

**Standard Terms of Delivery and Payment for
Marschner Tech Power Electronics GmbH & Co. KG, with its registered office in Wehingen
MCT Transformatoren GmbH with its registered office in Teningen
Manfred Schmelzer GmbH with its registered office in Teningen
Schneefuss & Rohde GmbH with its registered office in Teningen**

Last revised: 10/08/2022

1. Scope; Form

(1) These Standard Terms of Delivery and Payment apply to all of our business relationships with our customers (“Buyers”). However, they apply only if the Buyer is an entrepreneur as defined in section 14 of the German Civil Code (Bürgerliches Gesetzbuch -“BGB”), a legal entity organized under public law, or a special public fund.

(2) These Standard Terms of Delivery and Payment apply in particular to contracts for the sale and/or delivery of movable objects (“Goods”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (sections 433, 650 of the BGB). Unless otherwise agreed, the terms in effect at the time of the Buyer’s order, or at any rate the version last communicated to the Buyer in written form, shall also apply as a master agreement for similar contracts in the future, without us having to refer to them again in each specific case.

(3) Our delivery and payment terms shall apply exclusively. Any differing, conflicting or additional standard business terms of the Buyer shall only become an element of the contract if we have expressly agreed to their applicability. This consent requirement shall apply in any case, for example even if we make a delivery to the Buyer without reservation and with knowledge of such standard business terms.

(4) Individual agreements made with the Buyer in specific cases (including collateral agreements, supplements, amendments) shall have priority over these Standard Terms of Delivery and Payment in all cases. Subject to proof to the contrary, a written contract, or our written confirmation, shall be decisive as to the contents of any such agreements.

(5) Legally relevant declarations and notifications of the Buyer that relate to the contract (e.g., setting a deadline, notification of defects, withdrawal or price reduction) must be made in writing, i.e., in written or text form (e.g., letter, email, fax). Legal requirements as to form and additional evidence, in particular in cases of doubt as to the authority of the declaring party, remain unaffected.

(6) References to the application of the statutory provisions are solely for purposes of clarification. Even without such clarification, the statutory provisions shall nevertheless apply insofar as they are not directly amended or expressly excluded in these Standard Terms of Delivery and Payment.

2. Contract Conclusion

(1) Our offers are subject to change and non-binding. This is also the case if we have provided the Buyer with catalogs, technical documentation (e.g., drawings, figures, photographs, plans, calculations, references to DIN norms), other product descriptions or documents – including in electronic form – for which we reserve all property and copyrights.

(2) When the Buyer places an order for Goods, this is considered a binding contract offer.

(3) Acceptance can be declared either in writing (e.g., via order confirmation) or by delivery of the Goods to the Buyer.

3. Delivery Term and Delays

(1) The delivery term will be agreed on a case-by-case basis or specified by us upon acceptance of the order. The delivery term does not commence until all technical questions have been resolved.

(2) If we cannot meet binding delivery deadlines for reasons that are beyond our control (impossibility of performance), we will notify the Buyer without undue delay and indicate a new expected delivery term at that time. If the delivery cannot be made within the new delivery term, we are entitled to withdraw from the contract in whole or in part; any payments already made by the Buyer will be refunded without undue delay. As referred to above, impossibility of performance includes, without limitation, late delivery to us by our supplier if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we do not have a duty of procurement in any specific case.



(3) Applicable statutory provisions shall apply as to the occurrence of default in delivery on our part. In any case, however, a reminder by the Buyer is required.

(4) The Buyer's rights pursuant to Section 8 of these Standard Terms of Delivery and Payment and our legal rights, in particular, in the event that the obligation to deliver is excused (for example, because said delivery and/or subsequent performance is impossible or unreasonable), shall remain unaffected.

