

**01 Scope of application** The following terms and conditions form an inseparable part of the issued order or concluded scheduling agreement and are deemed contractually agreed to, whereby individual deviations in the order or scheduling agreement take precedence.

These Purchasing Terms and Conditions are applicable only to entrepreneurs, special funds under public law, and legal persons under public law.

The Contractor (hereinafter referred to as CT) shall bear all costs incurred as a result of the culpable failure to observe the Purchasing Terms and Conditions of VARTA.

VARTA objects to the inclusion of the CT's general business terms and conditions. Only these Purchasing Terms and Conditions of VARTA are applicable. Any deviating references to the CT's general business terms and conditions that are made in the offer, the order confirmation, or other declarations by the CT have no effect, even where VARTA does not again expressly object to them. The CT's general business terms and conditions form a part of the contract only if they have been expressly confirmed by VARTA in writing.

**02 Offers** Offers must be made by the CT pursuant to the request by VARTA for a quote. Should deviations from the request be necessary in order to achieve the contract purpose or for other comprehensible reasons, VARTA is to be made expressly aware of such deviations in the offer. The reference must be made in a way that is clearly evident. Offers are made to VARTA at no charge.

**03 Contract conclusion** A contract comes into effect either when the CT provides written confirmation of the written order by VARTA or through a contract signed by both parties. In the case of a scheduling agreement, the CT must also provide written confirmation of the individual call-downs by VARTA. Amendments, addenda, side agreements, and supplementations are binding only if they have been mutually agreed upon in writing. If the CT fails to confirm an order within 14 days, VARTA is no longer bound by the order. The receipt of the notice by VARTA shall be decisive. An untimely confirmation constitutes a new offer by the CT, which VARTA may accept at its own discretion.

**04 Scope of deliveries and services** The scope of deliveries and services is to be provided in accordance with the requirements in the order/scheduling agreement and with the technical specifications. Full provision includes, in particular, all listed deliveries and services and the complete documentation. The scope of deliveries and services must meet all statutory and regulatory rules applicable in the specified country of use, including safety and environmental rules and relevant technical regulations. A change to the scope of deliveries and services set forth in the order/scheduling agreement requires the written consent of VARTA. Should the CT consider such a change to be necessary, it must notify VARTA in a timely, comprehensive manner about the scope and the costs. Without the written consent of VARTA deviations will neither be compensated nor carried out. VARTA reserves the right to return to the CT at the latter's risk and expense any over-supplied goods.

**05 Execution of deliveries and services** The place of performance for deliveries and services is the delivery address specified in the order letter/scheduling agreement. Shipping notices are to be sent to VARTA electronically on the delivery date. An additional copy is to be attached to the shipment. Order number and order data are to be indicated on the reverse side of consignment notes or dispatch-note sections. Unless indicated otherwise in the order/scheduling agreement, the following **shipping addresses** are applicable:

Ellwangen plant:	Dischingen plant:
VARTA Consumer Batteries GmbH & Co. KGaA	VARTA Consumer Batteries GmbH & Co. KGaA
Alfred-Krupp-Str. 6	Zwinkelweg 2
D-73479 Ellwangen	D-89561 Dischingen

**06 Transfer of risk** The risk of accidental deterioration or loss of the deliveries or services passes upon receipt of the delivery by VARTA pursuant to these Terms and Conditions.

**07 Price and payment** The CT's invoices may not contain any notifications other than the data concerning VARTA's order. In the event of defective delivery, VARTA is entitled to withhold payment in proportion to the value until proper fulfilment. Prices shall be quoted for deliveries and services free to the aforementioned shipping addresses or free to places of destination specified by VARTA, and include applicable value-added tax as well as road tolls, packing and freight costs, and all other incurred ancillary costs, unless expressly agreed otherwise.

**08 Assignment and set-off** Without the consent of VARTA, the CT is not entitled to assign to third parties any rights and obligations under the contractual relationship, other than an assignment of receivables to the CT's bank. The CT is entitled to set off against VARTA's claims only if its claims are undisputed or have been legally established.

**09 Transfer of title** Title to deliveries shall transfer to VARTA once delivery has been made in accordance with the agreed delivery terms and conditions.

**10 Dates** The delivery dates specified in the order/scheduling agreement constitute for VARTA a material part of the contract and must be complied with. In the event that the CT is unable to meet a delivery date, it must notify VARTA as soon as possible, i.e. once it foresees it, about the reasons for and the expected duration of the delay. The CT is obligated to keep the delay as short as possible through increased effort. The costs for this are borne by the CT.

