

# The New Motion EVSE Ltd. General Terms & Conditions of Sale

Version January 2019

## 1. General

- 1.1. These General Terms and Conditions apply to and form an integral part of all Quotations and Agreements offered and delivered by The New Motion EVSE Ltd. (trading as NewMotion) to the Customer. (Additional) specific terms and conditions apply to certain types of Products and/or Services.
- 1.2. These General Terms and Conditions do not cover products and/or services offered and delivered by third parties other than NewMotion, such as resellers, in which case the (sales) agreement is not concluded with NewMotion, but between the Customer and this third party.
- 1.3. The applicability of any general terms and conditions of the Customer is hereby explicitly rejected and disregarded by NewMotion, and any such terms shall be wholly inapplicable to any sale made by NewMotion to Customer and shall not be binding in any way on NewMotion.

## 2. Identity

The New Motion EVSE Ltd.  
Davidson Building 4th Floor,  
5 Southampton Street,  
WC2E 7HA, London,  
The United Kingdom  
Company Number: 10296832  
VAT: 248 1696 76

**address**

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Davidson Building 4th Floor,  
5 Southampton Street,  
WC2E 7HA, London,  
The United Kingdom

**telephone**

+44 (0)20 3868 1036

**e-mail address**

customerservice@newmotion.com

**website**

[https://newmotion.com/en\\_GB](https://newmotion.com/en_GB)

**CoC (CRN)**

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**VAT**

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### 3. Definitions

- 3.1. **Affiliate:** any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.
- 3.2. **Agreement:** the agreement between NewMotion and the Customer concerning the Products or Services offered by NewMotion, of which the General Terms and Conditions form an integral part.
- 3.3. **Charge Card:** a carrier of a unique identification number issued by NewMotion, such as a charge card or a key chain, which grants access to one or more Charge Points.
- 3.4. **Charge Point:** a facility for charging an Electric Vehicle using a Charge Card and which power can be turned on or off by the End User.
- 3.5. **Charging Services:** all services offered by NewMotion to the Customer in connection with the use of a Charge Point and/or a Charge Card, including but not limited to the use of the Website, Portal, and NewMotion Apps by the Customer.
- 3.6. **Consumer:** means a Customer that is a consumer as defined under the Consumer Law.
- 3.7. **Consumer Law:** means the Consumer Rights Act 2015 and the Consumer Contracts Regulations 2013.
- 3.8. **Control:** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and Controls, Controlled and the expression change of Control shall be construed accordingly.
- 3.9. **Customer:** the natural person or legal entity who enters into a legal relationship with NewMotion. A Customer is also an End User if he uses the Products and/or Services himself.
- 3.10. **Customer Service:** the customer service of NewMotion that can be approached directly by Customers and End Users for questions and/or complaints.
- 3.11. **Electric Vehicle:** a road vehicle containing more than two wheels which is entirely or partially powered by an electric engine, which may or may not use energy stored in a battery that can be charged using a Charge Point.
- 3.12. **End User:** the natural person or legal entity who makes use of the Products and/or Services provided by NewMotion.
- 3.13. **General Terms and Conditions:** these general terms and conditions, including any annexes.
- 3.14. **Network:** NewMotion Network and the Partner Network together.
- 3.15. **NewMotion:** the supplier of the Services and Products, being The New Motion EVSE Ltd., trading as NewMotion, and its Affiliates.
- 3.16. **NewMotion Apps:** the Public EV Charge App and the Group Charge App jointly, as well as any other app that may be added to the Services offered by NewMotion at any time.
- 3.17. **NewMotion Network:** the combination of all Charge Points managed by NewMotion.
- 3.18. **Other Services:** any and all Services provided by NewMotion at any time, other than the Charging Services, including the installation of a Charge Point and making available of software owned by NewMotion.
- 3.19. **Partner Network:** the combination of all Charge Points that can be used with the

