

# General Terms and Conditions of Messer Canada Inc.

## 1. DEFINITIONS

1.1 In these General Terms and Conditions:

"Agent" means a Person, excluding a subsidiary of Messer, who is accredited and authorized by Messer to solicit and facilitate the sale of Goods to third parties on behalf of Messer and includes an authorized Messer depot or dealer.

"Messer" means Messer Canada Inc. and its successors in title and permitted assigns;

"Customer" means a customer named in a current customer account in the records of Messer, a customer or purchaser named in a current contract with Messer, or a Person purchasing Goods or Services from Messer or an Agent of Messer;

"Cylinders" means cylinders and/or containers including valves and guards rented by Messer in accordance with Section 7;

"Equipment" means all gas, welding, electrical, and other equipment, including consumables such as medical equipment, supplied by Messer;

"Gas" means any gas or gas mixture supplied by Messer, including liquefied, compressed or dissolved gas;

"Goods" means any goods (including Gas, Equipment, and Cylinders) supplied by Messer being, in respect of each order from a Party accepted by Messer, those goods described on the invoice issued by Messer to such Party in respect of the relevant order;

"Safety Data Sheet" means a data sheet that gives the detailed safety and material property information on a specific gas or material for the use of anyone coming in contact with this material in the workplace;

"Party" means any of a Customer or an Agent, as the case may be in the specified context;

"Person" means any natural person, body corporate, corporation, partnership, proprietorship, association, firm, trust, joint venture, unincorporated association, governmental authority, or any other entity of whatever nature;

"PPSA" means the Personal Property Security Act, as may apply in a province in Canada, to the sale of Goods pursuant to these General Terms and Conditions;

"Services" means any services (including the handling, delivery and installation of Goods) supplied by Messer; In these General Terms and Conditions, the singular includes the plural and vice versa; and any reference to any legislation includes any amendment, modification or re-enactment of, legislation enacted in substitution for or a regulation or other instrument issued or made under that legislation.

## 2. APPLICATION

2.1 These General Terms and Conditions apply in all cases where Messer supplies Goods or Services to a Party. References hereafter to "the Party" shall be to the Party to whom Goods or Services are being supplied under the specified circumstances and context in which the reference is made.

2.2 No addition to, nor any variation or waiver of, these General Terms and Conditions, nor any terms and conditions put forward by the Party or printed on the Party's written order with Messer for the supply of Goods or Services, shall have any legal effect unless expressly agreed to in writing on behalf of Messer by an authorized employee or Agent of Messer.

2.3 To the extent of any inconsistency between these General Terms and Conditions and any other written contract between Messer and the Party, the terms of such other contract shall prevail. For the purpose of this section, "other written contracts" include Messer's standard cylinder, bulk, agent, depot, dealer agreements and contracts approved by Messer in accordance with the then current contract resolution of the board of directors of Messer; but shall specifically exclude customer purchase orders.

2.4 The giving of a quotation by Messer shall constitute an offer to supply the Goods or Services described in the quotation subject to these General Terms and Conditions. Unless otherwise stated, if the Party does not place an order based on the quotation within 30 days after the date of giving the quotation by Messer, the quotation shall be deemed to have been withdrawn. Messer reserves the right to accept in whole or in part any written or phone order made by the Party or to decline any such order. Any order or part of an order not accepted shall be deemed to be cancelled.

## 3. PASSING OF TITLE AND RISK

### 3.1 Sale of Goods

(a) The risk of loss or damage to all Goods, which are sold by Messer to the Party, shall pass to the Party upon delivery by Messer to the Party. Delivery will have been satisfied when Goods are delivered to Customer's facilities by Messer or when Goods are loaded on Customer's truck, as the case may be.

(b) Notwithstanding the passing of risk of loss or damage to the Goods as set out in Section 3.1(a), title to all Goods which are sold by Messer to the Party shall remain in Messer until payment in full of all amounts outstanding in the Party's account with Messer has been received by Messer.

(c) Until payment is received from the Party by Messer, the Party agrees:

(i) to keep the Goods in such manner as to enable them to be readily identifiable as the property of Messer provided that in the case of Gas sold to the Party, the keeping of the Gas, before consumption, in the Cylinders in which the Gas was delivered, shall be sufficient to satisfy this requirement;

(ii) in the case of Equipment, to maintain the Equipment in good order and condition.

