

General Conditions Of Sales of Messtec Power Converter GmbH (MPC)

1. General provisions, applicability

1. All sales are governed exclusively by these terms and conditions of MPC. MPC does not recognize contrary conditions of the purchaser's or those differing from MPC's Sales Terms and Conditions unless MPC has explicitly consented in writing to their applicability. MPC Sales Terms and Conditions apply even if MPC, with knowledge of contrary conditions of the purchaser's or those differing from its terms executes delivery to the purchaser without reservation.

2. All agreements made between MPC and the purchaser must be recorded in writing.

3. MPC's sales Terms and Conditions apply only toward merchants as dealt with in section 310 of the German Civil Code.

2. Acceptance of orders

All merchandise Orders must be accepted in writing by a duly authorized representative of MPC.

3. Contract rescission, order cancellation

Orders accepted by MPC may not be cancelled unilaterally by the purchaser, but only with the written approval/consent of MPC, regardless of the reason for cancellation or rescission and without limitation of the rights and/or damage compensation claims to which MPC entitled thereafter. The purchaser is at liberty to show that MPC incurred lesser damages; MPC is at liberty to assert greater damages. Special orders for merchandise not ordinarily in stock cannot be cancelled or rescinded.

4. Prices, payment terms

1. Unless otherwise indicated in the order confirmation, MPC's prices are ex MPC's registered office or ex factory or warehouse, exclusive of packaging and shipping, which are billed separately.

2. Value-added tax as required by law is not included in the prices. It is indicated separately on the invoice in the amount required by law on the billing date.

3. Deduction of cash discounts requires special written arrangements.

4. The total gross invoice amount is due and payable within 30 days of billing without any set-off or deduction. If the purchaser is in payment arrears, MPC entitled to charge penalty interest at a rate of 8 percentage points above the current discount rate of the European Central Bank per year. If MPC can show greater damages due to delay, it is entitled to assert them. The purchaser is entitled, however, to show MPC that MPC incurred no or substantially lesser damages as a consequence of payment delay.

5. checks are accepted only subject to collection. If a credit amount is re-debited, the purchaser must pay all damages thus incurred, including reasonable legal fees. MPC may apply any checks received from the purchaser toward the purchaser's obligations to MPC arising from this or any other transaction, regardless of any statement made on the check or in relation thereto.

Acceptance of partial payment does not signify waiver by MPC of total payment of all outstanding amounts owed by the purchaser to the seller.

6. MPC refuse to supply merchandise on credit to the purchaser at an time. Merchandise supplied to the purchaser for payment upon delivery or similar methods are subject to these Sales Terms and Conditions.

7. The purchaser may declare a set-off to MPC only if his or her counterclaims have been decided finally and absolutely, are uncontested, or are recognized an acknowledged by MPC.

8. Unless there is a contrary agreement elsewhere, MPC reserves the right to raise the selling price unilaterally for merchandise ordered from MPC if it has not yet been shipped from MPC's registered office, but prior to an increase in MPC's costs for such merchandise by its suppliers. In the event of a price increase by the supplier, the selling price stated to the purchaser will be raised by the same percentage as MPC's costs for the merchandise have risen due to the price increase.

5. Delivery period, delivery

1. MPC is obligated solely to provide merchandise only after clarification of all technical matters. This presumes and requires that the purchaser fulfills all agreed and other obligations properly and in due time.

2. If the purchaser defaults in accepting delivery of merchandise or violates other participation obligations, MPC entitled to require compensation for damages thus incurred, including any added expenses. In this case, the risk of accidental destruction or accidental deterioration of the goods devolves upon the purchaser at such time as the purchaser enters default in accepting delivery.

3. MPC is not responsible for arrears in delivery or performance due to reasons beyond its control. Such reasons include-without restriction or limitation-acts of God, actions taken or refrained from by the purchaser or by civil or military authorities, fire, strike, epidemics, quarantine regulations, floods, earthquakes, unrest, war, shipping delays, etc., as well as the impossibility of obtaining labor, materials, or supplies. In case of delay, any contractually agreed delivery deadline will be extended by a period corresponding the time lost due to such delay as causes MPC incur damages requiring compensation or contractual penalties.

4. MPC is entitled to refuse or delay providing goods if the purchaser fails to make immediate payment of amounts due and payable, regardless of whether such amounts are the result of the same or another contractual relationship with MPC.

5. MPC may provide merchandise falling under the present provisions at any time or in several partial shipments within the period set the respective order.

6. All stated prices and shipped merchandise is F.O.B. ex MPC's registered office or ex factory or warehouse. This means that the legal regulations regarding sale by delivery to another location are applicable as dealt with in section 447 of the German Civil Code.

