



# General Terms and Conditions

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## 1. DEFINITIONS

In these general terms and conditions, the following terms are defined as follows:

**MSE:** Membrane Systems Europe B.V. with registered office at Hengelo. Hereafter referred to as: "MSE".

**Buyer:** any natural or legal person in a contractual relationship with MSE, based on a purchase agreement entered into with MSE, as well as any natural or legal entity negotiating with MSE about entering into a purchase agreement. This also includes anyone on whose instructions and at whose account goods are delivered.

**Principal** any natural or legal person in a contractual relationship with MSE, based on a contractor agreement concluded with MSE, as well as any natural or legal person negotiating with MSE about concluding such agreement.

**Agreement:** the agreement concluded after the offer is accepted.

## 2. APPLICABILITY

- 2.1 These general terms and conditions apply to all offers issued by MSE and to all agreements and commitments arising from it with MSE.
- 2.2 In the event of a purchase agreement, as defined in Article 7 clause 1 of the Dutch Civil Code, only section A of these terms and agreements are applicable.
- 2.3 In the event of a contractor agreement, as defined in Article 7 clause 750 of the Dutch Civil Code, only section B of these general terms and conditions are applicable.
- 2.4 The provisions in these general terms and conditions may only be derogated from if and insofar it has been explicitly agreed in writing.
- 2.5 General and special terms and conditions of Buyer or the Principal are not binding for MSE, except if and insofar the applicability of such conditions has been explicitly accepted by MSE in writing.

## A. PURCHASE

### 3. OFFERS

- 3.1 Any offers issued by MSE are without obligation. MSE is only bound by its offer if it has been confirmed in writing within the deadline indicated by MSE.
- 3.2 If MSE does not indicate a fixed deadline for acceptance in MSE's written offer, MSE can consider the offer as lapsed if Buyer has not accepted the offer after three weeks from the offer date, without specifically notifying Buyer.
- 3.3 Data included in printed matter does not bind MSE and they can be amended without prior notice.
- 3.4 Samples shown or submitted only constitute an indication of the item without the item having to match the sample.
- 3.5 MSE reserves the right to amend the offer if it emerges after receipt that additional technical information is required.
- 3.6 For the installation and mounting of different components, MSE will have to drill in the tank wall. To install our systems in the correct way, we are forced to keep the following freedom in drilling in the concrete walls:
  - Top of the tank wall, holes of 120 mm deep
  - Outside of the tank wall, holes of 70 mm deep
  - Inside of the tank wall, holes of 70 mm deep (only in case of protection systems for the membranes)In case drilling at those depths is not acceptable for the client, this will have to be communicated to MSE prior to the start of the installation. Without written communication prior to the installation,

MSE is not able to take this into account. For any damage to other systems caused by this drilling, MSE cannot be held responsible. In case it has been communicated to MSE that the drilling is not possible, MSE will find another solution for this together with the client. Extra costs for these other solutions will be charged to the client.

## 4. FORMATION OF AGREEMENT

- 4.1 An agreement with MSE is formed when MSE has accepted an order it receives in writing. The agreement is formed from the time MSE sends the order confirmation.
- 4.2 Buyer is bound by its order during a period of seven days from the order date. A statement from Buyer that it wishes to cancel or amend its order, made during this period of seven days, can therefore not prevent that an agreement is formed based on the (original) order, if MSE still accepts or confirms the order within this period of seven days.
- 4.3 The order confirmation sent by MSE to Buyer is deemed to be a full and accurate reflection of the agreement formed. Buyer is considered to be in agreement with the content of the order confirmation, unless Buyer indicates in writing within seven days from the date of the order confirmation concerned that it does not accept the content.
- 4.4 MSE cannot be bound by actions and/or verbal agreements by people who are not MSE's authorised representatives, unless those agreements are confirmed in writing by directors who are authorised representatives of MSE.

## 5. PRICES

- 5.1 Prices given by MSE are 'ex works', excluding VAT and packaging, except if explicitly agreed otherwise in writing.
- 5.2 The prices indicated in quotes, order confirmations and contracts are based on cost factors at the time the agreement is formed. These cost factors include but are not limited to: currency rates, manufacturers' prices, the price of raw materials and base materials, salary and transport costs, insurance premiums, taxes, import duties and other statutory impositions.
- 5.3 In the event of price increases after the date of the offer, MSE is entitled to pass those increases on to Buyer. This does not give Buyer the right to cancel the agreement. Prices exclude any costs in relation to transport, storage, installation and commissioning, unless explicitly agreed otherwise in writing. These costs will be invoiced separately.

