of the service, as well as any information provided for the proper performance of the business relationship, as well as any other information to which they may have access as a result of the business relationship, or which is generated as a result thereof, and which is not available to the public. This Confidential



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Information includes, but is not limited to, the following: materials, data, metrics, documents, technology, know-how, strategies, business plans, intellectual property, products, formulas, models, prototypes, compilations, devices, installations, ideas, projects, operations, techniques and any other information with commercial, technical and/or economic value and identified as confidential or secret by the disclosing party, or which the receiving party has reason to believe is or should be treated as such. Likewise, any personal data to which Messer or the Supplier have access by virtue of the business relationship between the parties shall be considered part of Confidential Information.

Both parties acknowledge that, in the course of their business relations, they may have access to confidential information of the other party. Therefore, under the terms of these General Conditions, the receiving party undertakes to maintain the strictest confidentiality and secrecy with regard to Confidential Information, which must be treated in accordance with (i) the confidentiality rules set out herein; (ii) the specific rules relating to personal data transmitted to it by the other party; and (iii) the mandatory rules relating to the processing of personal data.

In relation to the above, the parties undertake to adopt the same security measures according to the state of the art in the professional sector, also preventing its loss, theft or subtraction. Likewise, the parties acknowledge that, by accessing the other party's Confidential Information, they do not acquire any right or license over that Confidential Information.

The duty of confidentiality covers all information to which the receiving party, in each case, has had or may have had access during the relationship between the Parties, including prior to adherence to these General Conditions.

The parties agree that the obligation of confidentiality arising from their business relationship and governed by these General Conditions shall continue for the duration of their business relationship and after its termination, without any time limit.

The parties are obliged to keep all confidential information to which they have access secret and confidential and may not use it for any purpose other than that permitted in these General Conditions without the prior written consent and authorization of the other party. The obligations assumed by each of the parties extend to all personnel employed by the parties, whether managerial or otherwise.

In particular, but without limitation, each of the parties undertakes (unless otherwise provided in the following or when the other party so authorizes or the other party's own instruction implies otherwise) not to (i) disclose or communicate (orally or in writing) Confidential Information that has been directly or indirectly provided by the counterparty, (ii) not use the Confidential Information provided or extracts from it for purposes other than those required for cooperation with the counterparty, (iii) keep the Confidential Information strictly confidential and not disclose it to any unauthorized party or person, (iv) not make copies of the Confidential Information. In the event that copies are made for reasons strictly related to the proper performance of its duties, the receiving party undertakes to return them in full or, if indicated, to destroy them. This obligation also applies to digitally stored copies of Confidential Information, (v) use and archive Confidential Information with control and protection mechanisms, in accordance with the instructions of the other party, (vi) treat as Confidential Information any information to which it may have access by virtue of its business relationship, and (vii) use Confidential

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Information exclusively for the performance of its duties as an employee of the other party.

The above restrictions on disclosure and use do not apply to the information received, or any part of it, provided that one or the other party can reasonably establish, beyond reasonable doubt, that (i) the information was already in the public domain prior to its receipt, i.e. if it has already been published or has become generally available, (ii) the information was already known to the counterparty prior to its disclosure, (iii) the information became part of the public domain after its receipt, without the receiving party having been responsible for its disclosure, (iv) the information has been developed independently by one of the parties, without it having at any time had contact with or access to the Confidential Information, and (v) the information must be disclosed by express mandate of the law, order of the competent authority, decree, regulation or other legal rule applicable to the receiving party, in which case each party must first inform the other party.

The parties declare and acknowledge that the Confidential Information provided by each of them is the exclusive property of the disclosing party, and therefore the receiving party shall use said Confidential Information solely and exclusively for the purposes mentioned in these General Conditions.

At the request of the party that provided the Confidential Information, or, where applicable, both parties, or upon termination of these General Terms and Conditions, each party shall return all Confidential Information or destroy it in a secure manner, at the option of the party that provided the Confidential Information.

The parties acknowledge that any unauthorized disclosure and use of the confidential information may cause damage to the other party, which may be difficult to quantify. The receiving party

undertakes to indemnify and hold the other party harmless from any direct or indirect damages, losses, costs or any other payment obligation (including those arising from legal fees and costs) that may result from the use, misuse, disclosure or improper disclosure of the Confidential Information made by the receiving party or its representatives and/or employees.

### 22 - Protection of personal data

In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR), as well as Law No. 58/2019 of 8 August 2019, the Supplier authorizes Messer to process its traffic and billing data, with the personal data involved, for the purposes of performing the contract, providing the service and invoicing it. To the extent necessary to fulfil the purpose of the contract, the Supplier expressly consents to said data being transferred to Messer Group companies, to the channel of agents and commercial partners that collaborate with Messer for the execution of its activities, as well as to the various banking and credit institutions with which Messer maintains a commercial relationship. The data will not be transferred to third parties other than those mentioned above, except in cases where there is a legal obligation.

The data controller is therefore MESSERGAS, DISTRIBUÇÃO DE GASES INDUSTRIAIS UNIPessoal LDA. NIPC: (P) 507121589 with address at Av. Dom João II, nº 20, 1º - 1990-095 Lisboa with e-mail: [proteccion.datos@messergroup.com](mailto:proteccion.datos@messergroup.com)

The Supplier has the right to exercise the rights of access, rectification, deletion, cancellation, portability and opposition, as well as not being subject to a decision based solely on automated



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processing, by writing to  
[proteccion.datos@messergroup.com](mailto:proteccion.datos@messergroup.com) and  
attaching a copy of their identification.

In general, the data provided will be kept for as long as the business relationship is maintained and then, in accordance with tax and accounting regulations, for a period of 10 years.

### 23 - Industrial property and transfer of rights

Messer shall be the exclusive owner of all the results and contents delivered by the Supplier within the scope of this service provision and the documentation provided by the Supplier, and the Supplier shall transfer them exclusively, free of charge, universally and automatically to Messer. This extends, by way of example but not limitation, to all information, materials and content of said services.

Consequently, the Supplier acknowledges and accepts that all rights of ownership and exploitation of industrial and intellectual property associated with the work carried out by the Supplier within the scope of the provision of services belong exclusively to Messer.

### 24 - Bank Guarantee

When the specific conditions establish payments in advance of the delivery of the order, it will be necessary, except in exceptional cases and by agreement of the parties, to submit a bank guarantee for the same amount and according to the model that will be provided by Messer at the time of placing the order. This guarantee must be attached to the Supplier's acceptance of the order, together with the corresponding invoice.

### 25 - Conflict resolution

The parties agree that any controversy or dispute arising from this contract, including its interpretation, execution, validity or termination, shall, in the first instance, be settled amicably between the parties by direct negotiation within a maximum of thirty (30) days from written notification of the existence of the conflict.

### 26 - Jurisdiction and applicable law

Without prejudice to the provisions of the previous clause, any dispute that may arise between the contracting parties regarding the interpretation or execution of these General Conditions shall fall within the jurisdiction of the Courts of the district of Lisbon.

These General Conditions shall be governed by and construed in accordance with Portuguese law.