

## General Terms and Conditions of Purchase – Tyczka Hydrogen GmbH (Last updated: January 2024)

### 1. Scope

1.1 All deliveries, services and offers from our business partners and suppliers (hereinafter referred to as “contractors”) shall be provided exclusively on the basis of these General Terms and Conditions of Purchase. These General Terms and Conditions of Purchase shall form an integral part of all contracts that Tyczka Hydrogen GmbH (hereinafter referred to as “TH2”) enters into with its contractors, provided that they are “traders”, as defined in Section 14 of the German Civil Code (BGB), a legal person incorporated under public law or an investment fund incorporated under public law. They shall apply to all deliveries and services that are provided to TH2 either now or in the future. The most recent version of these General Terms and Conditions of Purchase, which can be viewed online at <https://tyczka-hydrogen.de/agb-aeb> or, in any case, the version most recently communicated to the contractor in text form, shall apply as a framework agreement for any similar contracts that may be concluded in the future without us having to refer to them again in each individual case.

1.2 Any deviating, conflicting or supplementary terms and conditions shall not be included in the contract, even if we are aware of them, unless we explicitly agree to their validity in writing. If TH2 accepts the contractor's delivery / service without objection, this shall not mean that TH2 accepts the contractor's terms and conditions in any way.

### 2. Purchase Orders, Conclusion of Contract

2.1 TH2's purchase orders shall only be legally binding if they are placed in text form (e.g. by letter, email or fax). A purchase order may be accepted in writing or in text form within 14 working days of the order date; otherwise, TH2 shall no longer be bound by the order. The contractor must inform us of any obvious errors (e.g. spelling mistakes and miscalculations) and any information that may be missing from a purchase order, including the order documents, before the purchase order is accepted, so that changes can be made and information can be added as required; otherwise, the contract shall be rendered null and void.

2.2 In the case of blanket orders and contracts for the performance of a continuing obligation, TH2 shall submit release orders for the quantities and types to be delivered. If the contractor is unable to provide the delivery / service as soon as released, the contractor must commit to a possible delivery deadline in the order confirmation.

2.3 Any orders placed verbally or by telephone must be subsequently confirmed in text form to be legally valid. The same applies to any verbal additional agreements and amendments to the contract.

2.4 The contractor must maintain confidentiality with regard to the contractual relationship. If the contractor wishes to refer to its business relationship with TH2 in advertising materials or in any other way, the contractor must first obtain TH2's written consent.

2.5 The contractor agrees to maintain confidentiality with regard to any non-public information of a commercial, technical or other nature that comes to its attention through its business relationship with TH2; the contractor agrees to treat such information as business secrets. The same obligations must also be imposed on any subcontractors.

2.6 TH2 shall be entitled to request changes to the deliverables, in particular with regard to the delivery volume, even after entering into the contract, provided that the changes are reasonable for the contractor. When amending the contract, due consideration must be given to the effects on both parties, in particular with regard to any additional or reduced costs and delivery dates.

### 3. Outsourcing and Subcontracting

3.1 The contractor shall not be entitled to have all or part of the deliveries / services provided by third parties without first obtaining TH2's consent. This consent must be given in text form. The contractor shall remain TH2's sole contractual partner.

If the order is transferred to a third party, the contractor shall remain liable for the complete execution of the order.

3.2 The contractor must immediately notify TH2 in writing of any changes in its corporate structure (e.g. new majority shareholdings, share transfers or mergers). If TH2 is notified of any fundamental changes affecting the continued existence of the contract, TH2 reserves the right to terminate the contract – except for the part that is currently in progress – with 2 months' notice within 30 calendar days of receiving the notification. In such cases, the contractor shall only be entitled to claim any costs that have already been demonstrably incurred up to the point of termination.

### 4. Prices, Shipping and Packaging

4.1 All prices shall be fixed and shall include the statutory rate of value added tax, unless this is stated separately. Any increases, even in the case of long-term supply contracts, must be individually agreed in text form. If any orders are placed without information regarding prices, their validity shall be subject to TH2's written approval of the relevant prices, which shall be immediately disclosed by the contractor for this purpose. The type of pricing shall have no bearing on the agreement concerning the place of performance.

4.2 Each delivery must be reported to TH2 immediately after execution by means of a dispatch note, which must be precisely broken down by type, quantity and weight. All dispatch notes, waybills, invoices, acceptance certificates, factory acceptance certificates and correspondence must contain the designations and item numbers requested by TH2 in the order form.

