

# General Terms and Conditions of Business (GTC)

(effective from January 1st, 2025)



## 1. Scope of application

These General Terms and Conditions of Business (hereinafter referred to as "GTC") shall apply to all deliveries and services provided by Tyczka Hydrogen GmbH (hereinafter referred to as "TH2"), unless otherwise agreed in individual contracts. Other terms and conditions of business (in particular terms and conditions of purchase) are hereby expressly rejected; they shall only become part of the contract if expressly confirmed in writing by TH2. These GTC apply both to consumers within the meaning of Section 13 of the German Civil Code and to entrepreneurs within the meaning of Section 14 of the German Civil Code. This version of the GTC replaces all previous versions.

## 2. Offers

Offers made by TH2 are non-binding and may not be made accessible to third parties. A contract is only concluded when TH2 accepts the customer's order by means of an order confirmation in text form (e.g. e-mail) or by delivery.

## 3. Prices, price adjustments

Unless otherwise agreed in individual contracts, all prices and conditions are based on the cost factors existing at the time of delivery. TH2 is entitled, at its reasonable discretion, to adjust prices in order to take account of changes in costs (in particular changes in costs with regard to energy, machine costs, labour costs, fuel, raw materials, transport (incl. tolls) or environmental regulations).

## 4. Payment, delay, offsetting

Invoices are due for payment immediately without deduction. Periodically recurring payments (in particular rent and instalment payments) for which TH2 does not issue an invoice are due without deduction on the agreed date, at the latest at the end of the respective period. The receipt of payment by TH2 is decisive for the timeliness of the payment.

Should TH2 make advance delivery, TH2 reserves the right to check the creditworthiness of the customer via a credit agency at any time based on its legitimate interest to avoid default of payment. For this purpose, TH2 will make enquiries with the SCHUFA responsible for the place of residence or company headquarters and/or with another credit agency. A probability value calculated from the credit agency's database may also be transmitted to TH2 to assess the credit risk (score procedure). Further information on the processing of personal data for the purpose of creditworthiness checks can be found in the privacy policy on the TH2 website. If the creditworthiness check reveals doubts about the creditworthiness of the customer which jeopardise the fulfilment of the contract, all existing claims of TH2 against the customer shall become due for payment immediately. In this respect, TH2 is also entitled to revoke payment terms or deferrals granted with immediate effect and to make (further) deliveries only upon advance payment. The same applies if, according to the circumstances of the individual case, there is reason to assume that the customer will not fulfil his payment obligations or will not fulfil them on time. If an advance payment is requested, the customer will be expressly informed of this.

In case of default of payment TH2 is entitled to charge a reminder fee for each reminder of the customer. The customer shall bear the bank charges for unauthorised returned chargebacks for which he is responsible. If the customer is in default of payment, TH2 is entitled to rescind the contract after granting a reasonable grace period.

It is excluded to set off TH2's claims for payment insofar as the matter does not concern the customer's counterclaims that are recognized by TH2, or which are undisputed or legally established.

## 5. Retention of title

The delivered goods shall remain the property of TH2 until full payment of the purchase price. If the delivered goods are mixed or blended with other items, TH2 shall acquire co-property in the

new item at a share corresponding to the value of the goods delivered by TH2 in relation to the value of the new item. The same shall apply if the delivered goods are consumed during the production of the new item. The goods may neither be pledged nor transferred by way of security without consent of TH2. The customer shall immediately notify TH2 of any seizure or other encumbrance by third parties and provide TH2 with the necessary assistance to protect its rights.

If TH2 concludes a transaction with another entrepreneur, the goods shall remain property of TH2 until full payment of all current account balances of TH2 including interest, financing costs and other ancillary costs. If the customer so requests, TH2 shall be obliged to release the securities to which it is entitled to the extent that the realisable value of the securities exceeds the value of TH2's outstanding claims against the customer by more than 10%. However, TH2 may select the securities to be released.

If TH2 concludes a transaction with another entrepreneur, the customer shall be entitled to resell the retained goods in the ordinary course of business as long as he is not in default of payment and as long as the goods were not delivered to him as end customer. The customer hereby assigns to TH2 by way of security its claims arising from the resale of the goods subject to retention of title and, in the event of insolvency proceedings against the assets of a customer, its rights of segregation and separation up to the amount owed to TH2.

## 6. Defects, warranty

Unless otherwise agreed, TH2 shall deliver the goods in merchantable quality. In the event of a defect the customer initially has the choice between rectification and replacement delivery (subsequent fulfilment). However, TH2 is entitled to refuse the type of subsequent fulfilment chosen if it is only possible at disproportionate costs and the other type of subsequent fulfilment is without significant disadvantages for the customer. If the subsequent fulfilment fails, the customer may assert the legal rights. In the case of successive delivery, the customer can only demand claims for defects with regard to the purchase contract on which the defective goods were delivered. In the case of transactions between entrepreneurs, claims for obvious defects shall only exist if the customer notifies TH2 in writing of the obvious defect without delay, but at the latest within 14 days of receipt of the goods. If the customer is an entrepreneur, claims for defects lapse twelve months after the transfer of risk. If delivered gases in a defect-free condition exhibit a regular stability of a period shorter than the limitation period for warranty claims for defects, TH2 warrants in deviation from the aforementioned provision only for the period of regular stability of the gas. Insofar as the above provisions restrict the statutory warranty rights, they shall not apply if TH2 has maliciously concealed the defect or has assumed a guarantee for the quality of the goods. The customer's rights of regress against TH2 in according to § 445a BGB shall only exist insofar as the customer has not contractually granted his own customer rights for defects that go beyond the statutory warranty rights. The assertion of claims for damages by the customer as a result of defects in the delivery or service is subject to the restrictions of the following clause 7. TH2 does not guarantee that the delivered goods are suitable for the purpose intended by the customer.

