



## GENERAL TERMS AND CONDITIONS for the Contract on Subscription to the Interzero Collection and Recovery System for Batteries

### 1 Preamble

The Austrian Waste Management Act [*Abfallwirtschaftsgesetz/AWG*] and the Austrian Regulation on Batteries [*Batterienverordnung/Batt-VO*] contain obligations for enterprises that place batteries on the Austrian market. Those obligations may and must be transferred to authorised collection and recovery systems (CRS).

INTERZERO Circular Solutions Europe GmbH ("Interzero") operates an authorised CRS for portable batteries, vehicle batteries and industrial batteries, and organises the

collection and recovery of such batteries in the territory of the Republic of Austria.

These GTC apply to portable batteries, vehicle batteries and industrial batteries and to any other products for which the *Batt-VO* provides for subscription to a collection and recovery system.

Any reference in these GTC to the *AWG* and the *Batt-VO* is a reference to the version applicable from time to time.

### 2 Applicability of the General Terms and Conditions

Interzero concludes contracts on subscription to the Interzero collection and recovery system for portable batteries, vehicle batteries and industrial batteries, as well as other products regulated in the *Batt-VO*, so that the obligations of the subscriber ("Partner") under the *Batt-VO* that may be transferred will be transferred to and fulfilled by Interzero on behalf of the contracting party (release from obligations [*Entpflichtung*]).

The said contracts will be based on these General Terms and Conditions as applicable at the time of conclusion of the contract, which shall be an integral part thereof. The GTC as applicable from time to time may be retrieved from the Interzero website at [www.interzero.at](http://www.interzero.at).

### 3 Subscription to the system

#### 3.1 Extent of subscription

For every collection and treatment category pursuant to the *Batt-VO* in which the Partner subscribes to the CRS of Interzero the Partner will subscribe completely with all the batteries and other products placed on the Austrian market by it, unless a statutory exemption from the subscription obligation applies.

Any expansion of the extent of the Partner's subscription to the system, including, without limitation, for products newly regulated in the *Batt-VO*, will become effective upon the first report of the reports provided for in Clause 3.4. *et seq.* and in this case will apply to the entire reporting period for which the report is made by the Partner.

Restrictions on the scope of release from obligations are permitted in accordance with and subject to the termination provision in Clause 6.2.

#### 3.2 Authorised representative

Partners with no registered office or establishment in Austria who, as a mail order company, deliver products regulated in the *Batt-VO* to end consumers in Austria on a commercial basis via a distance sale (foreign distance sellers), and Partners whose registered office is in another EU Member State and who sell products regulated in the *Batt-VO* to others than end consumers in Austria on a

commercial basis are required to appoint Interzero Circular Consulting Austria GmbH ("ICCA") as authorised representative for foreign distance sellers and as authorised representative for foreign persons in accordance with the provided forms of contract for products placed on the Austrian market.

#### 3.3 Calculation and reporting of subscription volumes

Pursuant to the *AWG* the Partner is required to make a full report of the masses placed on the market or imported for which it has subscribed to the CRS. Interzero assumes no liability with regard to the calculated subscription masses.

If the Partner places both portable batteries and/or vehicle batteries and/or industrial batteries on the market they must be kept separately in terms of calculation.

Batteries installed in electrical devices must be advised by weight only to the battery system responsible for treatment and, if necessary, sorting of the batteries, but not to the WEEE system responsible for collection and removal of the batteries.

The calculation basis for the respective charge is the mass (weight) per price category. The volumes per price category must be stated to the exact kilogram (kg). The unit weight per battery must be stated in grams (g).

### 3.4 Annual forecast

The Partner, with lump-sum reporters being exempt, will submit to Interzero an annual forecast (planned volume per price category) for the batteries placed on the market not later than upon conclusion of the contract. The forecast will serve as the basis for rough calculation of the charge for release from obligations payable by the Partner and the classification as a monthly, quarterly or an annual reporter. If no annual forecast is submitted, Interzero will classify the Partner into one reporting period.

