

## **H2 Mobility Deutschland GmbH & Co. KG General Terms and Conditions of Purchase**

### **1. Scope of application**

- 1.1. These general terms of condition and purchase (hereinafter “GTCP”) from H2 Mobility GmbH & Co. KG (hereinafter “H2M”) apply to all business dealings with our business partners and suppliers (hereinafter “contractors”). The GTCP only apply if the contractor is an entrepreneur in accordance with §14 of the German Civil Code, a corporate body under public law or a special fund under public law.
- 1.2. Unless agreed otherwise, the current version of the GTCP valid at the time of the order shall apply or the version last given to the contractor in written form as the framework agreement for similar subsequent contracts, without H2M having to refer to the GTCP in each and every case.
- 1.3. Only these GTCP apply. Divergent, conflicting or supplementary general terms and conditions from the contractor only become binding once H2M has consented explicitly to their validity in writing. The consent requirement is valid in all cases, such as when H2M implicitly accepts an order from the contractor in full knowledge of their general terms and conditions.
- 1.4. On a case-by-case basis, individual agreements made with the contractor (including collateral agreements, addenda and amendments) take precedence over these GTCP. Unless specified otherwise, H2M must agree to in writing or confirm in writing the content of any such arrangement.
- 1.5. Legally relevant clarifications and notifications on the part of the contractor pertaining to this business relationship (e.g. reminders, the setting of deadlines) must be issued in writing at the very least. Where these GTCP use the term “written,” that covers messages sent via e-mail or fax.
- 1.6. References to the validity of statutory provisions are purely explanatory in nature. Even without such an explanation, statutory provisions apply as long as they have not been directly amended or explicitly excluded in the GTCP.

### **2. Concluding the contract**

- 2.1. H2M orders shall only be deemed binding upon written submission or confirmation. The contractor is to inform H2M of obvious mistakes (particularly spelling or arithmetic mistakes) and omissions so that these can be corrected or appended prior to acceptance.
- 2.2. The contractor is obliged either to confirm the order in writing or to dispatch the goods unconditionally within 48 hours.
- 2.3. Late acceptance by the contractor will be considered a new offer and is subject to acceptance by H2M.

### **3. Delivery period and late delivery**

- 3.1. The delivery periods issued by H2M are binding. If a delivery period is not specifically stated on an order, it is understood that this is two weeks from the date the contract was concluded. The contractor must immediately notify H2M if agreed delivery periods – for whatever reason – cannot be met.
- 3.2. If the contractor fails to render his service or fails to do so within the agreed delivery period or the contractor defaults, H2M has rights in accordance with statutory provisions, particularly where those pertain to termination of contract and damages. The provisions of 3.3 remain unaffected.
- 3.3. Should the contractor default, H2M can demand a lump sum for damages caused by said delay equivalent to 1% of the net price of the goods being delivered late per elapsed calendar week. The amount of the damages caused by the delay may not exceed 5% of the net price of the goods being delivered late. It is up

to the contractor to demonstrate that no damages or considerably lower damages should be incurred and up to H2M to demonstrate that higher damages should be incurred. This does not affect other legal claims.

- 3.4. The contractor is obliged to render his services in accordance with recognised industry standards and with due regard to state-of-the-art technology.

#### **4. Third-party service provision, delivery, transfer of risk, default in acceptance**

- 4.1. Unless given prior written permission by H2M, the contractor is not entitled to have a third party provide any services due. The contractor bears the procurement risk for his services unless a separate agreement has been reached in a singular instance.
- 4.2. Deliveries are to be made to an address as specified by H2M. If no delivery address is stated, then delivery is automatically to be made to H2M's place of business in Berlin. The point of delivery is also the place of execution for the delivery and any subsequent services.
- 4.3. The delivery must come with a delivery note. The delivery note must contain a minimum of the issue and dispatch date and the contents of the delivery (item number and quantity) as well as the H2M purchase order identifier. H2M is not responsible for delays in processing or payment if the delivery note is incomplete or erroneous.
- 4.4. Risk for accidental destruction and/or deterioration is transferred to H2M upon handover of the goods. If acceptance has been agreed, this is binding for transfer of risk. Otherwise, statutory provisions apply upon acceptance.
- 4.5. Statutory provisions apply in the case of a default in acceptance by H2M. The contractor must also explicitly offer his services if a specific and/or specifiable date has been agreed upon for which H2M must act or assist. Should H2M delay acceptance, the contractor is entitled to demand compensation for any extra expenditure incurred in accordance with statutory provisions. If the delivery of a custom-made item produced by the contractor is overdue, the contractor is only within his rights if H2M has committed to assisting and then fails to assist.