## 7. Liability, compensation for damages

TH2 shall be liable without limitation as far as the cause of damage is based on wilful intent or gross negligence. Furthermore, TH2 shall be liable for the slightly negligent violation of essential contractual obligations, if their violation jeopardises the achievement of the purpose of the contract, or for the neglect of contractual obligations, the fulfilment of which enables the proper performance of the contract in the first place and on the observance of which the customer may regularly rely. In this case, however, TH2 is only liable for foreseeable damages typical for this type of contract. Upon conclusion of the contract, the contracting parties assume that this typical contractual damage

amounts to a maximum of three times the respective value of the goods. TH2 shall not be liable for the slightly negligent breach of obligations other than those mentioned in the preceding sentences. The above limitations of liability shall not apply to claims of the customer under the German Product Liability Act, from the assumption of a guarantee, from maliciously concealed defects as well as claims for bodily injury and damage to health attributable to TH2 or in case of loss of life. To the extent TH2's liability is excluded or limited, this shall also apply to the personal liability of employees, representatives and auxiliary persons.

#### **8. Force majeure**

Circumstances and events for which TH2 is not responsible and which prevent or significantly aggravate the delivery or service shall release TH2 from its obligation to perform for the duration of their effects. This applies in particular to cases of force majeure, such as fire damage, floods, strikes, lawful lockouts, official measures, epidemics and pandemics, electricity outages or electricity fluctuations, weather conditions which exclude the transport of dangerous goods or only allow it with unreasonable risk, as well as if the normal supply or transport possibilities are no longer available due to civil unrest, war or civil war events, riots, state interventions (in particular sanctions for suppliers). In such cases TH2 shall be entitled to deliver with a corresponding delay including a reasonable lead time.

#### **9. Interference by third parties, notification of changes**

If a third party interferes with rights or property of the customer or of TH2 which are subject of a contract with TH2, the customer shall inform TH2 immediately. This applies in particular to law enforcement measures directed against the customer, as far as these may affect rights or property of TH2. The customer shall immediately notify TH2 in text form of any change of name, company or address. The same applies to any case of legal succession or change of legal form of the customer.

#### **10. Technical regulations, safety provisions**

For delivery of gases, the customer shall comply with the regulations governing the handling of gases, in particular the provisions on occupational health and safety and accident prevention, including the relevant implementation rules, as well as the generally recognised rules of technology. Should TH2 come to the conclusion that the conditions for the supply of goods and services to the customer could be unsafe, TH2 may suspend its contractual (supply) obligations until the safety problem has been remedied by the customer.

#### **11. Final provisions**

If any provision of these General Terms and Conditions is or becomes invalid or void in whole or in part, this shall not affect the validity of the remaining provisions. The same shall apply in the event of (regulatory) gaps in the provisions.

TH2 is entitled to unilaterally amend these GTC for good cause, e.g., due to new technical developments, changes in jurisdiction or laws or other equivalent reasons. TH2 shall inform the customer of any amendment at least in text form (e.g., by e-mail), stating the content of the amended provisions. The amendment shall become part of the contract if the customer does not object in text form to TH2's inclusion in the contractual relationship within six weeks after dispatch of the notice of amendment. The objection to the inclusion of the amended GTC does not constitute a termination of the contractual relationship by the customer. In the event of an objection by the customer, TH2 has the right to terminate the contractual relationship.

The place of jurisdiction is Wolfratshausen if the customer is a merchant, a legal entity under public law or a special fund under public law. The same shall apply if the party against whom legal action is to be brought relocates its domicile or habitual residence outside the area of application of the German Civil Code

after conclusion of the contract or if its domicile or habitual residence is unknown at the time the lawsuit is filed.

All intellectual property rights in drawings, specifications, data and data sheets and all other information and documents provided to the customer, irrespective of the medium, shall remain with TH2. The contracting parties are obliged to maintain secrecy about the content of the contract and all commercial and technical details connected with it and not to pass on information of this kind to third parties. The legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Please contact us directly if you have any questions or problems:

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#### **Energy tax notice**

##### Sec. 2 Para. 4 German Energy Tax Act

Excise-privileged energy product! May not be used as fuel unless such use is permitted under the Energy Tax Act or the Energy Tax Implementation Ordinance. The Federal Ministry of Finance has defined the term "fuel" in the Energy Tax regulation N 09 2014 No. 29 and stipulated that hydrogen used in a fuel cell is not subject to the German Energy Tax Act and is therefore exempt from energy tax.

Any other use as fuel has consequences under tax and criminal law. In cases of doubt, please contact your competent main customs office.