

## **General Terms and Conditions of Sale, Delivery and Payment**

### **1. Scope**

The following general terms and conditions of sale, delivery and payment of Messmer Pen GmbH (hereinafter referred to as Messmer) shall exclusively apply to dealings with business people, body corporates organized under public law or special assets (hereinafter referred to as Purchaser). All contracts, deliveries and other services shall be subject to these terms and conditions. The General Terms and Conditions of the Purchaser shall apply only insofar as Messmer has explicitly agreed to them by writing.

### **2. Offer and Conclusion of Contract**

2.1 All offers of Messmer are subject to confirmation.

2.2 Orders shall only be deemed to have been accepted if they are either accepted by writing or executed immediately upon receipt of order or in due time. In such case the invoice shall be considered as order confirmation.

2.3 In case that after conclusion of the contract Messmer finds out facts especially with regard to delay in payment in former deliveries, which according to one's best commercial judgement may be the result of a change for the worse of the buyer's assets, Messmer shall require advance payment or respective guarantees. The buyer's refusal shall authorize Messmer to cancel the contract. Invoices for already made partial shipments shall become due immediately.

### **3. Supply Period and Supply Delay**

3.1 Delivery dates and deadlines shall only be binding if they have been expressly confirmed by Messmer.

3.2 In any case the supply period is subject to a correct and punctual supply of Messmer by his own sub-suppliers.

3.3 Partial shipments and partial performances of Messmer shall be acceptable to a reasonable extent. In case of custom-made special productions Messmer reserves the right to supply up to 10 % more or less of the real order quantity due to production reasons.

3.4 The time of delivery shall be extended adequately - also in case of supply delay - due to force majeure, strikes, lockouts, interventions of national and international authorities as well as in case of all unforeseeable unavoidable events outside of the influence of Messmer, which occurred after conclusion of contract and which will have considerable influence on the supply of the sold products. This shall also apply in the case these events occur at the suppliers of Messmer or their sub-suppliers. In such cases Messmer shall confirm to supply within an adequate period or cancel the contract. In case Messmer does not issue such statement the purchaser shall be entitled to rescission. Any indemnity claims in such cases shall be excluded.

3.5 In case the purchaser is entitled to claim compensation for non-performance this compensations shall be limited to max. 5 % of the value of the delayed goods in case of slight negligence. If, moreover, the purchaser wants to rescind the contract and/or claim damages instead of goods and services he shall set a reasonable grace period for the supply of the ordered goods and services.

3.6 Changes in construction or shape as well as colour variations occurring between passing of order and supply of goods shall be accepted by the purchaser , insofar as these changes or variations are a reasonable burden to the purchaser in due consideration of Messmer's interests.

#### **4. Shipment, Passing of Risk and Packing**

4.1 Unless the parties have agreed otherwise, Messmer shall decide on method of shipment and shipping material. The same shall apply to the packing under transport-technical and eco-political points of view.

4.2 The statutory prescriptions of § 447 Abs. 1 BGB shall apply with regard to transfer of risk, no matter whether dispatch takes place from place of execution or who will pay the freight charges.

4.3 A take-back of the nonreturnable package is not possible insofar as a dual system for packaging had been set up in which manufacturer and distributor of the goods are participating and which is accepted by the responsible authorities according to § 6 Abs. 3 of the regulation on packaging dated June 12<sup>th</sup>, 1991 (BGBl.I.S. 1234).

Messmer shall be authorized to comply with its take-back obligation by entrusting a suitable waste management company as third party with the disposal of package especially transport package according to the § 11 of the regulation on packaging.

4.4 Reusable packaging shall be returned at certain times agreed with Messmer.

4.5 Regardless of the application of the regulation on packaging one-sided invoice deductions, covering the disposal of package material especially transport package shall not be allowed.

#### **5. Payment Terms**

5.1 In the absence of any special agreement, prices apply in EURO plus shipping costs and value added tax. Eventual cash discount acceptance shall only be valid if the purchaser is not in arrears with his payments with regard to former deliveries.

Discount charges in case of payments by note are at the purchaser's expense.

5.2 Payments are to be made net within 30 days after date of invoice without any discount. Invoice is issued with delivery. Drafts and cheques are accepted only on account of performance.

5.3 Irrespective of the time of a draft eventually discounted or credited draft receivables by Messmer shall be due immediately if the purchaser does not meet

the payment terms or if Messmer gets to know facts which according to one's best commercial judgement may be the result of a change for the worse of the buyer's assets. In the latter case Messmer shall request advance payment or securities for further deliveries.

5.4 If the purchaser falls into arrears Messmer shall be entitled to charge default interest without any further reminder – 8 % over the respective basic interest rate. The right to claim any greater damages for default that have been incurred remains unaffected hereby.