### 3.5 Regular reporting

If the annual charge amounts to or exceeds EUR 20,000 (net) the Partner will be classified as a monthly reporter. If the annual charge amounts to between EUR 1,500 and < EUR 20,000 (net) the Partner will be classified as a quarterly reporter. If the annual charge amounts to less than EUR 1,500 (net) the Partner will be classified as an annual reporter.

Depending on the classification as a monthly, quarterly or an annual reporter the Partner will advise the weight of the batteries per price category actually placed on the market on a monthly, quarterly or an annual basis by means of the "Regular Volume Report".

The volume report to be made by monthly and quarterly reporters is due on the last day of the calendar month following the billing period. The volume report to be made by annual reporters shall be made together with the forecast not later than fourteen days after conclusion of the contract and in subsequent years together with the year-end report.

If no batteries are placed on the market by the Partner during a reporting period, the Partner will have to make a nil or zero report.

## 4 Charge

### 4.1 Calculation of the charge

The Partner must pay Interzero a charge for the latter taking on the obligations that may be transferred according to the *Batt-VO*. The charge will be calculated based on the masses placed on the Austrian market by the Partner per price category and reported to Interzero as well as on the applicable Interzero prices. The applicable prices (EUR/t) will be published at [www.interzero.at](http://www.interzero.at) under "Price overview".

Interzero has the right to fix a lump-sum charge in the price overview for subscribers who do not place more than the annual masses defined in the price overview on the market (lump-sum charge for small traders). Interzero has the right to fix a reasonable minimum charge and/or an additional processing charge to be paid by subscribers for low annual licence fees. The minimum charge and the processing charge will be published in the price overview.

### 3.6 Lump-sum report

Annual reporters who place only small volumes of batteries on the Austrian market per year may use the "Lump-sum report for small traders". The relevant amount will be invoiced to those traders once a year in accordance with the applicable Interzero price list. Thus, no report of actual volumes per price category will be necessary. However, the Partner (lump-sum reporter) is required to evaluate the masses of batteries placed on the market by it on an annual basis and inform Interzero if the stated lump-sum limit is exceeded.

### 3.7 Year-end report

Irrespective of the classification as a monthly, quarterly or an annual reporter the Partner must make a year-end report by 1 March for the previous calendar year. For that purpose Interzero will in a timely manner provide a year-end report containing the volumes for the relevant calendar year reported so far.

If deviations from the volumes actually placed on the market are identified, the Partner must correct the form accordingly. If no deviations are identified, accuracy of the reported volumes must be confirmed. The year-end report checked by the Partner must then be sent to Interzero by the Partner.

In the case of termination of this contract the Partner must submit a final contract report analogously to the year-end report. For that purpose the Partner will provide Interzero with an overview of the relevant volumes.

### 3.8 Mode of reporting

The relevant masses for which the Partner subscribes to the system must be reported via the Interzero internet portal by means of the (electronic) forms provided. The subscriber will be given access data for it to use the Interzero internet portal. The Partner is responsible for ensuring that the access data will not be disclosed to unauthorised third parties.

### 4.2 Changes

Interzero has the right to change the prices, price categories and the price structure, the lump-sum charge as well as the minimum charge and the processing charge as of the first day of every month. Such changes will be published by Interzero at [www.interzero.at](http://www.interzero.at) not later than one month before the changes will enter into force, where possible. If the Partner does not agree to such changes, the Partner may exercise its right to terminate the contract for cause as defined in Clause 6.4.

### 4.3 Invoice; Terms of payment

Invoices issued by Interzero must be paid net of expenses and deductions within a period of 14 days of the date of issue. If the relevant charge for release from obligations is not paid by the due date, default will occur as of midnight of that day. In the case of default the Partner must pay interest of 4% above the base rate of the ECB.

