

Purchasing Terms and Conditions

1. APPLICABILITY, ORDERS, KEY DEFINITIONS

- 1.1. These General Conditions of Purchase ("**Conditions**") apply to the purchase of (i) any goods and materials, including, without limitation, products, parts or components specifically developed or customized and deliverables resulting from a service ("**Goods**") and (ii) any services ("**Services**") by MESSER. "**MESSER**" means the legal entity of Messer ordering the Goods or Services from the supplier of such Goods and Services ("**SUPPLIER**").
- 1.2. The Conditions apply to all current and future business relations for the purchase of Goods and Services by MESSER, even if not explicitly referred to. Standard terms of the SUPPLIER shall not apply unless MESSER expressly consents thereto in writing. The Conditions also apply where MESSER, having knowledge of conflicting or deviating terms of the SUPPLIER, accepts the Goods or Services without reservation.
- 1.3. "**Order**" means a request (in whatever form) to the SUPPLIER for the supply of Goods or Services, and any drawings, specifications, and other attachments thereto and which is deemed to always include the Conditions. The Conditions supplement the Order and in case of a conflict between the Order and the Conditions, the terms of the Order prevail.
- 1.4. If an Order is not accepted by the SUPPLIER within 14 days after receipt or any other period stipulated in the Order ("**Acceptance Period**"), the Order is deemed revoked. Until an Order is accepted by the SUPPLIER in writing, MESSER is not bound by such Order and may revoke, modify or change the Order at any time.
- 1.5. Any (i) Order accepted without reservation or modification within the Acceptance Period by the SUPPLIER, (ii) Order accepted by the SUPPLIER with a reservation or modification or received by MESSER after the Acceptance Period, but accepted by MESSER (in whatever form), or (iii) other agreement between the SUPPLIER and MESSER which refers to these Conditions, constitutes a "**Contract**". Any specifications for the Goods and/or Services contained in or incorporated in the Contract by reference, or any other specifications agreed in writing between MESSER and the SUPPLIER from time to time are referred to as "**Specifications**".
- 1.6. "**Applicable Law**" means the laws applicable in the country according to section 19.1, unless agreed otherwise in the Contract.
- 1.7. If in these Conditions the term "in writing" is used, this shall include communication via e-mail or fax.

2. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

- 2.1. Time is of the essence for performance of the Contract by the SUPPLIER. Without prejudice to any other rights MESSER may have under the Contract or any other legal grounds, the SUPPLIER shall inform MESSER in writing

without delay if circumstances become apparent which indicate that the agreed time for delivery of Goods or performance of Services will not be met.

- 2.2. The SUPPLIER shall deliver the Goods and perform the Services during regular business hours (as applicable at the place of delivery/performance) in accordance with the time schedule in the Contract ("**Delivery Dates**"). If no Delivery Dates have been stated, the SUPPLIER shall deliver the Goods and perform the Services as soon as reasonably possible and the SUPPLIER shall inform MESSER of the date of delivery in writing reasonably in advance. Unless otherwise agreed in the Contract, the SUPPLIER shall deliver the Goods in accordance with Incoterms 2010 "DDP" and the Contract to the destination specified in the Order or Contract ("**Location of Receipt**").
- 2.3. If the SUPPLIER fails to deliver the Goods or fails to perform the Services by the Delivery Dates, or, if no Delivery Dates have been stated, by the time reasonably set by MESSER, MESSER may, without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds and without liability to the SUPPLIER, rescind the Contract by giving written notice to the SUPPLIER. In such a case, MESSER may request a refund of the purchase price, if already paid, and claim compensation for all costs, expenses, damages and other losses suffered due to the SUPPLIER'S failure. In addition, regarding Services, MESSER shall have the rights as set forth in section 8.3.
- 2.4. For each delivery of Goods, the SUPPLIER is responsible for ensuring continuous compliance with all legislation and regulations applicable to the transportation and delivery of such Goods.
- 2.5. Each delivery of Goods must include documents containing the following minimum information and any additional information requested by MESSER: order number, description of Goods and name of the SUPPLIER, unit of measure specifying volume, quantity or number and delivery point for the Goods.
- 2.6. All Goods must be packaged (i) securely so as to prevent damage during loading, transportation and off-loading and (ii) in compliance with MESSER's packaging specifications if provided to the SUPPLIER.
- 2.7. In addition, the SUPPLIER shall:
 - 2.7.1. provide MESSER, upon request, with certificates of origin, declarations, documents and data pertaining to trade requirements and, upon request, inform MESSER in detail and in writing of any possible export restrictions or approval obligations in the country of origin of the Goods or Services or their destination;
 - 2.7.2. furnish full details regarding all immediate and long-term potential hazards or dangers relating to the Goods, including, but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact and whether due to direct or indirect use thereof;