5.5 In case of delayed payment or if the purchaser does not honour a bill when due Messmer shall be entitled to take back the goods, respectively to trespass the company of the purchaser and to take away the goods. Furthermore, Messmer shall forbid the resale and removal of the goods. Taking back the goods shall not be a cancellation of the contract.

5.6 In the cases 5.3 and 5.5. Messmer shall be entitled to cancel the direct debiting mandate (paragraph 6.4) and request advance payment for outstanding deliveries. The purchaser can avoid advance payment and legal consequences and effects enumerated in paragraph 5.3 by a security amounting to the height of the pecuniary claim at risk.

5.7 The purchaser shall only be entitled to set off if the purchaser's counterclaim is undisputed or legally established. He shall only be entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is undisputed or legally established. If the claimed default is minor in proportion to the purchase price of the claimed goods resp. of the whole order, a refusal to pay the purchase price shall be generally excluded.

## **6. Retention of Title**

6.1 All goods supplied shall remain the property of Messmer as goods subject to the retention of title until each and every claim Messmer has against the purchaser on account of the business relationship has been fulfilled. This also applies if the purchaser makes payments on debts that are specified in particular. The payment of particular debts of an invoice does not cancel the retention of title.

If in connection with payment of the purchase price by the purchaser, an obligation to accept the bill of exchange or cheque is established for Messmer, the reservation of title shall not be dissolved prior to payment of the bill of exchange by the purchaser as drawee.

6.2 The purchaser shall inform Messmer forthwith of any seizure with regard to retained goods and assigned claims or other act of intervention by third parties. He may only sell the goods subject to the retention of title in the course of normal business according to his usual business conditions and as long as he is not in default of payment, provided that the demands arising from reselling are transferred to Messmer in accordance with paragraphs 6.4 and 6.5. He is not entitled to other means of disposal regarding the goods subject to the retention of title.

6.3 The debts arising from reselling the goods subject to the retention of title are ceded to Messmer already at this point in time. They are used as security to the same degree as the goods subject to the retention of title. If the goods subject to the retention of title are sold by the purchaser together with other goods that were not purchased from Messmer, then the debt arising from reselling will be ceded to Messmer in the ratio invoice value of the goods subject to the retention of title to invoice value of the other goods sold.

6.4 The purchaser shall be entitled to redeem any debts from reselling unless revocation of the direct debit authorization by Messmer according to paragraph 5.4. On request by Messmer the purchaser is obliged to inform his customers immediately about the transfer to Messmer – in case Messmer does not inform them himself – and to give Messmer the information and documents required for redemption.

A further transfer of debts arising from reselling shall not be permitted, unless the matter concerns transference in the sense of genuine factoring which is reported to Messmer by informing Messmer of the factoring bank and the accounts of the purchaser at this bank and whereby the factoring proceeds exceed the value of the secured debt of Messmer. Messmer's demand is due immediately with the credit note for the factoring proceeds.

6.5 Messmer commits itself to release the securities that Messmer is entitled to as far as their value exceeds the claims that are still to ensure and have not yet been settled by more than 20 %.

## **7. Notice of Defects and Guarantee**

7.1 The purchaser shall inform Messmer of any evident and/or identified defects, shortage or wrong deliveries at the latest within 7 days. Further duties and obligations of a merchant according to §§ 377, 378 HGB shall remain unaffected.

7.2 The information given by Messmer with regard to product and performance shall only be an indication as to the nature of the goods unless Messmer assures or guarantees in writing certain characteristics of the product or the performance. Technical details and descriptions of products in the product information shall not represent a promise of certain characteristics or a corresponding guarantee. An assurance of characteristics or a guarantee in a legal sense shall not be given unless Messer expressly confirms them as such in writing.

7.3 In the event of a claim Messmer or its agent shall at their option carry out subsequent fulfillment (remediation or replacement delivery). Replaced parts shall pass over into the ownership of Messmer. If Messmer refuses to remove the defects or does not remedy the deficiencies within 30 days, the purchaser, at his choice, shall be entitled either to withdraw from the contract or to an appropriate price reduction. Further or other than the preceding claims, especially claims to compensation for damages not caused to the delivery item or to legal interests of the purchaser i.e. loss of profit or other financial damages, shall be excluded – with the exception of the regulations in paragraph 8, unless Messmer has acted in willful intent and gross negligence, has willfully withhold

information about the defect causing the damage or taken over a guarantee for the condition of the goods.

The restriction of liability does not apply to undutiful violation of life, body or health.