4.3 The price shall include free delivery to the relevant destination (shipping address or place of use specified by TH2); in particular, the costs for packaging, freight and transport to the destination as well as for customs formalities and duties, shall be borne by the contractor. Unless otherwise agreed in individual cases, the price shall also include all services and additional services to be provided by the contractor (e.g. assembly, installation).

4.4 The goods shall be shipped at the contractor's risk. The risk of accidental loss and deterioration shall remain with the contractor until the goods are handed over at the destination.

If a formal acceptance procedure is agreed, this shall determine when the risk is transferred. The goods shall be deemed to have been handed over or accepted if TH2 is in default of acceptance.

4.5 TH2 shall only accept the quantities or numbers of pieces it has actually ordered. The number of pieces and weights delivered shall be based on the figures determined over the course of TH2's incoming goods inspection. Any excess or partial deliveries shall only be permitted if they have been explicitly agreed in text form. If partial shipments are agreed, the remaining quantity must be stated.

4.6 The goods must be packaged in such a way as to prevent damage. The relevant packaging materials must only be used to the extent necessary to achieve this purpose. Environmentally friendly packaging materials should be preferred. If requested, the contractor must take back all packaging at its own expense.

4.7 Ownership of the goods shall be transferred when they are handed over at the destination.

4.8 The contractor shall be obliged to indicate the TH2 order number on all shipping documents and delivery notes; if the contractor fails to do so, TH2 shall not be held responsible for any delays in processing.

4.9 The statutory provisions shall determine whether TH2 is in default of acceptance. However, the contractor must expressly offer TH2 its services even if a specified or specifiable calendar date has been agreed for TH2 to act or cooperate in any other way (e.g. by providing materials). If TH2 is in default of acceptance, the contractor may claim compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract concerns a custom-made item to be manufactured by the contractor, the contractor shall only be entitled to assert further rights if TH2 is obliged to cooperate and is responsible for its failure to cooperate.

### 5. Invoicing and Payment

5.1 Once a delivery has been made, the relevant invoice must be sent separately by post or as a digital PDF file to [invoice@tyczka.com](mailto:invoice@tyczka.com), including the TH2 order number and all associated data and documents, in a proper, verifiable form that complies with the provisions of the German Value Added Tax Act (UStG). Any invoices that are not submitted in a proper and verifiable manner shall only be deemed to have been received by TH2 at the time they are corrected and verifiable.

5.2 TH2 shall make payment within 14 days with a 3% discount – or after 30 days in full – as calculated from the date on which the invoice is received after the relevant delivery / service in accordance with Section 5.1 above.

5.3 If material testing certificates have been agreed, they shall form an essential part of the delivery and must be provided for the contractor to fulfil its delivery or service obligations. They must be sent to TH2 alongside the invoice.

5.4 In the event of incorrect delivery, TH2 shall be entitled to withhold the entire payment until the contractor has properly fulfilled its obligations, but no more than three times the value of the required replacement delivery.

5.5 If payment is made in advance, the contractual partner shall provide appropriate security (e.g. a bank guarantee) upon request.

5.6 TH2 shall not owe any default interest on late payments. The statutory provisions shall apply to any delays in payment.

### 6. Delivery Dates, Delivery Delays, Force Majeure

6.1 Any agreed delivery dates shall be binding. The delivery date or deadline shall be deemed to have been met based on the time at which the goods are received at the destination or are successfully accepted.

6.2 If the contractor realises that an agreed date cannot be met, the contractor must immediately notify TH2 in text form, stating the reasons for the delay and its expected duration.

6.3 If the contractor defaults on delivery, TH2 may assert its statutory rights. If a reasonable grace period set by TH2 expires to no avail, TH2 shall be entitled to withdraw from the contract and demand compensation in lieu of performance. As soon as TH2 claims compensation in lieu of performance, it shall waive its claim to the delivery / service. If TH2 accepts the delayed delivery / service, this shall not mean that it wishes to waive its claims for compensation.

6.4 In the event of a delay in delivery or service, TH2 shall be entitled to demand 0.2% of the order value for each working day of delay – but no more than 5% of the order value in total – as lump-sum compensation for damages caused by the delay in addition to the performance of the contract.

This shall be without prejudice to the assertion of further claims for damages due to the delay, regardless of the relevant legal grounds. This right shall remain in effect until the final settlement / payment even if TH2 has not reserved it upon acceptance of the delivery / service. The contractor reserves the right to prove that TH2 has incurred significantly less or no damage.

6.5 The contractor may only base its defence on the fact that TH2 has failed to provide the necessary documents if the contractor has requested the documents in writing and not received them within a reasonable period of time.

