

Conditions of sale and delivery

**General Terms and Conditions (GTC) of
varista gmbh,
An der Aitranger Str. 3,
87647 Unterthingau - Germany**
(valid from June 1, 2012)

§ 1 General, scope

- (1) These General Terms and Conditions (GTC) apply to all our business relationships with our customers (hereinafter referred to as "Buyer"). The GTC shall only apply, if the Buyer is an entrepreneur (§14 BGB [German Civil Code]), a legal entity under public law or a special fund under public law.
- (2) The GTC apply in particular to contracts regarding the sales and/or delivery of movable items (hereinafter referred to as: "Goods"). The GTC apply in their respective version as a framework agreement to all future contracts regarding the sale and/or delivery of movable items with the same Buyer, without us having to refer to these again in each individual case; we shall inform the Buyer immediately about amendments to our GTC.
- (3) Our GTC shall apply exclusively. Deviating, conflicting or supplementary terms and conditions of the Buyer shall only become a part of the contract if we have explicitly agreed to their validity. This requirement of approval shall apply in any case, for example also if, with the knowledge of the General Terms and Conditions of the Buyer, we carry out the delivery to him without reservation.
- (4) Individual agreements reached in an individual case with the Buyer (including collateral agreements, supplements and amendments) shall always prevail over these GTC.
- (5) Legally relevant declarations and notifications which are to be submitted to us by the Buyer after conclusion of the contract (e.g. setting of deadlines, notices of defect, notices of cancellation or reduction of price) must be made in writing.
- (6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such clarification insofar as they are not directly changed or are explicitly excluded in these GTC.

§ 2 Conclusion of the contract

- (1) Our offers are not binding and subject to change. This shall apply even if we have supplied the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, costing and references to DIN standards), other product descriptions or documents, also in electronic form.
- (2) The order of goods by the Buyer is considered as a valid contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this offer within 14 days of its receipt.
- (3) Acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the goods to the customer.
- (4) Should the Buyer cancel the order within the acceptance period specified in paragraph 2, we are authorized to demand a lump sum for the damage caused in the amount of 10% of the net price, if the Buyer does not provide proof that we incurred no or a significantly lower damage.

§ 3 Time of delivery and delay in delivery

- (1) The time of delivery shall be agreed individually or shall be stated by us upon acceptance of the order. If this is not the case, the delivery time is approximately two weeks from conclusion of the contract.
- (2) Provided that we are unable to comply with the time of delivery for reasons for which we are not responsible (hereinafter referred to as "non-availability of service") we shall inform the Buyer hereof immediately and at the same time communicate the estimated time of delivery. If the service is not available within the new time of delivery we shall be entitled to cancel the contract either in full or in part; we will reimburse an already provided counter-performance of the Buyer immediately. Deemed as case of non-availability of service within this meaning is in particular the late self-delivery by our component suppliers if we have concluded a hedging transaction, if the late delivery does not origin through our own or our supplier's fault, or if we are in the individual case not obliged to supply.
- (3) The occurrence of our delay in delivery is determined according to the statutory regulations. However, a reminder from the Buyer is required. Should we fail to deliver on time, the Buyer shall be entitled to demand a lump sum compensation for the damage caused by the delay. The lump sum compensation shall be 0.5% of the net price (delivery value) per full calendar week's default, subject to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has suffered no loss at all or only a substantially smaller loss than the lump sum mentioned above.
- (4) The Buyer's rights according to §8 of these GTC and our legal rights in particular upon the obligation to perform (e.g. due to impossibility or

unreasonableness of the performance and/or supplementary performance) remain unaffected.