## 6. DRAWINGS / LICENSES

- 6.1 The following form an integral part of offers issued by MSE: designs, drawings, models, samples, descriptions, pictures, indications of sizes, etc., as well as any attachments and records that relate to the quote. They all remain the property of MSE, as well as any tools made by MSE in relation to the offer. They must be returned at MSE's request and must not be copied and/or given to third parties without MSE's explicit written consent. MSE also reserves all rights pursuant to any intellectual and industrial property rights.
- 6.2 MSE does not accept any responsibility or liability on any basis for aforementioned designs, etc., which MSE issues for the purpose of carrying out the agreement.
- 6.3 Any industrial or intellectual property rights in relation to the aforementioned designs, etc., belong to MSE, even if they incorporate the ideas of Buyer.
- 6.4 Insofar licences are required or if third parties need to make deliveries or perform services, Buyer will take responsibility for those, for its own account.



## 7. TERMS OF COMPLETION AND DELIVERY

- 7.1 The delivery terms indicated by MSE commence on the day the agreement is formed, provided MSE already has all the details required for the execution of the order in its possession.
- 7.2 All delivery terms are only given by approximation. An agreed delivery time is not a final deadline. An overdue delivery does not entitle Buyer to recover any damages or to consider the agreement as terminated.
- 7.3 Unless the order confirmation states to the contrary, the delivery of goods occurs at the time the goods leave our warehouse or the warehouse of the supplier or manufacturer.
- 7.4 If it is agreed contrary to the above that the goods are transported by MSE, the goods are despatched as MSE sees fit, by forwarding agents of its choice.
- 7.5 Delivery will only be made to surfaced roads and to addresses accessible by trailer. Buyer is obliged to make sufficient staff and equipment available to unload the goods purchased.
- 7.6 If Buyer requests for goods to be delivered in a manner different from the usual manner, MSE can charge any costs associated with it to Buyer.
- 7.7 If the delivery of the goods occurs in derogation of what is provided in clause 3, the risk in relation to these goods is transferred to Buyer from the time the goods have arrived at the destination point.
- 7.8 MSE is allowed to deliver goods in instalments. In that case, MSE is also allowed to invoice the part deliveries separately.
- 7.9 Buyer is obliged to take delivery of the purchased items within the agreed time period. In the event Buyer fails to do so, MSE is entitled to claim based on the provision in Article 6 clause 60 of the Dutch Civil Code that the competent judge releases MSE of the obligation to deliver the purchased items, or to demand payment of the purchase price of the part delivery that has not been taken delivery of without a prior notice of default. If Buyer does not meet its obligation to pay, MSE is entitled to consider the agreement terminated without judicial intervention.
- 7.10 If Buyer remains in default by not taking possession of the purchased goods within the agreed time period and MSE demands payment of the purchase price, the goods are deemed to have been delivered and MSE will store the goods for the account and risk of Buyer, against compensation of all costs arising as a result.
- 7.11 If no term is agreed for Buyer purchasing the goods, MSE is authorised to take the measures set out in this Article if Buyer has not purchased the goods within one month from being invited to do so.
- 7.12 In derogation of the provision in clause 7 of this Article, MSE will arrange the times or periods of deliveries on demand in consultation with Buyer and confirm them in writing.
- 7.13 In the event of agreed deliveries on demand, Buyer is obliged to purchase the order in full within twelve months, except the order confirmation explicitly states otherwise. If MSE does not have the information required in MSE's opinion in time to complete the order, MSE will establish the delivery period anew in consultation with Buyer after receiving the information and confirm it in writing.

## 8. COMPLAINTS

- 8.1 Buyer is responsible for any information it gave to MSE being accurate and complete. In relation to the information MSE provided in its offer in terms of measures, weights and colour authenticity, Buyer must take into account the usual deviations. The goods supplied by MSE are therefore allowed to deviate from the description in the order if and insofar the deviations concern small differences in dimension, quantity and subsidiary amendments.
- 8.2 Any complaints, whether on the delivery of goods, invoices as well as on any repairs carried out must be submitted within seven days from receipt of the goods in writing, with careful description of the facts which the complaint relates to. Buyer is deemed to have

approved the goods supplied after this term has expired. MSE is only obliged to take note of the complaint if the amount payable pursuant to the agreement on which basis the complaint was made has been paid.