**11 Default and contractual penalty** If the CT is in default in providing the agreed deliveries and services on the agreed dates, VARTA is entitled, after setting a reasonable grace period, to the statutory right of rescission and/or claims for compensation of damages for non-performance and to a claim for payment of a contractual penalty in the amount of 0.5% of the total order value per commenced week for each exceeded delivery date, limited to at most 5% of the total order value. Acceptance of a delayed delivery does not preclude the assertion of a payable contractual penalty if VARTA declares a corresponding proviso upon acceptance.

**12 Sub-suppliers** If the CT intends to avail itself of a subcontractor to provide more than merely insignificant deliveries and services, it must first obtain the consent of VARTA. VARTA may refuse to provide such consent only for important reasons.

**13 Claims for defects** The CT warrants that the deliveries and services provided by it will be free of defects and be consistent with the contractual requirements at the place of use. Should this not be the case, VARTA is entitled to demand subsequent performance, i.e. repair, substitute delivery, or re-manufacture, at its sole choice. If the subsequent performance fails, or if same does not occur by a reasonable deadline set by VARTA, VARTA may make use of its right to reduce the purchase price or rescind the contract. VARTA also has the right to demand compensation of damages to the statutory extent.

Notwithstanding the CT's liability for defects, where defects jeopardise operational safety or need to be immediately eliminated in order to avoid greater damage, VARTA is entitled to eliminate same by itself, or have same eliminated by third parties, at the CT's expense, provided that the CT receives prompt notice thereof and it is clear that the CT will be unable to arrange for elimination in the same period. VARTA's statutory right to claim compensation of damages is not limited by this provision.

In addition to claims for defects, VARTA is entitled without limitation to the statutory recourse claims within a supplier chain in its favour (supplier recourse pursuant to sections 478 and 479 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB)). In particular, VARTA is entitled to demand from the CT the type of subsequent performance (repair or substitute delivery) that VARTA owes its customers in a given case. The foregoing does not limit VARTA's statutory right of choice (section 439, para. 1 BGB). VARTA's supplier recourse claims also apply where the goods were processed by VARTA or a customer, e.g. through installation in another product, prior to being sold to a consumer.

**14 Period of limitation for claims for defects** The period of limitation for claims for defects is set at 36 months after delivery. For replaced deliveries or parts thereof, the period of limitation begins to run anew after the successful re-delivery, provided that the scope of the re-delivery is more than merely immaterial in relation to the order. For repaired deliveries or parts thereof, the same shall apply, provided that the issue involves the same defect or the consequences of a defective repair.

**15 Notice to defects** The period for reporting defects pursuant to section 377 of the German Commercial Code (*Handelsgesetzbuch*, HGB) is 10 calendar days. For obvious defects, the period begins to run upon delivery and for latent defects, upon discovery.

**16 Industrial property rights and copyrights** If a third party lodges claims against VARTA based on the culpable infringement of an industrial property right or copyright (hereinafter, "Property Rights") by products delivered by the CT that are used in conformity with the contract, the CT is liable to VARTA as follows:

- a) The CT will at its own expense acquire a right of use for the product that enables VARTA to use the product in conformity with the contract, or
- b) The CT will change the product in such a way that the Property Right is not infringed or exchange the product. If this is not possible, VARTA is entitled to utilise a different product. The CT will take back its product and reimburse VARTA for all costs and incurred damages associated with the exchange. In addition, the CT is obligated to indemnify VARTA against claims by third parties.
- c) Moreover, the CT will reimburse VARTA for all reasonable costs that it incurs in defending the lawsuit. VARTA must give the CT prompt, complete notice of any such lawsuit. VARTA is not entitled to acknowledge an infringement of a Property Right asserted by third parties if the CT objects to it and posts security to VARTA upon request for the costs and damages resulting therefrom. The CT must, at VARTA's choice, either give VARTA all requested support measures at its own expense or directly handle the defence of VARTA at its own expense.
- d) The period of limitation for legal complaints is set at 36 months.