§ 4 Delivery, passage of risk, acceptance, default in acceptance

- (1) The delivery is carried out ex warehouse, which is also the place of performance. Upon the Buyer's request and at the Buyer's expense the goods may be shipped to another destination (sale to destination). If not otherwise agreed we are entitled to determine the type of shipment (in particular transport companies, shipping route, type of packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the good shall pass to the Buyer immediately after the good has been handed over to the Buyer at the latest. In the event of sale to destination, however, the risk of accidental loss and accidental deterioration, as well as the risk of delay shall already pass to the forwarding agent, carrier or other person or institution designated to carry out the dispatch upon shipment. If acceptance has been agreed on, such acceptance is decisive for the passage of risk. Also, in all other respects of an agreed acceptance, the statutory regulations of the German law on contracts for work and services shall apply accordingly. Default in acceptance by the Buyer shall be equivalent to delivery or acceptance.
- (3) If the Buyer is in default in acceptance, if the Buyer fails to provide an act of assistance or if our delivery is delayed for other reasons which the Buyer is responsible for, then we are entitled to request compensation for the consequent arising damages including additional expenses (e.g. storage costs). For this we shall charge a lump sum compensation in the amount of 0.5% of the net price (delivery value) per full calendar week's default, subject to a maximum of 5% of the delivery value, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready to be shipped.
- (4) The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; the lump sum is, however, to be set off against further monetary claims. The Buyer reserves the right to prove that we did not suffer any damages at all or only substantially less damages than the before mentioned lump sum.

§ 5 Prices and payment conditions

- (1) If not otherwise agreed in an individual case, our actual prices, valid at the time of the delivery, shall apply. The prices shall apply ex warehouse Unterthingau, not including packaging and shipping insurance. Any deduction of cash discount shall require a special written agreement. Our prices are exclusive of value added tax. The value added tax in the statutory amount shall be reported separately on the invoice on the day of billing.
- (2) In the event of sale to destination (§ 4 (1)) the Buyer shall bear the costs of transport ex warehouse and the costs of any shipping insurance requested by the Buyer. Any possible customs duties, taxes or other public levies shall likewise be borne by the Buyer. Transport packaging and all other packing in accordance with the German Packaging Ordinance is non-returnable and becomes the Buyer's property, except for pallets, cage pallets and reusable packaging materials.
- (3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods. In case of contracts of a delivery value of more than EUR 1,000.00, however, we are entitled to request a deposit of 30% of the purchase price. The deposit is due and payable within 14 days of invoicing.
- (4) Bills of exchange and cheques shall only be accepted if agreed on in advance and only on account of performance. The resulting costs and charges shall be borne by the Buyer.
- (5) The Buyer shall be in default in payment with the expiry of the before mentioned payment deadline. Interests are to be paid on the purchase price at the respective applicable statutory interest rate for default during the period of default. We reserve the right to assert further damages on default. Our claim for commercial maturity interest (§ 353 HGB [German Commercial Code]) against merchants remains unaffected.
- (6) The Buyer is only entitled to execute his rights of setoff or retention to the extent that its entitlement has been determined legally effective or is undisputed. In case of defects to the delivery, §7 (6) sentence 2 of these GTC remains unaffected.
- (7) If there are indications after conclusion of the contract that our entitlement of the purchase price is at risk through insufficient ability of the Buyer to pay (e.g. by an application for opening insolvency proceedings) then, according to the statutory regulations, we are entitled to refuse service and – if applicable after setting a deadline - to cancel the contract (§ 321 BGB [German Civil Code]). In case of contracts concerning the production of custom-made items we can declare the cancellation immediately; the statutory regulations concerning the lack of necessity to set a deadline remain unaffected.