That in turn means that the purchaser bears all expenses and risk of loss or damage from that time forward. Rights to the merchandise and the risk of loss, damage, or accidental destruction devolve upon the purchaser when MPC gives the merchandise to the carrier for shipment. The purchaser pays all freight and shipping costs, as well as any applicable insurance premiums for shipment of the merchandise, subject to written approval of contrary arrangements by MPC. Unless the purchaser instructs otherwise, MPC may itself determine the carrier, shipping method, and transport route.

6. Transport insurance

if so desired by the purchaser, MPC will provide transport insurance coverage for the merchandise shipment. Costs so incurred are paid by the purchaser.

7. Warranty for defects

1. The purchaser's rights under the warranty require that he or she has properly fulfilled the purchaser's inspection and notification obligations under section 377 of the German Commercial Code. It is assumed that the purchaser has accepted the merchandise if he or she has not refused acceptance within a reasonable period. Such period is 10 days from receipt of the merchandise. Claims due to delay in delivery are ruled out unless made prior to receipt of the merchandise. Merchandise acceptance represents of any and all claims due to in delivery. Return shipments will be accepted only if a "Return Material Authorization" is first obtained from MPC. Merchandise must be returned in the original packaging and must conform to the instructions of the office that issued the aforementioned "RMA".

2. MPC provides no warranty whatsoever for merchandise sold to the purchaser, nor any assurances of its suitability for particular purposes, so far legally permissible. MPC agrees to transfer to the purchaser any transferable warranties that MPC has received from the manufacturer of the merchandise sold to the purchaser. Value-addition work performed by MPC corresponds to the purchaser's applicable specifications for such work.

3. To the extent the merchandise has a defect or provide for which MPC is responsible, MPC is entitled to correct the defect or provide a replacement, at its choice.

4. Additional claims of the purchase are ruled out, regardless of their cause in law, insofar as no other provisions are set forth hereinafter. MPC assumes not liable for lost profits or other financial detriment to the purchaser. In no case MPC will be liable for indirect accessory or consequential damage.

5. Compensation of the purchaser on the basis of a payment claim by the purchaser is limited to the purchase price paid for the merchandise, regardless of the type of the payment claim, arising either from warranty of from the contract.

6. Claims for damages - no matter from which legal reason - is limited for one year. Excluded are claims for personal injuries and claims according to the German Product Liability Act. Those and warranties for defect apply to the legal periods of limitation according to the German civil law.

8. Aggregate liability

1. Further liability for damage compensation is precluded hereby, irrespective of the legal nature of the asserted claim.

2. The stipulation contained in paragraph 1 does not apply to claims according to sections 1 and 4 of the German Product Liability Act. The same applies for initial inability and impossibility for which the party is responsible.

3. Insofar as liability is precluded or limited for MPC, this also applies for personal liability on the part of MPC's staff, workers, employees, representatives, and fulfillment agents.

9. Retention of ownership

1. MPC retains ownership of the merchandise pending receipt of all payments from the supply contract. MPC is entitled to repossess the merchandise in the event of behavior by the purchaser in violation of the contract, especially default in payment. Repossession of the merchandise by MPC does not constitute rescission of the contract unless so expressed by MPC explicitly and in writing. Seizing of the merchandise by MPC always signifies rescission of the contract. MPC is entitled to sell the merchandise following repossession; proceeds from the sale are to be credited toward the amounts owed by the purchaser, minus reasonable sales expenses.

2. The purchaser is obligated to treat the merchandise with care until it is paid for in full.

3. The purchaser must notify MPC in writing without delay in case of seizure or other invention by a third party so that MPC may bring action in accordance with section 771 of the German Code of Civil Procedure. To the extent the third party is not able to reimburse MPC for court costs and other expenses associated with action pursuant to section 771 of the Code of Civil Procedure, the purchaser is liable for the financial loss suffered by MPC.

4. The purchaser is entitled to resell the merchandise by way of a proper business transaction. The purchaser now hereby assigns to MPC all payments receivable from customers or third parties to which the purchaser becomes entitled on account of such resale in the amount if the final invoice total (including value-added tax), regardless of whether the merchandise is resold with or without processing. The purchaser remains authorized to collect such payments receivables even following this assignment. MPC's authority to collect the payment itself remains unaffected thereby. Nevertheless, MPC undertakes to refrain from collecting the payment as long as the purchaser fulfills his or her payment obligations from the agreed proceeds, does not enter payment arrears, and in particular no application is made to open bankruptcy or composition proceedings and there is no stoppage of payments. If in the case, however MPC may require the purchaser to disclose to MPC the assigned receivables and the debtors, to provide all information necessary for collection, to relinquish the associated records, and to notify the debtors (third parties) of the assignment.

5. Processing or modification of the merchandise by the purchaser is always performed on MPC's behalf. If the merchandise is processed with other objects not belonging to MPC, then MPC acquires co-ownership of the new item in the ratio of the value of the merchandise is to the other processed objects at the time they are processed. The item created through such processing is also covered by the same stipulations as the merchandise supplied with rights reserved.