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- Charge Card and that are located outside the NewMotion Network.
- 3.20. **Portal:** the my.newmotion.com website where the Customer can log in using its login credentials, to, for example, manage its user details and check its usage, accessible via the NewMotion Apps or the Website.
  - 3.21. **Private Charge Point:** a Charge Point which, under the Agreement between NewMotion and the Customer, is supplied to the Customer and installed, hosted, maintained and/or managed, which is not designated as a Public Charge Point, and which can be used by using a Charge Card.
  - 3.22. **Product:** the physical product supplied by NewMotion to the Customer, including (Private and Public) Charge Points.
  - 3.23. **Public Charge Point:** a Charge Point within the NewMotion Network that has been made available for use by anyone in possession of any charge card accepted by NewMotion.
  - 3.24. **Quotation:** the quotation issued by NewMotion for one or more Product(s) and/or Service(s).
  - 3.25. **Safety Instructions:** the instructions and user instructions applicable to the use or installation of a Charge Point, using or connecting the Electric Vehicle, the use of a charging cable, each as published by NewMotion or the respective charging operator, manufacturer, or supplier of the relevant item.
  - 3.26. **Services:** Any Charging Services, Subscriptions and/or Other Services offered by NewMotion at any time, through its Website, the NewMotion Apps, or otherwise.
  - 3.27. **Subscription:** the subscription related to a Charge Point or Charge Card offered to the Customer by NewMotion through the Portal or otherwise.
  - 3.28. **Unauthorised Use:** this includes, without limitation: the incorrect or improper use of Charge Points (including the use of charging cables without the CE quality mark or otherwise of substandard quality, unsuitable, faulty or defective charging cables and/or charging plugs and the use of charging cables that are too easy to disconnect during locking); the Customer and/or End User repairing, attempting to repair, or having repaired on its behalf, a malfunction in a Charge Point; the circumventing or removing of technical safeguards or usage restrictions on or in the Products and/or Services; the use of charging cables that are not suitable for the charging capacity of the Electric Vehicle in question; the charging of (or attempts to charge) vehicles or other items not suitable for this; the use of a Product or another item other than stated in the (Safety) Instructions of NewMotion, the (Safety) Instructions of operators of the Charge Points or the applicable statutory (safety and other) regulations; and any acts or omissions of the Customer or the End User causing damage, including, but not limited to, the copying, modifying, combining, supplementing, reverse engineering, reverse assembling, decompiling, disassembling of the Charging Services, in an unauthorised manner gaining or providing access to the Charging Services, using the Charging Services in such a way that the Charging Services and/or other systems used by NewMotion deteriorate, are disrupted, or enables unauthorised access to the Charging Services.
  - 3.29. **Website:** the public [https://newmotion.com/en\\_GB](https://newmotion.com/en_GB), as well as the Portal and any other website used by NewMotion related to the Products and/or Services in the United Kingdom.

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## 4. Information

- 4.1. The Customer warrants that all information supplied by the Customer to NewMotion is correct, complete, and accurate. This means, for example, that the Customer, when activating a Charge Card and concluding a Subscription, provides its personal details, such as name, bank account number, VAT number, billing address, credit card details and e-mail address, which will be current, complete, and correct at all times. The Customer is required to immediately report any changes to these details to NewMotion through [my.newmotion.com](https://my.newmotion.com). NewMotion may assume that these details are accurate until the moment of change.
- 4.2. To enable proper performance of the Agreement by NewMotion, the Customer shall always provide NewMotion with all data and/or information reasonably required by NewMotion in a timely manner, whether or not at the request of NewMotion.
- 4.3. NewMotion is not liable for shortcomings in the performance of the Agreement if such shortcomings are the result of any breach of the obligations set out in clauses 4.1 and 4.2 by the Customer.
- 4.4. Correspondence by NewMotion, including invoices and any payment reminders, will only be sent by e-mail, placed in the Portal, or provided by NewMotion in another way, unless otherwise expressly agreed with the Customer.
- 4.5. An e-mail sent to the email address of the Customer will be deemed to have been received.