Unless they constitute counterclaims of the Partner vis-à-vis Interzero that have been recognised by Interzero or

ascertained in a non-appealable/final manner by a court, the Partner will not be allowed to offset them against any charges for release from obligations that may be payable to Interzero or to withhold the same.

If the Partner fails to make the monthly, quarterly or annual report in time, Interzero will be entitled, notwithstanding any other claims, to charge the Partner analogously to previous periods or to the annual forecast.

If the contractual services are provided to enterprises with no permanent establishment or registered office in Austria that is relevant in terms of VAT, the relevant VAT regulations must be complied with.

## **5 Auditing rights**

### **5.1 Audit**

Interzero has the right to audit the subscription masses placed on the market (in particular with regard to accuracy and completeness of the masses placed on the market and reported by the Partner) in the Partner's enterprise after timely notice either itself or have them audited by an independent auditor of its choice who is subject to an obligation to maintain secrecy. This applies also to cases where an authorised representative has been appointed in accordance with Clause 3.2. Interzero will also have that right for the year following termination of this contract. The Partner will also grant the above auditing rights to an authorised coordinating body and the auditors instructed by the same.

Under the AWG the Partner is obliged to cooperate reasonably with regard to the audit. For that purpose the Partner will retain and make available all records that are necessary for verifying the accuracy and completeness of the report of the masses placed on the market in accordance with the statutory periods and will grant access to its premises and IT systems and cooperate in all audit procedures.

### **5.2 Audit result**

If an audit reveals that the Partner's reports were inaccurate or incomplete, the Partner must make a correction report

## **6 Term of contract; Termination**

### **6.1 Commencement and term of contract**

The signed contract will enter into force on the day stated at the bottom of the contract and will be concluded for an indefinite period of time.

### **6.2 Termination by notice**

The contract may be terminated as of the end of any calendar year by giving six months' notice and for the first time as of the end of the first complete calendar year.

### **6.3 Termination without notice**

If there is an important reason (cause) for termination, the respective other party to this contract will have the right to terminate the contract without notice. This applies where:

- (a) insolvency proceedings are opened over the other party (confirmation by the insolvency administrator) or

By selecting the payment method SEPA direct debit order, Interzero is authorised until further notice to collect the agreed amounts payable via SEPA direct debit from the account advised by the Partner. At the same time the Partner instructs its bank to honour SEPA direct debits drawn on its account. The Partner must be notified in advance not later than five days before the due date for the first or one-off direct debits and not later than two days before the due date for subsequent direct debits. In the case of a returned direct debit the Partner is obliged to bear the costs arising in this connection.

immediately. Repayments or additional payments resulting therefrom must be settled immediately. The Partner will have to pay interest of 4% above the base rate of the ECB for additional payments.

If an audit of the Partner reveals that the mass stated falls short of the relevant total annual mass per price category by more than 5%, the Partner will, in addition to the additional payment of the contractual charge pursuant to Section 29(14) AWG, be obliged to pay Interzero a contractual penalty of 20% of the shortfall, which will be independent of fault and subject to no judicial right of reduction; Interzero must transfer such contractual penalty to the relevant coordinating body.

If an additional payment by the Partner is the result of inaccurate or incomplete information given wilfully or with gross negligence or if the Partner violates retention periods or is responsible for a situation where the audit cannot be concluded properly, the Partner must reimburse Interzero the audit costs incurred. If the audit cannot be concluded properly and the Partner is responsible for that, Interzero, the auditor instructed by it or the coordinating body will have the right to estimate the masses placed on the market and take the estimate as a binding basis for calculation of the owed charge for release from obligations. Repayments and additional payments resulting therefrom must be dealt with as described above.

where such insolvency proceedings are dismissed for lack of assets;

- (b) a party discontinues its business operations;
- (c) a party fails to fulfil material contractual obligations repeatedly or after a reminder and after a reasonable grace period was granted.