6. If the merchandise is inseparably combined with other objects not belonging to MPC, then MPC acquires co-ownership of the new item in the ratio of the value of the merchandise to the other combined objects at the time they are combined. If they are combined in such a way that the purchaser's item is considered the main item, then it is considered agreed that the purchaser shall transfer to MPC prorated co-ownership. The purchaser holds the sole property or jointly owned property-created in safe custody for MPC.

10. Assembly & installation

The purchaser is solely responsible for assembling installing and operating the merchandise sold herein, including-without limitation-obtaining all approvals, licenses, and certificates required for assembling, installing and operating this merchandise.

11. Technical consultation and data

Any technical consultation or advice offered or given in connection with using the merchandise is a gratuitous favor for the purchase; MPC bears no responsibility and assumes no liability whatsoever for the content or application of any such consultation or advice. The purchaser may not utilize, reproduce or disclose technical data or disclosed by MPC without the seller's prior written approval. Exceptions are assembly, installation, operation, and maintenance of the the merchandise acquired by the purchaser.

12. Software

Any computer software to be supplied to the purchaser by MPC will be provided by way of license directly to the purchaser by the owner of the software or by third parties in accordance with a separate licensing agreement or other arrangement. The purchaser confirms receiving a separate contract in which the license is granted for the software supplied to the purchaser.

13. Rights of seller

1. In the event the purchaser enters arrears on payment, the purchaser pays all costs incurred by MPC in collecting amounts owed by the purchaser, including reasonable legal fees and collection fees.

2. If MPC waives its rights in the event of violation of these provisions and conditions or in case of payment arrears, this does not constitute renunciation of such rights in case of subsequent violations or omissions.

14. Agreement, amendments/supplements to agreement

The present agreement represents the sole and total agreement between the parts with regard to the subject matter of the contract, replacing all earlier or contemporaneous agreements between them, whether written or oral, regarding that subject matter. Previous transactions between the parties and procedures customary in the industry are not authoritative as an interpretation or amendment of a provision hereof. Acceptance or tolerance in case of a performance rendered in the context hereof is not authoritative for determining the meaning of the present agreement, even if the accepting or tolerating party had knowledge of the type of performance and had the opportunity to object. Any later changes to this agreement are binding upon MPC only if made in writing and signed by both the purchaser and MPC. An assignment by the purchaser of this agreement or the rights arising there from is valid only with the written consent of MPC.

15. Purchaser's provisions and conditions

1. MPC strives to serve its customers promptly and efficiently. Accordingly, MPC provides its merchandise and renders its services exclusively in accordance with the provisions and conditions set forth herein.

2. Contract fulfillment by MPC depends exclusively on the consent of the customer on MPC's terms of sale, unless MPC expressly consents in writing to different arrangements. If such an agreement is lacking, the service and/or delivery begins only by way of accommodating the purchaser; this does not establish an act of acceptance of any or all of the purchaser's provisions and conditions, or is not interpreted as such.

3. If no contract is concluded in writing beforehand by mutual consent, then acceptance of the merchandise or services is considered acceptance of the provisions and conditions named herein.

16. General provisions

1. The present agreement and the performance to be rendered by the parties are governed and construed in accordance with the laws of the Federal Republic of Germany. The parties hereby rule out the applicability of the Unite Nation's law on international sale of goods and the Hague Convention on the law governing international sales agreements for movable property/Uniform Law on the Sale of Goods. All provisions, conditions, and agreements contained herein apply for all legal successors of the purchaser and are binding upon them.

2. If a provision or part of the present agreement is or becomes invalid, illegal, contrary to public policy, or unenforceable, the remaining provisions or portions will remain unaffected thereby.

3. The individual section headings employed herein serve only to help the categorize performances hereunder.

4. These Conditions of Sale were drawn up in German and then translated into English. In general, the English version of these Conditions of Sale shall be the work basis between the parties, provided, however, that in the dispute between the parties with respect to the interpretation of any clause the German version shall determine such dispute.

17. Legal venue, place of performance

1. In the event of dispute, the courts at the location of our registered office have exclusive jurisdiction insofar as the purchaser is a fully qualified merchant. However, MPC is also entitled to bring action against the purchaser at the court of his or her domicile.

2. Unless otherwise indicated in the order confirmation, the place of performance is the location of MPC's registered office.

Apply for our German Conditions of Sales at: Messtec Power Converter GmbH Grube 41 D- 82377 Penzberg.

Sollten Ihnen diese Allgemeinen Geschäftsbedingungen nicht in deutscher Übersetzung vorliegen, informieren Sie uns bitte unter Tel.: 08856/80306-0, Fax: 08856/9998, wir senden sie Ihnen umgehend zu.