## AGREEMENTS

### 5. Conclusion of the Agreement

- 5.1. An Agreement is concluded as indicated in a Quotation, but at the latest at the moment the Customer accepts a Product or Service or the performance of the Agreement has commenced.
- 5.2. Offers and Quotations made by NewMotion are non-binding and can be revoked by NewMotion at any time prior to the conclusion of an Agreement.
- 5.3. Verbal promises or agreements by its employees do not bind NewMotion. Nor is NewMotion bound to honour any Quotations containing obvious errors, such as incorrect prices or any other incorrect description.
- 5.4. An Agreement for the provision of Services or the sale of Products can also be concluded in other ways than provided for in this clause 5, including distance sales or services via telephone or internet.
- 5.5. NewMotion may, within legal frameworks, perform solvency checks and credit assessments. If the outcome hereof gives cause to do so, NewMotion is entitled

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not to enter into or to terminate the Agreement or to apply special conditions to its performance of the Agreement.

- 5.6. NewMotion is entitled not to enter into or to terminate an Agreement in, amongst others, but not limited to, the following cases:
- a. NewMotion receives no payment authorisation;
  - b. In case of failure of any payment obligation;
  - c. Shipping to the relevant delivery address is not possible;
  - d. Other circumstances which justify termination of the Agreement, including, but not limited to, the misuse of discounts and/or suspicion of fraud.

## DELIVERY

### 6. Delivery

- 6.1. Products are delivered Ex-Works, unless otherwise agreed in writing. Shipment, transport, export, and import of Products will always take place at the expense and risk of the Customer. NewMotion is only required to take out (transport) insurance if and insofar NewMotion agrees to do so in writing. The risk of the Products will always be transferred to the Customer as soon as he is informed that the Products are ready for collection.
- 6.2. The delivery dates, delivery periods, and delivery times provided or confirmed by NewMotion are rough estimates and will never constitute a fatal term. NewMotion shall not be liable for, nor shall NewMotion be in breach of its obligations to Customer, for any delivery made within a reasonable time before or after the communicated delivery date, period or time. In all cases in which an explicit term has been agreed, NewMotion can only be in default if NewMotion does not deliver, after NewMotion has been given notice of default in writing by the Customer giving NewMotion sufficient opportunity to still perform.
- 6.3. The Customer shall provide all cooperation to NewMotion that can be reasonably expected from the Customer for the delivery of the Products and/or Services. If, before or after the conclusion of the Agreement, it appears that the delivery of the Service or Product is not or not entirely possible, NewMotion will be entitled to impose additional conditions on the Customer that the Customer must meet before NewMotion is obliged to deliver the Service or Product. If these conditions are not met, the Customer cannot claim the delivery of the Service or Product, without NewMotion being responsible or liable to the Customer for any damage resulting therefrom.
- 6.4. The Customer will give NewMotion written notice of failure to deliver and thirty (30) days to complete delivery.
- 6.5. If NewMotion does not deliver within such thirty (30) day period, the only and exclusive legal remedy of the Customer will be to dissolve the Agreement for the part that relates to the Service or Product not delivered, provided that NewMotion

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is responsible for the delay. Claims for damages due to the non-performance of the obligations by NewMotion or due to delay are excluded.

- 6.6. If the Customer does not take receipt of the ordered Product(s), NewMotion may deliver the Products in consignment at the expense of the Customer.
- 6.7. If the production by NewMotion is limited for any reason, NewMotion will be entitled, at its sole discretion, to allocate its available production and Products among its various customers and as a result may sell and deliver to Customer fewer Products than agreed, without being responsible or liable to Customer for any damage resulting therefrom.
- 6.8. The Customer is responsible for obtaining the required government licences and/or permits, including, but not limited to, import and export licences or exemptions applicable to the delivery of the Products and Services.

