

## MSA Italia S.R.L.

### Terms and Conditions of Sale (EU)

#### 1 General information

1.1 These Terms and Conditions of Sale (EU) (“**Terms**”) shall apply to all present and future contracts, offers, deliveries for products and/or services (hereinafter collectively the “**Goods**”) of MSA Italia S.R.L. (“**Vendor**”) to third parties (each a “**Buyer**”; Vendor and Buyer each a “**Party**” and collectively the “**Parties**”). The Vendor’s offerings are not addressed to any consumer in the meaning of Section 13 German Civil Code (“**BGB**”). By accepting these Terms, the Buyer confirms not to be a consumer in the meaning of the same Section 13 BGB.

#### 2 Offers and conclusion of Contract

2.1 Offers by the Vendor shall be subject to confirmation and non-binding, except as expressly stated otherwise. The order of Goods by the Buyer constitutes a binding offer for the conclusion of a contract (“**Offer**”). The Offer shall be binding for a period of two (2) weeks. A binding contract is concluded only after the Vendor’s acceptance of an Offer (“**Contract**”). The Vendor may accept Offers (i) by confirmation in writing, including via email (“**Order Confirmation**”); and / or (ii) by delivery of the Goods. Buyer’s Offer must be accompanied by sufficient information to enable Vendor to proceed therewith; otherwise, Vendor shall be entitled to extend delivery times or amend the prices quoted to cover any increase in time or cost after the Offer was submitted.

2.2 Acceptance of Buyer’s Offer is expressly conditioned upon the Contract being

governed exclusively by these Vendor’s Terms as well as any Vendor-issued Quotation, unless agreed otherwise in writing by the Parties. Any deviating, conflicting or supplementary terms and conditions of the Buyer or any third party shall not apply, even if the Vendor fails to expressly object to their application, and no new, supplementary, modifying, or contradictory terms shall form part of the Contract, whether express or implied, on the basis of any trade, customer, practice, or course of dealing.

2.3 The version of the Terms that is applicable at the time of the conclusion of the Contract shall be controlling and legally binding. Cost estimates, drafts, drawings, samples, calculations and other documents remain the property of the Vendor and shall not be copied or made available to third parties. These materials shall be returned to the Vendor if no Contract has been concluded. Any samples submitted to Buyer and not returned to Vendor within one month from date of receipt of such samples shall be paid for by Buyer.

2.4 Once an Offer by the Buyer has been accepted by Vendor, the Contract may not be cancelled unilaterally by the Buyer. A cancellation will be possible only with the express written authorization by Vendor. If so authorized, the Buyer will receive a forwarding address and shall be responsible for arranging carriage of the Goods to the forwarding address. All returns are subject to a 15% restocking charge.

#### 3 Prices

3.1 Unless expressly agreed otherwise between the Parties in writing: (i) the price

es quoted by Vendor do not include costs for transportation (and any transportation-related charges) or statutory value added tax, and (ii) all orders under EUR 2,000 (or its local currency equivalent) will incur a fixed charge for transportation, as specified in the Vendor's applicable quotation. Express deliveries, transportation of dangerous Goods, or special transportation requests from Buyer will incur additional transportation charges.

- 3.2 Except as otherwise agreed in writing by the Parties, the Goods are supplied at the prices in effect on the day of the Contract as set out in the applicable *MSA Price List*. The Parties may mutually agree on a price adjustment mechanism to cover potential increases of the Vendor's purchase prices charged by the Vendor's suppliers.
- 3.3 Any variation or suspension of work caused by Buyer's instructions or lack of instructions shall entitle Vendor to adjust the price accordingly.

#### **4 Delivery and delivery time**

- 4.1 Notwithstanding any conflicting provision contained in the Buyer's Offer, the delivery period shall be as (i) mutually agreed; or (ii) determined by the Vendor in the course of acceptance of the Offer. All shipments or lead times quoted by Vendor are to be treated as estimates only, are not of the essence, and do not in any way constitute a binding obligation on Vendor as materials are at all times subject to prior orders.
- 4.2 The Vendor's obligation to perform shall be subject to the correct and timely delivery by Vendor's suppliers as well as correct instructions from Buyer. If the Vendor cannot meet delivery deadlines due to instructions (or lack thereof) of Buyer or a lack of correct and timely delivery by Vendor's suppliers, the time for delivery shall be extended by a reasonable period. If the new delivery time

cannot be met due to a continued lack of correct and timely delivery by Vendor's suppliers, and / or due to a force majeure event, the Vendor is entitled to revoke the Contract partly or in its entirety.