(d) If payment for the Goods is not received by Messer on the date stipulated for payment or at any time the Party suffers any act or proceeding which calls its solvency into question, the Party hereby permits Messer or its authorized representative or agent to enter into the Party's premises to repossess the Goods without liability for any damage which may be caused.

### 3.2 Delivery of Goods to Agents; Sale of Goods by Agents to Customers on behalf of Messer

(a) Where Goods are delivered by Messer to an Agent for the purpose of the sale thereof by such Agent to a third party on behalf of Messer, the Agent shall, while the Goods are in the possession of the Agent, bear all risk of loss or damage to the Goods. The Agent shall immediately notify Messer of the existence, nature and extent of any loss, damage or theft.

(b) Where Goods are supplied by Messer to an Agent for sale by the Agent on behalf of Messer, until payment for such Goods has been received by Messer, the Agent shall hold the proceeds of any sale of the Goods in trust for Messer. All such proceeds of sale of Goods by an Agent are the sole property of Messer. In determining whether Messer has received payment, any payments made by the Agent shall, if they are not expressed to be paid in respect of a particular consignment of Gas, be attributed first to the consignment of Gas the purchase price of which has been outstanding for the longest period and thereafter to the next longest outstanding purchase prices.

(c) The risk of loss or damage to all Goods which are sold by an Agent on behalf of Messer to a Customer, shall pass to the Customer upon delivery of the Goods to the Customer. Delivery will have been satisfied when Goods are delivered by Messer to Customer's facilities or when Goods are loaded on Customer's truck, as the case may be.

(d) Title to all Goods which are sold to a Customer by an Agent on behalf of Messer shall remain in Messer until

payment in full of all amounts outstanding have been received by Messer.

(e) Until payment in respect of Goods sold to a Customer by an Agent on behalf of Messer, is received by Messer, the Customer agrees:

(i) to keep the Goods in such manner as to enable them to be readily identifiable as the property of Messer provided that in the case of Gas sold to Customers, the keeping of the Gas, before consumption, in the Cylinders in which the Gas was delivered, shall be sufficient to satisfy this requirement;

(ii) in the case of Equipment, to maintain the Equipment in good order and condition.

(f) If payment in respect of Goods sold to a Customer by an Agent on behalf of Messer, is not made on the date stipulated for payment or at any time the Customer suffers any act or proceeding which calls its solvency into question, the Customer hereby permits Messer or its authorized representative or agent to enter into the Customer's premises to repossess the Goods without liability for any damage which may be caused.

## 4. PRICING

### 4.1 Price Effective at Time of Supply

Unless otherwise agreed by Messer in writing or specifically quoted by Messer as a fixed price for a fixed period, the price for all Goods or Services supplied by Messer shall be the price effective at the time of supply, as stipulated by Messer within its sole discretion, notwithstanding that the time of supply may be delayed by agreement or otherwise.

### 4.2 Taxes

Any and all taxes, present or future, on the provision, sale, rental or shipment of Goods or Services hereunder, whether by virtue of Federal, Provincial, Municipal or other law applicable thereto, shall be payable by the Party purchasing the Goods or Services and may be added to the price of Goods or Services hereunder.

### 4.3 Costs of Delivery

Where the delivery is FOB or FCA the Party's location, Messer may charge a delivery fee. No such increases or changes in the foregoing charge shall constitute price increases as per Section 4.1.

## 5. TERMS OF PAYMENT

5.1 If terms are offered, the Party shall make full payment to Messer for all accounts rendered by Messer within thirty (30) days of the date of the invoice. Without prejudice to any of Messer's other remedies, Messer may charge interest on any amount overdue at the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law which interest shall accrue from the payment due date until and including the date upon which payment in full of the overdue amount plus interest is received by Messer. The Party shall notify Messer immediately of any invoice errors.

5.2 If the Party fails to comply with Messer's terms of payment, Messer may forthwith discontinue supply of further Goods or Services to the Party and payment shall become immediately due for all Goods and Services supplied. Messer shall have the right, and is authorized by the Party, to charge the Party's credit card for overdue amounts plus interest thereon.

5.3 Where Messer has granted a discount to the Party, the continued granting of that discount will be subject to the Party complying with the provisions of Section 5.1.

5.4 The Party shall reimburse to Messer all costs incurred by Messer in collecting any payment which is overdue by the Party (including all legal or other enforcement costs).