- 2.7.3. furnish full details relating to the most appropriate safety precautions to be taken in connection with the use and handling of the Goods; and
 - 2.7.4. appropriately and prominently label all packages and containers that contain dangerous, toxic or otherwise harmful Goods in order to protect those who handle or are exposed to them.
- 2.8. Partial shipments of Goods or early deliveries may only be made with MESSER's prior written approval. In the event of a delivery earlier than agreed, MESSER reserves the right to return the shipment at the expense of the SUPPLIER. If MESSER does not return an early delivery, it may store the Goods up to the delivery date at the SUPPLIER'S risk and expense.
 - 2.9. If, for any reason, MESSER is unable to accept delivery of the Goods at the time specified in the Contract, the SUPPLIER shall, if requested by MESSER, store the Goods and maintain them in merchantable condition. Subject to prior written agreement, MESSER shall reimburse the SUPPLIER for the reasonable costs of such storage.
 - 2.10. The SUPPLIER shall carry out Services at the agreed locations at the Delivery Dates according to the Specifications and good industry practice and standard. The SUPPLIER shall document the performance of Services and provide such documents to MESSER upon request or completion of the Services, at the latest together with the SUPPLIER'S invoice. If a deliverable or a specific result is to be achieved through the Services, the provisions of these Conditions relating to Goods shall apply accordingly
 - 2.11. The SUPPLIER shall ensure that its personnel performing the Services, in particular when working on MESSER's or MESSER's customer's premises, is not considered having entered into or being entitled to enter into an employment relationship with MESSER or MESSER's customer. In the case of a breach, the SUPPLIER shall indemnify MESSER against all related costs, expenses, damages or other losses.
 - 2.12. If the SUPPLIER is required to operate on premises owned or operated by or on behalf of MESSER, then the SUPPLIER shall comply with all MESSER's site safety rules and procedures at its own expense. These include, but are not limited to, using appropriate personal protective equipment, attending site induction training, removing all rubbish, debris, surplus materials and temporary structures, and leaving the site tidy. The SUPPLIER bears the risk of loss and damage for all materials used or to be used until completion of the Contract.

3. TRANSFER OF RISK AND TITLE

- 3.1. Unless the parties agree otherwise, the risk of loss and damage passes to MESSER at the time of receipt of the Goods at the Location of Receipt. Where an Acceptance Procedure (as defined in section 6.3) is agreed or required, the date of final acceptance by MESSER will determine the transfer of risk.
- 3.2. Title to all or the relevant part of the Goods passes to MESSER on the earlier of (i) payment for such Goods or part thereof; and (ii) delivery of such Goods at the agreed Location of Receipt. Where title to all or any part of the Goods has passed to MESSER but the Goods remain in the possession of the SUPPLIER, the SUPPLIER shall clearly label the Goods as the property of MESSER and store them separately from all other goods.

4. PRICE AND PAYMENT

- 4.1. The price(s) for the Goods and/or Services must be specified in the Contract and remain fixed for the term of the Contract.