- 4.3 If Vendor does not receive forwarding instructions sufficient to enable it to deliver the Goods within 14 days after the date of notification by Vendor that such Goods are ready for delivery, Buyer shall take delivery or arrange for storage. If Buyer does not take delivery or arrange for storage, Vendor shall be entitled to arrange storage either at its own works or elsewhere on Buyer's behalf and all charges for storage, insurance or demurrage incurred by Vendor shall be payable by Buyer.
- 4.4 The legal consequences of the Buyer's default of acceptance shall be subject to the applicable statutory provisions. If the Buyer is a legal entity under public law or a special fund under public law, the Buyer shall for the purposes of this Section 4.4 be deemed to be merchant in the meaning of Section 1(1) of the German Commercial Code ("HGB").

#### **5 Performance and passing of risk**

- 5.1 Unless expressly agreed otherwise in writing, deliveries shall be made DAP. Upon request of the Buyer, delivery to another place will be conducted at the risk and to the expense of the Buyer.
- 5.2 The Buyer is obliged to accept partial deliveries, provided that (i) the partial delivery is usable within the scope of the contractual purpose, (ii) the delivery of the remaining Goods is secured, and (iii) no additional costs or expenses for the Buyer will arise.

## 6 Inspections and tests

- 6.1 The Vendor's Goods are carefully inspected and are, at the Vendor's discretion and where reasonably practicable, submitted to the Vendor's standard tests at the Vendor's works before delivered by the Vendor. If other tests or tests in the presence of the Buyer or the Buyer's representatives are reasonably required, these will be charged for and payable by the Buyer. In the event of any delay on the Buyer's part in attending such tests after receiving seven (7) days' notice that the Vendor is ready to carry out the relevant tests, such tests will proceed in the Buyer's absence and shall be deemed to have been made in the Buyer's presence.

## 7 Payment, set-off, retention

- 7.1 The purchase price shall be due and payable within thirty (30) days, as calculated from the invoice date.
- 7.2 If the Buyer fails to pay the full purchase price within the above 30 day period ("**Default of Payment**"), the Vendor may make any and all outstanding and future deliveries subject to prior full payment of the agreed purchase price by the Buyer.
- 7.3 During Default of Payment, the Buyer shall pay to the Vendor interest in the amount of nine (9) percentage points above the applicable base interest rate, as published by the German Central Bank, p.a. The Vendor's right to claim additional damages under the BGB shall remain unaffected. The Vendor shall also charge Buyer EUR 40 for each reminder regarding a Default of Payment.
- 7.4 If Buyer owes Vendor money under several outstanding orders and Buyer renders repayment that is not sufficient for the repayment of all claims, then payment shall be allocated in accordance with Section 366(2) BGB, even if the Buyer has expressly allocated otherwise.

- 7.5 No set-off or retention by the Buyer shall be permitted for any payment due hereunder unless the Vendor has agreed in writing or if made pursuant to a counterclaim that has been confirmed by final and absolute court decision.

## 8 Retention of title

- 8.1 Title in the Goods shall only pass to Buyer upon full payment of all outstanding payments due for the relevant Contract in accordance with Section 7 above. The Buyer is nevertheless responsible for the safe custody, protection and preservation of the Goods after delivery of the same and the risk in the Goods shall pass in accordance with the relevant INCOTERM as published by the International Chamber of Commerce from time to time and used for shipping purposes.

## 9 Warranties

- 9.1 The Vendor does not take over any guarantee for failure of any Goods as to the quality or fitness for any particular purpose of the Goods or for compliance with any sample and description or to attain any performance figures quoted by the Vendor, unless the Vendor has specifically and expressly guaranteed them subject to any tolerances specified or agreed to by the Vendor. If the performance figures obtained on any test provided for in the Contract are outside the rejection limits specified therein, the Buyer will be entitled to reject the Goods in respect of which such figures fall outside such limits, but the Vendor is to be given reasonable time and opportunity to rectify their performance before the Buyer becomes so entitled. If the Buyer becomes entitled to reject Goods pursuant to this clause 9.1, the Vendor will repay to the Buyer any sum paid by the Buyer to the Vendor on account in respect of such Goods. The Buyer assumes responsibility that Goods stipu-

lated by the Buyer are sufficient and suitable for the Buyer's purpose.