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§ 6 Retention of title

- (1) Any products delivered to the Buyer remain in our ownership until all of our current and future claims resulting from the purchase agreement and the business relationship (secured claim) have been paid completely.
- (2) Prior to complete payment of the secured claims, the goods subject to retention of title may neither be pledged to third parties, nor assigned as collateral to third parties. The Buyer must notify us in writing and without undue delay, if and insofar as third parties attempt to seize or attach the goods that are our property.
- (3) In case of breach of contract by the Buyer, in particular in case of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory regulations, as well as to demand the return of goods due to the withdrawal. Irrespective of a declared withdrawal, the return of the goods can also be requested solely on the basis of the retention of title. If the Buyer fails to pay the due purchase price, we may only assert these rights after having unsuccessfully set a reasonable period for payment or if setting of such a period is not required by law.
- (4) The Buyer is entitled to sell the goods subject to retention of title within the ordinary course of business and/or process them. In this case the following provisions shall apply additionally.
- (a) The retention of title extends to goods arising from the processing, mixing or combination of our goods to their full value, with ourselves being deemed as the producers. If during the processing, mixing or combination with items of third parties their property right should persist, we thus acquire co-ownership of the goods in relation to the invoice value of the goods as processed, mixed or combined. To the resulting item the same shall apply as to goods delivered under retention of title.
- (b) The Buyer hereby now already assigns the claims against third parties which are established from the resale of the goods in total or in the amount of our possible co-ownership share to us as collateral according to the before mentioned paragraph. We accept the assignment. The Buyer's obligations as stated in paragraph 2 shall also apply regarding the assigned claims.
- (c) Beside ourselves, the buyer remains authorized to collect the claims. We engage ourselves not to call in the claims as long as the customer meets his payment obligations, the customer is not in delay of payment, no application for the opening of insolvency proceedings is filed and no other fault in his capability of performance occurs. Should this be the case, however, we may demand that the customer disclose to us the assigned claims and their debtors, that he provide us with all necessary information for the collection of the debt and surrender the relevant documents and that he inform his debtors about the assignment.
- (d) If the realizable value of the securities exceeds our claims by more than 10% we shall release securities upon the buyer's request and at our discretion.

§ 7 Buyer's warranty claims

- (1) The statutory regulations shall apply to the rights of the Buyer in case of defects of quality and title (including false delivery and shortfall in delivery as well as improper assembly of faulty assembly instructions) if not otherwise determined below. The special legal provisions in the case of ultimate delivery of the goods to a consumer (suppliers' recourse according to §§ 478, 479 BGB [German Civil Code]) shall be unaffected in all cases.
- (2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions designated as such (including those from the manufacturer) that have been handed over to the Buyer prior to his order or have been integrated in the business contract in the same way as these GTC shall be considered as agreement concerning the quality of the goods.
- (3) In the absence of any agreement made concerning the quality of the goods, the existence or non-existence of a defect shall be assessed according to the statutory provisions (§ 434 (1) sentences 2 and 3 BGB [German Civil Code]). We shall not be held liable, however, for any public statements given by the seller or other third parties (e.g. advertising messages). In particular, we shall not be held liable for any warranties offered by the manufacturer.
- (4) The Buyer's claims for defects presume that he has satisfied his statutory obligations for inspection and reporting of complaints (§§ 377, 381 HGB [German Code of Commerce]). If a defect is determined during the inspection or subsequently, then this is to be reported to us immediately and in writing. The report is deemed immediately, if it is made within two weeks, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints, the Buyer must report obvious defects (including false delivery or shortfall in delivery) in writing within two weeks from delivery, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline. If the Buyer fails to carry out the legal obligation for the inspection and/or notification of defects, our liability for the defect which was not reported is excluded.

- (5) If the delivered object is faulty, we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse subsequent performance under the statutory prerequisites remains unaffected.
- (6) We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. The Buyer is, however, entitled to retain a part of the purchase price which is reasonable in the ratio of the defect.
- (7) The Buyer must give us the time and opportunity necessary for the owed subsequent performance; in particular the Buyer has to provide access to the goods which a complaint was made about. In the event of the substitute delivery the Buyer must return the faulty object to us according to the statutory regulations. The subsequent performance shall not include the removal and the re-installation of the default product, if we have not been obliged to carry out the installation originally.
- (8) The expenses which are necessary for the purpose of subsequent performance, in particular transport, route, work and material costs (not including costs for removal and re-installation) shall be borne by us only in case of an actual defect. However, if it is determined that a request for remedy of defect by the Buyer is unjustified, we can request reimbursement of the costs incurred hereby from the Buyer.
- (9) If the subsequent performance has failed or a reasonable deadline for subsequent performance set by the Buyer has expired unsuccessfully or it is dispensable according to the statutory regulations, the Buyer is entitled to withdraw from the purchase contract or to reduce the purchase price. However, no right to cancellation exists with an insignificant defect.
- (10) In his own interest, the Buyer is required to request subsequent performance from our side. However, if the Buyer rectifies the fault by himself without failure to perform a subsequent performance or non-compliance of a deadline by our side, this will result in the loss of the statutory right for subsequent performance. In this case we are not legally obliged to bear the costs to remedy the defect.
- (11) The Customer shall be entitled to claim compensation or reimbursement of expenses that incurred in vain only as provided in § 8; otherwise such claims shall be excluded.

