



The Stiftung Gemeinsames Rücknahmesystem Batterien. General Terms of Contract for the User Contract

Introduction

- 1 Germany's "Market Placement, Collection and Environmentally Compatible Waste Management of Batteries and Accumulators Act" (Batteriegesetz – "BattG") requires battery manufacturers to collect and recycle waste batteries. Manufacturers of portable batteries fulfil this requirement by operating or participating in a collection scheme for waste portable batteries.
- 2 The Foundation operates a collection scheme for waste portable batteries in accordance with the statutory provisions of the BattG. The Foundation is not profit-oriented. It offers every manufacturer of portable batteries within the meaning of the BattG and its associated sales and service partners the fulfilment of its obligations under Sections 4 and 5 of the BattG with regard to the collection and recycling of waste portable batteries. Furthermore, the Foundation cooperates with collection schemes in other EU member-states, thereby assisting users to fulfil collection and notification requirements in other EU states.
- 3 The Foundation provides its services to the user on the basis of the BattG and these General Terms of Contract ("GTC"), which are an integral part of the user contract and which apply to all users in the same manner.
- 4 The user is the manufacturer in the sense of Section 2 (15) BattG. The user has decided not to operate another collection system of its own but to participate exclusively in the collection system operated by the Foundation. Participation takes place on the basis of the user contract concluded between it and the Foundation and these GTC.

§ 1 The Foundation's obligations

- 1 The Foundation undertakes to operate a collection system for waste portable batteries approved in accordance with Section 7 BattG.
- 2 The object of the user contract is also portable batteries which are incorporated into other products or enclosed with other products, whereby the Foundation's collection and recycling obligations relate only to the batteries (removed and not intentionally damaged) and not to the other products.
- 3 The Foundation may either commission third parties to provide the services required of it under the BattG or provide the services itself.
- 4 The Foundation fulfils its obligations as defined in the user contract in a cost-efficient manner.

§ 2 The User's obligations

- 1 The User undertakes to fulfil their obligations by the terms of the BattG and of this contract and, in particular:



- a to submit their reports on portable batteries placed in circulation in the market in a proper and timely manner for the relevant reporting period;
 - b to pay the fee due to the Foundation under Section 4 GTC;
 - c to provide the Foundation with the information required for its activities, in particular to fulfil the reporting, notification or registration obligations required under the BattG;
 - d to fulfil their legal and contractual duties to provide information to the Foundation properly and in due time;
 - e to inform the Foundation immediately of any subsequent corrections to the reporting data (e.g. with regard to quantity, electrochemical systems, type groups) and to provide legally binding verification of such corrections at the request of the Foundation;
 - f to indicate in their instructions for use of lithium batteries and battery packs of all systems printed after conclusion of the user contract that these batteries are to be returned to the collection points only when discharged or that precautions are taken against short circuits (e.g. by insulating the poles with adhesive strips);
 - g to register in accordance with Section 4 BattG with the competent authority itself or through the Foundation and to ensure that all information required for registration is correct and complete.
- 2 The user hereby grants the Foundation the power, revocable at any time, to fulfil in their name all manufacturer obligations required under the BattG vis-à-vis the competent authority, with the exception of registration in accordance with Section 4 BattG. In the event that the user separately instructs the Foundation to carry out or amend the registration in accordance with Section 4 BattG, a separate power of attorney is required. The content and form of the power of attorney is determined by a model power of attorney issued by the competent authority or the Foundation. In the event that the user revokes the power of attorney vis-à-vis the Foundation, the user is obliged to always comply without delay with their obligations required under the BattG. Should the user violate this obligation, the Foundation is entitled to terminate the user contract without notice, without the Foundation having to set a deadline to remedy the situation.
- 3 The user undertakes, upon request, to provide the Foundation with adequate security for the services incumbent upon it, provided that the user is not domiciled in Germany.
- 4 . When registering via a portal provided by the Foundation (currently at www.batterieregister.de), the user is required to provide the data requested by the Foundation completely and correctly. Should the data provided change after registration, the user is obliged to update the data themselves in the portal provided without delay; in particular the entry of the correct bank data and the current contact persons and their e-mail addresses. In addition, the user undertakes to notify the Foundation in writing without delay of any other material changes in their corporate status or of an application to open insolvency proceedings.
- 5 All obligations imposed on the user by the terms of the BattG or of this contract, especially notification, cooperation and reporting obligations, continue to apply after the termination of this contract insofar as the fulfilment thereof by the user continues to be necessary in order to enable the Foundation to fulfil its obligations arising from the BattG or the user contract



§ 3 Subcontracting

Users may entrust third parties with the fulfilment of their legal obligations. At the request of the Foundation, the third party is required to provide evidence of its commissioning and, if applicable, authorization. The content and form of the verification is determined by a template issued by the Foundation. The contractual relationship between the Foundation and the user remains unaffected by the commissioning of third parties, in particular the obligation of the user to fulfil their obligations under the BattG and the user contract.