- 9.2 The Buyer must carefully examine the consignment immediately on arrival. If a defect is found, the Buyer must immediately notify the Vendor in writing. Any visible damage must be reported on the consignment note or by way of a statement of facts before acceptance.
- 9.3 The Buyer must report (i) obvious defects at the latest within eight (8) days after delivery; and (ii) non-obvious defects at the latest within eight (8) days after discovery in writing. The timeliness of the notification depends on the time of its receipt by the Vendor. If the Buyer fails to inspect or to report a defect properly to the Vendor, then claims in relation to the unreported defect shall be excluded.
- 9.4 Subject to the terms herein, Vendor shall repair, or at its option, replace material defects that under proper use appear in Goods of our manufacture. Provided always that unless otherwise agreed by the Vendor, the defective parts shall be promptly returned by the Buyer to the Vendor's facilities or at an address specified by the Vendor and at the Buyer's cost unless the Vendor agrees otherwise. The repaired or new Goods will be delivered by the Vendor free of charge. If the Buyer requires the Vendor to carry out repair at the Buyer's site, the Vendor reserves the right to charge for any resulting additional costs.
- 9.5 The Vendor shall not be liable for any material defects in Goods pursuant to this Section 9 if the material defects in Goods result from the following events: (1) the material defect arises because the Buyer failed to follow the Vendor's written or oral instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) Good trade practice regarding the same; (2) the Buyer alters such Goods without the Vendor's prior written consent; or (3) the material defect arises as a result of wear and tear; wilful damage; negligence; transportation; lack of maintenance; improper, excessive or abusive usage of the products; failure to follow manufacturer instructions; and generally speaking, from inappropriate environmental, storage or operating conditions.
- 9.6 In the case of defects in Goods not manufactured by the Vendor, the Vendor shall assign to the Buyer any rights against the third party manufacturer which the Vendor may have under the terms of its contract with the third party manufacturer but shall have no other liability for warranties whatsoever.
- 9.7 If the Vendor is obliged to pay damages in the relation to the defect in accordance with the statutory provisions – for whatever legal reason – such obligation shall be limited in accordance with Section 10.
- 9.8 Claims of the Buyer for defects under this Section 9 shall become time-barred after one (1) year upon delivery, unless expressly agreed otherwise in writing by the Parties. This shall not apply in case of intent or fraudulent misrepresentation by the Vendor or where such limitation period would be in contradiction to a warranty expressly given by the Vendor in writing.
- 9.9 The Goods subject to claims must be returned in their original packaging to the Vendor after obtaining his consent, with carriage costs assumed by the Buyer.
- 9.10 The repair, modification or replacement of Goods during the period covered by the guarantee shall not serve to prolong the duration of the Goods guarantee, as is the case for any maintenance contract operation.
- 9.11 The Buyer's claims to indemnity against the Vendor under Sections 445a and 445b BGB shall remain unaffected.

## 10 Limitations of liability

- 10.1 The Vendor shall be liable to damages without any limitation if the damage or loss results from wilful conduct and gross negligence.
- 10.2 In the event of simple negligence, the Vendor shall be liable only for: (i) any damage resulting from injury to life, body and / or health; and (ii) any damage resulting from breach of an essential contractual obligation (i.e. a contractual obligations which is indispensable for achieving the purpose of the Contract and on whose strict observance the Buyer must therefore be able to rely). Furthermore, liability under this Section 10.2(ii) shall be limited to such damage which was by its nature and scope foreseeable to the Vendor when the Contract was concluded and of a nature typical to a contract for the sale of Goods and/or services. The Parties agree that such damage typically does not exceed the price of the relevant Goods.
- 10.3 Any liability for the breach of a guarantee expressly given by the Vendor and / or any liability that arises from applicable national laws on product liability of any *EU Member State which implement the European Product Liability Directive 85/374/EC*, such as for Germany the German Product Liability Act, shall by no means be excluded or limited by this Section 10 or any or other section of these Terms.
- 10.4 The limitations of liability by Buyer set forth in this Section 10 shall equally apply to any liability of the Vendor's legal representatives, officers, agents, and employees.