6.6 In the event of force majeure or industrial disputes, the contracting parties shall be released from their contractual obligations for the duration of the disruption and to the extent of its effect. The contracting parties shall be obliged to immediately provide the necessary information – within reason – and to adapt their obligations to the changed circumstances in good faith. TH2 shall be fully or partially released from its obligation to accept the ordered delivery / service and shall be entitled to withdraw from the contract if TH2 can no longer be reasonably expected to accept the delivery / service due to the delay caused by force majeure or the industrial dispute, taking economic aspects into account.

6.7 If any goods are delivered earlier than agreed, TH2 reserves the right to return them at the contractor's expense. If the goods are not returned following an early delivery, they shall be stored until the agreed delivery date at the expense and risk of the contractor. In the event of early delivery, TH2 reserves the right to only make payment by the originally agreed date.

## **7. Warranty**

7.1 If the goods have any material defects or defects in title (including incorrect and short deliveries, improper assembly and inadequate assembly or operating instructions), and if the contractor breaches any other duties, TH2's rights shall be governed by the statutory provisions, unless otherwise specified below.

7.2 The contractor agrees to use environmentally friendly products and processes for its deliveries / services and also for any supplies and ancillary services provided by third parties, to the extent that it is economically and technically feasible to do so.

7.3 By way of derogation from the second sentence of Section 442 (1) BGB, TH2 shall be fully entitled to assert claims for defects even if it is unaware of the defects when entering into the contract as a result of gross negligence. The provisions of Sections 377 and 381 of the German Commercial Code (HGB) apply with regard to TH2's commercial obligation to inspect deliveries and report any defects, subject to the following conditions: TH2 shall only be obliged to check for defects that may be revealed by external inspections of incoming goods, including delivery documents, or defects that may be revealed by random quality controls (e.g. transport damage, incorrect or short deliveries). TH2 shall not be obliged to inspect the goods if a formal acceptance procedure has been agreed. The necessity of an inspection shall also depend on its feasibility within TH2's ordinary course of business, taking into account the specific circumstances of each case. However, TH2 shall still be obliged to report any defects found at a later date. Irrespective of TH2's obligation to inspect deliveries, TH2 shall be deemed to have raised an immediate and timely complaint (notification of defects) if TH2 submits it within 5 working days of discovering the defect or, in the case of obvious defects, within 5 working days of delivery.

7.4 In the event of a defective delivery / service, TH2 shall be entitled to choose whether to have the defect rectified by the contractor or to request the delivery of a non-defective item. The rectification measures shall also include removing the defective goods and reinstalling them, provided that the goods have been installed in another item in accordance with their intended use. The costs incurred by the contractor for the purpose of examining the goods and rectifying the defect (including any removal and installation costs) shall be borne by the contractor even if it turns out that the goods are not defective. TH2 shall be liable for damages in the event of an unjustified request for the rectification of a defect; however, TH2 shall only be liable if it actually recognised the lack of defects or failed to recognise this through gross negligence.

7.5 If the contractor does not meet its obligation to rectify a defect within a reasonable period of time set by TH2, either by eliminating the defect (repair) or by delivering a non-defective item (replacement), as chosen by TH2, TH2 may rectify the defect itself or have it rectified by third parties at the contractor's expense. TH2 or third parties shall be permitted to rectify defects even if there are only minor defects or if there is a risk of unusually high damage and immediate action is required to avert the damage. If defects are rectified by TH2 or third parties, this shall be without prejudice to the contractor's warranty obligations; in particular, the contractor shall bear the costs of rectifying the defects.

7.6 In the event of a material defect or defect in title, TH2 shall also be entitled to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions. In addition, TH2 shall be entitled to compensation for damages and reimbursement of expenses in accordance with the statutory provisions.

## **8. Limitation Period**

8.1 Any mutual claims held by the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise specified below.

8.2 By way of derogation from Section 438 (1) No. 3 BGB, any claims for defects shall generally become time-barred within 3 years of the transfer of risk. If a formal acceptance procedure has been agreed, the limitation period shall begin once the goods have been accepted. The 3-year limitation period shall also apply accordingly to any claims arising from defects in title, without prejudice to the statutory limitation period for real rights of third parties on the basis of which the return of a purchased item may be demanded (Section 438 (1) No. 1 BGB); in addition, any claims arising from defects in title shall not become time-barred under any circumstances as long as the third party can still assert the right against TH2, in particular in the absence of a limitation period.