5.5 In the event that the Party fails to pay any invoices when due, or if Messer reasonably believes that the Party will be unable to make payment when due, Messer may require the Party to pay for deliveries of the Goods in advance and pay any outstanding indebtedness before Messer makes any further deliveries. Messer may apply towards the payment of any amount owed to Messer any credit or amount which may be owed by Messer to the Party.

## 6. GAS SUPPLY

### 6.1 Purity and Suitability

Messer warrants that Gas supplied by Messer shall conform to the description thereof published by the manufacturer or Messer, as the case may be, at the time of sale. If any Gas supplied by Messer does not so conform to the description thereof published by the manufacturer or Messer, as the case may be at the time of sale, Messer will replace that Gas free of charge if a claim and evidence satisfactory to Messer proving the validity of the claim is lodged with Messer within ten (10) days after delivery of the Gas to the Party. Apart from such replacement, Messer shall have no further liability whatsoever to the Party in respect of or arising out of such claim.

### 6.2 No Warranties

The warranty provided in Section 6.1 is in lieu of all statutory or other conditions, representations or warranties, whether expressed or implied. Except as expressly provided in Section 6.1, all other conditions, representations and warranties arising by law or otherwise are hereby excluded including, but not limited to, any implied warranty of merchantability or fitness for purpose, any implied warranty arising from course of dealing or trade usage, or any liability, claim or remedy arising pursuant to statute including, without limitation, from strict liability or product liability.

### 6.3 Limitation of liability of Messer

Messer's obligation and liability shall be limited to replacement of Gas pursuant to Section 6.1 and this shall be the Party's exclusive remedy, except that Messer's obligations in such Section do not apply to defects if caused by the Party. In no event shall Messer be liable to the Party or any other Person for any claim in respect of loss or damages suffered in excess of the purchase price of the Gas sold by Messer or for any indirect, special, incidental or consequential damages, or loss of profits, arising out of or in connection with any Gas sold hereunder whether such damages result from any negligent act or omission of Messer or are related to strict liability.

### 6.4 Party's Liability

Until title to Gas passes to the Party, the Party shall be liable to Messer for all loss or damage to Gas located at the Party's premises or within the Party's control. Regardless of whether title to Gas has passed to the Party, the Party agrees to indemnify and hold Messer harmless from and against all claims, damages, losses, costs and expenses, including legal fees, of any kind whatsoever for loss or injury to property or Persons at any time caused directly or indirectly by or through the presence, use or maintenance of Gas at the Party's premises or under the control of the Party.

## 7. CYLINDERS

Messer may rent Cylinders to the Party upon the terms and conditions set forth in this Section 7:

### 7.1 Cylinders to Remain Property of Messer

The Cylinders shall at all times remain the property of Messer.

### 7.2 Responsibilities of the Party

(a) The Party shall not fill or refill any Cylinder with any gas, liquid or solid, or permit any of them to be so filled or refilled except by Messer and shall promptly return to Messer's location all empty Cylinders, in good condition, with valves tightly closed. Credit will not be given for residual Goods in any Cylinder.

(b) The Party shall at no time part with possession of or dispose of any Cylinders. The Party shall under no circumstances make or cause to be made any repairs, alterations or additions to Cylinders or their accessories, but if any are returned in a damaged condition or without any caps, fittings or valves, the Party shall promptly pay Messer on demand for the actual cost to Messer of making all necessary repairs and of replacing all missing parts.

### 7.3 Repossession

(a) Messer may at any time demand that the Party return all Cylinders rented to the Party by Messer. Upon receiving a demand therefore from Messer, the Party shall return all Cylinders to Messer and shall promptly make payment to Messer, at Messer's then current replacement value, for any or all Cylinders which are

not returned to Messer within 10 days of the date of Messer's demand. However, title to all Cylinders so paid for shall remain in Messer, and if such Cylinders shall be subsequently returned to Messer by the Party, Messer agrees to refund to the Party all amounts paid therefore, less accrued rental for such Cylinders at the rate specified in Messer's published price list from the date payment was made by the Party until the date of return thereof to Messer and less the cost of any necessary repairs.

(b) Messer may at any time, upon reasonable notice, enter the premises of the Party to verify the existence and condition of any or all Cylinders rented by the Party.