§ 8 Other liability

- (1) If not otherwise derived from these GTC including the following provisions we shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.
- (2) We shall be liable for damages – no matter for what legal grounds – in case of wilful intent and gross negligence. In case of simple negligence we shall only be liable
- a) for damages from the injury to life, body or health,
- b) for damages from the breach of an essential contractual duty (an obligation, the performance of which only enables the proper execution of the contract at all and with which the contractual partner relies and may rely on its compliance as a rule); in this case our liability is, however, limited to the reimbursement of the foreseeable, typically occurring damages.
- (3) The liability restrictions which can be derived from Part 2 shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the goods. Warranties offered by the manufacturer are no guarantees in this sense; in principle, we do not embrace warranties offered by the manufacturer (cf. § 7 Part 3). Furthermore, the liability restrictions which can be derived from Part 2 shall not apply for claims under the German Law for product liability.
- (4) The Buyer can only cancel or terminate the contract owing to the breach of duty which does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 651, 649 BGB [German Civil Code]) is excluded. Incidentally, the statutory pre-requisites and legal consequences shall apply.

§ 9 Statute of limitation

- (1) Notwithstanding § 438 Part 1 No. 3 BGB [German Civil Code], the general statute of limitation for claims from defects of quality and title is one year from the date of delivery onwards. If an acceptance has been agreed on the statute of limitation shall begin with the acceptance.
- (2) However, if the good is a building or an object used for a building as a result of its customary mode of use and has caused its defectiveness (building material), the period of statute of limitation according to the statutory regulation shall be five years from the date of delivery (§ 438 Part 1 No. 2 BGB [German Civil Code]). Statutory special regulations for in rem claims to return of third parties (§ 438 Part 1 No. 1 BGB [German Civil Code]), wilful deceit of the vendor (§ 438 Part 3 BGB [German Civil Code]) and for claims of recourse against the supplier in the final supply to a consumer (§ 479 BGB [German Civil Code]) shall also remain unaffected.
- (3) The before mentioned periods of statute of limitation of purchase law shall also apply to contractual and non-contractual claims to damages of

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the Buyer based on a defect in the goods unless application of regular statutory statute of limitation (§§ 195, 199 BGB [German Civil Code]) would lead to a shorter statute of limitation in the individual case. The periods of statute of limitation of the German Product Liability Law shall remain unaffected in any case. Apart from this, the statutory periods of statute of limitation shall exclusively apply to claims to damages of the Buyer according to § 8 of the present GTC.

§ 10 Provided documents

(1) For any documents, for example calculations, drawings etc. made available by us to the Buyer in connection with any order we reserve all property rights as well as copyright. These documents shall not be disclosed to any third parties, unless we grant our explicit permission in written form to the Buyer.

(2) If we deliver on the basis of drawings, models, samples or using parts provided by the Buyer, the Buyer shall be responsible for ensuring that property rights of third parties are not violated as a result. The Buyer shall hold us harmless in relation to claims of third parties that origin from the non-compliance of this obligation.

§ 11 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these GTC and all legal relations between us and the Buyer under the exclusion of all international and supranational (contractual) legal regulations, in particular the UN Convention on the International Sale of Goods. The pre-requisites and effects of the retention of title according to § 6 of the present GTC are subject to the law of the respective storage location of the object insofar as accordingly the choice of law which was agreed is inadmissible or invalid for the benefit of German law.

(2) If the buyer is a merchant within the meaning of the German Code of Commerce, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Unterthingau. However, we are also entitled to file an action at the general place of jurisdiction of the Buyer.

§ 12 Language

Only the German version of the General Terms and Conditions is binding. Other translated versions, in particular this English version, are for convenience only. In case of discrepancies between the German version and other translated versions of these General Terms and Conditions, the German version prevails.

