

GENERAL TERMS AND CONDITIONS OF DELIVERY – 04/2020

1 General provisions

1.1 The following terms and conditions shall apply to all deliveries, services and offers provided by VARTA Consumer Batteries GmbH & Co. KGaA. They shall also apply to all future deliveries, services and offers, even if they are not specifically agreed upon again. Terms and conditions of the customer that differ from our own are expressly rejected; such terms and conditions shall only be deemed binding if we have expressly acknowledged them in writing.

1.2 Individual agreements made with the customer (e.g. verbal agreements, ancillary agreements or changes to existing agreements) take precedence over these General Terms and Conditions of Delivery if they are expressly agreed as binding and taking precedence. Subject to proof to the contrary, the content of such agreements will be determined by a written agreement or a written confirmation. With the exception of managing directors and holders of a general power of attorney, our employees are not authorised to make verbal agreements that deviate from the written agreement.

1.3 Legally relevant declarations and notifications made by the customer (e.g. deadlines, notifications of defects, rescission or reduction) must be made in writing, i.e. in written or text form (e.g. by letter, email or fax). Statutory requirements regarding form and further evidence, particularly where there is doubt about the legitimacy of the declarant, remain unaffected.

2 Contract formation

2.1 All of our offers are subject to change without notice.

2.2 The information that we provide on the object of delivery or performance (e.g. weights, dimensions, use values, resilience, tolerances and technical data) and our representation thereof are only approximate unless full conformity is required for use for the purpose envisaged in the contract. There are no guaranteed characteristics. Deviations that are customary in the trade, as well as those that are attributable to legal requirements or constitute technical improvements, are permitted, as is the replacement of components with equivalent parts, provided that this does not interfere with use for the purpose envisaged in the contract.

2.3 The minimum order value is EUR 250.00 excluding value-added tax.

2.4 An order of goods by the customer constitutes a binding offer to form a contract. We may declare our acceptance in writing or by dispatching the goods to the customer.

3 Delivery, transfer of risk, packaging

3.1 Delivery dates are only binding if expressly agreed as such. If shipment has been agreed, the delivery period will begin when the goods are handed over to the forwarding agent, carrier or other third party engaged to transport the goods. Notwithstanding its rights arising from the default of the customer, we may request an extension of delivery deadlines by the period of time for which the customer fails to fulfil any duty to cooperate, particularly in respect of the provision of documents, payment of deposits or the agreed call-off. Should the customer fail to call off the goods on time, we reserve the right, at our discretion, to ship said goods to the customer at the latter's expense or to keep them in storage and charge the customer the normal warehousing fees.

3.2 We deliver ex works (EXW). The place of performance is therefore our distribution warehouse.

3.3 If the goods are sent to the customer, the risk of accidental loss or deterioration of the goods is transferred to the customer upon handover to the carrier, forwarding agent or other third party appointed to ship the goods. This applies regardless of whether the goods are shipped from the place of performance and regardless of who bears the freight costs. If the customer delays shipment of the goods, the risk is transferred to the customer when we notify the customer that the goods are ready for dispatch.

3.4 Unless otherwise agreed in a specific case, shipping and packaging are chosen at our sole discretion and we shall not be liable for the cheapest form of shipping.

3.5 Reusable pallets, special crates and other special packaging for the shipping remain our property and must be returned to the sender carriage paid as soon as they have been emptied, without being used in the interim. If these items are not returned within eight weeks of delivery, we will be entitled to invoice the customer for them.

3.6 We shall not be obliged to take back other sales packaging not included in 3.5 above, unless the latter is sales packaging for private consumers.

3.7 Unless otherwise agreed, partial deliveries and the respective invoices shall be permitted to a reasonable extent.

4 Transport damage

4.1 A record of visible transport damage must be made upon receipt of the goods in the presence of the shipping agent and submitted to us immediately in writing. Transport damage that is discovered at a later date must be notified to us in writing immediately upon detection. Failure to comply with the obligation to examine and give notice of defects will result in the exclusion of claims for transport damage.