7.4 The purchaser shall give Messmer sufficient time and opportunity as appears reasonable to rectify defects. Purchaser shall place at Messmer's disposal the claimed product or respective samples. Otherwise the guarantee shall expire immediately.

7.5 Any warranty claims against Messmer shall start with the surrender of the goods and shall expire after 12 months. They shall not be transferable. If another purchaser in the supply chain is a consumer, the claims of the purchaser shall not be affected of the preceding regulation according to § 478 BGB.

## **8. General Limitation of Liability**

8.1 The liability of Messmer from the warranty is regulated in 7. Any further claims of the purchaser - for whatever legal reason - shall be excluded, unless the following provisions provide otherwise. Therefore, Messmer shall not be liable for damages not caused to the delivery item itself. In particular Messmer shall not be liable for lost profits or any other financial losses of the purchaser. In any case the liability of Messmer is limited to the contractually typical losses foreseeable at the time of the conclusion of the contract.

8.2 This exemption from liability shall not apply in the case of intent, gross negligence, culpable breach of significant contractual duties by Messmer or his agents. The preceding restrictions and exclusions of liability shall also not apply for any claims according to the product liability law or for any claims resulting from undutiful violation of life, body or health. To the extent to which the liability of Messmer is excluded or limited this shall apply equally in favour of the employees, agents, representatives in the event that the purchaser brings a claim directly against them.

## **9. Data Protection**

Messmer hereby informs the purchaser that Messmer shall handle the personal data acquired in the context of business-related activities according to the regulations of the German Federal Data Protection Act.

## **10. Place of Fulfillment, Place of Jurisdiction, Applicable Law**

- 10.1 These General Terms and Conditions for Sales and Deliveries and Payment as well as all legal relationships between Messmer and the purchaser shall be governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 10.2 Messmer shall reserve the express right to unilaterally modify these General Terms and Conditions of Sale, Delivery and Payment. The new General Terms and Conditions of Sale, Delivery and Payment shall be binding, also in case of a long-lasting business relationship between Messmer and the purchaser, from the first order the purchaser places at Messmer after having received information referring to the new General Terms.
- 10.3 Place of fulfillment for supply and payment is Emmendingen, place of jurisdiction is Freiburg.

## **General Purchasing Terms and Conditions of Messmer Pen GmbH**

### **I Scope**

These General Purchasing Terms and Conditions shall apply to any and all business relations between Messmer Pen GmbH (hereinafter referred to as "Messmer" and any supplier or other consignee (hereinafter referred to as "supplier", even if not expressly mentioned in subsequent agreements.

Any terms and conditions conflicting with, in addition to, or deviating from these General Purchasing Terms and Conditions – unless expressly stipulated in the order – shall not be valid.

### **II Conclusion/order**

1. An order becomes binding only if placed by Messmer in written form and provided with a signature or, in case of order placed verbally, telephonically, if duly confirmed by Messmer in writing. Drawings and tolerance indications provided by Messmer shall be binding. By accepting the order the supplier shall confirm that by having studied carefully the existing plans, he is well aware of modality and scope of supply and services. To the extent the order, documents, drawings and plans submitted by Messmer contain obvious errors, misspellings, or miscalculations, Messmer shall not be bound to it. The supplier shall immediately inform Messmer of such mistakes to enable Messmer to correct and renew the order. This shall apply also to missing documents or drawings.
2. Immediately, however at the latest within 2 weeks after date of order, the supplier shall confirm the order by providing the order copy with his signature. Otherwise Messmer shall be authorized to cancel the order.
3. Deviations with regard to quantity and quality from text and contents of the order and later amendments to the contract are deemed agreed only if expressly confirmed by Messmer in writing.
4. Messmer reserves any and all rights, in particular property rights in drawings, tools, samples, patterns, brands and designs or the like, finished products and semi-finished products provided by Messmer or produced by order of Messmer. They shall only be handed over to a third party with the explicit written permission of Messmer. Except when otherwise stipulated in particular cases, these shall be returned to Messmer immediately after settlement of the order without any further request. Products produced or marked with such manufacturing equipment, brands and designs shall only be handed over to a third party with the explicit permission of Messmer.

### **III Delivery dates**

1. The agreed lead times and delivery times are binding. They count from date of order. Within the agreed lead time respectively up to the agreed delivery time goods have to arrive at the point of acceptance indicated by Messmer. The supplier shall inform Messmer immediately of any occurring delay in order to obtain a decision as to maintenance of order.
1. In case of delay in delivery and after having reminded the supplier, Messmer shall have the right to claim a contractual penalty of 0,5 % of the net order value per week or part thereof, not exceeding 5 % of the net order value and/or the delivery and/or to cancel the order. The paid contractual penalty shall be credited against claim for damages.
2. Messmer shall not be bound to take the delivered products before the expiration of the agreed delivery term.

