



VARTA AG and its Affiliated Companies

General Terms and Conditions of Purchase – Dated: August 2022

1. General Provisions and Application

1.1 These General Terms and Conditions of Purchase ("**Conditions of Purchase**") shall apply to any contract between

- us (i.e. VARTA AG and/or one of the companies affiliated with VARTA AG as defined in section 15 of the German Stock Corporation Act (*Aktiengesetz, AktG*), depending on which company uses these Conditions of Purchase; whereby "**we**" and "**us**" hereinafter always refer to the company using these Conditions of Purchase) as buyer and
- a company (section 14 of the German Civil Code (*Bürgerliches Gesetzbuch, "BGB"*)), a legal entity under public law and special fund under public law as seller ("**Supplier**")

for the purchase and delivery of movable goods ("**Goods**"), irrespective of whether the Supplier manufactures the Goods or purchases them from third parties (sections 433, 650 BGB).

- 1.2 These Conditions of Purchase shall apply exclusively. Contrary, supplementary or differing terms and conditions of the Supplier shall not apply except if we expressly acknowledge them in writing. This shall also apply to terms and conditions which are included in offers or (order) confirmations of the Supplier. Furthermore, these Conditions of Purchase shall apply if we accept deliveries of the Supplier without reservation and in the knowledge of conflicting, supplementary or deviating terms and conditions of the Supplier.
- 1.3 References to the applicability of statutory provisions have only a clarifying meaning. Even without such clarifications, the statutory provisions shall apply insofar as they are not amended or expressly excluded in these Conditions of Purchase.
- 1.4 These Conditions of Purchase shall be an integral part of the contract and any supplements. They shall also apply to all future contracts concerning the purchase and delivery of Goods between us as buyer and the Supplier as seller (hereinafter also referred to as "**Party**" or "**Parties**").

2. Conclusion of Contract, Product Discontinuation and Termination

- 2.1 Offers and quotations shall be legally binding for the Supplier and submitted to us free of charge.
- 2.2 Any agreement made between the Parties shall only be valid and legally effective if it is agreed in writing. Verbal agreements shall not be part of the contract.
- 2.3 A contract shall only be deemed to have been concluded if we issue a declaration of acceptance after receiving an offer made by the Supplier or if the Supplier issues a declaration of acceptance after receiving an offer made by us.
- 2.4 The following terms shall have the following meaning in contracts:
- "**(Purchase) Order**": (1) agreement on one-time receipt of Goods according to fixed terms (2), within a current "Contract", i.e. a Quantity Contract or Value Contract: request for Goods within this contract.
 - "**Scheduling Agreement**": agreement on receipt of Goods according to fixed terms and in a specified quantity on predetermined dates (as specified divisions).
 - "**Quantity Contract**": agreement on receipt of Goods up to a specified quantity according to fixed terms.
 - "**Value Contract**": agreement on receipt of Goods up to a specified total value of orders according to fixed terms.
- 2.5 In case of Orders as defined in section 2.4, the discontinuation of Goods by the Supplier shall not be permitted. Insofar as a Scheduling Agreement, a Quantity Contract or a Value Contract as defined in section 2.4 or another contract contains a right of ordinary termination, the discontinuation of Goods shall also not be permitted. In all other cases (e.g. of a Quantity Contract

without right of ordinary termination) discontinuation of Goods shall be permitted in writing with a notice period of one year.

- 2.6 Each Party may extraordinarily terminate Scheduling Agreements, Quantity Contracts and Value Contracts as defined in section 2.4 as well as continuing obligations for good cause. A good cause is, for example, if a significant deterioration of the Supplier's financial situation occurs or threatens to occur and the fulfilment of obligations to us is endangered as a result.

3. General Terms and Conditions of Delivery

Unless expressly agreed otherwise, the following shall apply: "Delivery Duty Paid" (DDP) in accordance with Incoterms 2020 (place of destination: our registered office).