4.2 Furthermore, a damage report including all the necessary information must be submitted to the carrier (e.g. Deutsche Bahn AG or Deutsche Post AG) without delay.

4.3 No modifications may be made to damaged items before they have been released by us or the transport insurance company.

5 Payment terms

5.1 Unless expressly agreed otherwise, our prices are given in Euro ex works or ex distribution warehouse, excluding packaging and statutory VAT, export customs duties if applicable or fees and other public levies. The applicable statutory VAT, the transport costs ex works or warehouse, and the costs of any transport insurance specifically requested by the customer will be added to these prices.

5.2 Unless terms to the contrary have been agreed, the purchase price is payable within ten days with a 2% discount or no later than 30 days after the date of the invoice without deduction. Payments by bill of exchange is permitted only with our prior agreement. Bills of exchange and cheques will only be accepted by us in fulfilment of debt and will only be valid as a means of payment after having been honoured without reservation. No discounts will be granted in the case of payment by bill of exchange.

5.3 The customer will be deemed in arrears if the purchase price has not been paid within 30 days of the date of the invoice. In the event of late payment, we may claim interest on the arrears at the statutory rate. We reserve the right to claim compensation for any additional proven loss caused by the delay.

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__5.4__ We are entitled to credit payments against the oldest outstanding debt.

__5.5__ Should there be a substantial deterioration in the customer's financial situation, particularly if the customer fails to meet payment deadlines, seeks deferment or composition of payments, or has ceased making payments, we may demand the immediate payment of all debts arising from the business relationship. Under the same conditions, we may demand advance payment or the provision of security for all current transactions.

__6__ Rights arising from defects

__6.1__ We represent and warrant the use of flawless materials, proper technical execution and, insofar as standard products are concerned, conformance with the EN standard for dimensions, performance and marking. Our advice is based on the findings of numerous research studies and many years of experience. However, our advice is provided without obligation and does not relieve the customer of the duty to check our products and methods with regard to their suitability for the purpose in question.

__6.2__ We warrant that the goods are free of defects on the day of transfer of risk. The customer's warranty claims expire in accordance with the statutory rules unless otherwise provided for below. In all cases, the special legal requirements for the final delivery of the unprocessed goods to a consumer (supplier recourse in accordance with section 478 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB)) remain unaffected. Claims arising from supplier recourse are excluded if the defective goods have been processed by the customer or another party, e.g. by installing them in another product.

__6.3__ The limitation period for defects pursuant to section 438(1)(3) BGB is 12 months starting on the day of delivery. This limit does not apply to the customer's claims for damages as a result of loss of life, physical injury or damage to health, or under the German Product Liability Act (*Produkthaftungsgesetz*, ProdHaftG), or as a result of wilful misconduct or gross negligence on our part or on the part of our vicarious agents, which expire in accordance with the statutory provisions.

__6.4__ If defective goods are delivered, we may, at our discretion, initially repair or replace the goods (subsequent performance). We may refuse subsequent performance where this would entail unreasonable costs for us. The customer's entitlement to repair is excluded in the case of minor quality defects. In particular, a defect will be considered a minor quality defect if the value or suitability for typical use is only slightly reduced. We shall bear the costs incurred for the purpose of subsequent performance, including transport, travel, labour and material costs. In the case of replacement delivery, the customer shall return the defective item to us in accordance with the statutory provisions.

__6.5__ Should the subsequent performance fail, the customer may, after a deadline has expired without rectification, unless this is not required according to the statutory regulations, demand a reduction or withdraw from the contract. The request for reduction or notice of rescission shall be given in writing. The right to demand compensation or the reimbursement of wasted expenditures remains unaffected as specified in section 8.

__6.6__ Missing quantities shall be delivered if possible; otherwise, we shall issue a credit note.

__6.7__ The customer shall adequately examine the goods when risk is transferred. With regard to obvious defects or other defects that would have been detected during an adequate inspection, the customer will be deemed to have accepted the goods if we do not receive a written notice of defects within seven working days of delivery. In respect of other defects, the customer will be deemed to have accepted the goods if we do not receive the notice of defects within seven working days of discovery of the defect.