### **IV Delivery/Packing**

1. The delivery shall take place to the point of acceptance indicated by Messmer at the expense of the supplier, free of costs for Messmer. In case by way of exception Messmer has to pay the freight charges the supplier shall choose the mode of transport specified by Messmer or otherwise the mode of transport and type of delivery the most favourable for Messmer.
2. The supplier shall bear all risks until acceptance by Messmer at the point of acceptance.
3. The packing shall be included in the price. In case by way of exception another agreement is made the supplier shall invoice the packing at net cost. The supplier shall use the packing specified by Messmer and shall take special care that the goods are protected against any damage. In case of return consignment of the packing material the supplier shall credit at least 2/3 of the invoiced value.

### **V Documentation**

1. Invoices, delivery and packing slips shall be enclosed to each consignment in duplicate. The documents shall include:
  - order no.
  - quantity and quantity unit
  - gross, net and if necessary calculation weight
  - denomination of item with Messmer item no.
  - remaining quantity in case of partial shipments
2. The day of dispatch the supplier shall transmit a special shipping advice,

## **VI Prices**

1. Unless explicitly agreed otherwise the agreed prices shall be binding, provided that the supplier does not reduce his prices in general.
2. The supplier shall not give Messmer worse prices and conditions than any other buyer, if in a concrete case this buyer offers the same pre-conditions.

## **VII Invoice/Payment**

1. Invoices shall be issued separately for each purchase order. Payment shall only be made after full receipt of the goods free from defects, or full performance free from defects, and after receipt of the invoice. This shall apply accordingly to partial deliveries. Delays resulting from incorrect or incomplete invoices do not adversely affect discount periods.

In case of discount, payment shall be made:

- Within 14 days less 3 % discount
  - Net within 30 days
2. Payment claims from the supplier shall require the agreement of Messmer to be transferred to third parties. Payment shall only be made to the supplier.

## **VIII. Guarantee/Warranty/Complaints**

1. The supplier shall ensure that the goods, including packaging and price marking, comply with the specifications given by Messmer. The Messmer purchase order shall be carried out technically and materially according to the current state of the art.
2. The supplier shall be given an opportunity for supplementary performance/fulfillment in the event that defective goods are delivered. If the supplier cannot take such action immediately or does not take such action upon request and within a given deadline, Messmer may return the goods at the cost and risk of the supplier and may stock up elsewhere. In urgent cases and after having notified the supplier Messmer shall be entitled to perform remedial actions itself or have performed such actions by third parties. Any costs arising shall be borne by the supplier.
3. Unless above otherwise agreed the warranty shall comply with the statutory regulations.

## **IX. Producer Liability**

The supplier shall release Messmer from product liability arising from faults or defects for which he is responsible to the extent to which he would also be directly liable.

## **X. Property Rights**

The supplier shall be liable for ensuring that no patents or other property rights of third parties are violated by the delivery of the supplier and its utilization by Messmer. He shall exempt Messmer and its customers from any claims resulting from the infringement of industrial property rights and registered rights of protection. This shall not apply insofar as the supplier has manufactured the delivered goods in accordance with the drawings, models handed over by Messmer, or in accordance with other descriptions or orders matching these and does not know, or in connection with the manufactured product cannot know, that property rights are thereby violated.

## **XI. Force Majeure**

War, civil war, export restrictions resp. trading restrictions due to changes in political conditions as well as strikes, lockout, stoppages, cutting back of operations and other events which make fulfillment of the contract impossible or unreasonable, are regarded as force majeure and shall release Messmer for the duration of their existence from the obligation of taking delivery in good time. The parties to the contract shall be obligated to immediately provide the required information, and to adapt their obligations to the changed circumstances in good faith.

## **XII. Safe Custody/Property**

Material provided shall always remain the property of Messmer. It shall be stored strictly separate and only be used for the performance of Messmer purchase orders. The supplier shall be liable for any impairment of value or loss even if he is not at fault. The articles which have been produced with material Messmer has supplied shall remain property of Messmer in each process of production. The supplier shall hold these items in custody for Messmer. The custody charges for the articles and materials kept in custody for us shall be included in the purchase price.

## **XIII. Trade Secrecy**

The supplier shall treat all orders passed by Messmer and the commercial and technical details related to these orders as business secrets.

## **XIV. General Provisions**

1. If a provision is or becomes null and void, the validity of the remaining provisions shall remain unaffected.
2. Place of fulfillment is Emmendingen. Specific agreements may be made for the delivery.
3. Provided the supplier is a business owner, legal entity under public law or special fund under public law, the place of jurisdiction is Freiburg.