- 4.2. Unless otherwise stated in the Contract, the price payable for the Goods and/or Services is:

- 4.2.1. exclusive of value added tax ("VAT") or other sales tax; and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods, all travel expenses, food and beverage, accommodation and other costs related to the Services and all duties, licenses, permits and taxes (other than VAT or other sales tax) as may be payable for the Goods and/or Services from time to time.
- 4.3. If the Contract states that VAT or other sales tax is payable with respect to any Goods or Services, MESSER is only required to pay such tax upon receipt of a valid VAT or other sales tax invoice.
- 4.4. Unless otherwise specified in the Contract, and subject to the SUPPLIER complying with its obligations under the Contract, MESSER shall pay for the Goods and/or the Services within five working days after the end of the month following the month of receipt of the SUPPLIER'S duly prepared and accurate invoice. The SUPPLIER may not issue the invoice until the relevant Goods have been delivered to MESSER or the relevant Services have been completed. Invoices must always include the official order number and comply with all applicable laws and any specifications requested by MESSER.
- 4.5. MESSER may withhold payment of any disputed or insufficiently documented amounts included in any invoice. MESSER may further set-off any sum due from the SUPPLIER to MESSER or any other member of Messer, against any amount due from MESSER to the SUPPLIER under the Contract, or to recover such sums as a debt.
- 4.6. Payment of an invoice by MESSER does not constitute acceptance of the Goods and/or Services covered by the invoice and is without prejudice to any and all claims MESSER may have against the SUPPLIER in connection with the Contract.

5. QUALITY REQUIREMENTS

- 5.1. The SUPPLIER shall provide Goods of the highest quality and in accordance with the SUPPLIER'S Warranties as defined in section 7.3. The SUPPLIER shall comply with the applicable statutory provisions and good industry practice and standard and shall develop, manufacture and test the Goods to be delivered so that they are in accordance therewith and with the Contract.
- 5.2. If the SUPPLIER becomes aware that the Goods or Services do not comply with quality requirements and the SUPPLIER'S Warranties as defined in section 7.3 and/or if the SUPPLIER has legitimate doubts regarding the Goods' or Services' compliance with such requirements, then the SUPPLIER shall promptly notify MESSER in writing and shall advise MESSER on any further steps to be taken. The same applies if the SUPPLIER becomes aware of property rights of third parties which conflict with the unrestricted use of the Goods or Services by MESSER. Receipt and handling of such information by MESSER is without prejudice to any and all claims MESSER may have against the SUPPLIER resulting from such non-compliance.
- 5.3. MESSER may inspect the Goods or Services at any time prior to delivery or completion of the Goods or Services at the SUPPLIER'S premises or at any other location. Inspection by MESSER does not relieve the SUPPLIER of its responsibility or liability for the Goods and Services and does not imply MESSER's acceptance of the Goods or Services. MESSER's right of inspection prior to delivery is without prejudice to MESSER's right to reject the Goods after delivery.

5.4. MESSER may call for certificates of raw materials and test certificates for materials and equipment used in the sourcing and manufacture of the Goods. The SUPPLIER shall provide such certificates to MESSER within five working days after receipt of such request.

6. INSPECTION, TESTING

6.1. The SUPPLIER shall supply all Goods and Services in accordance with the Contract and the Specifications. MESSER may inspect and test the Goods upon or after MESSER's receipt of the Goods. Any obligation of MESSER under the Applicable Law to inspect the Goods or Services or to notify the SUPPLIER of any defects within a certain period of time is hereby excluded to the extent legally possible. If the obligation to inspect cannot be excluded, the following will apply: (i) MESSER is only required to inspect the Goods for variations in identity and quantity and obvious transport damage and (ii) MESSER shall notify the SUPPLIER of any such discrepancies and damages within 14 days after receipt of the Goods at the Location of Receipt. To fulfil the notification requirement, MESSER need only provide the SUPPLIER with a brief description of the discrepancy, damage or defect.

6.2. Before and within 30 days following delivery or performance, or any longer period as set forth in section 6.3, and without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds, MESSER may reject in whole or in part any delivery of Goods or performance of Services which are not in full compliance with the Contract. If certain parts of the Goods or Services do not comply with the Contract, MESSER may reject the entire delivery or performance unless the SUPPLIER can prove that the remainder of such delivery or performance is in compliance with the Contract.