__6.8__ Our liability for defects does not apply to normal wear and tear or improper use, nor to damage resulting from incorrect or negligent handling, excessive use, unsuitable equipment, failure to comply with our recommendations for handling, testing and storing our products, or other factors beyond our control. Our warranty will also become void if the customer or a third party makes changes or improper repairs to the goods we supplied.

__7__ Withdrawal and compensation in lieu of performance

__7.1__ In the event that we fail to provide due performance or our performance does not comply with the contract ("breach of duty"), the customer is only entitled to withdraw from the contract and we shall only pay compensation in lieu of performance if:

- a) it is not an insignificant breach of duty, and
- b) the customer requests in writing that we provide the performance within a reasonable period of at least 14 days, and
- c) we still have not provided the performance within this period.

No grace period need be set if we seriously and definitively refuse performance, if we have not complied with a fixed agreed performance time, or if withdrawal without granting a grace period is justified due to the particular circumstances.

__7.2__ In case of a breach of duty not comprising defect, the buyer may only rescind the contract if we are responsible for such breach of duty. In the case of an insignificant breach of duty, withdrawal from the contract is excluded. Notice of rescission must be given in writing. If the customer sets us a deadline to remedy a breach of duty, the notice setting the deadline must precisely specify the due performance for which the grace period is being set (qualified notice). The statutory requirements and legal consequences apply in all other respects.

__7.3__ While the notice of a deadline is pending, we may set the customer a deadline by which to state whether it intends to continue to insist on performance.

__8__ Liability

__8.1__ Unless otherwise provided in these General Terms and Conditions of Delivery, including the provisions hereinafter, we shall be liable for breach of contractual and extra-contractual obligations in accordance with the relevant statutory provisions.

__8.2__ We shall be liable – irrespective of the legal basis – only for compensation of damages caused by wilful misconduct or gross negligence. In addition, in cases of ordinary negligence, we shall be liable for

- damage suffered as a result of loss of life, physical injury, or damage to health;
- damage suffered due to a breach of an essential contractual obligation; in this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.

__8.3__ The aforementioned limitations of liability do not apply if we have fraudulently concealed a defect or if we have provided a guarantee with respect to the quality of the goods. The same applies to the customer's claims under the German Product Liability Act (*Produkthaftungsgesetz*, ProdHaftG).

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9 Force majeure

Force majeure and other influences beyond our control that may hinder the smooth execution of the contract in question, particularly war, fire, floods, earthquakes, traffic congestion and stoppages, labour disputes, shortage of materials, power cuts, action by government authorities or import and export restrictions shall entitle us, after notification to the customer, to postpone the delivery date accordingly or, if the fulfilment of the contract is seriously jeopardised or prevented by the aforementioned events, to withdraw from the supply contract in whole or in part, without the customer gaining any right to claim compensation. The same applies in the event of delays in delivery or non-delivery by our suppliers if we have concluded a congruent hedging transaction and neither we nor the supplier is at fault.

10 Retention of title

10.1 We reserve title to the goods supplied ("reserved goods") until full settlement of all debts due to us arising from the business relationship and any subsequent claims, irrespective of the legal grounds.

10.2 The customer shall be entitled to process our reserved goods or combine them with other goods within the scope of its normal business activities. To safeguard our claims under 10.1 above, the customer hereby transfers to us co-ownership of the goods resulting from processing or combination. The customer shall hold the co-owned goods in safe custody free of charge. The level of co-ownership shall be determined by the value of our product in proportion to the value of the goods produced by processing or combination.

