

# General Terms and Conditions of Purchase and Supply Maximator Hydrogen GmbH

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## 1. Scope of Application

- 1.1. These General Terms and Conditions of Purchase and Supply of Maximator Hydrogen GmbH (hereinafter referred to as the "**Terms and Conditions of Purchase**") shall apply to agreements between Maximator Hydrogen GmbH (hereinafter referred to as the "**Customer**" or "**we**" or "**us**") and its contractors for the purchase of movable things, in particular goods, equipment, merchandise, machines and materials of any kind (hereinafter referred to in each case as the "**Goods**"), irrespective of whether the contractor manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 of the German Civil Code).
- 1.2. Deviating, conflicting or supplementary General Terms and Conditions of the contractor shall only become part of the agreement if and to the extent that the Customer expressly consented to their application. This requirement for consent shall apply under any circumstances, for example even if the Customer accepts the contractor's deliveries or services without any reservation with knowledge of the contractor's General Terms and Conditions. However, any individual agreements agreed upon with the Customer in individual cases (including ancillary, supplementary and amendig agreements) shall in any event take precedence over these Terms and Conditions of Purchase.

## 2. Offers and Issuing Orders

- 2.1. Offers shall in any event be prepared free of charge for us.
- 2.2. In the case of deliveries of machines and/or parts to be installed (with or without assembly commissioned at the same time), the contractor shall examine at the Customer's premises the actual circumstances, prerequisites and conditions for the assembly of the machines and/or parts to be installed. The result of this examination shall be duly considered and reflected in the preparation of the offer.
- 2.3. Orders, changes to orders and individual requests from orders must be made in writing. Verbally placed orders shall remain non-binding until a written order is issued.
- 2.4. The acceptance of our order must take place within ten (10) working days.

## 3. Deadlines and Delay

- 3.1. The time period for delivery or performance specified by us in the order is binding. If the contractor can see that he cannot fulfil his contractual obligations in whole or in part or cannot fulfil them in time, he must inform us in writing immediately and state the reasons for the delay.
- 3.2. If the contractor is in default, we shall be entitled - in addition to further statutory claims - to claim delay liquidated damages in the amount of 0.3% of the net price per each commenced working day, but in total not more than 5% of the net price of the Goods delivered late. We reserve the right to prove that we have incurred higher damages. The contractor reserves the right to prove that we have incurred no or less damage as a result of the delay.

## 4. Performance, Delivery and Transfer of Risk

- 4.1. The contractor shall provide with the Goods certified drawings and manuals in a quantity and design that complies with industry standards.
- 4.2. The contractor shall bear the risk of procurement with respect to its services unless otherwise agreed in individual cases (e.g. sale of Goods in stock).
- 4.3. The delivery of Goods is always packed DDP (Incoterms 2020) free to the recipient's facility (recipient's unloading point). If export and customs permits are required, these are to be provided by the contractor. The contractor shall indemnify us and hold us harmless against any export and customs expenditures incurred. All export and customs documents must be returned to us in the original.
- 4.4. With each delivery, a specified dispatch note must be sent to us, stating our order number and the name of the recipient, showing the type of Goods, date of our order, quantity, type of packaging, trading unit no. and weight.
- 4.5. The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon handover at the place of performance.
- 4.6. The acceptance of a service, to the extent prescribed by law or agreed upon, shall be carried out formally, on the Customer's acceptance protocol. The acceptance protocol shall be signed by both contracting parties.
- 4.7. Unless otherwise expressly agreed upon, we are not obliged to accept partial deliveries.
- 4.8. In the event that we are affected by Force Majeure, such as war, natural disasters, strikes, lock-outs, official decrees (e.g. due to pandemics (information/recommendations of the German Federal Ministry of Foreign Affairs/WHO are considered as an indication, e.g. as in the case of COVID-19) or epidemics) or other circumstances for which we are not responsible and which were not foreseeable at the time of conclusion of the agreement, we shall be released from the obligation to accept any Goods for the duration of the interruption of operations and shall not be in default of acceptance due to an offer by the contractor to perform.