§ 4 Financing; fee

- 1 The Foundation is not profit-oriented.
- 2 The fee payable by the user is to cover the costs incurred in the calendar year in performing the services in accordance with the BattG or this contract. It is calculated according to the most current list of contributions to disposal costs.. In this list, a disposal cost contribution per unit or weight unit is defined for each battery category (characterized by a minimum and a maximum weight, belonging to a type group – primary battery, secondary battery, button cell or battery made up of button cells – and the electrochemical system used in each case) for the services of the Foundation in accordance with the BattG or this contract. Fee changes are only permitted in accordance with para. 4 below. The fee payable by the user is determined separately for each category. It is calculated for each billing period in the calendar year by multiplying the waste disposal cost contribution per unit or weight unit applicable to this category. Further services are defined and priced in the list of disposal cost contributions.
- 3 The "placement on the market" of batteries is determined according to Section 2 Abs. 16 BattG. Should there be a dispute between the Foundation and the user as to whether batteries have been placed on the market, the user is obliged to prove that they have not been placed on the market.
- 4 The Foundation is entitled to amend the disposal cost contributions determined for the individual battery categories in accordance with the change in costs (in particular the administrative and personnel expenses, the expenses from the collection, sorting, recycling and/or disposal of batteries). Increases in one cost category may only be used to increase contributions to waste disposal costs to the extent that they are not offset by any reductions in other cost categories. The aforementioned provision also applies to cost reductions correspondingly. Changes of the disposal cost contributions are communicated to the users by public notification. The change in the contributions to disposal costs takes effect at the beginning of the second calendar quarter following the publication of the new list of contributions to disposal costs. Notwithstanding the above, the period may be shortened to two weeks in the event of a reduction in the disposal cost contributions. The list is published by sending the new list of disposal cost contributions to the contact data provided by the user in the portal (currently at www.batterieregister.de) (contact "contractual matters") with the proviso that the list is also deemed to have been published should it not have reached all users.



- 5 The costs incurred in performing the services under this contract include all costs incurred by the Foundation in connection with the operation of the collection system on the basis of the provisions of the BattG.
- 6 Should the user only be able to determine the type and number of batteries integrated into devices at a disproportionate expense, the parties may agree which type and number of batteries – possibly depending on certain parameters – are deemed to have been placed on the market by the user. The purpose of the agreement is to ensure that the subsequent charge is at least as high as the charge that would have been levied should the actual number of batteries placed on the market have been determined. The agreement is to stipulate which reports are to be submitted instead of the reports specified in Section 5 (2) GTC. Section 5 (4) GTC applies accordingly.

§ 5 Fee payments, interest

- 1 The fee payable by the user for the Foundation's services is calculated on a monthly basis ("billing period") in accordance with the current list of disposal cost contributions.
- 2 The user is obliged to notify the Foundation by using the form specified by the Foundation within 15 days of the end of each billing period for each category of the number or weight as well as the total weight of the batteries sold during the billing period. The Foundation is entitled to notify the competent authority of failure to provide notification, or incomplete or incorrect notification.

Should the notification not be made in due time, it is assumed until the notification is completed that the user has sold 100 % of the batteries sold by the user in the last notified billing period in each category during the billing period. In such cases, the Foundation issues a supplementary invoice. The Foundation charges a fixed amount of EUR 15.00 for each supplementary invoice; the user is entitled to prove that the Foundation has incurred only a lesser loss or no loss at all. Should notification not have been effected even after expiry of a period of 14 days following a reminder, the user is to bear the costs of an examination carried out by the Foundation after expiry of this period, unless the user proves that no fault is attributable to the user with regard to the failure to provide notification.

A subsequent correction of the quantity report by the user is possible for lower quantities until 15 January of the following year at the latest; for higher quantities, a report is also possible beyond this reporting date.