10.3 If the reserved goods are delivered to an address within the Federal Republic of Germany or conveyed to such a place by the customer: We grant our customer the revocable right to resell the goods in the normal course of business. This right shall expire if the customer falls into payment arrears. The customer hereby transfers to us all claims and ancillary rights accruing from the resale of goods in the amount of the invoice value of the reserved goods supplied by us; we hereby accept this transfer. The assigned claims shall serve to secure all claims pursuant to 10.1. If the value of the security continuously exceeds the debts due to us by more than 10%, we shall release the security interests in a reasonable amount. This assignment shall apply regardless of whether the item sold has been processed or not. The customer shall be entitled to collect the assigned debt claims as long as we have not revoked this authorisation. The collection authorisation shall lapse, even without express revocation, if the customer falls into payment arrears. At our request, the customer shall notify us immediately in writing to whom the reserved goods have been sold and which claims the customer has acquired as a result of this sale, and shall provide us with documentary evidence of the assignment of claims, certified at the customer's expense by a notary. Where a legitimate interest exists, we may notify the purchaser of the reserved goods of the assignment of our customer's debt claim.

10.4 If the reserved goods are delivered to an address outside the Federal Republic of Germany or conveyed to such a place by the customer, the following applies in addition to 10.3: The customer shall ensure that the retention of title is effectively protected in the country in which the reserved goods are located or to which they are to be transferred. If specific steps need to be taken (for example special marking or local registration of the contractual goods), the customer shall perform these steps in our name at its own expense. Should our assistance or support be required, the customer shall notify us without delay. In addition, the customer shall inform us of all significant circumstances relevant to achieving maximum possible protection of our property. In particular, the customer shall place at our disposal all documents and information necessary for the enforcement of rights arising from the retention of title. The provisions of this paragraph 10.4 apply accordingly if, under the laws of the country in which the reserved goods are located, an effective retention of title cannot be agreed that creates a legal position for us in which our interests and claims are safeguarded in an equally effective or other suitable manner, insofar as this is legally possible.

10.5 The customer is not entitled to otherwise dispose of reserved goods wholly or partly owned by us, or to transfer claims already assigned to us. In particular, the goods may not be pledged or assigned as security. The customer shall immediately notify us of any seizure or enforcement proceedings by a third party or other curtailment of rights to the reserved goods/debt claims wholly or partly owned by us.

10.6 We may demand the surrender of goods owned by us at any time if the customer defaults on payment or if there is a serious deterioration in the customer's financial situation. If we exercise this right, this shall only constitute rescission of the contract, notwithstanding other mandatory legal requirements, if explicitly stated by us.

10.7 The customer shall take out and maintain adequate insurance cover for the goods wholly or partly owned by us and shall handle the goods with care. The customer hereby assigns to us all claims against its insurance company in the event of loss, insofar as they relate to the goods wholly or partly owned by us; we hereby accept this assignment.

10.8 We reserve the right of ownership and copyright to cost estimates, samples, drawings and other documents handed to the customer in conjunction with our offer or our deliveries; they may not be made available to third parties and must be returned to us on request.

11 Data protection

If we receive the customer's personal data (e.g. name and contact details of individual contacts), we will process this data to establish and execute the delivery contract and to the extent justified in accordance with the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (*Bundesdatenschutzgesetz*, BDSG). Further information can be found in the privacy policy (<https://www.varta-consumer.com/en/service/privacy>) on our website at any time.

12 Final provisions

12.1 The customer is permitted to set off payment claims and exercise rights of retention only if the claims are undisputed, acknowledged by us, or legally established. The customer may only assert a right of retention if it is founded on a claim arising from the same contractual relationship.

12.2 The customer may not assign claims to third parties. We may assign claims to third parties.

12.3 The place of jurisdiction is Frankfurt am Main.

12.4 The law of the Federal Republic of Germany applies, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

12.5 Should individual provisions of these terms and conditions of a contract be or become ineffective or unenforceable, this will not affect the validity and enforceability of the remaining provisions. The parties shall work together to agree upon and replace said provision with a provision that most closely corresponds to the economic or legal purpose of the ineffective or unenforceable provision. If the parties are unable to reach an agreement, the contract must be interpreted without the ineffective or unenforceable provision. The same applies if this contract contains a gap that needs to be filled.