4. Delivery; Passage of Risk; Acceptance; Default in Acceptance

(1) Deliveries are made ex warehouse, which is also the place of performance for the delivery and any related subsequent performance. At the Buyer's request and expense, Goods may be shipped to another destination (shipment contract). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular carrier, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer no later than when the good are handed over to the Buyer. However, in the event of a shipment contract, the risk of accidental loss and accidental deterioration of the Goods, and the risk of delay, shall pass to the Buyer once the Goods are handed over to the forwarding agent, carrier or other person or organization engaged to provide shipping services. In the event that acceptance has been agreed, this shall be decisive for the passage of risk. In all other respects, the statutory provisions under the law of contracts for works and services shall apply to any agreed acceptance of the Goods. Handover or acceptance shall be deemed to have occurred if the Buyer is in default of acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for any resulting damages including additional expenses (e.g., storage costs). In such cases, we charge a flat rate for compensation in the amount of 0.5% of the net price of the items to be delivered per calendar day, commencing on the delivery date or – absent a delivery date – upon notification that the Goods are ready for shipment. Such damages are capped at 10% of the net price of the items to be delivered in the event of final non-acceptance. Our right to demonstrate that we have incurred greater damages and our other legal rights (particularly for additional expenses, reasonable compensation, termination of contract) remain unaffected; the flat damages as described above shall be included in any further monetary claims. The Buyer is entitled to prove that we have incurred no damages at all or only considerably less damage than the assumed rate described above.

5. Prices and Payment Terms

(1) Unless otherwise specifically agreed, our current prices in effect at the time the contract is signed shall apply, FCA, exclusive of packaging, plus statutory VAT.

(2) Packaging will be invoiced separately. We are only obliged to accept return of such packaging if required by law or the Buyer demands that we accept return. In such cases, they shall bear the costs of return.

(3) In the case of shipment contract (Section 4, para. (1)) the Buyer responsible for the transport costs from the warehouse and any transport insurance they request. We will invoice the transport costs actually incurred in each particular case. Any duties, fees, taxes and other official levies are to be paid by the Buyer.

(4) Order quantities may vary for production-related reasons. Overages and underages of up to 10% shall therefore represent fulfillment of the delivery obligation in accordance with the contract, unless expressly agreed otherwise in the contract concerned. In such cases, quantities actually delivered will be invoiced.

(5) In cases in which cost reductions or cost increases occur between the conclusion of the contract and the execution of the order for which we are not responsible and which were not foreseeable, in particular due to changes in the prices of materials, we are entitled to adjust prices commensurate with the change in circumstances without computing additional profits.

(6) In particular, in the event of an unexpected increase in procurement costs, we are entitled to reasonable price increases in proportion to the average market price increase for Goods to be delivered at least two months after conclusion of the contract. The copper base price is EUR 153.40 per 100 kg. On the date of order confirmation, copper weight (Cul-weight) per transformer plus the difference compared to the daily DEL quote is listed in the form of a copper surcharge.

(7) Unless otherwise agreed, the purchase price is due and payable within seven (7) days from the invoice and delivery or inspection of the Goods. However, even in the context of an ongoing business relationship, we are entitled at any time to only make a delivery, in whole or in part, against prepayment. We will declare a corresponding reservation no later than upon order confirmation.

(8) The Buyer will be in default upon expiration of the payment term referred to above. The purchase price shall accrue interest at the applicable statutory default interest rate for the duration of the default. We reserve the right to assert any further damages resulting from default. This is without prejudice to our claim to commercial interest on maturity (section 353 of the HGB) in dealings with merchants.

(9) The Buyer has no right to offset or retain any amounts unless their counterclaims are undisputed or have been legally determined by a court of law. In the event of defects in the delivery, the Buyer's counterclaims shall remain unaffected, in particular pursuant to Section 7, para. (6), second sentence of these Standard Terms of Delivery and Payment.



(10) If it becomes apparent after conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is endangered by the Buyer's inability to pay, we are entitled to refuse performance and – if necessary after setting a deadline – to withdraw from the contract (section 321 of the BGB). For contracts made for the manufacture of custom items, we can declare such a withdrawal immediately without prejudice to the statutory rule regarding dispensing with notice of withdrawal.

6. Retention of Title

(1) We shall retain title on all Goods sold until full payment of all present and future claims under the present purchase agreement and all ongoing business transactions (secured claims).

(2) The Goods subject to retention of title may not be pledged to third parties or assigned as collateral, until the secured claims have been paid in full. The Buyer must notify us in writing without undue delay if a request is made to open insolvency proceedings, or if third parties gain access (e.g. seizures) to Goods that belong to us.