(c) In the event that the Party does not, upon the request of Messer, return Cylinders to Messer as required pursuant to Section 7.3(a), Messer may in addition to or instead of any other remedies it has in law or under these General Terms and Conditions:

(i) enter upon the Party's premises where the Cylinders are thought to be and retake possession of and retain them (together with any Gas remaining in them, in respect of which Messer shall not be obligated to give any credit to the Party); and

(ii) charge the Party, by way of liquidated damages, an amount equal to the rental payable on the Cylinders from the date of Messer's request for the return of the Cylinders to the date upon which Messer receives full payment under Section 7.3(a) or repossesses the Cylinders pursuant to Section 7.3(c)(i) (as the case may be).

(iii) For the purpose of Section 7.3(a)(i), the Party shall not unreasonably withhold access to its premises during normal business hours, so that Messer may repossess its Cylinders.

(iv) The Party shall be liable for and shall indemnify Messer against any claims, damages, losses, costs and expenses, including legal fees, of any kind whatsoever, arising directly or indirectly as a result of Messer not having reasonable access to the Party's premises or in respect of its failure to return, Cylinders.

### 7.4 Rental Fee for Cylinders, ICC Fee and Cylinder Utilization Fee

(a) Messer will charge, and the Party agrees to pay, a rental charged per period or part thereof for each Cylinder held by the Party, as shown on Messer's records and in Messer's invoice statement. Messer may require that such rental be paid in advance. It is the Party's responsibility to ensure that the number of Cylinders held by the Party from time to time conforms to the number on which Messer charges rental.

(b) Payment by the Party of the rental invoice statement is deemed conclusive (subject to transactions prior to the date of the invoice which have not been included in the invoice and to (c) below) as to the Party's holding of Cylinders as shown on the date of the invoice in question.

(c) If a Cylinder transaction or notification by a Party or on a count by Messer indicates that the number of Cylinders being held by the Party is greater than that recorded in respect of the Party, Messer shall amend its records and charge the Party rental accordingly.

(d) If Messer receives advice or otherwise discovers that the Party holds fewer Cylinders than the number shown on Messer's monthly invoice then the number of Cylinders comprising the difference shall be deemed to be lost by the Party and the Party shall pay to Messer the then current replacement cost of those Cylinders.

(e) Messer reserves the right to charge a Cylinder deposit for Cylinders rented by the Party, such deposit to be held by Messer until the Cylinders are returned to Messer. Once the Cylinders are returned to Messer, Messer shall refund the deposit (or the appropriate part thereof if not all Cylinders are returned) to the Party.

(f) Each Cylinder is individually identified by a 7-point system ("ICC System") making each Cylinder a unique asset. Messer uses the ICC System to track the Cylinders. Each Cylinder rented by Messer to the Party is scanned in the ICC System when delivered to the Party and scanned again upon its return to Messer. The Party is required to return each particular Cylinders rented to it as identified by the ICC System. The Party recognizes and agrees that any Cylinder returned by it that was not rented to the Party, as determined by the ICC System, will not be credited against the Party's cylinder account. Messer will charge to the Party an ICC System fee ("ICC fee") as detailed in Messer's published price list for each Cylinder rented to the Party until such time as that Cylinder is returned to Messer. Notwithstanding the ICC fee, the Party remains liable for all Cylinders delivered to the Party until their return

to Messer in the condition required as provided for in these General Terms and Conditions.

(g) In addition, Messer may charge the Party a Cylinder utilization fee as described in Messer's published price list for each Cylinder that is not returned to Messer within the time period indicated in the published price list.

### 7.5 Cylinder Size Requested not available

If the size of Cylinder requested by the Party is not available, Messer reserves the right to supply Cylinders of the nearest available size.

### 7.6 Supply and Collection by Messer

(a) The Party shall provide free of charge adequate labour and/or material handling equipment for the loading and unloading of Cylinders at its premises.

(b) Where, in order to supply or collect Cylinders, Messer or its authorized carrier enters upon the Party's premises, the Party shall provide adequate and safe access to Messer or its carrier during normal business hours and shall be liable for and shall indemnify Messer against any losses, claims or damages arising directly or indirectly as a result of the failure by the Party to observe the terms hereof.

(c) Where Messer agrees to collect Cylinders from the Party's premises, the Party shall ensure that the Cylinders are available for collection at a safe and easily accessible point and available at such time during normal business hours as Messer or its carrier arrives to collect them.