6.3. If, according to the Contract or under the particular circumstances, MESSER is required to test and approve the Goods or Services as to their compliance with the Contract, the SUPPLIER shall request that MESSER carry out such test and acceptance after the Goods or Services are completed ("**Acceptance Procedure**"). The SUPPLIER shall make such request in accordance with the dates stated in the Contract or, if no date is specified, as soon as practicable. Upon reasonable request by MESSER, the SUPPLIER shall provide suitable personnel to attend any such tests at its own cost. MESSER may reject the Goods or Services in whole or in part if they are not proven by the SUPPLIER to be compliant with the requirements under the Contract and/or any acceptance criteria agreed. If MESSER does not accept the Goods or Services in whole or in part, the SUPPLIER shall promptly investigate the non-conformity, correct such non-conformity and repeat the Acceptance Procedure. After failure of the second Acceptance Procedure, MESSER may at its discretion choose whether to repeat the Acceptance Procedure or assert the remedies set forth in section 8. MESSER will not be deemed to have accepted the Goods or Services solely because it is using them in whole or in part due to operational necessities.

7. THE SUPPLIER WARRANTIES AND OBLIGATIONS

7.1. Without prejudice to any warranties under the Contract or any other legal grounds, the SUPPLIER warrants that the Goods and any parts or materials used in the manufacture or performance of any work related to the Goods will:

- 7.1.1. be fit for the intended purpose;
- 7.1.2. be fit for any special purpose as defined by

MESSER to the SUPPLIER;

7.1.3. conform to the Specifications in all respects and, where applicable, to any samples or drawings; in particular, the weights, measures, signs, legends, words, particulars, or descriptions, if any, stamped, printed, or otherwise attached to the Goods or containers (including any required country of origin markings) or referring to the Goods delivered hereunder will be true and correct and comply with all relevant statutes, regulations and legislations;

7.1.4. be new and unused, of sound materials and workmanship and free from any defects (latent or otherwise);

7.1.5. conform to all applicable international and local laws and regulations relating to the design, manufacture, sale, packaging, labelling, safety standards and use of the Goods, which are in force on the date of delivery;

7.1.6. be accompanied by all information, warnings, instructions and documentation relevant for the use, storage, operation, consumption, transportation and disposal of such Goods; and

7.1.7. unless agreed otherwise, conform to the representations and warranties in the SUPPLIER'S literature and advertising materials.

7.2. In addition to any other warranties MESSER may have under the Contract or any other legal grounds, the SUPPLIER warrants that all Services will be performed (i) with a degree of high professional skill, sound practices and good judgment normally exercised by recognized professional firms providing services of a similar nature, (ii) in full compliance with all applicable laws and (iii) so as to ensure that the Services completed under the Contract are free from defects in materials and workmanship and are fit for the intended purpose.

7.3. Any warranties set forth in this section 7 or existing under the Contract or any other legal grounds ("**SUPPLIER'S Warranties**") apply for a period of 24 months after acceptance of the Goods at the Location of Receipt, approval by MESSER according to section 6.3, or completion of the Services (whatever occurs later) or any longer period stipulated by the Applicable Law or in the Contract ("**Warranty Period**"). If a Good or Service cannot be used for a certain period of time due to breach of the SUPPLIER'S Warranty, the Warranty Period extends accordingly.

8. REMEDIES

8.1. If the Goods delivered fail to conform with the SUPPLIER'S Warranties ("**Defective Goods**"), then, without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds, MESSER may, at its option choose one or several of the following remedies:

8.1.1. refuse to take delivery;

8.1.2. require the SUPPLIER to repair or replace the Defective Goods at the SUPPLIER'S sole cost within any period reasonably specified by MESSER, however at the latest within 21 days of receipt of MESSER's request;

8.1.3. carry out the repair instead of the SUPPLIER or may have it carried out by a third party at the SUPPLIER'S sole cost;

8.1.4. require the SUPPLIER to reimburse MESSER for all costs, expenses, damages and other losses associated with the repair or replacement, including, without limitation, costs for investigation and analysis of the defect, for installation/de-installation, for the use of its own or external personnel, costs for parts, attorneys' fees or other legal cost, accommodation, travel or transportation costs;

8.1.5. claim compensation from the SUPPLIER for all

costs, expenses, damages and other losses incurred by MESSER due to the Defective Goods.