4. Delivery Date and Delay

- 4.1 All delivery dates stated in the contract or otherwise agreed upon are binding. Agreed delivery dates shall apply to the receipt of the Goods with us, unless expressly agreed otherwise; the agreement of a deviating Incoterms 2020 clause shall not be deemed an explicit agreement in this respect. Early deliveries are not permitted.
- 4.2 On the day of shipping, we shall be notified electronically of the shipping and the delivery note details set forth in section 5.2 and the expected date of arrival of the Goods.
- 4.3 The Supplier shall inform us immediately in writing of any threatening or actual failure to meet a delivery date, the causes thereof and the expected duration of the delay. This shall not affect the occurrence of the default in delivery.
- 4.4 If the Supplier is in default of delivery, we shall be entitled to charge a contractual penalty of 0.3% of the net price of the delayed Goods for each started working day of the delay, but no more than 5%. We reserve the right to prove a higher damage, while the Supplier reserves the right to prove a lower or no damage at all. If the respective reservation is not made while the receipt of the Goods or supplementary performance is carried out, the contractual penalty can still be claimed up to the final payment. The contractual penalty shall be offset against any claims for damages.
- 4.5 The Supplier is not entitled to make partial deliveries without our prior written consent. We reserve the right to return to the Supplier any Goods delivered in excess at the Supplier's expense and risk.

5. Delivery and Passing of Risk

- 5.1 Delivery shall be made "free domicile" to the place of destination specified in the contract or otherwise agreed upon. If a place of destination has not been agreed, delivery shall be made to our registered office. The respective place of destination is also the place of performance for the delivery and any supplementary performance (obligation to deliver, *Bringschuld*).
- 5.2 The delivery shall be accompanied by a delivery note with the following information:
- Delivery note number and date of issue of the delivery note;
 - our order number, order position and order date;
 - date of shipping;
 - delivery address;
 - content of the delivery (our goods numbers (including index or version of the goods numbers, if applicable), our description of goods and delivery quantity).
- 5.3 The Supplier is obliged to hand over the original customs documents to us at the place of destination.
- 5.4 The Supplier shall comply with the applicable VARTA General Shipping and Packaging Instructions for each delivery. The current version can be downloaded here:
https://www.varta-ag.com/fileadmin/varta/about/downloads/AGB/General-shipping-and-packing-instructions_2021.04.pdf

Deviations require our prior written consent.