(d) Where Cylinders are transported by Messer to the Party's premises, delivery shall be deemed to take place at the moment the Cylinders pass over the side of the vehicle upon which they were transported to the Party's premises. In all other cases, delivery shall take place at such time as the Party takes receipt of the Cylinders.

### 7.7 Return of Cylinders

(a) The Party shall ensure that all Cylinders are returned to Messer as soon as they are empty.

(b) Cylinders shall be deemed not to be returned by the Party until:

(i) they are received by Messer at any Messer branch or at the place of business of Messer's Agent or, where the Cylinders are collected by Messer or its authorized carrier, until they are loaded onto the collection vehicle; and

(ii) Messer has issued to the Party a "Delivery Receipt" or similar document in use from time to time by Messer acknowledging receipt of the Cylinders.

(c) Where the Party returns Cylinders to Messer other than by Messer vehicles or authorized carriers, Messer shall be informed in advance of the details of such returns including details of the Cylinders and the proposed date and method of their return.

(d) All Cylinders must be returned by the Party (or by any person acting on behalf of the Party) in a clean, safe and serviceable condition, with valves closed and any protecting caps (where fitted) in place.

(e) Subject to fair wear and tear, Messer reserves the right to charge the Party for repair, renovation or cleaning of a Cylinder due to the Party's failure to take proper care of the Cylinder. The Party will be charged for a new Cylinder if a Cylinder is lost or, at Messer's discretion, damaged beyond repair.

### 7.8 Repair of Cylinders

If for any reason a Cylinder needs to be repaired while on the Party's premises the Party shall forthwith return that Cylinder to Messer's branch or the place of business of Messer's Agent. Under no circumstances should a Party attempt to repair a Cylinder. If a repair is required through fair wear and tear, Messer will replace the Cylinder including its contents with an equivalent Cylinder.

### 7.9 Limitation of Liability of Messer

Messer's sole liability in respect of any defective Cylinder is to replace or repair the Cylinder in accordance with Section 7.8 and this shall be the Party's exclusive remedy, except that Messer's obligations to repair or replace Cylinders do not apply to Cylinders damaged by Customer or otherwise as a result of circumstances beyond Messer's control. In no event shall Messer be liable to a Party or any other Person for any claims or damages in respect of loss suffered in excess of the rental amounts previously paid by the Party to Messer for rental of the Cylinders or for any indirect, incidental or consequential damages arising out of or in connection with any Cylinders rental hereunder whether such damages result from any negligent act or omission of Messer or are related to strict liability.

### 7.10 Liability of Party

(a) The Party shall be liable to Messer for all loss or damage to Cylinders located at the Party's premises or within the Party's control and agrees to indemnify and hold Messer harmless from and against all claims or demands of any kind whatsoever for loss or injury to property or Persons at any time caused directly or indirectly by or through the presence, use, filling, storage, handling, transportation or control of Cylinders at the Party's premises or under the control of the Party. Where a Distributor sub-rents Cylinders to its customer, the Distributor shall be liable to indemnify and hold Messer harmless from and against all claims, damages, losses, costs, or expenses, including legal fees, of any kind whatsoever, for loss or injury to property or Persons at any time caused directly or indirectly by or through the presence, use, filling, storage, handling, transportation or control of the Cylinders at the Distributor's customer's premises or under the control of the Distributor's customer.

#### 7.11 Precautions to be Observed in Handling and Use of Cylinders and Responsibility for Safety

(a) The precautions to be observed in order to ensure safety in the handling and use of Cylinders appear on the labels affixed to Cylinders and are set out in Messer's safety literature which is available free of charge from any Messer branch. Those precautions must be strictly observed by the Party who shall be responsible for bringing them to the attention of all Persons using or handling Cylinders on the Party's behalf. The rental of all Cylinders to the Party is subject to the condition that the Party shall not attempt to fill that Cylinder from any source whatsoever (including decant filling) and the Party agrees to indemnify Messer against all claims, damages, losses, costs or expenses, including legal fees, of any kind whatsoever brought against or suffered by Messer arising directly or indirectly out of the Party's failure to observe this condition.

(b) The Party shall not use oil, grease or any other compound on valves or regulators of Cylinders.

(c) The Party is responsible for any risks to health or safety from Cylinders in its possession and/or control.