- 8.2. If the SUPPLIER fails to remedy its breach of the SUPPLIER'S Warranties with respect to the Defective Goods within the period according to section 8.1.2, or if the SUPPLIER is not able to or rejects the repair or replacement of the Defective Goods, then, without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds and in addition to the remedies set forth in section 8.1, MESSER may, at its option:
 - 8.2.1. rescind the Contract and request a refund of the purchase price, if already paid, in which case MESSER shall return the Defective Goods to the SUPPLIER at the SUPPLIER'S sole cost and expense; or
 - 8.2.2. claim a reduction or refund (as the case may be) of the purchase price in the amount of the reduced value of the Defective Goods; or
 - 8.2.3. return the Defective Goods to the SUPPLIER at the SUPPLIER'S risk and expense and obtain identical or similar goods from an alternative supplier and claim reimbursement from the SUPPLIER for any additional costs and expenses reasonably incurred by MESSER; and
 - 8.2.4. claim compensation from the SUPPLIER for all costs, expenses, damages and other losses incurred by MESSER due to the Defective Products.
- 8.3. If the Services performed fail to conform with the SUPPLIER'S Warranties ("**Defective Services**"), then, without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds, MESSER may, at its option choose one or several of the following remedies:
 - 8.3.1. require the SUPPLIER to re-perform the Services free of charge and as soon as is reasonably practicable;
 - 8.3.2. require the SUPPLIER to reduce pro-rata the compensation allocable to the Defective Services;
 - 8.3.3. obtain the Services from a third party and require the SUPPLIER to reimburse for all reasonable costs and expenses thereby incurred;
 - 8.3.4. terminate the Contract and refuse to accept any further performance of Services under the Contract;
 - 8.3.5. claim compensation from the SUPPLIER for all costs, expenses, damages and other losses incurred by MESSER due to the Defective Services.

9. INDEMNIFICATION

- 9.1. If a claim is made against MESSER by a third party arising out of or in connection with the provision of Goods or Services by the SUPPLIER, then, the SUPPLIER shall indemnify MESSER and its employees, officers, agents, customers and successors and assignees (the "**Indemnified Parties**") from all costs and damages incurred or to be incurred by MESSER. In such event, any further rights and remedies of MESSER under the Contract or otherwise will remain unaffected.
- 9.2. Without prejudice to any other legal or contractual rights that MESSER has, including Section 7 of this Contract, the SUPPLIER shall indemnify MESSER and the Indemnified Parties against any liability, loss, costs (including legal fees, costs for recalls and costs for its own employees), damage or injury in consequence of (i) any Defective Goods or failure to properly perform the Services, (ii) any breach by the SUPPLIER or its suppliers or subcontractors of the Contract (including any late delivery of Goods or performance of the Services), (iii) any negligence, wilful default or wrongful act or omission

of the SUPPLIER or its suppliers or subcontractors.

10. INSURANCE

- 10.1. The SUPPLIER shall arrange and maintain, at its own cost, all insurance customary and on terms common in the industry and satisfactory to MESSER, in particular a professional, public and product liability insurance. The SUPPLIER shall produce evidence of such insurance to MESSER upon request. For the avoidance of doubt, the insurance coverage or the failure to maintain insurance shall not waive nor limit in any way the SUPPLIER'S responsibility and liability for its Goods delivered and Services performed to MESSER.