(3) If the Buyer acts in violation of the contract, especially in the case of non-payment of the purchase price when, we are entitled, under the statutory provisions, to withdraw from the contract and/or to demand the return of the Goods thereunder on grounds of retention of title. Any demand for the return of Goods does not, at the same time, constitute a cancellation of the contract; rather, we are entitled to merely demand the return of the Goods and to reserve the right to cancel the contract. If the Buyer does not pay the purchase price when due, we may assert these rights only if we have previously granted the Buyer an appropriate deadline for payment to no avail or if setting of such a deadline may be waived under applicable law.

(4) The Buyer is authorized, until further notice pursuant to (c) below, to sell the Goods subject to retention of title, or process them further, in the ordinary course of business. The following provisions shall also apply in such cases.

(a) The retention of title shall extend to the full value of the products that result from the processing, mixing or combination of our products, and we shall be deemed the manufacturer. If third parties retain their title to products used in conjunction with the processing, mixing, or combining of the delivered Goods, we shall acquire a joint ownership interest in proportion to the invoice value of the processed, mixed, or combined Goods. In all other respects, the same shall apply to the resulting product as to the Goods that are delivered subject to retention of title.

(b) The Buyer hereby assigns to us, by way of security, any and all claims against third parties resulting from the resale of the Goods or products in full, or to the extent of any joint ownership in accordance with the preceding paragraph. We hereby accept this assignment. The Buyer's obligations in paragraph (2) above shall also apply in respect of the assigned claims.

(c) The Buyer shall remain entitled to collect these claims in addition to us. We agree not to collect the claim so long as the Buyer meets their payment obligations to us, there is no defect in their performance, and we do not assert any retention of title by exercising any right pursuant to paragraph (3). However if this is the case, we can demand that the Buyer inform us of the assigned claims and their payors, provide all information necessary for collection, surrender relevant documents, and inform the debtors (third parties) of the assignment. In addition, we are entitled to revoke the Buyer's authority to further sell and process Goods that are subject to retention of title in such cases.

(d) If the realizable value of collateral exceeds our claims by more than 10%, we will release our security interest at our discretion at the Buyer's request.

7. Buyer's Warranty Rights

(1) Unless otherwise specified below, the statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short deliveries as well as improper assembly or defective assembly instructions). In any event, this has no effect on the specific statutory provisions covering final shipment of unprocessed Goods to a consumer even if the consumer has further processed the Goods concerned (supplier's recourse pursuant to section 478 of the BGB). The claims of the Buyer arising from supplier recourse are excluded if the defective product has been further processed by the Buyer or another entity, for example by being installed in another product.

(2) The basis of our liability for defects is primarily any agreement reached on the quality of the Goods. All product descriptions and manufacturer information which are the subject matter of the individual contract or which were made public by us at the time of conclusion of the contract (in particular, in catalogs or on our homepage) shall be deemed to constitute an agreement on the condition and quality of the Goods.

(3) If specific agreements concerning the condition and quality of the Goods have not been made, the statutory provisions per section 434(1)(2) and (3) of the BGB shall be used to determine whether there is a defect or not. However, we do not accept any liability for public statements by the manufacturer or other third parties (e.g. advertising statements) that the Buyer did not point out to us as being decisive in making the purchasing decision.



(4) In principle, we are not liable for defects that the Buyer was aware of when concluding the contract or of which Buyer was not aware on the basis of gross negligence (section 442 of the BGB). Furthermore, the Buyer's claims for defects require that they have complied with their statutory inspection and notification obligations (sections 377, 381 of the HGB). In the case of building materials and other Goods intended for installation or other further processing, an examination must always be carried out immediately before processing. If a defect appears during delivery, inspection or at any later point in time, this must be reported to us in writing without undue delay. In any case, obvious defects must be reported in writing within eight working days of delivery, and defects not visible during the inspection must be notified within the same period after their discovery. If the Buyer fails to carry out a proper inspection and/or report a defect, then any liability on our part for the defect which was not reported, not reported in time or not properly reported shall be excluded in accordance with applicable statutory provisions.

(5) If the Goods delivered are defective, we may at our discretion remedy said defect by rectifying the defect (cure) or by delivering a product free of defects (substitute delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make our obligation to provide subsequent performance conditional on the payment of the purchase price by the Buyer. However, the Buyer is entitled to retain a proportionate part of the purchase price in relation to the defect.