#### 7.12 Safety Data Sheets

The Party acknowledges receipt from Messer of Safety Data Sheets which describe the Goods. The Party acknowledges that it has full knowledge of the hazards associated with the storage, distribution and use of the Goods and hereby assumes all responsibility for warning its employees and any third parties exposed to the Goods of such hazards. The Party shall indemnify and hold harmless Messer from and against any and all claims, costs, losses or damages of any kind whatsoever, including for loss or injury to property or Persons at any time caused directly or indirectly by or through the use, possession or maintenance by the Party of any Goods or the failure by the Party to make necessary warnings with respect to the hazardous nature of the Goods.

#### 7.13 Regulations of Transport Canada

(a) Messer shall use reasonable care to ensure that all Cylinders conform with the regulations of Transport Canada or any regulatory body succeeding to the function of the aforementioned board.

## 8. NON-MESSER CYLINDERS

Where the Party requests Messer to refill the Party's privately owned Cylinders which bear the distinctive markings of the Party, Messer may, at the Party's expense, inspect and subject that Cylinder to a hydrostatic test if, in accordance with statutory regulations then in force, such test is in the opinion of Messer required. Messer shall charge such testing and any required re-testing to the Party. A Cylinder failing these tests will, after the Party has been advised, be rendered unusable in accordance with statutory regulations. Messer reserves the right to charge for other costs incurred by Messer in preparing the cylinder for filling in accordance with Messer's standard operating procedures.

## 9. EQUIPMENT

### 9.1 Inspection and Claims for Defective Delivery

The Party is responsible for the immediate examination of Equipment upon delivery by Messer or its Agent to the Party and any deficiency in the Equipment must be notified to Messer in writing within 7 days of that delivery. If the Party does not give notice to Messer within such period the Equipment shall be deemed

in all respects to be accepted by the Party who shall become bound to pay Messer for the Equipment.

### 9.2 Returns

(a) No items of Equipment may be returned to Messer unless:

(i) the prior consent of Messer has been obtained; and

(ii) in the case of Equipment supplied in a package or other container, the item has not been used and is returned in same condition as when sold, together with all original packaging.

(b) Any items of Equipment accepted for return may be subject to a handling charge equal to twenty percent (20%) of their invoiced value.

### 9.3 Warranty

(a) Subject to the remaining provisions of this Section 9.3, Messer warrants that all Equipment manufactured by it and supplied to the Party conform to the manufacturer's description thereof. Messer's entire liability in respect of such warranty is limited to the repair or replacement of those items of Equipment returned to it (freight paid by the Party) at the Party's risk and which upon examination by Messer are found to be defective in workmanship or materials; provided, however, that notice of the defect is given, and the Equipment is returned, within the applicable warranty period.

(b) Messer accepts no liability for defective Equipment supplied by others to Messer for resale either as individual items or, in the case of Equipment after incorporation into Equipment supplied by Messer. Any Equipment not of Messer's manufacture shall be subject to the warranty of the maker only.

(c) The duration of the warranty is for the period (if any) specified in relation to the particular items of Equipment when supplied by Messer commencing from the date of delivery of the Equipment to the Party.

(d) The warranty only applies to the original purchaser of the Equipment, either from Messer or its authorized Agent, and is not transferable.

(e) The warranty does not cover faults causing failure which arise from fair wear and tear or from negligent use of or misuse of or accidental damage to the Equipment or from the use of the Equipment for any purpose not recognized by Messer. The giving of the warranty is subject to the Equipment being used in accordance with appropriate operating manuals and under competent supervision.

(f) No warranty is given in respect of obsolete Equipment sold at auction, pre-owned Equipment or prototype Equipment supplied by Messer or its Agents.

(g) Messer accepts no responsibility for repairs made other than by Messer or Messer's authorized repair centre.

(h) The warranty provided in this Section 9 is in lieu of all statutory or other conditions, representations or warranties, whether expressed or implied. Except as expressly provided in this Section 9, all other conditions, representations and warranties arising by law or otherwise are hereby excluded including, but not limited to, any implied warranty of merchantability or fitness for purpose, any implied warranty arising from course of dealing or trade usage, or any liability, claim or remedy arising pursuant to statute including, without limitation, from strict liability or product liability.