8.3 The limitation periods stipulated in sales law, including the aforementioned extension, shall apply to all contractual claims for defects to the extent permitted by law. If TH2 is also entitled to assert non-contractual claims for damages due to a defect, the regular statutory limitation periods specified in Sections 195 and 199 BGB shall apply, unless the limitation period could be extended in a particular case by applying the limitation periods stipulated in sales law.

## **9. Product Liability, Indemnity, Liability Insurance Coverage**

9.1 If the contractor is responsible for product damage, it shall be obliged to indemnify TH2 against any third-party claims for damages upon first request to

the extent that the cause lies within the contractor's sphere of control and organisation and the contractor is personally liable to third parties.

9.2 In this context, the contractor shall also be obliged to reimburse any expenses resulting from or in connection with any product recall campaigns carried out by TH2 in accordance with Sections 683 and 670 BGB. TH2 shall inform the contractor about the content and scope of any such product recalls – if possible and reasonable – and shall give the contractor the opportunity to comment. TH2 reserves the right to assert further statutory claims.

9.3 The contractor agrees to maintain product liability insurance with lump-sum coverage of at least EUR 5 million per personal injury / property damage claim for the delivery of goods related to technical systems, facilities, buildings or equipment; this shall be without prejudice to any further claims for damages to which TH2 may be entitled. If requested by TH2, the contractor shall provide proof of the coverage.

## **10. Intellectual Property Rights**

10.1 The contractor shall guarantee that all deliveries are free from third-party intellectual property rights and, in particular, that the delivery and use of the deliverables will not result in the infringement of any patents, licences or other intellectual property rights of third parties.

10.2 The contractor shall indemnify TH2 and its customers against any third-party claims resulting from any infringement of intellectual property rights upon first written request. The contractor shall also bear any costs incurred by TH2 in this context.

10.3 TH2 shall be entitled to obtain permission to use the relevant deliverables and services from the authorised party at the contractor's expense.

## **11. Drawings, Tools and Supplies Provided by TH2**

11.1 TH2 shall reserve all property rights and copyrights in relation to any drawings, models, templates, execution instructions, product descriptions and similar items, as well as any other order documents. They must be used exclusively for the contractually agreed services and may not be transferred or otherwise made accessible to any unauthorised third parties, even after the contract has expired. The reproduction of such items shall only be permitted within the framework of copyright law and to the extent necessary for the performance of the contract.

11.2 The above provisions shall apply accordingly to any substances, parts, tools or materials to be provided by TH2 (e.g. software, finished and semi-finished products). They may only be used for their intended purpose. If the contractor processes such materials or assembles such parts, this shall be done for TH2. The contracting parties agree that TH2 shall be the co-owner of any products manufactured using its materials and parts in the ratio of the value of the materials provided by TH2 to the value of the entire product, which the contractor shall hold in safe custody for TH2.

11.3 Any products manufactured using TH2's specifications, drawings, tools, samples or models may only be delivered to TH2 or its designated recipients. Only the drawings attached to the purchase order shall be valid for the manufacture of the goods. They must be returned to TH2 alongside the invoice once the order has been completed. This also applies to any reproductions made in accordance with Section 11.1 above. However, it does not apply to any drawings that TH2 expressly intends to remain with the contractor.

## **12. Occupational Health and Safety, Environmental Protection**

When delivering goods and providing services to TH2, the contractor must comply with all applicable regulations on occupational health and safety, working conditions and environmental protection, as well as all applicable laws and regulations in this context, and must ensure that these laws and regulations are also observed by all its employees, subcontractors and representatives.

## **13. Place of Performance, Place of Jurisdiction**

13.1 The place of performance for the delivery obligations shall be the destination specified by TH2; the place of performance for all other obligations of both parties shall be Geretsried.

13.2 Wolfratshausen shall be the exclusive place of jurisdiction for any disputes arising from the contract. The same shall apply if the contractor does not have a general place of jurisdiction in Germany or if the contractor's domicile or habitual residence is unknown at the time the lawsuit is filed. However, TH2 shall also be free to take legal action against the contractor at its principal place of business.

## **14. Final Provisions**

14.1 If individual provisions of the contract, including these General Terms and Conditions of Purchase, prove to be wholly or partially ineffective, this shall have no bearing on the validity of the remaining provisions. In such cases, the wholly or partially ineffective provision shall be replaced by a clause that comes as close as possible to the economic sense and purpose of the ineffective provision.

14.2 The contractor shall not be entitled to assign any claims against TH2 to third parties, unless TH2 gives its prior consent in text form. TH2 shall only refuse consent for objective reasons.

14.3 TH2 shall store the contractor's personal data in accordance with the legal requirements.

14.4 The contract shall be subject exclusively to the law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.