

VARTA Microbattery GmbH – Conditions of Delivery – 01.01.2016

1. General

- 1.1 The conditions below apply to any contract between us and a merchant, a legal entity under public law and special assets under public law (“**Customer**”) in respect of the delivery of goods by us to the Customer (“**Order**”).
- 1.2 Other conditions, specifically the Customer’s general terms and conditions, will only be binding, if we have expressly acknowledged these in writing.
- 1.3 Verbal agreements prior to, on and/or after conclusion of contract require confirmation in writing from us to be valid and binding.

2. Conclusion of Contract, Delivery and Transfer of Risk

- 2.1 Our offers are subject to change. The contract comes into force, with these conditions applying, if we issue our order confirmation as acceptance of the Customer’s order. The Customer consents to the use of electronic communication without using any specific encryption procedures in connection with the conclusion and the execution of the contract; we are not obliged to use electronic communication, even if we have already used it ourselves.
- 2.2 Unless agreed otherwise in writing, delivery is “ex-works (to the location specified in the order confirmation)” in accordance with Incoterms 2010. If it is agreed in writing that the goods are to be sent to the Customer at the Customer’s request (shipment), delivery will be made “free to freight carrier (to the location specified in the order confirmation)” in accordance with Incoterms 2010.
- 2.3 Partial deliveries and corresponding billing are permitted to an extent which is reasonable for the Customer.
- 2.4 Our indicated delivery periods and deadlines shall only be deemed approximate (so-called approximate details) unless these are expressly agreed in writing as “fixed”. The periods commence on receipt of the order confirmation by the Customer; however not before existing cooperation obligations have been met by the Customer, in particular regarding the supply of documents to be procured by the Customer, the deposit to be paid or the agreed call order from the Customer. Accordingly the deadlines are extended by the period of delay caused by the Customer. Should the Customer cause a delay in making the request for delivery, we retain the right, against an invoice, either to send the goods to the Customer or to store the goods, the choice being ours, and to charge the Customer with the shipment or the storage expenses at the usual rates.
- 2.5 Force majeure / acts of God and other events outside our control for which we are not at fault and which can compromise prompt delivery, in particular delays in supplies from our own suppliers, transport and operating breakdowns, employment disputes, raw material and energy shortages, measures taken by government authorities as well as import and export restrictions, shall entitle us to accordingly extend the period of delivery or delivery date or, if the abovementioned events place the performance of the contract in serious doubt or render performance impossible, to withdraw from the Order in whole or in part without this entitling the Customer to any claims for compensation. However, we may only rely on the foregoing, if we have notified the Customer immediately after becoming aware of the circumstances.
- 2.6 We will use our best judgement for the shipment (where agreed in writing) and packaging, however we are not obliged to use the cheapest form of transport.
- 2.7 The provisions of Incoterms 2010 agreed for delivery shall apply to the transfer of the risk of accidental loss or accidental deterioration of the goods. Where it is agreed in writing that Incoterms 2010 are to be excluded, our consignments are sent at the Customer’s costs and risk. If the goods are sent to or collected by the Customer then the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer on their despatch or collection, but no later than the time when the goods leave the factory or the warehouse, irrespective as to whether the goods are despatched to or collected from the place of performance and who is responsible for the freight costs. If shipment or collection is delayed at the request of the Customer or for reasons for which we are not at fault, the risk is transferred to the Customer as soon as it is notified that the goods are ready for despatch or collection.
- 2.8 Reusable pallets, special crates and other special packaging remain/remains our property and have to be returned to us carriage free immediately after the goods have been removed from them and without any intermediate use. If these items are not returned within eight weeks after delivery we shall be entitled to bill the Customer for them.

3. Claims for Defects

- 3.1 We warrant the use of proper materials, a technically proper design/quality and – in the case of serial products – the compliance with the applicable EN standard for dimensions/measurements, capacity and labelling. Our advice is based on the results of extensive research work and many years of experience. However, it is not binding and does not exempt the Customer from the requirement to test our products and processes in order to determine their suitability for the Customer’s purposes.
- 3.2 If the goods are defective, we will repair or replace them at our discretion (so-called subsequent performance). Missing quantities will be made up later within the framework of the subsequent performance. If we fail to make subsequent delivery, the Customer can demand reduction in value.
- 3.3 We have to be notified in writing without delay, if any defects are discovered – in the case of identifiable defects no later than however within fourteen days following receipt of the goods.
- 3.4 If we fail to effect subsequent performance, the Customer can withdraw from the contract – notwithstanding any claims for compensation under No. 4. Failure to effect subsequent performance applies for example, if we allow a reasonable period of grace granted to us to expire without having supplied replacement goods or having remedied the defect, if we unjustifiably refuse or unreasonably delay subsequent performance or if the repair is unsuccessful; a repair shall be deemed to have been unsuccessful after the second unsatisfactory attempt at repair.
- 3.5 We shall be liable for replacement deliveries and repair to the same extent as for the goods originally supplied.
- 3.6 Our liability for defect does not apply to natural wear and tear nor to improper treatment nor to damage which arises as the result of incorrect or negligent handling, overuse, unsuitable operating materials, non-compliance with our recommendations for the treatment, testing and storage of our products, nor does it cover damage/loss caused in any other way, the fault of which cannot be attributed to us. We are also not liable, if the Customer or a third party makes alterations to the goods delivered by us or carries out improper repair work.

3.7 The statute of limitations regarding claims for defect commences with the transfer of risk in accordance with No. 2.7. The statute of limitations is for a period of one year. This does not apply to wilful intent, gross negligence, fraudulent concealment of the defect, non-compliance with a guarantee of quality nor for claims under the Product Liability Act nor as the result of injury to life and limb or damage to health; the periods for these are governed by law.