Warranty and guarantee

Terms and Conditions of warranty and guarantee of varista gmbh,
An der Aitranger Str. 3,
87647 Unterthingau - Germany
 (Valid from April 1, 2010)

Warranty is granted in accordance with the statutory regulations.

1. Precondition

1.1. The provision of guarantee services by varista gmbh is subject to the presentation of the paid invoice of the good which warranty or guarantee is claimed for. The identity of the good must be clearly determinable and assignable from this invoice.

1.2 The good or the components must have been put up, assembled and connected by certified specialists according to the installation and assembly instructions. In addition legal requirements must be observed.

1.3. The easy access for maintenance and repair purposes needs to be guaranteed. Frost-sensitive goods or components must be stored and assembled in accordance with the manufacturer's specifications.

2. Denial of warranty or guarantee

2.1 Improper transportation, improper loading or unloading. Negligent or deliberate damages as well as use of force. Improper storage and improper installation. Loss of the good or damage caused by failure to supervision. Exceeding the admissible operational parameters (pressure, temperature, climatic conditions, UV-radiation, voltage and currents). Usage of inappropriate equipment such as non-authorized liquids, oils, acids or other substances or the absence of these. Improper or failure to conduct maintenance or repair operations. This includes the execution of maintenance or installation operations by unauthorized personnel. Normal wear, deposits of operating supplies, natural changes in colour, environmentally or operationally caused opacity as well as differences in colour of cells and wafers. Incorrect operation or deferred operation.

2.2 In general, damages caused by force majeure such as lightning strike, hail, storm, flood, heat, power outage, power fluctuation and fire, are excluded from warranty or guarantee.

3. Exclusion of warranty

3.1 In the event of a justified claim, we kindly ask you to directly contact varista gmbh. It will only be decided after agreement and written confirmation if subsequent improvement, substitution or exchange may be applicable. Any replaced parts shall become the property of varista gmbh. A return can be requested.

3.2. The warranty expires with any interference by third-parties for which we did not issue an explicit written order, even in case the work is carried out by a specialised company. The reimbursement of costs for third parties requires a written request for remedy of defects from us. The Buyer is also required to set us a reasonable term for rectification or processing the complaint.

3.3. Transportation damages shall only be inspected and might be acknowledged only in case they are reported to us on the working day following the day of delivery at the latest and proved by pictures.

4. Provision of guarantee services

4.1. The full payment of the goods or components as well as the claimant's fulfilment of all his obligations to his seller are preconditions for the provision of guarantee services through varista gmbh.

4.2. The period of guarantee for individual goods, assemblies or components will neither be renewed nor extended by the performance of guarantee or warranty claims or by the performance of service or maintenance operations.

4.3 Any claims in addition to the warranty and guarantee claims, in particular compensation for damages or consequential damages are excluded within the statutory regulations. Any costs for labour time related to repair works or restoration to the condition prior to the damage – also proportionally – shall be fully borne by the Buyer. Our guarantee only applies to the repair or the replacement of goods or components delivered by us. The regulations of the General Terms and Conditions of varista gmbh shall remain in full force and effect insofar as they are not amended by the present conditions of guarantee.

4.4. All services not included in the scope of these conditions of guarantee will be charged.

5. Product liability

5.1. The liability of varista gmbh in the sense of product liability (§1 (2) No.1 ProdHaftG [German product liability law]) applies to goods and components properly put into circulation only.

5.2. According to §1(4) the Buyer bears the burden of proof for the provision of services under product liability. The deductible in the amount of EUR 500

applies likewise. According to §5 varista gmbh only joins the joint liability if it cannot provide proof that the delivered goods or goods produced by order, components or semi-finished products meet the quality standards claimed by varista gmbh. The statute of limitation shall become effective after three years from the moment onwards at which the beneficiary of the damage learned or should have learned of the damage, the fault and the person liable for damages. A suspension shall take effect only in accordance with the German Civil Code.

5.3. Until clarification of all facts and circumstances as well as the causal reason for the damage, a possible fault of varista gmbh is firmly excluded.

5.4. The exclusion of liability related to damages also applies if point 2 of the present terms and conditions for warranty and guarantee is fulfilled.