## 7. Retention of title

- 7.1. All Products delivered or to be delivered will remain the property of NewMotion until all claims NewMotion has against the Customer (including any (collection) costs and interest) have been paid in full.
- 7.2. Prior to the transfer of ownership referred to above, the Customer is not authorised to sell, deliver, or otherwise transfer or encumber the Products with any rights of lien, other than in accordance with its normal business operations and the normal purpose of the Products.
- 7.3. The Customer shall insure the Products with a reputable insurance company upon delivery. NewMotion retains the right to, if needed, give prior approval to this insurance company, and the Customer shall include NewMotion's interest in the Products in the insurance conditions. The Customer hereby cedes in advance all claims regarding payout(s) of insurance payments, in the absence of which notification NewMotion will be entitled to notify the insurance company itself.
- 7.4. The Customer will, until the ownership has been transferred to the Customer, ensure that the Products remain identifiable by storing the Products per order, separate the Products from third party products, or by marking the Products clearly as the property of NewMotion.
- 7.5. NewMotion is entitled to reclaim the Products that were delivered under retention of title and are still at the premises of the Customer, if the Customer fails to ensure timely payment of the invoices or face, or is likely to face, difficulty meeting its financial obligations. The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the Products shall be borne by the Customer. The Customer will always give NewMotion free access to its Products for inspection and/or to exercise any rights NewMotion may have.

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## 8. Non-conformity

- 8.1. The Customer is obliged to inspect a delivered Product immediately upon receipt. If it appears that a delivered Product is incorrect, faulty or incomplete, the Customer must (before returning the Product(s) to NewMotion) report such deficiencies immediately, in any case no later than 48 hours after receipt, by contacting [customerservice@newmotion.com](mailto:customerservice@newmotion.com) under penalty of forfeiture of its rights related to non-conformity and related rights.
- 8.2. The Product(s) must be returned in its original packaging (including accessories and related documents) and in an as-new condition to the address provided by NewMotion to the Customer for this specific purpose.
- 8.3. If the Product is put into use or given into service, is damaged, and/or resold, the claim to non-conformity and the related rights shall lapse.
- 8.4. If the Customers' complaint is deemed valid by NewMotion, NewMotion will, at its sole discretion, to the exclusion of any right of the Customer, either replace the delivered items free of charge, repair the items free of charge, or reimburse the Customer for (part of) the purchase price paid.
- 8.5. NewMotion is not liable on grounds of non-conformity in any event if, in the reasonable opinion of NewMotion: a) the Customer is in default towards NewMotion, b) the Customer has installed, repaired, and/or adjusted the Product himself or has had the Product installed, repaired and/or adjusted or treated by third parties, c) the Product has been exposed to abnormal circumstances or has otherwise been improperly handled, or handled in contrary to the instructions of NewMotion and/or the instructions for use on the packaging, or d) the defectiveness of the Product is wholly or partially the result of (new) requirements set by the government regarding the nature or the quality of the materials used.
- 8.6. The above only applies exclusively to Products purchased directly from NewMotion by the Customer (and not from third parties, such as resellers).
- 8.7. This clause 8 is subject to any applicable provisions of the Consumer Law.

## PRODUCTS AND SERVICES

### 9. Charge Point, Charge Card, Portal and NewMotion Apps

- 9.1. The Customer is obligated to immediately register the Charge Point and Charge Card in the Portal upon installation.
- 9.2. The Customer must handle the Charge Point(s) and the Charging Services in a proper manner and with due care, use them in accordance with the Safety Instructions, and refrain from any Unauthorised Use thereof.

