



**VARTA MICROBATTERY INC.
TERMS OF SALE AND DELIVERY**

I. General

Varta Microbattery Inc. is the "Seller" for all transactions. Any person buying Products from Seller is the "Buyer." The products sold by Seller are the "Products."

II. Acceptance

2.1 No price list or catalog of Seller shall be deemed an offer to sell. All orders are subject to acceptance at Seller's main office in Rye, NY. Seller's acceptance of any order of Buyer is expressly made conditional upon Buyer's assent that these terms constitute the sole and exclusive agreement (the "Contract") between Seller and Buyer. Seller's acceptance or fulfillment of Buyer's order does not constitute an acceptance of provisions on any order or other form of Buyer that are different from or additional to these terms. Such different or additional provisions are hereby expressly rejected and are void.

2.2 The terms hereof may not be modified, waived, superseded, or rescinded except by a writing signed by an authorized officer of Seller.

III. Modification of Material Furnished by Seller

3.1 All catalogs, price lists, specifications, and other material of Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller. Seller reserves the right to correct clerical and typographical errors at any time.

3.2 All prices listed in any such materials of Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller.

3.3 Seller reserves the right to modify or discontinue Products, and to change specifications, at any time without notice.

IV. Prices

4.1 Unless Seller has agreed in writing that any quotation is binding for a specified period not yet expired, price quotes are subject to change at any time prior to shipment of the Products. If a quotation is designated as a binding quotation, it is binding only for thirty (30) days from the date of the quotation unless otherwise expressly stated.

4.2 Unless otherwise agreed in writing by the parties, freight (including without limitation loading, lighter age, wharf age, and loading charges) and insurance are not included in the price. In addition, sales, use, value added or similar taxes, as well as export fees or import duties and brokerage fees, are not included in the price, unless otherwise agreed in writing by the parties.

4.3 The purchase price of any Product shall be the sum of the price plus, where applicable, a "precious metals adder," which is an additional charge reflecting the fluctuations of Seller's cost of each particular Product resulting from the change in price of the precious metal content of such Product.

V. Delivery and Acceptance

5.1 Unless otherwise agreed by the parties in writing, pricing and delivery is Free Carrier (FCA) (Incoterms 2000) Seller's plant or warehouse.



5.2 Any delivery dates indicated or set by Seller are estimates only, and do not bind Seller unless specifically agreed in writing by Seller. Delivery dates are based on customary quality control testing procedures: additional testing required by Buyer will be deemed to extend delivery dates accordingly. Seller reserves the right to make partial shipments and to submit separate invoices for each such partial shipment. If delivery is delayed as a result of any action or inaction by Buyer, Seller may invoice Buyer for the Products as of the scheduled delivery date, and risk of loss (but not title) shall pass, and Seller may charge Buyer for storage and other expenses incurred by Seller as a result of such delay

5.3 If Buyer defaults in its obligations, including payment obligations, in regard to any partial or prior shipment, Seller may suspend subsequent shipments until Buyer cures such default.

5.4 Products not rejected within fifteen (15) days after receipt of shipment will be deemed accepted by Buyer.

VI. Title/Risk of Loss/Legal Duties

Risk of loss shall pass, and the parties' respective legal obligations in regard to delivery and shipment shall be defined, as specified in INCOTERMS 2000 for the relevant shipping term, whether FCA or otherwise. Unless otherwise agreed by Seller in writing, title shall pass when risk of loss passes.

VII. Payment

7.1 Unless otherwise agreed in writing by Seller, Buyer shall pay to Seller the invoice price of the Products sold hereunder, in full and without any deduction or set-off of any kind, within thirty (30) days after the invoice date in the currency specified by Seller.

7.2 All bank charges in respect of payment instruments shall be at Buyer's expense. Where payment is by letter of credit, payment shall be made by irrevocable letter of credit issued and confirmed by banks approved by Seller within fifteen (15) days after acceptance of the order. The letter of credit shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations, shall permit partial deliveries and provide for pro-rata payments upon invoices and certificate of delivery and for the payments of cancellation charges. In the event Seller is required to bring legal action to collect delinquent accounts, Buyer agrees to pay Seller's reasonable attorneys' fees and costs of suit.