- 8.3 Defects that were not externally noticeably at the time of the delivery, or that could not be spotted during a careful and timely inspection, must be notified by Buyer within seven days of being spotted, in the manner specified in clause 2.
- 8.4 Any right of Buyer to make a claim against MSE due to defects in goods supplied, also lapses in the event:
- the defects were not notified by the aforementioned deadlines and were not reported to MSE in the manner indicated;
  - Buyer does not grant any or sufficient co-operation to the investigation into whether the complaints are justified;
  - Buyer did not set up, treat, use, store or maintain the goods correctly or if Buyer used the goods or treated them in circumstances or for purposes other than those anticipated by MSE;
  - Buyer continues with the application and the use of the things, in relation to which the complaints were made;
  - the guarantee period specified in the individual agreement has lapsed, or in the event such deadline is not mentioned, the complaints are only expressed after a period longer than twelve months after the delivery period has lapsed.
- 8.5 If MSE is of the opinion that the complaint was justifiable, MSE is entitled to pay compensation, or to proceed with replacing or repairing the goods delivered, at MSE's own discretion. Any amount in damages payable by MSE will in no event exceed the value of the goods delivered.
- 8.6 Insofar nothing is provided otherwise, any legal claims that may be instigated by Buyer arising from the transaction which these terms and conditions apply to, lapse one year after the delivery date.

## 9. LIABILITY

- 9.1 Only if the warranty obligations in relation to goods supplied by MSE have not been assumed by third parties (for example, manufacturers) can Buyer instigate warranty claims against MSE. The liability of MSE is in any case limited to defects that are a result of manufacturing and material faults.
- 9.2 When there is a marginal deviation from the agreed condition, no claims on resignation due to material defects can exist. Deviations of the delivery item in reference to earlier deliveries or samples are allowable and not a defect, if it complies with current DIN / EN standards or other relevant technical standards.
- 9.3 Depending on the composition of ambient air (especially in high concentrations of ammonia), a discoloration of the membrane material can occur under the influence of UV radiation. This discoloration does not affect function and durability of the membrane and is not a defect.
- 9.4 If MSE has established that the grounds for the complaint, in relation to quality, were justified, and if MSE can be held liable following the provision in clause 1 of this Article, MSE is obliged to:
- (free) repair of defects
  - delivery of replacement items or, as the case may be, components, after receiving the returned defective items or components;
  - refund of the purchase sum paid or issuing a credit note for the invoice sent to Buyer, with termination of the agreement formed without judicial intervention, all insofar the purchase price, invoice and agreement relate to the defective goods supplied;
  - damages to be agreed in consultation with Buyer in a different form to that defined above.
- This would nevertheless be solely at MSE's discretion.
- 9.5 The damage payable by MSE to Buyer is in any case limited to an amount equalling ten percent of the purchase price next of VAT.



- 9.6 Any damage must be reported to MSE within twenty calendar days after it is discovered. MSE must be given every co-operation in the event it launches an investigation into the nature, extent and cause of the damage. Failure to grant co-operation would be at the risk of forfeiting the right to compensation.
- 9.7 Damage discovered more than six months after the goods are delivered or the work is completed which the delivered item is applied to, does not qualify for compensation.
- 9.8 If Buyer carries out repairs to items and/or carries out or commissions modifications without prior explicit and written consent, any warranty obligation on MSE's side comes to an end.
- 9.9 Except for any obligations based on the above, MSE is never liable for any compensation to the Principal and others unless in the event of deliberate acts or gross negligence committed by MSE. More in particular, MSE is never liable for consequential damage or trading loss, direct or indirect damage, under any name, including loss of profits and loss owing to stoppage - suffered by the Principal, its subsidiaries and generated at or by its employees or third parties due to the complete or partial delivery or re-delivery of goods, the delayed or defective delivery, a failure to deliver or by the goods themselves.
- 9.10 With respect to recommendations made by MSE not based on an explicit written agreement for the purpose of making recommendations, MSE does not accept any liability on any basis.
- 9.11 Buyer is not entitled to return goods that are not the object of a motivated complaint. In the event this is done nevertheless, without a valid reason, all costs of the return freight are for the account of Buyer. In such event, MSE is free to store these items for the account and at the risk of Buyer, possibly with third parties.
- 9.12 Buyer is obliged to indemnify MSE against any claims third parties may make against MSE with respect to the execution of the agreement, insofar it is not prohibited by law that the damages and costs arising from the judgements concerned are for the account of Buyer. More in particular, Buyer indemnifies MSE against claims from third parties based on industrial property in relation to the manufacture and delivery of a product manufactured according to Buyer's instructions by MSE or that MSE arranged for a third party to make on Buyer's instructions.
- 9.13 The foil covers, as well as the means of attachment, are resistant to many types of chemicals. There are nevertheless restrictions, depending on the concentration and temperature. MSE is only responsible for its products being affected when MSE is provided with a complete analysis of the content of the tank, the pH values and the maximum working temperature of the substance stored and/or to be treated, before the order is placed.