**17 Product liability** If the CT is responsible for product liability damage, it must indemnify VARTA against claims by third parties for compensation of damages, insofar as the cause of the product liability damage lies within the CT's sphere of control and organisation. The CT must reimburse VARTA for expenses that it incurs in this connection. In this regard, it is also obligated to reimburse VARTA for any expenses that it incurs from or in connection with a recall campaign carried out by VARTA. To the extent feasible and reasonable, VARTA will notify the CT about the substance and scope of the recall measures being carried out. The CT is obligated to maintain product liability insurance with a lump-sum coverage amount of at least EUR 3 million per personal injury and property loss. If VARTA is entitled to additional claims for compensation of damages, same remain unaffected.

**18 Liability** Unless provided for otherwise in the order/scheduling agreement or in these Terms and Conditions, the CT's liability in terms of both basis and amount is determined by statutory provisions. The CT represents that it complies with all statutory provisions concerning the minimum wage. If the CT avails itself of a third party (subcontractor) for the provision of services, it guarantees that the subcontractor and any sub-subcontractors engaged by the latter comply with all statutory provisions, including the statutory arrangements concerning the minimum wage. The CT indemnifies VARTA against any claims by third parties, including claims by employees of the CT or one of the subcontractors engaged by the CT for payment of the statutory minimum wage.

The CT guarantees that the prices and other terms offered by it were arrived at without violating the prohibition on practices that restrict competition. Should a court or competition authority determine that the CT has violated this prohibition or engaged in such practices, it is obligated to pay VARTA lump-sum compensation of damages in the amount of 5% of the purchase price during the relevant procurement period, together with statutory interest, unless the CT can demonstrate lesser or no damages to VARTA or VARTA can demonstrate greater damages. Other statutory or

contractual compensation claims by VARTA due to anti-competitive practices remain unaffected. The CT will make available to VARTA all information necessary for reviewing the existence of possible claims by VARTA.

**19 Insurance** The CT is obligated to obtain insurance common in the industry in a reasonable amount and to demonstrate same to VARTA upon request.

**20 Duty to perform in advance and ending of the contract** Notwithstanding the other cases of ending of contract addressed in these Purchasing Terms and Conditions and the possibilities for rescission and termination regulated by statute, VARTA is entitled to rescind the contract for the following reasons:

VARTA is also entitled to end the contract if the contractor culpably breaches its contractual duties and, as a result, continuation with the contract can no longer be reasonably expected of VARTA. In such case, VARTA is entitled, at its choice, either to demand restitution of the performance already provided by VARTA in exchange for return of the deliveries and services or to retain the deliveries and services already provided in exchange for payment of the pro-rata price. In addition, VARTA is entitled to rescind the portion of the contract still unfulfilled if the CT's financial situation deteriorates following contract conclusion or it ceases making its payments or suspends its operations (including temporarily).

If a contracting party ceases making its payments, or if court-ordered insolvency proceedings are commenced against its assets or court-ordered or extra-judicial composition proceedings are commenced, the other party is entitled to rescind the unfulfilled portion of the contract.

**21 Force majeure** Neither of the contracting parties is responsible for events of force majeure. Force majeure includes, but is not limited to, such events as war, flooding, earthquakes, strikes, and other events lying beyond the control of the contracting parties. The dates for fulfilling the contractual obligation are postponed in accordance with the duration of such an event. The party relying on the existence of force majeure must notify the other party within 10 days about its occurrence and expected duration and provide proof about the occurrence of such circumstances, e.g. through a confirmation by the chamber of commerce. Should it be unreasonable to expect one of the contracting parties to continue with the contract for the aforementioned reasons, such party is entitled to rescind the contract without any claims to compensation of damages thereby arising for the other party.

**22 Confidentiality** VARTA retains all ownership rights and copyrights to drawings, prototypes, documentation, CAD data, other documents, and data storage media (hereinafter, the "Information") that VARTA shares with the CT. The Information may be used solely for manufacturing in accordance with the order/scheduling agreement. Such Information may be reproduced only in connection with operational requirements and copyright provisions. The Information must be kept confidential, may not be made accessible to third parties, and must be returned after carrying out the order without being asked. The aforementioned confidentiality obligation also survives the ending of the business relationship for a period of three years. Sub-suppliers are to be made subject to a corresponding obligation.

**23 Publications** When providing references or making publications, the CT may mention VARTA or brands or other signs of VARTA or otherwise use the business connection for the purposes of advertising only if VARTA has given its prior written consent.

**24 Applicable law and place of jurisdiction** Ellwangen (Jagst), Germany, is the exclusive place of jurisdiction for all disputes arising in connection with this contractual relationship. All legal relationships in connection with the contract are determined by German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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