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- 9.3. The Customer and/or End User must ensure that any peripheral equipment and connections (including mobile phones and computers) used by him are sufficiently secured when using the Charge Point(s) and Charging Services, to protect against, for example, viruses and unauthorised use by third parties, e.g. by setting a strong password.
- 9.4. If Charging Services operate using (private or public) communication infrastructure, networks, and/or software to function, including but not limited to (mobile) internet connections, and the electricity network, NewMotion offers no guarantee that these will be available without interruption, faults or malfunction, and NewMotion will not be liable for any damage resulting from interruptions, defects and/or faults in this infrastructure or in the supply of electricity to the Charge Services.
- 9.5. NewMotion strives to ensure the proper functioning of the Charging Services. NewMotion shall never be liable for a malfunction or interruption. A (brief) interruption in the Services may be required for certain work, such as maintenance. NewMotion strives, within reasonable limits, to avoid and prevent interruptions and disruptions or otherwise come up with a solution within a reasonable time frame.
- 9.6. NewMotion does not guarantee the correctness, completeness, or accuracy of the information shown and provided by NewMotion through its Charging Services.
- 9.7. NewMotion is entitled to immediately remove registered Charge Points from its back-office, to not activate (activated) Charge Cards or to terminate and/or block access to the Charging Services:
- a. if the direct debit could not be executed successfully several times or in case of the non-fulfilment of any payment obligation, or
  - b. if any proceedings in insolvency, bankruptcy (including reorganization), liquidation or winding up are instituted against the Customer, whether filed or instituted by the Customer, voluntary or involuntary, a trustee or receiver is appointed over the Customer or any assignment is made for the benefit of creditors of the Customer; or
  - c. if the Customer or the End User caused damage to a Charge Point and/or Charging Service; or
  - d. in other circumstances, including, but not limited to, misuse and/or suspicion of fraud.
- 9.8. If the Customer, when using a Charge Point and/or Charging Services, discovers damage, defects, or irregularities to that Charge Point and/or Charging Services, the Customer shall report this damage, defect, or irregularity to NewMotion as soon as possible by sending an e-mail to [customerservice@newmotion.com](mailto:customerservice@newmotion.com).

## 10. Charge Card

- 10.1. A Customer can obtain a Charge Card in various ways, for which provision NewMotion may charge a fee based on the rates applicable at that time, to be paid by the Customer using the payment method applicable. The moment of the request

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of a (new) Charge Card determines the applicable rate and payment method, regardless of when the Customer entered into a legal relationship with NewMotion.

- 10.2. The Customer must register an account in the Portal, using the relevant identification code, and must activate the Charge Card in order to:
  - a. Use the Charge Card for Private Charge Points;
  - b. Use the Charge Card for access to Public Charge Points;
  - c. View usage information of the Charge Card or Charge Point;
  - d. View reimbursement settings for Charge Points, including, for example, settings for guest usage or settings for reimbursement of End Users by their employer, leasing company, or business account;
  - e. Upload and/or download Customer data and/or data supplied by the Customer.

Notwithstanding the right to use a pseudonym (“alias” or “nickname”) when creating an account using the identification code, the Customer agrees to provide correct information when registering or changing information in accordance with clauses 4.1 and 4.2.

- 10.3. In order to activate the Charge Card, the Customer must enter its account details and link them to the relevant Charge Card, whereby the Customer authorises NewMotion to debit the costs charged by direct debit from the account. Customers situated in the Eurozone must enter their International Bank Account Number (IBAN) and Customers situated outside the Eurozone must enter their credit card details.
- 10.4. The identification code is a Customer identifier. The Customer must observe the following security rules. The Customer shall ensure to always keep its identification code secure. The Customer ensures that the Charge Card is never used by any other person and shall, in the event of theft or loss, act in accordance with clause 10.5.
- 10.5. In the event the Charge Card is damaged, lost, or stolen, the Customer must inform NewMotion as soon as possible using telephone number +44 (0)20 3868 1036 (fixed rate) or by sending an e-mail to [customerservice@newmotion.com](mailto:customerservice@newmotion.com). NewMotion will then block the Charge Card. The Customer will be liable for any and all damage resulting from the loss, unauthorised use, theft, or misuse of the Charge Card until the moment it is blocked. The Customer will be liable for all costs for transactions made using the Charge Card prior to it being blocked. NewMotion will charge costs for replacement in line with the rates applicable at that time.