- 5.5 The risk of accidental loss or accidental deterioration of the Goods shall pass to us upon handover at the place of performance; handover shall be deemed to have occurred if we are in default of acceptance (*Annahmeverzug*). If acceptance (*Abnahme*) has been agreed, the acceptance is decisive for the passing of risk.
- 6. Prices, Invoice, Payment**
- 6.1 The price stated in the contract shall be a fixed price and binding, including statutory value added tax, unless explicitly agreed upon otherwise (e.g. by using the abbreviation "plus VAT" or the term "estimated price"). The price stated is understood to be "free domicile" and includes the costs for all agreed (ancillary) services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging according to section 5.4 and transport), unless explicitly agreed upon otherwise. If it is explicitly agreed that we shall bear the costs of certain services to be provided by Supplier (e.g. transport costs), only the Supplier shall be entitled to issue an invoice to us with for these costs; if a third party (e.g. freight forwarder commissioned by Supplier) issues such an invoice to us, we are entitled to reject this invoice at Supplier's expense.
- 6.2 Invoices shall be sent in single copy to the invoice address stated in the contract or – if the parties have agreed accordingly – electronically in the form of PDF documents with the following information: our order number and order position, our goods number(s), including index or version of the goods numbers, if applicable, our description of goods, delivery quantity, delivery note number, tax number as well as the Supplier's VAT number; VAT shall be shown separately. Furthermore, the invoices shall comply with the applicable tax law requirements. Insofar as any requirements are not fulfilled, invoices shall only be deemed to have been received by us and properly invoiced at the time of receipt of the correct(ed) invoice.
- 6.3 Payment shall be made in the manner and at the time agreed upon by the Parties in each individual case. If not agreed upon otherwise in an individual case, payments shall be made within 14 days of receipt of a correct invoice pursuant to section 6.2 with a 3 % discount, or within 30 days net; however, the period for payment shall not commence before the passing of risk in accordance with section 5.5.
- 6.4 Payments shall not constitute acceptance of the Goods as being in conformity with the contract.
- 6.5 Returns of defective Goods are carried out by debiting back the invoice amount or issuing a (VAT) invoice reimbursement at Supplier's expense and risk. Replacement deliveries shall be invoiced again stating the number of our return and debit note.
- 7. Set-off, Right of Retention**
- 7.1 We shall be entitled to set-off claims of the Supplier by debit note (e.g. in case of partial deliveries, (partial) returns of defective Goods or forfeited contractual penalties) or by issuing a (VAT) invoice reimbursement. We reserve the right to issue corresponding invoices and to carry out corresponding direct debits.
- 7.2 The Supplier shall only set-off such claims (including claims resulting from other legal relationships) and retain deliveries only on the basis of such counterclaims that are undisputed or have been established as final and absolute by a court. He is not entitled to any right of retention insofar as such rights are based on counterclaims from other legal transactions with us. We shall be entitled to set-off or any right of retention to the full extent provided by law.
- 8. Services of the Supplier, Cooperation**
- 8.1 The Supplier performs the services under its own direction and responsibility. Only the Supplier shall be authorized to issue instructions to its employees. The use of third parties (e.g. subcontractors), requires our prior written consent, except for the use for the transport of the Goods (e.g. by forwarding agents).
- 8.2 The Supplier will only use such employees or subcontractors for the performance of the services who have the necessary qualification.
- 8.3 In case of the services within our business premises, the applicable safety instructions, which we keep available at the entrance of our business premises and which we will also make available to the Supplier on request, must be complied with and the safety instructions of our employees must be followed. Plant and visitor identity cards have to be worn visibly at all times within our business premises and returned when leaving the business premises.
- 8.4 The Supplier must immediately give written notice of insufficient or late cooperation. Otherwise, we will not be in default with these.
- 9. Requirements for the Goods**
- The Supplier guarantees that the Goods comply with the requirements agreed in the contract and all statutory provisions as well as all official regulations and specifications, in particular the safety and environmental regulations as well as relevant technical regulations that apply in the country of the place of performance and the countries of use specified in the contract. The Supplier examines the requirements stated in the contract (e.g. index or version of the goods numbers) and informs us if these are incomplete, incorrect or inconsistent, or if he cannot fulfil them.
- 10. Liability for defects**
- 10.1 The statutory provisions shall apply to our rights in the event of material defects and legal defects of the Goods (including wrong delivery and short delivery) and in the event of other breaches of duty by the Supplier, unless stated otherwise below.
- 10.2 In accordance with the statutory provisions, the Supplier shall be liable in particular that the Goods have the agreed quality at the time the risk passes to us. In any case, those product descriptions which have become integral part of the contract, in particular by designation or reference in the contract, or which have been included in the contract in the same way as these Conditions of Purchase, shall be deemed to be an agreement on the quality.
- 10.3 In addition to claims for defects, we are entitled without limitation to the statutory claims for recourse within a supply chain in our favor (supplier recourse pursuant to sections 445a, 445b and 478 BGB). In particular, we are entitled to demand from the Supplier the type of subsequent performance (repair or substitute delivery) that we owe to our customers in the individual case. The foregoing does not limit our statutory right of choice (section 439 para. 1 BGB). Our claims from supplier recourse shall also apply if the Goods have been further processed by us or by a customer, e.g. by incorporation into another product, prior to their sale to a consumer.
- 10.4 We are not obliged to inspect the Goods or to make special inquiries about any defects at the time of conclusion of the contract. Partially deviating from section 442 para. 1 sentence 2 BGB, we are therefore also entitled to claims for defects without limitation even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- 10.5 The commercial duty to examine and give notice of defects shall be governed by the statutory provisions (sections 377, 381 of the Commercial Code (*Handelsgesetzbuch, HGB*)) with the following proviso: Our duty to examine shall be limited to defects which become apparent during our incoming goods inspection under external appraisal including the delivery papers, or which are recognizable during our quality control in the random sampling procedure. As far as an acceptance is agreed upon, there is no duty of examination. In all other respects it depends on the extent to which an examination is



feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Irrespective of our duty to examine, our complaint (notice of defect) shall in any case be deemed without undue delay and timely if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.