- 3 The remuneration is invoiced by the Foundation in accordance with the provisions of the Value Added Tax Act, taking into account surcharges and instalments paid. The fee - or in cases of a correction of an invoice within the meaning of paragraph 4 below the refund - is due for payment four weeks after the end of the billing period. Should the user receive the invoice at a later point in time through no fault of the user, the fee is only due for payment upon receipt of the invoice. Should an invoice be corrected at a later date through no fault of the Foundation, reimbursement is only due upon receipt of the invoice correction. In principle, the user is obliged to participate in the SEPA basic direct debit scheme and, upon registration in the portal (currently at www.batterieregister.de), grants the Foundation a corresponding direct debit authorization. Any objection to participation in the SEPA direct debit procedure is to be submitted in writing. Any debit for which the user is at fault or otherwise returned due to the fault of the user ("no details"),



any fees charged by the bank maintaining the account or by third parties are passed on to the user.

- 4 Should a check be conducted at the user's premises or should it be established in any other way that the user has placed more or fewer batteries on the market in past billing periods than reported, then the Foundation, subject to the provision in Section 5 (2), last sentence GTC, collects an additional payment or effects a refund ("invoice correction") in accordance with the list of disposal cost contributions applicable at the time of the incorrect notification. Should an audit of at least one calendar year result in a change of more than 20 % of the fee paid on the basis of the notification or should a user prove to be unauditably, the user is to bear the costs of the audit.

Should the user fail to make a due payment or fail to pay the amount due in full by the due date, the outstanding amount is subject to default interest at the statutory rate calculated from the due date. Notwithstanding the above, the Foundation is entitled to demand payment of the statutory flat rate fee in accordance with Section 288 Para. 5 BGB for each reminder. The Foundation reserves the right to assert further claims for damages caused by default, taking into account the flat rate fee; the user is entitled to prove that the Foundation has suffered only minimal damage or no damage at all. Should due payments not be made, the Foundation is also entitled to refer the matter, after a further reminder, to a collection agency. The user bears the costs of the collection procedure. In addition, the Foundation reserves the right to notify the competent authority of any breach of duty by the user.

- 5 Notwithstanding the above paragraphs, simplified reporting and payment obligations apply to users whose disposal cost contributions are less than EUR 2,000.00/year ("small quantity users"). Small quantity users report the quantity and weight of batteries placed on the market only once per calendar year. The effective date is 31 December of each year. The Foundation is to be notified by 15 January of the following year. In each calendar year, the small quantity user makes an advance payment to the Foundation. The basis for the first advance payment in the year of accession is the sales figures estimated by the small quantity user at the time the user contract is concluded. This advance payment is due four weeks after the date of conclusion of the user contract. In subsequent years, the user of small quantities is required to make an advance payment to the Foundation on 30 June of each calendar year based on the previous year's figures. An exact accounting by the Foundation takes place after notification of the quantities and weights placed on the market by the user in accordance with sentences 2 to 4 of this paragraph; the list of disposal cost contributions applicable on 31 December of each year is then decisive. Should the invoice show the contribution toward disposal costs for the year to have been more than EUR 2,000.00 notification and payment from the following year is due monthly in accordance with the provisions of paragraphs 1 to 4 (above); then this paragraph 5 is no longer effective.

§ 6 Disclosure of information, confidentiality of user data

- 1 The user undertakes to provide the Foundation with all information deemed necessary by the latter for the purposes of determining the fee to be paid by the individual user, ascertaining key facts and information required by the Foundation to fulfil its statutory reporting obligations and reviewing the user's notifications in accordance with Section 5 (2) or Section 5 (5) GTC. The user grants the Foundation access to his business documents at their request, provided this is neces-



sary for the aforementioned purposes. The user bears the costs arising from the obligation to provide information and the duty of cooperation. The user also bears the costs incurred by the Foundation for access, provided that such access results from incorrect information provided by the user.

- 2 The above obligation to provide information ceases to apply provided that and insofar as the correctness and completeness of the information provided by the user in accordance with the currently valid auditing guidelines applied by the Foundation and the auditing standards applicable to auditors has been confirmed for the preceding calendar year by an auditor or sworn auditor selected by the user in the form of a sealed audit certificate no later than 30 June of a subsequent year. Should there be justified doubts as to the correctness of the certificate, the user's duty to provide information continues unchanged.
- 3 The Foundation treats the data and information it receives from users confidentially. Confidentiality with regard to sales figures and other competition-relevant data also applies to the Foundation's Advisory Board, which may at best be informed of such data in anonymous form.