## 11. NewMotion Network and Partner Network

- 11.1. NewMotion does not give any guarantee regarding the extent and coverage of the NewMotion Network and/or Partner Network, nor for the proper functioning, availability, or accessibility of Charge Points in the Partner Network and/or Public Charge Points.
- 11.2. The use of Charge Points in the Partner Network is subject to the conditions of the

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operator of the Charge Point concerned. The Customer is obliged to familiarise itself with these conditions and to adhere to them. If the Customer fails to do so, or fails to do so properly, the Customer is in default in the fulfilment of its obligations towards NewMotion under the Agreement.

- 11.3. NewMotion is at all times entitled to remove one or more Charge Point(s) from the NewMotion Network and/or to restrict or deny further access to a Charge Point in the Partner Network, without giving prior notice and without any obligation towards the Customer at any time.
- 11.4. If the Customer wishes to open a Private Charge Point to all other Customers and End Users, and NewMotion agrees to this, NewMotion will include the Charge Point concerned as a Public Charge Point in the NewMotion Network. As of that moment, the Charge Point is to be regarded as a Public Charge Point. The Customer shall clearly display any specific usage, precautionary, and safety measures for the relevant Charge Point by displaying them in plain sight.

## 12. Charge Points Warranty

- 12.1. A Charge Point and/or Charge Card supplied by NewMotion has a two-year warranty against material defects and manufacturing faults. During this period, NewMotion will to the best of its ability try to repair or arrange to repair any material or manufacturing defects free of charge within a reasonable time frame, or, at its discretion, provide a replacement Charge Point and/or Charge Card. Repair or replacement will only take place if the defect or fault has been reported to the NewMotion Helpdesk by telephone or e-mail as soon as is reasonably possible, but in any event within 14 days following its discovery as permitted by law, and the Customer having to provide as many details about the defect or fault as possible. Late notifications may result in claims for free repair or replacement being voided. The warranty does not apply where the defect is the result of Unauthorised Use, or the result of incorrect installation and/or incorrect assembly by, or on behalf of, the Customer. Nor does the warranty apply to the installation, removal, or maintenance of the Charge Point and/or the Charge Card. The warranty is non-transferable.
- 12.2. The above only applies to Charge Points and/or Charge Cards purchased directly from NewMotion by the Customer (and thus not from third parties, such as resellers).
- 12.3. In the event that NewMotion repairs or replaces a defective Product, the warranty period of the original Product remains in effect, albeit with a minimum duration of 6 months.
- 12.4. The warranty does not apply to any of the Charging Services.

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## 13. Subscriptions

- 13.1. Upon the purchase or resale of a Charge Point, the Customer is required to take out, or to have the purchasing party take out, a Subscription to which the Subscription terms and conditions apply. The Subscription terms and conditions will be provided in a timely manner and are published on the Website.
- 13.2. NewMotion is entitled to terminate the Subscription with immediate effect:
- if the direct debit could not be completed successfully several times or in case of the non-fulfilment of any payment obligation; or
  - if any proceedings in insolvency, bankruptcy (including reorganization), liquidation or winding up are instituted against the Customer, whether filed or instituted by the Customer, voluntary or involuntary, a trustee or receiver is appointed over the Customer or any assignment is made for the benefit of creditors of the Customer; or
  - if the Customer or the End User has caused damage to a Charge Point.

## 14. NewMotion Apps

- 14.1. The Public EV Charge App shows what Public Charge Points are available near the user of the Public EV Charge App. The Public EV Charge App can also be used to find other Charge Points and show their charge tariffs and availability. This information may be (partially) obtained from third parties. NewMotion is not liable for any incomplete or incorrect information in the Public EV Charge App and no rights can be derived from this information.
- 14.2. The Group Charge App shows, among other things, what Charge Points are available near the app's user. NewMotion is not liable for any incomplete or incorrect information in the Group Charge App and no rights can be derived from this.