4. Liability

- 4.1 Unless stipulated otherwise in these conditions we shall be liable for losses/damages attributable to breach of contractual or non-contractual obligations in the event of wilful intention or gross negligence.
- 4.2 Moreover, we shall only be liable, if this were to breach a material, contractual obligation (cardinal obligation) which jeopardises the achievement of the purpose of the contract. In such cases the Customer's claim for reimbursement is limited to the reimbursement for the foreseeable loss typical for such a contract.
- 4.3 This does not affect the liability based on mandatory statutory regulations (such as e.g. in the event of injury to life or limb and damage to health, breaches of the Product Liability Act, fraudulent concealment of the defect, non-compliance with a guarantee of quality).
- 4.4 Sentences 2 and 3 of No. 3.7 apply accordingly to the statute of limitations relating to the Customer's liability claims. The commencement of the statute of limitations is governed by the statutory regulations.

5. Purchase Prices, Invoices, Payment Terms, Delay, Offsetting

- 5.1 Unless specified otherwise in writing, the purchase prices are understood as being "ex-works" (Incoterms 2010) plus the corresponding, applicable statutory Value Added Tax.
- 5.2 The Customer consents to the electronic transmission of invoices; we can also transmit invoices on paper. The purchase price has to be paid net within thirty days of the date of invoice. Payment via bills of exchange is only permissible by prior agreement with us. Bills of exchange and cheques will only be accepted by us for the purpose of performance and shall only be acknowledged as payment after their unconditional encashment.
- 5.3 The Customer is deemed to be in default, if it fails to make payment on the calendar payment date specified in the contract. This does not affect the statutory rule under which the Customer is automatically in arrears with due payments no later than thirty days following receipt of an invoice or an equivalent payment request. The Customer has to meet the cost for the collection of the claims.
- 5.4 We are entitled to allocate payments to the oldest due claim in each case.
- 5.5 In the event of default we are entitled to charge default interest at the rate of 9 percent points above the being base interest rate correspondingly applicable as well as an additional fixed default fee of 40 Euro.
- 5.6 If the circumstances show that there is a considerable deterioration in the financial condition of the Customer, with the result that our claim for payment is at risk due to the Customer's inability to pay, particularly in the event of over-indebtedness, insolvency or lack of creditworthiness on the part of the Customer, if enforcement measures are initiated against it or it ceases payments, we shall be entitled to refuse delivery of the goods unless payment is made or security deposit provided. We are also entitled to withdraw from the Order after having unsuccessfully given the Customer a reasonable period of grace to effect payment or provide security deposits, at its discretion, in return for step-by-step delivery of the goods. In the same instances we can demand payment in advance or security deposits for all current business transactions.
- 5.7 The Customer can only make offsetting arrangements with those claims which are undisputed or have acquired legal force.

6. Retention of Title, Reserved Rights

- 6.1 We reserve retention of title to the goods supplied until full payment is received for all current and future claims to which we are entitled from the respective delivery and the current business relationship with the Customer and any other due claims (e.g. reminder costs, collection costs, interest) on any legal grounds thereof. We engage to release securities we are entitled to to the Customer upon demand, in so far as the realizable value of our securities will exceed the receivables to secure by more than 10 %; the selection of the securities to release are incumbent upon us.
- 6.2 The Customer is entitled to resell the goods which are supplied and under retention of title ("**Retained Goods**") in the ordinary course of business. Pledging and assignment for security are not allowed.
- 6.3 Should the Customer resell Retained Goods, it assigns to us, already today, all claims it will have against its customers out of the resale, including any ancillary rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, the Customer assigns to us such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by us.
- 6.4 Until further notice, the Customer may collect assigned claims relating to the resale. We are entitled to withdraw the Customer's authorization to collect the assigned claims for good reason, including, but not limited to delayed payment, suspension of payment, start of insolvency proceedings, protest of a bill or justified indications for overindebtedness or impending insolvency of the Customer. In addition, we may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that the Customer informs its customer of the assignment.
- 6.5 The Customer shall inform us, without undue delay, of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, the Customer shall, without undue delay, provide us with the information and documents necessary to assert the claims it has against its customers.
- 6.6 In the event of actions in breach of contract by the Customer, including, but not limited to the nonpayment of the due purchase price, we are entitled to withdraw from the Order in accordance with the statutory provisions or/and require return of the Retained Goods subject to retention of title. The demand for the return of Retained Goods shall not be deemed to include a simultaneous declaration of withdrawal; we are rather entitled to merely require return of the Retained Goods and to reserve the right to withdraw from the Order. If the Customer does not pay the due purchase price, we may claim these rights only if we have unsuccessfully set the Customer a reasonable deadline for payment in advance or if setting such deadline is not necessary according to the statutory provisions.

7. Place of Performance, Jurisdiction and Applicable Law

- 7.1 Place of performance for all obligations arising from the contract is the place of the delivering factory or warehouse.
- 7.2 Place of jurisdiction is Ulm, Germany.
- 7.3 Should individual provisions be legally unenforceable this will not affect the binding nature of the remainder of the contract. The unenforceable provisions will be deemed to have been replaced by enforceable provisions that most closely reflect the wishes of the parties to the contract from the commercial aspect.
- 7.4 The contract is subject to the substantive law of the Federal Republic of Germany. The application of the legal standards of the German conflict of laws, insofar as these refer to foreign law, as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG) or other conventions relating to the law on the purchase of goods, is excluded.