11. INTELLECTUAL PROPERTY, CONFIDENTIALITY

- 11.1. Any know-how, confidential information, intellectual property rights, including, without limitation, patents, trademarks, service marks, design rights (whether registered or unregistered), copyrights (including any future copyrights) and any application for any of the foregoing, developed by the SUPPLIER, or on behalf of the SUPPLIER, in connection with (i) a specifically agreed development, (ii) a MESSER-specific modification of a product or (iii) a part or the design of a tool ("**New IP Rights**") shall become the property of MESSER and is covered by the payment of the price for the Goods and/or Services. The SUPPLIER shall take all actions reasonably necessary to secure the assignment of such rights to MESSER. Notwithstanding its obligation to assign ownership, the SUPPLIER hereby grants to MESSER in advance an unconditional, irrevocable, transferable, exclusive and worldwide license in any New IP Rights, either in their original or in any modified form, free of charge. The SUPPLIER shall not use any New IP Rights other than for the purposes of the Contract.
- 11.2. The SUPPLIER shall keep confidential all information and documents that MESSER makes available to it, or that it otherwise acquires relating to MESSER'S business, or that it creates or produces, or has created or produced, specifically in connection with the performance of the Contract for MESSER. The SUPPLIER shall not use or cause to be used such information or documents other than for the purposes of the Contract. Such obligation will continue in force notwithstanding termination or completion of the Contract, however caused, although such provisions do not apply to any information or document in the public domain or coming into the public domain other than through the SUPPLIER'S violation of its obligations and to such information disclosed to the SUPPLIER'S subcontractors to the extent necessary for performance of the Contract.
- 11.3. The SUPPLIER shall use objects, documents and auxiliary resources of all types that MESSER provides to it to carry out the Services or manufacture the Goods, exclusively to perform the Services or manufacture the Goods and shall return such items to MESSER without delay after performance of the Services or manufacturing of the Goods or the termination or expiry of the Contract.
- 11.4. The SUPPLIER warrants that the sale, possession, resale or use of the Goods and/or the performance of the Services to be supplied do not infringe any third party intellectual property rights or third party know-how. MESSER shall have the remedies as set forth in section 8. In addition to these remedies, the SUPPLIER shall, to the greatest extent permitted by the Applicable Law, indemnify MESSER and the Indemnified Parties against all payments or loss of royalties or licence fees, and against all costs, losses and expenses suffered by them or for which they may be liable in respect of any breach of this warranty, including attorneys' fees or other legal cost. The SUPPLIER will give MESSER and

the Indemnified Parties all assistance that is reasonably required in defending any such infringement claim. If it comes to MESSER's knowledge that a claim may arise under this warranty, then MESSER may terminate the Contract immediately and without any liability towards the SUPPLIER.

- 11.5. The SUPPLIER shall not make any reference to MESSER in its advertising, literature or correspondence without MESSER's prior written consent. Nothing in the Contract will entitle the SUPPLIER to use any name, trademark or logo of MESSER.

12. SPARE PARTS

- 12.1. The SUPPLIER shall, for a period of at least seven years after discontinuation of production of the Goods, have available compatible spare parts substantially equivalent in terms of function and quality to the parts contained in the Goods, or shall provide equivalent solutions on commercially reasonable conditions for MESSER.

13. TOOLS

- 13.1. Any material, software, equipment or tools (i) provided by MESSER to the SUPPLIER, (ii) purchased by MESSER under this Contract or (iii) purchased or used by the SUPPLIER in connection with this Contract and paid by MESSER ("Tools") shall remain the property of MESSER and may only be used for the sole purpose of performing the SUPPLIER'S obligations under this Contract. The ownership of all Tools is transferred to MESSER by the SUPPLIER on the date of the acquisition of the Tool by the SUPPLIER, or in the case of Tools manufactured by the SUPPLIER, on the date of the completion of the manufacturing by the SUPPLIER. No further action by any party is required to make such transfer effective. The SUPPLIER shall mark such Tools directly after they are provided to it or directly after the acquisition by the SUPPLIER or the completion as being MESSER's property. Upon request the SUPPLIER shall prove such marking through photos or otherwise. The SUPPLIER shall use the Tools exclusively for the provision of Services to MESSER or for the manufacturing of the Goods ordered by MESSER. THE SUPPLIER, at its own expense, shall insure the Tools belonging to MESSER at the replacement value on appropriate terms. The SUPPLIER shall carry out timely inspection, servicing, maintenance and repair work at its own expense. Upon request of MESSER, the SUPPLIER shall hand over the Tools to MESSER.