- 10.6 Acceptance or approval of samples provided does not constitute waiver of claims/liability for defects.
- 10.7 Notwithstanding the Supplier's liability for defects, where defects jeopardize operational safety or need to be immediately eliminated in order to avoid greater damage, we are entitled to remedy the defects ourselves or to have them remedied by third parties at the Supplier's expense, provided that the Supplier has been informed immediately and it is clear that the Supplier cannot remedy the defects within the same period of time. The same shall apply if a reasonable deadline set by us for remedy of a defect has not been met. Our statutory right to reduce the purchase price, to withdraw from the contract and to claim damages and reimbursement of expenses is not limited by this provision.
- 10.8 The Supplier shall bear the costs and risk related to the return of defective Goods.
- 10.9 Notwithstanding section 438 para. 1 no. 3 BGB, the period of limitation for claims for defects shall be 36 months after the passing of risk pursuant to section 5.5. For replaced deliveries or parts thereof, the period of limitation begins to run anew after successful re-delivery, provided that the scope of the re-delivery is not only insignificant in relation to the order. For repaired deliveries or parts thereof, this shall apply mutatis mutandis, insofar as the same defect or the consequences of a defective repair are concerned.
- 10.10 If negotiations between the Supplier and us with regard to our written defect notification are pending, the statute of limitations for claims based on defects/liability shall be suspended.
- 10.11 The Supplier guarantees that all Goods delivered to us are its property and that no other third-party rights (such as liens, other creditor positions resulting from the assignment of claims or factorization et cetera) prevent the sale and transfer of the ownership of the Goods to us.

11. Product Liability, Insurance

- 11.1 The Supplier shall indemnify us and hold us harmless from and against any and all liability or claims of third parties arising from the intended use of the Goods delivered by him. The indemnity obligation shall not apply if the claim is based on our intentional or grossly negligent breach of a duty.
- 11.2 If we are forced to carry out a recall due to a defect of Goods delivered by the Supplier, the Supplier shall bear all our expenses in relation with such recall. The obligation to bear our expenses shall exist irrespective of whether the Supplier is at fault or not.
- 11.3 During the term of each contract based on these Conditions of Purchase, but at least until the expiration of potential claims for defects which are the last to expire under these Conditions of Purchase, the Supplier is obliged to maintain, at its own expense, product liability insurance with adequate minimum insurance coverage in accordance with industry standards, but in any case not below EUR 10 million per personal injury or property damage, and to provide us with evidence of this upon request. Any further claims for damages shall remain unaffected by this.

12. Confidentiality

- 12.1 The Supplier shall be obliged to treat as confidential all Objects Provided according to section 13.1 and all our other information and documents which are labeled or identifiable as confidential, not to pass them on to third parties and only use them for the performance of the contract. These obligations

shall remain effective for a period of 5 years after the end of the contract.

- 12.2 The abovementioned obligations shall not apply to information which is generally known or which comes to the knowledge of Supplier by a third party without breach of confidentiality obligation.
- 12.3 The Supplier shall oblige the persons it uses to fulfill its contractual obligations in accordance with the abovementioned obligations and shall ensure that this obligation is complied with.
- 12.4 Upon our request, which may be made at any time, Supplier shall without undue delay return to us the documents which it has obtained from us and which are subject to the abovementioned obligations, or destroy them and confirm the destruction to us in writing. Supplier's right of retention to these documents are excluded.

13. Objects Provided

- 13.1 All objects provided by us, images, equipment, calculations, documentation, means of production, components, materials, measuring instruments, models, patterns, plans, product description, packaging, devices, tools, drawings or other information, documents or objects, which we provide to the Supplier for the production of the Goods ("**Objects Provided**"), are and remain our property and shall be treated confidential pursuant to section 12, unless explicitly agreed upon otherwise. The Suppliers shall be obliged to check and inspect the Objects Provided without undue delay, and any complaints shall be notified to us in writing without undue delay. The Supplier may only use the Objects Provided for the production and delivery of the Goods and shall not use them for other purposes or grant third parties a right to use the Objects Provided without our prior written consent.
- 13.2 We remain owner of all copyrights and intellectual property rights with regard to the Objects Provided.
- 13.3 The Supplier shall be obliged to label the Objects Provided as our property and store them separately at its own expense. Furthermore, the Supplier shall be obliged to treat the Objects Provided with the care customary in the ordinary course of business, to maintain them in proper condition at its own expense (e.g. to carry out the maintenance, care and partial renewal) and, if necessary, replace them. The Supplier shall be obliged to insure the Objects Provided against destruction and loss to a reasonable extent at its own expense and provide us with evidence of this upon request.
- 13.4 Any processing, mixing and combining (further processing) of Objects Provided by the Supplier shall be done for us. The same shall apply if the delivered Goods are further processed by us, so that we shall be deemed the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 13.5 Upon our request, which may be made at any time, Supplier shall without undue delay return the Objects Provided to us, or destroy them and confirm to us the destruction in writing.