7.3 Unless otherwise indicated on the invoice, all amounts will be paid in U.S. Dollars. If the amounts owing are in U.S. Dollars, interest will be charged daily on past due amounts from the due date at a rate of the lesser of (i) one and one-half percent (1.5%) per month and (ii) the maximum rate of interest allowed by law. If the amounts owing are in a currency other than U.S. dollars, interest will be charged at the rate of interest customarily charged by Seller or its affiliates on credit sales to its customers in the currency specified.

7.4 If Seller concludes in its sole discretion that the financial condition of Buyer at any time jeopardizes its ability to make payments hereunder, Seller may require cash payments or additional security satisfactory to Seller before further performance by Seller. Buyer's failure to timely pay any invoice shall operate to make all other invoices of Seller immediately due and payable and, at the discretion of Seller, shall be grounds for cancellation of any further performance by Seller. The acceptance by Seller of part payment shall not constitute a waiver of any of Seller's rights set forth herein or provided by law, including the right to cancel.

7.5 Until payment in full for an applicable Order, Buyer grants to Seller a purchase money security interest in the Products sold to Seller under such Order, and in the proceeds of all such Products. In furtherance thereof, Buyer shall be authorized without any further act of Seller to file one or more UCC financing statements in such jurisdictions as Seller deems appropriate to perfect any such security interests.

VIII. Warranty; Limitation of Warranty

8.1 Seller warrants that the Products (i) are manufactured in a good and workmanlike manner and (ii) are in accordance with Seller's specifications. If any failure to conform to the warranty is reported to Seller in writing within one (1) year after shipment to Buyer, Seller, if satisfied of the existence of such non-conformity, will correct the same by delivering replacement Product to Buyer. If Seller so elects, or if Seller is unable to correct such non-conformity by delivering replacement Product, Seller shall return to or credit Buyer the purchase price thereof, or, where appropriate, the unit price for such number or quantity of the Products as shall have such non-conformity



which Seller is unable to correct. The warranty set forth in this paragraph applies both to the original Products and any replacement Products. The foregoing shall be Buyer's sole and exclusive remedies.

8.2 Any description of the Product, or any drawings and any samples, models, bulletins, or similar material used in connection with this sale, are for the sole purpose of identifying the Product and are not to be construed as an express warranty that the Product will conform to such description. Any field advisory or installation support is advisory only. THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE, ARE EXCLUDED.

8.3 The above warranty shall not apply if Products have been (i) handled or stored other than in accordance with Seller's handling or storage instructions, (ii) have been subjected to misuse or neglect, accident or modification, or (iii) have been used in any manner outside of the authorized use for which the Products were designed by Seller. This warranty applies only to Products manufactured by Seller. Warranties on Products sold, but not produced or manufactured by Seller or its affiliates, are assigned to Buyer by Seller (without recourse) at time of delivery.

8.4 No Products shall be returned without Seller's prior written consent. Products which Seller consents to have returned shall be shipped at Buyer's risk and expense, freight prepaid, to such location as Seller may designate. In addition, in no event shall Seller be liable for any costs incurred by Buyer in removing or re-installing the Product.

IX. Insurance

Buyer shall maintain comprehensive general liability insurance, including product liability insurance, property damage insurance, vendor's liability insurance and contractual liability insurance, designating Seller an additional named insured, and have such coverage and limits and be issued by such company as Seller shall deem reasonably adequate for its protection, but in any event no less than \$3,000,000.00 and a deductible of no more than \$250,000.00. Buyer shall, within ten (10) days after Seller's request therefor, furnish to Seller certificates of insurance, issued by the applicable insurers, confirming the coverages, limits and expiration dates of the respective insurance policies.