14. SUBCONTRACTORS

- 14.1. The SUPPLIER shall not engage subcontractors without MESSER's prior written consent. The SUPPLIER shall require its subcontractors to comply with all obligations under this Contract, including secrecy. Notwithstanding any consent given by MESSER, the SUPPLIER shall remain liable to MESSER for any acts or omissions of its subcontractors as if they were its own. No sub-contract shall relieve the SUPPLIER from the obligation to provide the Goods or perform the Services, or from any liability under the Contract.

15. THE SUPPLIER CODE OF CONDUCT

- 15.1. The SUPPLIER acknowledges that MESSER has a '[Code of Conduct for the SUPPLIERS of Messer](#)' (the "**SUPPLIER Code of Conduct**"). Copies of it may be viewed at www.messer-us.com and will be made available by MESSER upon request. The SUPPLIER shall comply with the requirements of the SUPPLIER Code of Conduct and maintain a consistently high standard of integrity in all its business relationships with MESSER

as well as foster the highest possible standards of professional competence in all its activities. To this end, in supplying Goods to MESSER and/or in performing any Services, the SUPPLIER shall not take any action that violates the SUPPLIER Code of Conduct. Further, the SUPPLIER acknowledges that no employee of MESSER is authorised to propose to the SUPPLIER or approve conduct which is inconsistent with the SUPPLIER Code of Conduct.

- 15.2. The SUPPLIER shall demonstrate compliance with the requirements of the SUPPLIER Code of Conduct at the request and to the satisfaction of MESSER, e.g. by providing data or conducting self-assessments.
- 15.3. If MESSER has reason to believe that the SUPPLIER may be in material breach of the requirements laid out in the SUPPLIER Code of Conduct, MESSER or a third party appointed by MESSER may conduct inspections at the SUPPLIER'S premises in order to verify the SUPPLIER'S compliance with the requirements of the SUPPLIER Code of Conduct. MESSER shall use reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with the SUPPLIER'S business activities nor violate any of the SUPPLIER'S confidentiality agreements with third parties. The SUPPLIER shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- 15.4. Without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds, MESSER may terminate the Contract and any purchase order issued hereunder without any liability whatsoever, if the SUPPLIER is in material breach of the SUPPLIER Code of Conduct or fails to remedy any breach after written notification of the breach by MESSER.
- 15.5. Material breaches include, but are not limited to, incidents of forced or child labour, corruption and bribery, and failure to comply with the SUPPLIER Code of Conduct's environmental protection requirements.
- 15.6. Any reference to the SUPPLIER Code of Conduct shall (except where the context otherwise requires) be construed as referring to such SUPPLIER Code of Conduct as amended and in force from time to time.

16. COMPENSATION IN THE CASE OF THE SUPPLIER'S VIOLATION OF COMPETITION LAW

- 16.1. Without prejudice to other rights or remedies MESSER may have under the Contract or any other legal grounds, if the SUPPLIER has made an agreement constituting an illegal restriction of competition in connection with the Contract's conclusion, the SUPPLIER shall pay to MESSER 15% of the price of all related deliveries or services. Further claims by MESSER for compensation of damages exceeding this lump sum compensation remain unaffected. However, the SUPPLIER may pay only the actual damages caused by its illegal restriction of competition if it proves that these are lower than the lump sum compensation set forth in this section. This provision also applies if the Contract expires, is terminated or has already been fulfilled.