#### **5. Prices, payment conditions, invoices**

- 5.1. The prices given in the orders are binding. All prices include statutory VAT unless this is shown separately.
- 5.2. Unless agreed otherwise on a case-by-case basis, prices cover all the contractor's services and additional services (e.g. assembly, installation) as well as any additional costs.
- 5.3. The agreed prices are due for payment within 30 calendar days of full delivery and service and receipt of a proper invoice. H2M does not pay interest on arrears. Statutory provisions apply in case of late payment.
- 5.4. H2M has statutory offset or retention rights and the right to plea non-fulfilment of contract. H2M is explicitly entitled to withhold due payment while there are outstanding claims of incomplete or deficient performance.
- 5.5. The contractor only has offset or retention rights in cases of legally recognised or undisputed counterclaims.
- 5.6. Invoices with order number and project reference are to be sent either by post to the following address

H2 Mobility Deutschland GmbH & Co. KG  
EUREF Campus 10-11  
D-10829 BERLIN

or by e-mail as a PDF to:

[rechnungen@h2-mobility.de](mailto:rechnungen@h2-mobility.de)

## **6. Reservation of ownership**

The assignment of goods to H2M must be carried out unconditionally and irrespective of payment of the sales price. Should H2M, in an individual case, accept assignment on an offer from the contractor based on payment of the sales price, the contractor's reservation of ownership expires as soon as the sales price for the delivered goods is paid. H2M reserves the right, in the proper course of business, to resell the goods in advance assignment of the resulting claim even before payment of the purchase price. All other forms of reservation of ownership are excluded, in particular reservation of ownership which has been expanded, continued or extended for further processing.

## **7. Rights arising from product defects/liability**

- 7.1. Unless hereinafter stated otherwise, statutory-provision rights apply in cases of defect of quality or title and other derelictions of duty by the contractor.
- 7.2. The contractor is liable in particular for the fact that the goods are in the state agreed to upon transfer of risk. The product descriptions which form part of the contract, or which have been included in the contract in the same way as these GTCP, are considered agreement on the state of said products. It is irrelevant whether said product description originates from the contractor or H2M.
- 7.3. H2M reserves the unrestricted right to claim for defects in derogation from § 442 paragraph 1 sentence 2 of the German Civil Code if it has no knowledge of a defect due to gross negligence at the time when the contract was entered into.
- 7.4. Follow-up services include the disassembly of faulty goods and their reassembly if the goods delivered were assembled as per their purpose in other goods. Any costs incurred by the contractor in performing checks or follow-up services (including dismantling and assembly costs, if applicable) are to be borne by the contractor, even if it turns out that there was no defect in actual fact. H2M's liability for damages remains unaffected in cases of unjustified demands for rectification of defects; H2M shall only be liable if it is discovered or, due to gross negligence not discovered, that there was no defect.
- 7.5. Statutory provisions apply in cases of duty to inspect and give notice of defects with the following stipulations: the duty to inspect and give notice of defects only applies to defects which come to light during the incoming goods control under external appraisal including the delivery note. If acceptance has been agreed, there is no duty to inspect and give notice of defects. Otherwise, it depends on how customary an inspection is in view of the circumstances of the individual case as per the proper course of business. The obligation to give notice of defects discovered at a later date remains unaffected. The duty to inspect notwithstanding, a complaint (report of defects) shall be deemed prompt and timely if dispatched within five working days of the discovery of the defect..
- 7.6. If the contractor fails to carry out his follow-up services – at the behest of H2M, either a rectification of the defect or the delivery of defect-free goods – within a reasonable timeframe as set by H2M, H2M is entitled to rectify the defect itself and to demand a refund from the contractor for the expenses incurred or demand an appropriate advance. If the follow-up services are inconvenient for H2M (e.g. for reasons of particular urgency, a risk to operational safety or the threat of disproportionate damage occurring), no deadline need be set. In such cases, H2M will inform the contractor without delay.
- 7.7. Otherwise, statutory provisions apply on lowering the purchase price or terminating the contract. H2M also has a right to compensation for damages and expenses as per statutory provisions.

## **8. Spare parts**

The contractor is obliged for a period of five years after the discontinuation of production to provide appropriate and compatible spare parts that are of equal value both in terms of function and quality.