§ 7 Payout of annual surpluses; additional charge

- 1 The annual costs incurred by the Foundation for Waste Portable Batteries in fulfilling its contractual obligations are reflected in an annual budget and are to be covered by the disposal cost contributions levied. Since the foundation is not profit-oriented, a net profit for the year leads to a payout to the users and a possible net loss for the year leads to an additional charge against the users.
- 2 The annual surplus generated by the Foundation in a financial year for waste portable batteries is generally paid out to the users ("payout amount"). "Annual surplus" here means the amount that would have accrued without this provision in accordance with the provisions of the German Commercial Code (Handelsgesetzbuch /HGB). The payout is to be based on the ratio of fees invoiced to users in the financial year in question insofar as these fees are based on a quantity report by the user as per Section 5 (1) sentence 1 or by the small quantity user as per Section 5 (5) GTC. A payout amount per year and per user of less than EUR 10.00 is not paid out in accordance with the principle of proportionality. Should the user not or not fully comply with his obligation to report quantities or to pay the disposal cost contributions for the financial year in question, or should the user only make surcharges or partial payments to the Foundation, then the user is not included in the payout of surpluses. Subsequent notifications, i.e. notifications made for completed years after the relevant notification deadline, are taken into account in the year of notification subject to the provision in Section 5 (2), last sentence GTC; this provision applies correspondingly to the subsequent payment of outstanding disposal cost contributions. Should subsequent reports for years in which payouts have already been made lead to a reduction in payouts, the Foundation is entitled to a refund from the user.
- 3 Should the Foundation incur a net loss for the year in any financial year, any amount paid out in the previous year is reduced by the amount of the Foundation's net loss for the year. The amount of the reduction is shared among the users according to the same criteria as the payout amount. Should the payout amount not be sufficient to cover the shortfall, then the user is obliged to com-



pensate for the shortfall attributable to them for the financial year in question ("subsequent debit"). The individual user is charged a minimum amount of 10.00 EUR for the additional costs.

- 4 The payout amount is due for payment in full or in partial amounts depending on the liquidity situation of the Foundation and the business expectations for the following financial year. This is assessed on the basis of the adopted annual financial statements for the following financial year. The payout credits or invoices are to be issued no later than 30 June of the following year in which the aforementioned annual accounts are adopted. Payment is made in accordance with the provisions of Section 5 (3) GTC. Where instalments of the payout amount are paid, they are paid to individual users in proportion to the payout of the total payout amount.

§ 8 Duration, termination

- 1 The user contract may be terminated by the user with a notice period of six months to the end of each calendar year
- 2 In principle, the Foundation is not permitted to terminate the user contract. Only the Foundation's notice of termination of an amendment for the purpose of adapting the GTC to changed circumstances is admissible, whereby the amendment is to effect all users equally.
- 3 The right of both contract partners to terminate the contract for important reasons in exceptional circumstances remains unaffected. An important reason is, in particular, when the user fails to fulfil their obligations according to Section 2 GTC after expiry of a time limit set for remedial action.
- 4 The user contract terminates without notice should the user not have brought any batteries into circulation in two successive calendar years.

§ 9 Geographical area of validity, applicable law and terminology, place of jurisdiction, amendments to the GTC; validity

- 1 The terms of the user contract apply solely to batteries brought into circulation within the area of validity of the BattG.
- 2 The user contract is subject to German law. Unless expressly stated otherwise in this contract, the terms used in the contract coincide in meaning or implied meaning with the terms used in the BattG.
- 3 The place of jurisdiction in the event of disputes arising from or in connection with the user contract is Hamburg.
- 4 The user is notified of any changes to these GTC at the contact details provided in the "www.batterieregister.de" portal. A change is deemed to have been agreed between the Foundation and the user when the user has not objected to the change in writing within six weeks of receipt of the notification, in which case sending the objection within the period is sufficient, and the Foundation has expressly drawn the user's attention to this consequence when notifying the change.
- 5 These GTC become effective on 01.01.2021 with the amended BattG.



§ 10 Severability clause

Should one of the provisions of the user contract, including these GTC, be or become invalid or unenforceable, the validity of the remaining provisions are not affected. The place of the invalid or unenforceable provision is deemed to be substituted by, insofar as legally permissible, by a valid and enforceable provision that comes as close as possible to achieving the economic aims of the invalid and unenforceable provision. The Foundation and the user undertake to agree to any such provision expressly and without delay. The severability clause also applies should a gap exist in the user contract or these GTC.