## 15. Other provisions

- 15.1. Installation of a Charge Point: at the request of the Customer NewMotion can provide for the installation of a Charge Point, in which case the installation terms and conditions will apply. The installation terms and conditions will be provided in a timely manner and are published on the Website. NewMotion is not liable for any loss arising from information or advice provided (by NewMotion) in relation to the installation of the Products and/or Services. NewMotion is not a certified or recognised installer or a training company or institute for installers. Following up on or acting in accordance with an installation advice provided by NewMotion is at the Customer's own expense and risk.
- 15.2. NewMotion reserves the right to (temporarily) suspend or change a Product and/or a Service, which also includes the location where the Service is performed, due to, among other things, economic reasons, to comply with (new) legal requirements, for compliance with requirements of time and technological innovation, or on grounds of quality and/or quantity considerations, without any liability towards the Customer

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### VAT

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### Bank account

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or End User. This means for example that NewMotion is also entitled, among other things, to adjust the functionality of Charging Services as a result of which the functioning of the Product and/or Service may change.

- 15.3. NewMotion will do its best to change a Service with the fewest possible consequences for the Service and the Service or Product purchased by the Customer. When a Service will no longer be provided, NewMotion will inform its Customers in accordance with the correspondence options recorded in clause 4.4.

## 16. NewMotion Customer Service

- 16.1. The NewMotion Customer Service is available by e-mail at customerservice@newmotion.com and/or by telephone at +44 (0)20 3868 1036 (flat rate).
- 16.2. The New Motion will make every effort to help all its Customers and End Users as best as it can, but cannot guarantee that Customer Service will always be available nor that Customer Service will always be able to resolve a complaint to the Customer's satisfaction.

## PRICES, RATES, INVOICING, AND PAYMENT

### 17. Tariffs and billing of Products and Services

- 17.1. The Customer is obliged to pay the amounts due to NewMotion under the Agreement. These amounts are specified either in the Quotation or on the invoice, or will be in accordance with the prices, tariffs and rates as communicated by NewMotion in another manner.
- 17.2. NewMotion invoices in the manner indicated in the Agreement, unless explicitly agreed otherwise in writing between NewMotion and the Customer. The Customer must transfer the full invoiced amount within the payment term. If no payment term is specified, a payment term of 14 days of date of the invoice applies.
- 17.3. If a direct debit, for any reason, cannot proceed (in full), respectively if the payment by the Customer does not take place within the payment term set for it by NewMotion, the Customer is by operation of law and without further notice in default and owes a (contractual) interest of 1% per month or part thereof, this part being considered as a whole month. To the extent permitted by law, NewMotion will be entitled to charge administration costs of at least GBP 15 ex VAT per reminder or, at NewMotion's discretion, to charge the legally permitted extrajudicial collection costs to the Customer, notwithstanding any other claims for compensation NewMotion may have.
- 17.4. All amounts and rates are exclusive of (turnover) tax(es), surcharges, and other levies. NewMotion is entitled to pass on any (interim) increases in taxes, surcharges, and other levies imposed by the authorities directly to the Customer, including those where it concerns outstanding Quotations.

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- 17.5. If VAT is payable on any supply made by NewMotion under the Agreement, the Customer must pay to NewMotion, in addition to and at the same time as the payment for the supply, an amount equal to the amount of VAT on the supply. Where the Customer is required by the Agreement to reimburse or indemnify NewMotion for any loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that NewMotion will be entitled to claim for the loss or amount incurred and increased by the amount of any VAT payable by NewMotion in respect of the reimbursement or payment.
- 17.6. Unless the parties explicitly agree otherwise, all costs related to the performance of the Agreement, including costs resulting from requests or instructions from NewMotion, will be and remain at the expense of the Customer.
- 17.7. Complaints about invoices must be submitted to NewMotion by sending an e-mail to [customerservice@newmotion.com](mailto:customerservice@newmotion.com) before the end of the payment term. If a Customer wrongly complains about invoices more than three times in one calendar year, NewMotion will be entitled to charge the Customer administrative costs of at least GBP 40 ex VAT and/or to terminate the Agreement.
- 17.8. If the complaint is proved to be well-founded, NewMotion will refund the amount paid by the Customer as soon as possible after the complaint has been submitted, set off against the costs for the use of the Products or Services.
- 17.9. In the event of liquidation, bankruptcy, repossession, or suspension of payments Customer, NewMotion's claims against the Customer will become immediately due and payable.
- 17.10. The Customer waives its right to suspend (which includes the exercise of any right of retention). The Customer is not entitled to withhold or reduce payments or to set off existing and/or future claims against any outstanding amounts owed to NewMotion.
- 17.11. If permitted by law, an End User will be entitled to have a direct debit reversed without giving any reason, which will not affect the payment obligation.