(i) Messer accepts no responsibility for the accuracy of any information or advice given by Messer or its authorized Agents in relation to the use of Equipment sold by Messer or its authorized Agents.

(j) Warranty work will be carried out at the premises of Messer or of its authorized repair centre within normal working hours. All Equipment must be forwarded freight paid by the Party to those premises, and will be returned to the Party's premises freight collect. On request, warranty work will be carried out at the Party's premises or outside normal working hours, but the Party will be liable for travelling time, service vehicle costs, accommodation and other costs for call-out and overtime.

(k) In the event of a replacement part not being available from stock, Messer will ship it to the point of repair by surface freight at its cost. On request by the Party, the replacement part can be forwarded by airfreight, in which case the Party will be liable for the additional freight cost.

### 9.4 Limitation of Liability of Messer

Messer's sole liability in respect of Equipment is to repair or replace Equipment pursuant to Section 9.3(b), and this shall be the Party's exclusive remedy, except that Messer's obligations to repair or replace do not apply to Equipment damaged by the Party or otherwise as a result of circumstances beyond Messer's control. In no event shall Messer be liable to the Party or any

other Person for any claim or damages in respect of loss suffered in excess of the purchase price of the Equipment sold by Messer or for any indirect, special, incidental, or consequential damages arising out of or in connection with any Equipment sold hereunder whether such damages result from any negligent act or omission of Messer or are related to strict liability.

### 9.5 Liability of Party

(a) Until title to the Equipment passes to the Party, the Party shall be liable to Messer for all loss or damage to Equipment located at the Party's premises or within the Party's control. Regardless of whether title to the Equipment has passed to the Party, the Party agrees to indemnify and hold Messer harmless from and against all claims, damages, losses, costs or expenses, including legal fees, of any kind whatsoever for loss or injury to property or Persons at any time caused directly or indirectly by or through the presence, use or maintenance of Equipment at the Party's premises or under the control of the Party.

## 10. GENERAL

### 10.1 Force Majeure

Messer shall not be liable for any failure to fulfill its obligations if such failure is due to any cause beyond Messer's reasonable control. Messer shall immediately notify the Party of such cause.

### 10.2 Supply of Goods and Services

Any Person engaged at the point of delivery on work in connection with the supply of Goods or Services by Messer other than employees or agents of Messer shall be deemed to be the employees or agents of the Party.

### 10.3 Licences and Permits

The Party is required to obtain, in relation to all Goods or Services supplied to the Customer, all necessary statutory, regulatory or other licences, permits, certifications or consents.

### 10.4 Drawings and Specifications

All technical information (including drawings, specifications, catalogues, illustrations and particulars of weight and dimensions) supplied by Messer to the Party are approximate only.

### 10.5 Confidential Information

All know-how or technical information or documents supplied by Messer to the Customer shall be treated by the Party as confidential and the Party shall not communicate such information to any Person without the written consent of Messer. This Section 10.5 shall survive indefinitely.

### 10.6 Catalogues

While Messer takes every precaution in the preparation of catalogues, technical circulars, price lists, illustrations and other advertising matter, these are an indication only of the type of Goods offered, and no particulars contained therein shall be binding on Messer.

### 10.7 Patents

Messer endeavours not to offer information or advice or to supply Goods or Services which infringe patent rights but accepts no responsibility for the consequences of any patent infringement which may arise out of the use of such information, advice, Goods or Services.

### 10.8 Assignment

The Customer shall not assign any of its rights or obligations contained in these General Terms and Conditions without the prior written consent of Messer.

### 10.9 Waivers

Failure by Messer to insist upon strict performance by the Party of any terms or conditions contained in these general terms and conditions shall not be taken to be a waiver or to in any way prejudice any right of Messer in relation to those terms and conditions and shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

### 10.10 Arbitration

(a) In the case of any dispute or difference arising between Messer and the Party, as to the construction of these General Terms and Conditions or the rights, duties or obligations of either party under these General Terms and Conditions or any matter arising out of or concerning the same, such dispute or difference shall be determined by a single arbitrator. The arbitration shall be conducted in the English language in Toronto under the Ontario Arbitration Act pursuant to the Arbitration Rules established by ADR Chambers in Ontario.