## 10. RETENTION OF TITLE AND SECURITY

- 10.1 Goods delivered by MSE remain the property of MSE until the time that Buyer has paid for the goods, as well as settled any payable charges associated with or arising from the goods delivered by MSE. If MSE judges it necessary, it has the right to demand that Buyer provides security in relation to Buyer complying with its obligations.
- 10.2 Buyer is obliged to store the goods delivered by MSE with the necessary care and as the recognisable property of MSE.
- 10.3 In relation to goods that have not been paid for, Buyer does not have the right to subject them to a pledge, a non-possessory pledge or to any other business or personal pledge to the benefit of a third party.
- 10.4 Without prejudice to what is provided above in this Article, Buyer is allowed to sell goods to third parties, but only in the context of its normal business activities. In that case, Buyer is obliged to transfer the money received in that respect to MSE without delay, or if the goods have not been sold in return for cash, to transfer the amounts receivable to MSE without delay.
- 10.5 In the event the property right MSE had on the items it delivered has been lost as a result of Buyer treating or processing the goods, Buyer undertakes to cooperate with establishing an undisclosed pledge on the goods resulting from the treatment or process, if MSE requests this.
- 10.6 MSE is at all times entitled to take goods which are located with Buyer (or third parties), but which still belong to MSE, back into its own possession, as soon as MSE can assume in all fairness that there is a real chance that Buyer will not fulfil its obligations. The above does not prejudice the rights MSE derives from common law: namely, Pro Eco retains the right to lodge a claim for compensation with Buyer, after taking possession of the goods.
- 10.7 Buyer is obliged to insure the risk for any goods that have not been paid for, including against the risk of fire and theft, and to show the insurance policy to MSE at its first request.

## 11. PAYMENT

- 11.1 Payment must be made in cash at the time the goods are delivered or services have been completed, except explicitly agreed otherwise in writing, without the possibility of any discount or off-setting. In any case, the amount due to MSE must be made at the latest within fourteen days after the date of invoicing by electronic transfer to a bank account or giro account indicated by MSE.
- 11.2 The right of Buyer to off-set any counterclaims against MSE is explicitly excluded.
- 11.3 Any payments made by Buyer are always in the first instance allocated to the settlement of any interest charges and costs due, then to the oldest unpaid invoices, even if Buyer states that the payment is intended for the settlement of another invoice.
- 11.4 If Buyer does not proceed with the (full) payment, it is in default without requiring a further notice of default. In that event, MSE has the right, if and insofar Buyer has been sufficiently consistent in its failure to meet its obligations, to suspend all its obligations towards Buyer, without prejudice to MSE's rights arising from common law. MSE is also entitled to expect settlement of any deliveries still to be made in cash before the goods are delivered, or to demand a guarantee for a timely payment. Furthermore, MSE is in that event entitled to terminate the agreement without judicial intervention, whereby Buyer in that case is obliged to return any goods already delivered, or the obligation to undo any work MSE has already done, without prejudice to MSE's right to compensation.
- 11.5 If Buyer fails to make a timely payment, he forfeits interest to MSE without any further reminder being required, from the date on which the payment was due to the day the full payment was made, at a rate equal to the statutory rate plus 4% per year, in total minimum 8% per year, calculated on the unpaid amount, which becomes immediately payable by application of law, without any further notice of default being required.
- 11.6 Furthermore, Buyer will be obliged to pay MSE the extrajudicial costs associated with the collection of its claim(s). These costs are determined at 10% of the principal sum (including VAT), without prejudice to the right of MSE to make out a convincing case for higher costs. In addition, all disadvantageous consequences arising from the price loss or any other loss from the overdue payment or non-payment, are for the account of Buyer, even if Buyer would have settled the payments on time based on the prevailing provisions in its own country, but if circumstances or measures outside its control caused the transfer to take place in a manner that was disadvantageous to MSE.
- 11.7 In conformity with Article 6:44 of the Dutch Civil Code, payments are first used in settlement of costs defined in clause 3, then in settlement of the accrued interest and lastly in settlement of the principal sum and the running interest.
- 11.8 If the financial position of Buyer deteriorates significantly after the agreement is formed, but before the goods are delivered, MSE is entitled to decide not to proceed with the further execution of the agreement, or to demand a change in the terms of payment.