### **6.4 Termination by notice for cause**

The contract may be terminated by giving four weeks' notice with effect as of the end of any calendar quarter:

- (a) by either party if, as a result of official measures or a change in the legal situation, the legal bases for the parties change in such a way that profound consequences for the present contractual relationship arise;
- (b) by the Partner, if Interzero announces a price increase, increase in the minimum charge or processing charge or in the lump-sum charge that concerns the Partner;

- (c) by the Partner if it does not agree to a material change as described in Clause 7.3.

## **7 Final provisions**

### **7.1 Liability**

Interzero's liability under the contract is limited to wilful intent and gross negligence and to the amount of the sum insured under the third-party liability insurance maintained of EUR 5 million.

For fulfilling the obligations under the contract in conformity with the Regulation the Partner needs to cooperate. If the Partner fails to cooperate as defined in the contract, any and all claims of the Partner vis-à-vis Interzero will be excluded and the Partner must fully indemnify and hold harmless Interzero, including with regard to third-party claims.

### **7.2 Engaging third parties**

Interzero is entitled to engage third parties to perform the subscription contract. Interzero will engage only enterprises which ensure that the services will be carried out properly in accordance with the *Batt-VO* and all regulations relevant to waste management law.

### **7.3 Modifications; Amendments**

Interzero is entitled to modify or amend the contract and these GTC, forms and information sheets in connection with the subscription without the Partner's consent by way of a unilateral communication made by Interzero well in advance in order to ensure proper functioning of the system or to improve the system or to adapt the same to changed legal framework conditions. In the case that the Partner does not agree to material modifications of or amendments to clauses or to material modifications of or amendments to the provisions of the GTC, the Partner may exercise its right to terminate the contract for cause as laid down in Clause 6.4.

### **7.4 Written form**

Any modification of or amendment to the contract requires written form, except in cases of an implicit modification of the contract by not exercising the right of termination for cause laid down in Clause 6.4 (cf. Clauses 4.3 and 8.3). This also applies to abolishing this formal requirement of written form. Notice of termination as defined in Clauses 6.2 to 6.4 must be given by registered letter. The parties have made no oral side agreements.

### **7.5 Invalidity of provisions**

If any provision of the contract is ineffective or unenforceable this will not affect the effectiveness of the

remaining contract. In such a case the parties undertake to replace the relevant provision by an effective and enforceable provision which comes as close as possible to the spirit, the purpose and the business objective of the contract. The same applies to gaps in this contract, if any.

### **7.6 Confidentiality**

Interzero will treat information that is provided by the Partner or becomes known to Interzero in the course of performance of the contract as confidential, protect it against unauthorised access and not use it for purposes other than the performance of the contract and fulfilment of statutory obligations. The obligations to maintain confidentiality do not apply to confidential information that is in or comes into the public domain at the time of its transmission by Interzero with no violation of the contract.

Interzero will disclose confidential information only if it is required to do so by law. Moreover, confidential information must be disclosed whenever Interzero is ordered to do so by public authorities or courts or if information is required by the coordinating body, in which case the Partner must be informed without delay.

Interzero is entitled to disclose the Partner's details (name, authorised representative, licensed product area) to the competent authorities and to the coordinating body to the extent that this is necessary for the fulfilment of its statutory obligations.

### **7.7 Business address**

For each party the address of the other party stated in the contract is decisive. Either party must notify the other party in writing of any changes of its business address without delay. Communications which do not reach a party at all or do not reach it in time due to a breach of the aforementioned notification obligations will be deemed to have been received in time.

### **7.8 Dispute resolution**

This contract is subject to Austrian law; the conflict of laws rules of Austrian private international law and UN Sales Law are expressly excluded.

It is Interzero's and the Partner's aim to settle all disagreements. If the parties do not reach an agreement, the court having jurisdiction over Vienna's First District and over the subject matter will have jurisdiction over all disputes arising out of or in connection with the contract.