- 4.9. The contractor shall inform the Customer prior to delivery of any conditions and/or properties that deviate from the order specifications. The delivery of such deviating Goods shall require the prior consent of the Customer, which shall be given at the Customer's discretion, in particular with regard to the planning and handling of such deviating goods.
- 4.10. The contractor shall inform the Customer of any changes (i) to the Goods (specification, composition, manufacturing processes, etc.), (ii) to its subcontractors and/or suppliers used in relation to the manufacturing or processing or supply of the Goods and (iii) to the location and/or essential facilities of its production sites, to the extent reasonably necessary in each case to ensure a consistently high level of quality of the Goods and shall obtain the Customer's consent thereto prior to the supply of any such Goods affected by changes pursuant to this Section 4.10.

## 5. Carrying out Services on the Customer's Premises

- 5.1. Deliveries of Goods with vehicles as well as work of the contractor on the premises of the Customer can only be accepted on working days (except on 24 and 31 December) from Monday to Thursday between 6.30 am and 9.00 am, 09.30 am and 12.00 pm as well as between 12.30 pm and 03.00 pm and on Fridays between 6.30 am and 9.00 am as well as between 09.30 am and 12.45 pm.
- 5.2. The use of subcontractors on the premises of the Customer shall be notified to the Customer by the contractor in due time before the start of the assignment.
- 5.3. The contractor shall be responsible for ensuring that all of its vicarious agents who enter the Customer's factory premises - also for the purpose of delivering a Good - wear personal protective clothing (safety shoes (class S3 - safety boots/in any case ankle-high - no low shoes, unless we instruct a lower safety level on site), helmet and safety goggles and, on instruction from us, also ATEX clothing [will be provided] in specific areas).

## 6. Warranty and Liability

- 6.1. The contractor shall observe and comply with all applicable laws, norms, standards and guidelines (e.g. DIN, EN, CE, VDI) in the version applicable at the time of performance of the service; in particular with regard to those serving to protect safety and the environment. The contractor warrants (to the extent relevant for the contractor and/or the delivered Goods): (i) The requirements of the Chemicals Regulation EC No. 1907/2006 ("REACH Regulation"), as amended from time to time, are complied with and the contractor registers or authorises in advance all substances contained in the Goods supplied (where required) and maintains such registration/authorisation of the Goods so that we do not have to carry out such registration or authorisation ourselves in any event. The contractor shall inform us immediately in writing (including by e-mail) if the Goods to be delivered contain substances which are included in the candidate list SVHC, in Annex XIV or in Annex XVII of the REACH Regulation (as amended from time to time). (ii) The Goods and services to be provided by the contractor shall fully comply with the requirements of Directive 2011/65/EU ("ROHS") as amended from time to time.
- 6.2. Prior to delivery of the Goods to us or prior to the beginning of the performance of its services, the contractor shall provide for liability insurance, including for product liability damage, with sufficient coverage for personal injury, property damage and pecuniary loss regarding the respective order. Upon request, the contractor is obliged to provide us with evidence of the existence of this insurance.
- 6.3. In the event of defects of material and defects of title (including incorrect and short delivery as well as improper assembly, defective assembly or operating manuals) and in the event of other breaches of obligations by the contractor the statutory provisions shall apply.
- 6.4. The statutory provisions (Sections 377, 381 of the German Commercial Code, HGB) shall apply to the commercial duty to inspect and give notice of defects as follows: our duty to inspect shall be limited to defects which become apparent during our inspection of incoming Goods based on an external examination including with respect to the delivery papers or during our quality control when conducting sample checks (e.g. transport damages, wrong and short delivery). If an acceptance procedure has been agreed, there shall be no duty to inspect. Apart from that, the extent to which an inspection is feasible in the ordinary course of business, taking into consideration the circumstances of the individual case shall be relied upon. Our obligation to give notice of defects discovered later remains unaffected. In any event, our complaint (notice of defect) shall be deemed to have been made immediately and in time if it is received by the contractor within ten (10) working days after delivery.
- 6.5. The costs incurred by the contractor for the purpose of inspection and rectification (including any removal and installation costs) shall be borne by the contractor.
- 6.6. With regard to the delivered Goods, the contractor shall be responsible for the supply of spare parts to the extent and for the duration customary in the industry with respect to the delivered Goods, and shall in this regard keep available identical spare parts or spare parts that are functionally and qualitatively equivalent.