## 12. FORCE MAJEURE

- 12.1 MSE is not liable for damage resulting from circumstances that were not anticipated by MSE at the time the agreement was entered into. The following qualify as such circumstances: lack of base materials, late performance of suppliers or ancillary workers, general operational failures, fire, frost, an industrial strike, a lack of staff, natural disasters, a state of siege or war.
- 12.2 In the event of force majeure, MSE has the right to suspend compliance with the agreement or to terminate it. MSE reserves the right to invoice for any part of the agreement that has already been executed.
- 12.3 If MSE still performs the suspended part of the agreement at a later stage, Buyer is obliged to pay the full price specified in the agreement, without any form of discount.

## 13. APPLICABLE LAW

- 13.1 Any disputes that may arise between MSE and Buyer as a result of their agreement or of subsequent agreements following on from it, will be adjudicated by the Almelo Court and are exclusively governed by Dutch law.
- 13.2 A dispute is deemed to have arisen as soon as either Party declares it.

## B. CONTRACTING WORK

### 1. APPLICABILITY OF AVA 1992

In the event work is contracted, the only regulations that apply are the General terms and conditions for Contracting Work (AVA 1992) with due observance to the provisions in these terms and conditions. A copy of the AVA 1992 is attached in annex.

### 2. OFFER

In derogation of what has been provided in Article 1 Clause 4 of AVA, the offer issued by MSE is valid for 14 days.

### 3. LIABILITY

In addition to what is provided in the General Terms and Conditions for Contracting Work in the Construction Industry (1992) the following applies in relation to the liability of the contractor.

MSE is never liable for any compensation to the Principal and others unless in the event of deliberate acts or gross negligence on the side of MSE. More in particular, MSE is never liable for consequential damage or trading loss, under any name, including loss of profits and loss owing to stoppage - suffered by the Principal, its subsidiaries and generated at or by its employees or third parties.

### 4. WARRANTY

- 4.1 The warranty period agreed in the order confirmation applies.
- 4.2 The warranty period agreed in the order confirmation is explicitly limited to assembly parts and materials supplied by MSE.

### 5. OBLIGATIONS OF THE PRINCIPAL

In addition to Article 3 of the AVA, the Principal has the following obligations.

- 5.1 The access road and the assembly area must be weatherproof, levelled out, cleared or empty, easily accessible and clean.
- 5.2 The assembly point must be directly accessible with a 60 ton lorry over a hardened road. Should a breakdown lorry be required, the site should be accessible accordingly.
- 5.3 The Principal may need to move, protect and/or remove any pipes or cables in the vicinity of the foundations (including for water, gas, electricity, phone).
- 5.4 The principal or a representative must be present at the start of the work in order to instruct the designated employees of MSE and to point out any special circumstances.
- 5.5 The principal must provide a connection point in the assembly area for a 230 Volt high current power supply, secured by 1 x 16 Amp. The power distribution panel must be installed within 5 metres of the assembly area.
- 5.6 The Principal makes sanitary equipment available to employees of or deployed by MSE.
- 5.7 For unloading lorries, MSE must be given the use of a forklift truck with a capacity of 2 tons and forklift length of 2 metres.
- 5.8 The Principal must ensure that all bricklaying, demolition work, wiring and groundwork required for the installation of the silos or silo covers is completed before MSE installs its work.
- 5.9 If it is agreed that the Principal will provide engineers, the Principal must ensure that the engineers are sufficiently qualified and available during the entire job. The Principal is responsible for ensuring that the engineers deployed are at least 18 years old.
- 5.10 The Principal indemnifies MSE against any claims for non-compliance with obligations in relation to the payment of wages, work permits, payment of premiums, employer contributions, consent, insurance or any other obligations arising from local rules and regulations in the country of installation.
- 5.11 The Principal is obliged to make a sufficiently spacious, dry and lockable area available for the storage of materials and equipment, among other things, and for the accommodation of employees deployed by MSE. The storage of materials, covers and tools is for the account and risk of the Principal. MSE is not liable, either, for any components lost on the construction site or during storage.
- 5.12 During delays of the work as a result of circumstances that are for the account of the Contractor, excluding force majeure, the Contractor is liable for losses due to delays. The losses during delays will in any case amount to € 50.00 per man/hour that no work can be done, without MSE being obliged to provide proof.
- 5.13 If our supervisor/mechanics are not allowed to work on Sundays, the following fees will be charged to the client:  
- Extra day of stay for a supervisor: € 300,00, excluding accommodation costs (€ 125,00)  
- Extra day of stay for a mechanic: € 250,00, excluding accommodation costs (€ 125,00)

### 6. DELIVERY

- 6.1 In addition to Article 7.3 AVA 1992, force majeure is explicitly deemed to include the following weather conditions.
- Beaufort wind scale greater than 4
  - Temperatures below 5 degrees Celsius
  - Persistent precipitation