## 11 Foreign trade provisions

- 11.1 The Buyer agrees and acknowledges that Vendor's ultimate parent company is headquartered in the United States and that the Goods may be subject to the export control laws and regulations

of Germany, the European Union, other EU Member States, the United States and / or other countries including, without limitation, the requirement to obtain necessary approvals and licences prior to the acceptance of any orders, or the shipment of Goods.

- 11.2 During the term of this Contract, and at all times thereafter, the Buyer (i) shall not export or re-export any Good or technical information relating to any Good for which a consent, authorization and / or license is required without first obtaining properly such consent, authorization or license; and (ii) shall comply with all applicable trade and sanctions laws, in particular laws on export control.
- 11.3 The Buyer further agrees and undertakes to impose the same obligations also on the recipients of such Goods or technical information.
- 11.4 In the event of any breach of any duty by Buyer, as referred to in Sections 11.1. – 11.3, above, the Buyer shall indemnify the Vendor and its affiliates and its and their directors, officers, employees, and representatives against any claim from third party and / or any administrative or governmental sanction, including reasonable attorneys' fees.

## 12 Applicable law and jurisdiction

- 12.1 This Contract is governed by the laws of the Federal Republic of Germany; the provisions of the *United Nations Convention on Contracts for the International Sale of Goods (CISG)* shall not apply.
- 12.2 The courts of Frankfurt am Main, Germany, shall have exclusive jurisdiction for any dispute arising from or in connection with the contractual relationship. Notwithstanding the above, Vendor may alternatively bring legal action against Buyer before the competent courts at Vendor's registered business seat.

### 13 Final provisions

13.1 **Entire agreement.** The Contract forms the entire agreement as between the Parties. The Contract shall supersede any previous arrangements between the Parties on the subject matter of the Contract.

13.2 **Compliance.** With respect to the Parties' business relation, each Party shall comply with applicable law, including U.S. and European anti-corruption and anti-bribery laws; furthermore, the Buyer shall comply with MSA's Global Code of Business Conduct, which is available at <http://gb.msasafety.com/ourEthics>. All quotations by Vendor for Goods for which the supply is or may become subject to export, import, or similar required license by EU officials or the officials of any other government are subject to such license being granted.

13.3 **Confidentiality.** Each Party shall keep confidential and not disclose to any third party the content of any Contract and any business and trade secrets and other confidential information regarding the other Party disclosed to it in connection with the business relationship between the Parties, except as expressly agreed upon with the other Party. Any press releases and other communication in connection with the business relationship between the Parties shall require the prior consent of the respective other Party. Notwithstanding the above, each Party may disclose any information as required in order to comply with applicable law, the rules and regulations of any stock exchange or an enforceable order of a court or public authority; provided, however, that the relevant Party shall, to the extent legally permissible

and practicable, notify the other Party thereof in advance and seek to agree with it upon the content of the information.

13.4 **Non-assignment.** Buyer may not assign, delegate or otherwise transfer any of its rights or obligations under these Terms and Conditions of Sale or any Contract to a third party without the prior consent of Vendor.

13.5 **Severability.** Should any provision of these Terms and Conditions of Sale, and / or any provision incorporated into a Contract in the future, be or become invalid or unenforceable, the validity or enforceability of the other provisions of these Terms and Conditions of Sale and / or any other provision incorporated into a Contract in the future shall not be affected thereby. The invalid or unenforceable provision shall be substituted by the parties by way of good faith negotiations by a suitable and equitable provision which, to the extent legally permissible, comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision. The same shall apply if the Parties have, unintentionally, failed to address a certain matter in these Terms and Conditions of Sale and / or any Contract; in this case a suitable and equitable provision, which reflects what the Parties, in the light of the economic intent and purpose of these Terms and Conditions of Sale and / or any Contract, would have agreed upon if they had considered the matter, shall be agreed upon by the Parties by way of good faith negotiations.

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