17. OBLIGATION TO INFORM

- 17.1. If any of the following events occur with respect to the SUPPLIER, the SUPPLIER shall promptly inform MESSER of the details regarding such event and shall further promptly answer in good faith any questions of MESSER regarding such circumstances: (i) a change in the legal form of the SUPPLIER; (ii) a disposition of all or substantially all of the assets of the SUPPLIER; (iii)

any entity or person(s) becomes the direct or indirect owner of voting securities representing more than 50% of the outstanding voting interests in the SUPPLIER; (iv) the merger of the SUPPLIER with another entity; (v) any change in the senior management of the SUPPLIER; or (vi) any other event resulting in a change of control of the SUPPLIER, meaning a change of the entity or person(s) having the ability to direct the management and/or strategy of the SUPPLIER.

18. TERMINATION

- 18.1. MESSER may at any time and for any reason terminate the Contract in whole or in part by giving the SUPPLIER written notice whereupon all work on the Contract shall be discontinued and MESSER shall pay to the SUPPLIER a fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss and never be higher than the price of the Goods or Services under that terminated Contract. MESSER may request that any Goods and Services or results of Services to which the payment of compensation by MESSER pertains shall be delivered to MESSER in their current state.
- 18.2. MESSER may terminate the Contract, without liability to the SUPPLIER and while preserving to itself any accrued rights or remedies, by giving written notice to the SUPPLIER with effect from the date specified in the termination notice, if:
- 18.2.1. The SUPPLIER commits a material breach of any provision of the Contract and (in the case of a breach capable of remedy) fails to remedy that breach within 21 days of being notified of such breach by MESSER (the SUPPLIER acknowledges that a series of minor breaches may together constitute a material breach); or
- 18.2.2. The SUPPLIER files a petition in bankruptcy or has such a petition filed against it or is subject to an insolvency proceeding or a proceeding giving protection against creditors, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets, or if any assignment for the benefit of its creditors is made.
- 18.3. Those conditions expressly or impliedly having effect after termination continue to be enforceable notwithstanding termination.

19. GOVERNING LAW AND JURISDICTION

- 19.1. The Contract and any supply of Goods and Services stipulated thereunder shall be governed by the laws of the State of New Jersey.
- 19.2. The Parties shall submit any dispute, controversy or claim arising out of or in connection with the Contract, including any dispute as to the validity of the Contract, exclusively to an appropriate court in the country or jurisdiction in which MESSER has its registered office and at the place of such registered office, save that MESSER may always initiate court action against the SUPPLIER at the court of general jurisdiction at the place of the registered office of the SUPPLIER.

20. GENERAL

- 20.1. The SUPPLIER may not set-off any claims it may have under the Contract against any claims of MESSER or refuse to perform any obligation it may have under the Contract on the grounds that it has a right of retention, unless the rights or claims of the SUPPLIER are not disputed by MESSER or have been confirmed by a final decision of a competent court.

- 20.2. No failure or delay on the part of MESSER to exercise any power, right or remedy under the Contract shall operate as a waiver thereof nor shall any single or partial exercise by MESSER of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. No waiver by MESSER of any breach of any of the terms and conditions of the Contract shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition thereof. No waiver by MESSER is validly made unless made in writing.
- 20.3. The Contract constitutes the entire agreement between MESSER and the SUPPLIER relating to the sale and purchase of Goods and/or Services. No amendment to or variation of the Contract shall be effective unless it is expressly agreed to in writing by MESSER. No course of prior dealings between the parties and no usage of trade is relevant to supplement or explain any term of the Contract.
- 20.4. Except as expressly provided in the Contract, no provisions of the Contract are enforceable by a third party. MESSER may assign the Contract or any right or claim under the Contract to any third party without the prior written consent of the SUPPLIER.
- 20.5. If any term or provision of the Contract is void or unenforceable, the remainder of the provisions of the Contract shall remain in full force and effect to the fullest extent permitted by the Applicable Law. In place of the invalid or unenforceable provision, or to fill a contractual lacuna, such valid and enforceable provision shall apply which reflects as closely as possible the commercial intention of the parties as regards the invalid, unenforceable or missing provision.
- 20.6. In case of discrepancies between different language versions of these Conditions, the English language version shall prevail.



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