X. Confidentiality; Other Intellectual Property

10.1 Buyer agrees that all specifications, data and other technical information furnished by Seller to Buyer constitute the property of Seller, are furnished solely for the purpose of Buyer's and Seller's performance hereunder, and may not be copied or made accessible or otherwise disclosed to third parties without Seller's prior written consent. Buyer shall promptly return such specifications, data and other technical information and all copies thereof to Seller upon Seller's request. Such request may be made at any time prior to or after delivery of the Products. The obligations of Buyer set forth in this Section 10.1 also shall survive cancellation or completion of the Contract. No other information of either party shall be deemed given or received in confidence unless and to the extent that it is covered by a separate written agreement.

10.2 Seller makes no express or implied warranty that Products sold hereunder will not infringe any United States or foreign patents, design patents, trade secrets, trademarks, copyrights, or other proprietary rights. The sale of any Product hereunder does not convey any license by implication or estoppel or otherwise in regard to any combination of any Product with other devices or elements. Buyer shall hold Seller harmless against any expenses or liability from claims of unfair competition or unfair trade practice, or infringement or contributory infringement of any patents, design patents, trade secrets, trademarks, copyrights, or other proprietary rights related to Products sold hereunder arising from (i) Seller's compliance with Buyer's designs, specifications or instruction; (ii) use of any Product in combination with any products not supplied by Seller; or (iii) use of any Product in connection with any manufacturing or other process.

XI. Cancellation

11.1 The Contract is not subject to cancellation by Buyer other than in accordance with Paragraph 12.2 hereof.

11.2 If Buyer purports to cancel the Contract in contravention of Paragraph 11.1 in respect of any Products which have been specially manufactured for Buyer, Seller, in addition to all other available remedies, shall be



reimbursed by Buyer for all direct costs of labor, raw materials and parts purchased or contracted to be purchased and overhead costs incurred by Seller in the manufacture of said Products. Buyer agrees that Seller's calculation of the costs shall be accepted by the parties hereto. In addition, Seller shall have the right to complete and sell to a third party any specially manufactured Products, the order for which has been purportedly cancelled by Buyer, without any liability whatsoever to Buyer.

11.3 Seller shall have the right to cancel any unfilled order without liability to Buyer in the event that Buyer becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy or reorganization statutes, becomes unable to meet its financial obligations in the normal course of business, discontinues its business or sells the bulk of its assets other than in the usual course of business.

XII. Force Majeure

12.1 "Force Majeure" means any cause not within the reasonable control of the party affected. Events of Force Majeure include, without limitation, acts of God, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel, transportation, utilities, or raw materials, and governmental laws and regulations.

12.2 Force Majeure does not excuse either party from its Contract obligations, but merely suspends such performance during the Force Majeure. The party prevented from performing its obligations shall promptly so notify the other party hereto and provide its best estimate of the duration of such Force Majeure and notice of the cessation thereof. Upon such cessation the performance of any suspended obligation shall recommence. If, however, the Force Majeure prevents performance by either party for a period in excess of ninety (90) days, then so long as such Force Majeure continues, either party may terminate the Contract at once by delivering notice of termination to the other party. The foregoing to the contrary notwithstanding, payment obligations may not be suspended due to Force Majeure.

12.3 If Products are ordered by Buyer and Seller does not have sufficient stock to fill the order, or for any reason deems, in its reasonable discretion, that it cannot fill the order in its usual course of business, Seller may, at its option and without any liability (i) not fill the order; (ii) allocate Product as to which there is a shortage among its buyers, distributors and agents in any reasonable manner; or (iii) accept the order on such conditions as it may deem appropriate. If Seller agrees to fill the order but, for any reason beyond its control (including, without limitation, inventory shortages, work slowdown or stoppages), is unable to fill the order, or make delivery of the Product ordered, by Buyer, Seller will have no liability in respect of such order.

XIII. Miscellaneous

13.1 The invalidity or unenforceability of any one or more of the terms hereof shall not affect the validity and enforceability of the remaining terms hereof.

13.2 The failure of either party to insist upon strict performance by the other party of any term hereof or to exercise any right hereunder shall not be deemed to be a modification of any term hereof or a waiver of the future performance of any such term.