## 7. Prices and Terms of Payment

- 7.1. The price stated in the order is binding. All prices are net prices, the statutory value added tax is to be set forth separately.
- 7.2. Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the contractor (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance). Transport and other packaging that cannot be recycled must be taken back by the contractor.
- 7.3. If the contractor charges us for packaging material of any kind in accordance with a prior individual agreement, we shall be entitled to return such packaging material to the supplier against crediting of the costs for the packaging material provided that it can be

reused. If Goods are delivered in returnable containers, no costs may be charged to us for such returnable containers. After emptying, the returnable containers shall be made available for collection, which shall be carried out or arranged by the supplier at the supplier's expense. If the containers are not collected, we shall be entitled to send back the returnable containers at no charge.

- 7.4. If we have left the means of transport and transport routes or mode of dispatch to the contractor's discretion and if we have to bear the freight costs in accordance with a prior individual agreement, the contractor shall choose the most favourable mode of dispatch, taking into consideration the safety, speed and price of delivery. In case the delivery is made by a more expensive shipping method even though there would have been an equally safe and fast but cheaper shipping method, we are entitled to deduct the difference from the supplier's invoice if we can prove the cheaper shipping costs.
- 7.5. Costs for insurance shall only be borne by us if this has been agreed with us in writing in advance.
- 7.6. Each order shall be invoiced separately. Invoices shall be sent directly by post or in text form with reference to our order number to our accounting department. Invoices must always state the contact person in our company, whether the Order has been completed or what quantities or pieces are still to be delivered. The invoices must state the order number, type of items, quantity, type of packaging, trading unit number, weight, etc.; VAT must be shown separately. Invoices for main orders and for any ancillary, follow-up or supplementary orders shall be issued separately by the contractor.
- 7.7. We may reject invoices that contain incomplete or missing information/documents. Any discount period shall only run from receipt of the corrected, complete and valid invoice. In the event an invoice is submitted late the discount period and payment deadlines shall be extended accordingly.
- 7.8. Unless otherwise agreed, payment shall be effected net within thirty (30) calendar days of the Customer's receipt of the invoice, unless a notice of defects is asserted. Our payments shall in no case constitute a waiver of the right to give notice of defects.
- 7.9. Partial payments on agreed dates shall only be made after proper invoicing and request for payment by the contractor. The services performed up to that point shall be listed and any interim payments already made shall be deducted. The quantities listed in any interim invoice shall only be reviewed when the final invoice is reviewed (settlement of the entire order).
- 7.10. We shall have a right to set-off, a right of retention and a right to set forth a defense based on non-performance of the agreement in accordance with statutory law. In particular, we are entitled to withhold due payments as long as we have claims against the contractor based on incomplete or defective services.
- 7.11. The Contractor shall only have a right to set-off or a right of retention with respect to counterclaims that have been recognized by judgment or are undisputed; moreover, the contractor shall only be entitled to exercise a right of retention to the extent that its counterclaims are based on the same contractual relationship.

## **8. Confidentiality, Designs and Ownership of Drawings, etc.**

- 8.1. With regard to the protection of confidential information of the Customer, the statutory provisions shall apply, in particular the German Act on the Protection of Commercial Secrets (GeschGehG), as well as corresponding agreements between the Customer and the contractor, to the extent such agreements have been concluded, for example in the form of non-disclosure agreements.
- 8.2. Neither the name nor the logo of the Customer may be used for advertisement.
- 8.3. The contractor is prohibited from taking photographs on the Customer's premises without express written permission from the Customer.
- 8.4. Sample deliveries, preparations of drafts, projects, execution instructions, plans or cost calculations are free of charge and non-binding for us. This shall also apply in case we do not place an order. Drawings, printing blocks, models and samples provided by us to the contractor or produced according to our specifications remain or become our property. These items and documents may only be used for the purposes of the contractual performance and must be returned to us after completion of the agreement.

## **9. Retention of Title**

- 9.1. Any processing, mixing or combination (further processing) of items provided by the contractor shall be carried out by us. The same shall apply in the event of further processing of the delivered Goods by us, so that we shall be regarded as the manufacturer and shall acquire ownership of the product or the Goods at the latest upon further processing in accordance with the statutory provisions.
- 9.2. The transfer of ownership of the Goods to us shall be unconditional and without regard to the payment of the price. If, however, in an individual case we accept an offer of the contractor for transfer of ownership on the condition of our payment of the purchase price, the contractor's retention of title shall expire at the latest with this payment for the Goods delivered. We shall remain authorised to resell the Goods in the ordinary course of business even before payment with advance assignment of the claim arising therefrom (in the alternative, validity of the simple reservation of title prolonged to the resale ("verlängerter Eigentumsvorbehalt")). All other forms of retention of title are excluded, in particular the extended retention of title ("erweiterter Eigentumsvorbehalt"), the passed-on retention of title ("weitergeleiteter Eigentumsvorbehalt") and the retention of title extended to further processing ("auf die Weiterverarbeitung verlängerter Eigentumsvorbehalt").