(7) The Buyer must allow us the necessary time and opportunity to render the subsequent performance owed and shall, in particular, surrender the defective merchandise in question for the purposes of inspection. In the event of a replacement delivery, the purchaser must return the defective item to us in accordance with the statutory provisions. The subsequent performance does not include the removal of the defective item nor the re-installation if we were not originally obliged to install it.

(8) Provided a defect actually exists, we shall bear or reimburse any costs for the purpose of inspection and subsequent performance, in particular, transport, travel, labor and material costs, as well as any removal and installation costs, in accordance with applicable statutory provisions. Otherwise, we may demand reimbursement from the Buyer for the costs arising from the unjustified request to remedy the defect (in particular, inspection and transport costs), unless the absence of a defect was not apparent to the Buyer.

(9) In urgent cases, e.g. when operating safety is put at risk or to avert disproportionate damages, the Buyer has the right to rectify the defect themselves and to demand from us reimbursement of the expenses objectively required for such remedial work. We must be informed immediately, if possible in advance, of such an attempt at cure by the Buyer. The right of self-cure does not apply if we would be entitled to refuse subsequent performance in accordance with applicable statutory provisions.

(10) The Buyer may withdraw from the contract or reduce the purchase price if subsequent performance fails or if a reasonable grace period to be set by the Buyer for subsequent performance expires without success or such a grace period is not required according to applicable statutory provisions. However, there is no right of withdrawal in the case of minor defects.

(11) Any claims by the Buyer for damages or reimbursement of futile expenses may only be asserted in accordance with Section 8, even in the case of defects, and are otherwise excluded.

8. Other Liability

(1) Unless otherwise provided in these Standard Terms and Delivery and Payment, including the following provisions, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with applicable statutory provisions.

(2) In the case of fault-based liability, we shall be liable for damages – regardless of legal grounds – in cases of intent or gross negligence. In cases of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. exercising care in own affairs, insignificant breach of duty), solely

a) for damages resulting from injury to life, limb or health;

b) for damages resulting from the breach of material contractual obligations (obligation the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The limitations on liability provided in paragraph (2) shall also apply in the case of breaches of duty by (or for the benefit of) persons for whom we are responsible under statutory provisions. They do not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the Goods and for claims of the Buyer under the Product Liability Act.

(4) In the event of any breach of duty other than those which relate to a defect, the Buyer is only entitled to withdraw from or cancel the contract if we are responsible for said breach of duty. The Buyer shall have no free right of termination (in particular, pursuant to sections 648, 650 of the BGB). The applicable statutory provisions shall apply in all other respects.

9. Statute of Limitations

(1) Section 438(1)(3) of the BGB notwithstanding, the general limitation period for claims based on material defects and defects in title shall be one year from the date of delivery. If acceptance has been agreed, the limitation period begins upon acceptance.



(2) However, if the good is a building or a good which was used for a building in accordance with its intended use and has caused the building to become defective (building material), the period of limitation shall be five years following delivery pursuant to the statutory period of limitation (section 438 (1) no. 2 of the BGB). This is without prejudice to additional specific statutory rules regarding the suspension of the limitations period (in particular, section 438 (1) no. 1, (3), sections 444, 445b of the BGB).

(3) The foregoing periods of limitation under the law of purchase and sale shall also apply to contractual and non-contractual damage claims of the Buyer that are due to a defect in the Goods or services unless the application of the standard statutory period of limitation (sections 195, 199 of the BGB) would result in a shorter period of limitation in a specific case. Claims for damages by the Buyer pursuant to Section 8, paragraph (2), sentence 1 and sentence 2(a), as well as pursuant to the Product Liability Act, shall, however, become time-bared exclusively in accordance with applicable statutory limitations periods.

10. Choice of Law and Jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these Standard Terms of Delivery and Payment and to the contractual relationship between us and the Buyer, to the exclusion of uniform international laws, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business. The same applies if the Buyer is an entrepreneur, as defined in section 14 of the BGB. However, in all cases we are also entitled to bring an action at the place of performance of our delivery commitment as provided in these Standard Terms of Delivery and Payment or a specific agreement having priority, respectively, or at the Buyer's general place of jurisdiction. This is without prejudice to overriding statutory provisions, in particular those concerning exclusive jurisdiction.