13.3 This Contract and all sales and other transactions pursuant hereto shall be governed by, and construed in accordance with, the substantive law of New York (but not the choice of law provisions thereof), but the provisions of the U.N. Convention on Contracts for the International Sale of Goods are excluded in their entirety. The prevailing party in any litigation shall be entitled to reimbursement of attorneys' fees and disbursements and court costs from the losing party. Jurisdiction and venue for any dispute or claim arising out of or relating to this Agreement shall be exclusively in the state and federal courts located in New York, and both Buyer and Seller consent to and agree that such courts shall have jurisdiction over each of them with respect to any such matters.

13.4 Unless otherwise expressly provided in writing, Buyer shall obtain no interest in any mold, form, or other tooling used in the production of any Product. If Buyer makes any molds, forms or other tooling available to Seller to fulfill any Orders of Buyer, Seller shall not be liable for fair wear and tear to Buyer's molds, forms, or other tooling.

13.5 Buyer will be responsible for the timely obtaining of all required authorizations, including export or import licenses, exchange permits and all other governmental authorizations, even though such authorizations may be



applied for by Seller. Seller will not be liable if any authorization is delayed, denied, revoked, restricted or not renewed, and Buyer will not be relieved thereby of its obligations to pay Seller for its work. All sales hereunder will at times be subject to the export control laws of the United States Government and any amendments thereof. Buyer agrees that it will not make any disposition, by way of transshipment, re-exports, diversion or otherwise, except as such laws and regulations expressly permit, of U.S.-origin goods purchased from Seller, other than in and to the ultimate country of destination specified on Buyer's order and/or declared as the country of ultimate destination of Seller's invoice.

13.6 By acceptance of this Order, Buyer warrants it has complied with all applicable governmental, statutory and regulatory requirements and will furnish Seller with such documents as may be required hereunder. Should Buyer fail to comply with the terms and conditions contained herein, or as otherwise specified, Seller may defer further shipments and deliveries or may at its option cancel the undelivered balance of the order.

13.7 Buyer's right and obligations under this Contract and the sales transactions contemplated hereby may not be assigned without the prior written consent of Seller.

13.8 Seller withholds the right to impose minimum values for orders and for order lines.

XIV. Limitation of Liability; Indemnity

14.1 BUYER ACKNOWLEDGES THAT BUYER IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH PRODUCTS SUITABLE FOR ANY PARTICULAR PURPOSE OF BUYER, OR TO DETERMINE THE FEASIBILITY OF THE PRODUCTS FOR ANY PARTICULAR APPLICATIONS CONTEMPLATED BY BUYER. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON, WHETHER BY WAY OF INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE, FOR LOST PROFITS, LOSS OF REVENUE, OR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING FROM FORCE MAJEURE, DEFECTIVE WORKMANSHIP OR MATERIALS OR DESIGN, BREACH OF WARRANTY, DELAYS IN DELIVERY OR OTHER BREACH OF CONTRACT OR TORT, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING THE NEGLIGENCE OR MISCONDUCT OF SELLER OR ITS AGENTS OR EMPLOYEES. IN ADDITION, IN THE ABSENCE OF ANY GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY SELLER, SELLER'S LIABILITY TO BUYER FOR ANY MATTERS ARISING OUT OF BUYER'S USE (OR BUYER'S OWN CUSTOMERS' USE) OF THE PRODUCTS OR OTHERWISE ARISING OUT OF THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT PAID BY BUYER FOR THE APPLICABLE PRODUCT(S).

14.2 Buyer shall indemnify Seller and its affiliates from and against any and all claims, losses, damages, liabilities, cost or expense arising from: (i) Buyer's or its affiliates' (or Buyer's customer's) use or misuse of the Products (including, without limitation, any bodily injury, death or damage to real or tangible personal property caused by the Buyer or any of its affiliate in using the Products); (ii) any negligent act or omission or willful misconduct of the Buyer, its agents or employees; and (iii) any other matters arising out the Buyer's (or Buyer's affiliates) operation of its business or other business activities.

XV. Life Support Policy

THE PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF SELLER. As used herein: "Life support devices or systems" are devices or systems which (i) are intended for surgical implant into the body or (ii) support or sustain life, and, in each case, whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user, and a "critical component" is any component in a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system or to affect its safety or effectiveness.