(b) If either Messer or the Party proposes to have a matter arbitrated, it shall give written notice to the other (the "Notice of Arbitration") specifying the particulars of the matter or matters in dispute and proposing the name of the person it wishes to be appointed as the

single arbitrator. Within five business days after receipt of such notice, the recipient of the Notice of Arbitration (the "Recipient") shall give notice to the Person that delivered the Notice of Arbitration (the "Claimant") advising whether the Recipient accepts the arbitrator proposed by the Claimant. If no such notice is given within such five business day period, the Recipient shall be deemed to have accepted the arbitrator proposed by the Claimant. If the parties do not agree upon a single arbitrator within ten business days of the Notice of Arbitration, either party may apply to an Ontario court for the appointment of a single arbitrator.

#### 10.11 Notices

Notices to Messer shall be hand delivered or sent by pre-paid registered post to Messer's address stated on Messer's delivery document. No notice to Messer shall be taken to have been given until it is actually received by Messer.

#### 10.12 Consent for Collection of Credit Information

By placing orders for Goods, the Party shall be deemed to have consented to Messer's collection of information about the Party from credit reference agencies and other credit service providers for the purpose of assessing the Customer's credit record.

#### 10.13 Execution of Documents

The Party shall execute documents and do such further acts as may be required by Messer to register security interests of Messer in the Goods under the PPSA or for any other purpose whatsoever.

#### 10.14 Internet Purchases

If the Party purchases Goods and Services from Messer through any Messer website or other e-commerce process, then (without limiting the foregoing) the following terms and conditions also apply:

- (a) the Party shall ensure that it safeguards its password and agrees that it will be bound by purchases made by any Person using its password;
- (b) unless the Party advises Messer otherwise, on each occasion when the Party places an order, such

Party is instructing Messer to process that order (including payment for that order) in accordance with the details which such Party has registered with Messer most recently;

(c) all orders must be accompanied by payment using credit cards or charge cards accepted by Messer, or by using the Party's Messer account. Acceptance by Messer of the Party's order is subject to authorization of the transaction by the Party's credit or charge card's issuer/manager, if the Party uses a credit card or charge card to place its order. If for any reason the Party's credit or charge card is not accepted or authorized as required then Messer will notify the Party, at which time the Party may be able to make alternative arrangements for payment;

(d) Messer and its suppliers have endeavoured to ensure that all sites and access points are secure; however, Messer accepts no liability for any misuse of information transmitted to or from these sites and/or access points by a party who is not a Messer employee;

(e) the Party consents to the use of cookies by Messer through its website, and other e-commerce processes.

(f) if the Party purchases access to Messer documents, process, information, calculators or materials ("Information") the Party is granted a non-exclusive, non-transferable, limited license to access, download and use such Information for its internal purposes only, subject to the terms of these General Terms and Conditions. The Party may not, without Messer's express prior written permission, (i) modify the materials or use them for any commercial purpose or any public display, sale or rental, (ii) remove any of Messer's copyright or other proprietary notices from the materials; or (iii) sell or transfer the materials to any other party. Messer may terminate this license at any time if the Party violates any of the terms hereof and, upon any such termination, the Party agrees to immediately destroy or return, as required by Messer any materials in its possession or control. Also the

Party agrees to indemnify, defend and hold Messer harmless from any claims, damages, losses, costs and expenses, including legal fees, which Messer and its employees, agents or representatives may incur as a result of the Party's use or dissemination of any materials in violation of any term or condition of these General Terms and Conditions.

(g) all Information within any Messer site is the property of and is owned solely by Messer and/or its affiliates, suppliers, advertisers, or agents or sponsors. Except for a single copy made for personal use only, the Party may not reprint, republish, resell or redistribute these materials in any form or manner without the express written permission of the owner(s) of the material which may be protected from copying by national and international copyright laws and treaties. Messer does not warrant or represent that the Party's use of materials displayed on, or obtained through, any Messer site will not infringe the rights, including intellectual property rights, of third parties.

(h) Messer and the Messer logo are trademarks and/or service marks of Messer. All other trademarks are trademarks or registered trademarks of their respective owners. Nothing in these General Terms and Conditions grants the Party any right to use any trademark, service mark, logo, and/or trade name of Messer or its affiliates, suppliers, advertisers, or agents or sponsors.

#### 10.15 Messer's Earlier Conditions of Trade

These General Terms and Conditions shall supersede and override any earlier general terms and conditions issued by Messer, other than those contained in contracts between Messer and a Party, in which case Section 2.3 shall apply.