## **10. Compliance**

- 10.1. The contractor is obliged to ensure that the legal provisions and internationally recognised standards for the protection of the environment and respect for human rights (e.g. within the meaning of the Supply Chain Due Diligence Act or the regulation and directive referred to in Section 6.1), in particular prohibitions of child and forced labour and discrimination, regulations on minimum wages as well as safety and fundamental rights of workers, are complied with throughout the supply chain of the Goods

sold by the contractor. At the request of the Customer, the contractor shall provide evidence of compliance with these obligations by procuring and transmitting suitable documents so that the Customer can fulfil the corresponding obligations of proof towards its customers. In the event a breach of the recognised standards for the protection of the environment and respect for human rights is identified, we will notify the contractor in writing within one month after becoming aware of the breach and set him a reasonable period to cure and comply with the standards. If such a breach is substantial and culpable and makes it unreasonable for us to continue the respective contractual relationship until the ordinary termination, we may terminate the respective contractual relationship after the unsuccessful expiration of the cure period, provided that we have notified the contractor of our intention to terminate when setting the grace period. Statutory rights for extraordinary termination without setting a cure period as well as claims for damages remain unaffected.

- 10.2. The contractor ensure that it will comply with all its obligations according to the German Minimum Wages Act (MiLoG), in particular that it will pay its employees employed in Germany at least a salary in the amount of the minimum wage pursuant to Section 1 of the German Minimum Wages Act no later than the respective due date.
- 10.3. The contractor further ensures that it will only use subcontractors (including rental companies) who, for their part, comply with their obligations according to the German Minimum Wages Act, in particular that they will pay their employees employed in Germany at least a salary in the amount of the minimum wage pursuant to Section 1 of the German Minimum Wages Act no later than the respective due date. This provision and all subsequent provisions regarding subcontractors shall apply accordingly to any subcontractor chain.
- 10.4. In the event of a claim against the Customer pursuant to Section 13 of the German Minimum Wages Act or the initiation of fine proceedings pursuant to Section 21 para. 2 of the German Minimum Wages Act, the contractor shall indemnify the Customer against all related costs (including reasonable costs related to legal defenses and any fines imposed).
- 10.5. To the extent the German Posting of Workers Act (AEntG) is applicable, Sections 10.2 - 10.4 shall apply accordingly.
- 10.6. To the extent the German Minimum Wages Act or the German Posting of Workers Act is not applicable with respect to the contractor, the requirements set out in Section 10.3 shall apply accordingly to the applicable requirements.
- 10.7. At the request of the Customer, the contractor shall submit a valid certificate of no objection ("Unbedenklichkeitsbescheinigung") from the collectively agreed social security fund ("tarifliche Sozialkasse").

## 11. Return of Old Equipment

We are entitled to all legal claims for the return of old equipment in accordance with the German Electrical and Electronic Equipment Act (ElektroG), in particular we are entitled to the return of old equipment in accordance with Section 19 para. 1 of the German Electrical and Electronic Equipment Act.

## 12. Miscellaneous

- 12.1. The place of performance shall be the Customer's head office, to the extent permitted by law.
- 12.2. German law shall apply with exclusion of private international law and the UN Convention on Contracts for the International Sale of Goods.
- 12.3. Amendments or supplements to these Terms and Conditions of Purchase must be made in writing.
- 12.4. Should one or more provisions of these Terms and Conditions of Purchase or of the agreement be or become invalid, the validity of the remaining provisions shall not be affected.
- 12.5. If the contractor is a merchant within the meaning of the German Commercial Code, a legal entity under public law or special assets under public law, it is agreed that Mülhausen shall be the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
- 12.6. Declarations with legal relevance and notifications to be made to us by the contractor after conclusion of the agreement (e.g. setting of deadlines, reminders, declarations of rescissions) must be made in writing to be effective.
- 12.7. References to the application of statutory provisions shall only be made for clarification. Even without such clarification, the statutory provisions shall apply, unless they are directly amended or expressly excluded in these Terms and Conditions of Purchase.