## **9. Recourse against the suppliers**

- 9.1. In additions to rights arising from product defects, H2M also has unlimited recourse against the suppliers as per statutory provisions within the supply chain (recourse against the suppliers as per §§ 478 f. of the German Civil Code). H2M is explicitly entitled to demand the precise type of follow-up service which H2M owes its customer in an individual case. The statutory right of choice as per § 439 paragraph 1 of the German Civil Code is not thereby restricted.
- 9.2. Before accepting an H2M customer's alleged defect claim, H2M will inform the contractor and ask for a written statement to establish the facts. If the statement is not delivered within an appropriate timeframe and an amicable solution not reached, the claim against H2M for defects by the customer is considered due by H2M. In such cases it is up to the contractor to provide evidence to the contrary.

## **10. Manufacturer liability**

- 10.1. If the contractor is responsible for damaged goods, he indemnifies H2M from all claims to the extent that the cause of the damage lies within his domain and organisational area and he is himself liable in relation to third parties.
- 10.2. The indemnity bond obliges the contractor, in accordance with §§ 683, 670 of the German Civil Code, to reimburse expenses arising from or in relation to a third-party claim. This includes any costs incurred by H2M for product recall. H2M will notify the contractor of the content and scale of any product recall insofar as possible and convenient and provide an opportunity to make representations. Other statutory claims remain unaffected.
- 10.3. The contractor is obliged to take out and maintain product liability insurance with a lump-sum liability limit of at least €1 million per case of personal injury or material damage.

## **11. Statute of limitations**

- 11.1. A statutory-provision statute of limitations applies to reciprocal claims unless hereinafter stated otherwise.
- 11.2. In derogation from § 438 paragraph 1 no. 3 of the German Civil Code, the statute of limitations for claims for defects is three years from the transfer of risk. Once purchase has been agreed, the statute of limitations begins upon said purchase. Correspondingly, the three-year statute of limitations also applies to claims for defects of title whereas the statutory term on the statute of limitations for actual claims for surrender by third parties remains unaffected. Furthermore, claims for defects of title have no statute of limitations as long as the third party – particularly in the absence of a statute of limitations – can still assert its claim against H2M.
- 11.3. In derogation from § 438 paragraph 1 no. 3 of the German Civil Code, the statute of limitations for claims for defects is three years from the transfer of risk. Once purchase has been agreed, the statute of limitations begins upon said purchase. Correspondingly, the three-year statute of limitations also applies to claims for defects of title whereas the statutory term on the statute of limitations for actual claims for surrender by third parties remains unaffected. Furthermore, claims for defects of title have no statute of limitations as long as the third party – particularly in the absence of a statute of limitations – can still assert its claim against H2M.

## **12. Confidentiality**

- 12.1. H2M reserves property rights and the copyright to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents. Such documents are solely for contractual use and upon completion of the contract, they are to be returned to H2M. Such documents are not to be disclosed to third parties, even after termination of the contract. The duty of confidentiality only expires if and when the information contained in the documents handed over has become common knowledge.
- 12.2. The above provision shall apply mutatis mutandis to substances and materials (for example, software, finished and semi-finished products) as well as to tools, templates, samples and other objects that H2M supplies to the contractor for manufacture. Such items must, as long as they are not processed, be stored separately and insured to the usual extent against destruction and loss at the supplier's expense.
- 12.3. Any processing, mixing or combining (further processing) of the objects delivered shall be carried out for H2M by the contractor. The same shall apply in case of further processing of the delivered goods by H2M, so that H2M shall be regarded as a manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with statutory provisions.

## **13. Advertising**

The contractor is not entitled to advertise its contractual commitment and business relationship with H2M. This includes referring to same on internet sites. Exceptions are only possible with the written permission of H2M.

## **14. Data protection**

If the contractor receives access to personal data from H2M in the course of providing his services, he shall observe the applicable data protection regulations and collect, process or use the data only for the purpose of carrying out the construction contract. The contractor must guarantee that all members of staff have signed a data secrecy agreement.

## **15. Choice of law and jurisdiction**

These GTCP and all contractual relations between H2M and the contractor shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN sales of goods law.

The H2M place of business in Berlin is the jurisdiction for all disputes arising from this contractual relationship. H2M is, however, also entitled in all cases to take legal action at the place of execution of the obligation to deliver in accordance with these GTCP or a prior individual agreement or in the general jurisdiction of the contractor. Prior statutory provisions, especially those regarding exclusive competences, remain unaffected.