14. Intellectual Property Rights, Indemnification

- 14.1 The Supplier guarantees that the intended use of Goods delivered by him by us or by third parties (e.g. our customers) will not infringe any intellectual property rights of third parties and that the Goods delivered by him can be used worldwide without infringing intellectual property rights of third parties.
- 14.2 The Supplier shall indemnify us and hold us harmless from and against all third party claims arising from any infringement of intellectual property rights in connection with the intended use of the Goods and shall reimburse us for all our necessary expenses in connection with this claim. This obligation shall apply irrespective of whether the Supplier is at fault or not.
- 14.3 The Supplier shall not be entitled to use our trademarks, logos and/or other symbols or our company name in order to refer to us as a reference without our prior written consent, which may



be revoked at any time.

15. REACH-Regulation/RoHS

- 15.1 The Supplier guarantees to fulfill all obligations imposed on it and us by the Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH-Regulation"), as amended from time to time, in accordance with the provisions of the REACH-Regulation at its own expense.
- 15.2 Insofar as the REACH-Regulation prevents the transfer of obligations from us to the Supplier, the Supplier shall inform us thereof without undue delay and shall fully support us in fulfilling the obligations imposed on us free of charge.
- 15.3 If the Supplier has its registered office outside of the European Union, Supplier shall appoint a representative with a registered office within the European Union at its own expense who fulfills the obligations under the REACH-Regulation and inform us accordingly.
- 15.4 The Supplier guarantees that the Goods to be delivered by him comply without restriction with the requirements of Directive 2011/65/EU (RoHS), as amended from time to time.

16. Conflict Minerals

- 16.1 The Supplier shall comply with the provisions on conflict minerals set out in section 1502 of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the provisions of the EU Regulation laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (Regulation (EU) 2017/821). If conflict minerals are required in the context of the production or for the function of the Goods delivered by the Supplier, their origin must be disclosed. Upon request, the Supplier shall provide us with the documentation on the use and origin of conflict minerals required under the Dodd-Frank Act or Regulation (EU) 2017/821 in full and without undue delay.
- 16.2 Suppliers of raw materials or goods containing cobalt will provide information about the origin of cobalt in their supply chain. Upon request, the supplier will provide similar information about further minerals and metals. In this context the supplier will comply with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and will establish this requirement in his supply chain. The current version can be downloaded here:
<https://www.oecd.org/corporate/mne/mining.htm>

17. Code of Conduct

We are member of the amfori BSCI Business Initiative. The Supplier will comply with the BSCI Code of Conduct and the VARTA Supplier Code of Conduct and impose its compliance on its subcontractors.

The current version of the amfori Code of Conduct can be downloaded here:

[https://www.amfori.org/node/223/field_resource_type/code\[1\]conduct-119](https://www.amfori.org/node/223/field_resource_type/code[1]conduct-119)

For the current version of the VARTA Supplier Code of Conduct please refer to:

<https://www.varta-ag.com/en/about-varta/sustainability>

18. Anti-Trust Compliance

The Supplier guarantees that the prices and other terms offered by it were arrived at without infringing the prohibition on practices that restrict competition. Should a court or an anti-trust authority determine that the Supplier has violated this prohibition or has been involved in such practices, the Supplier shall be obligated to pay us liquidated damages in the amount of 5% of the purchase price of the affected relevant

procurement period, plus statutory interest, unless the Supplier can demonstrate lesser damage or the non-occurrence of a damage or we can demonstrate greater damages. Other of our statutory or contractual claims for compensation due to anti-competitive practices shall remain unaffected. The Supplier will make available to us all information necessary for the examination of the existence of possible claims by us.

19. Severability Clause, Choice of Law, Jurisdiction

- 19.1 If one or more provision(s) of this contract are or become fully or partly invalid under the applicable law, this shall not affect the validity of other provisions of this contract. Each provision, which is fully or partly invalid, will be replaced by a valid provision which realizes the intention of the invalid provision in the best way possible. The same shall apply in case of a regulatory gap.
- 19.2 This contract as well as all contracts based on these Conditions of Purchase shall be governed by and construed in accordance with the law of the Federal Republic of Germany, except for the conflict-of-law rules. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 19.3 Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract or contracts based on these Conditions of Purchase shall be our registered office. Nevertheless, we shall be entitled to file a claim against the Supplier at the place of performance or of its general venue.