## 18. Costs for Charging Services of Public Charge Points / Network

- 18.1. The costs published on the Website, the NewMotion Apps or in the Portal will be charged for charging at Public Charge Points. These costs consist of at least the following components:
- Subscription costs, if applicable;
  - the rates charged for the charging session (this rate may be charged per kWh, or for the duration of the charging session, or it is a fixed charging session fee, which differs per Public Charge Point), this generally concerns the fee for the owner of the Charge Point;
  - the transaction fee for administrative handling per charging session for the use of the Charge Card.

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- 18.2. If the rate is not stated on the Charge Point, the End User is responsible for checking the applicable rate for the charging session at the Charge Point in the NewMotion Apps, Portal or on the Website prior to the start of the charging session.
- 18.3. Access to and/or charging at Public Charging Points is subject to the terms and conditions and rates applied by the operator of the specific Charge Point and the transaction costs for the charge session as determined by NewMotion. A Customer may choose either (at its own expense and risk) to agree to these terms and conditions and thus to activate the Charge Card for these Charge Points as well, or to leave the Charge Card inactive for these Charge Points.
- 18.4. To determine the amounts owed at any time (including any costs related to charging sessions in the Partner Network), the administration of NewMotion will be the exclusive evidence of the electricity used as well as the payments made by the Customer, subject to any evidence to the contrary provided by the Customer. The Customer must provide such evidence to the contrary within one month of the invoice date, under penalty of forfeiture of its claim.

## 19. Remuneration conditions of Private Charge Points

- 19.1. The Customer is entitled to set a tariff for third parties for the use of its Private Charge Point(s) that is/are open to third parties. The Customer is obliged to inform NewMotion in advance of this tariff. NewMotion is unilaterally entitled to increase this tariff and publish it as such in the NewMotion Apps and on the Portal, with the difference accruing to NewMotion.
- 19.2. A Customer who makes its Private Charge Point open to the public is required to display the tariff clearly visible and recognisable on the Charge Point in the manner indicated by NewMotion.
- 19.3. The Customer will receive a compensation (equal to the rate set by the Customer) from NewMotion for charge sessions by third parties at its Private Charge Point(s) made available to the public. The charge session shall be charged to the third party. NewMotion reserves the right not to pay any compensation to the Customer if the third party does not pay NewMotion for the charging session.
- 19.4. If the Customer, as an employer, makes a Charge Point available to its employees, the Customer guarantees that the employee will include the correct tariff for electricity use in the Portal in good time. If the employee makes the Private Charge Point available to third parties, the Customer guarantees that the employee will comply with the obligations of this clause 19. NewMotion is not obliged to pay any compensation to the employee and is not liable to the Customer in the event of non-compliance with this clause 19.4.
- 19.5. A charge session at a Private Charge Point must be ended once a month. If a charge session at a Private Charge Point is less than 0.2 kWh or more than 350 kWh, NewMotion shall not reimburse such charge session.

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## LIABILITY

### 20. Liability of NewMotion

- 20.1. The liability of NewMotion for indirect damage (including consequential damage, loss of profits, lost savings, reduced goodwill, loss through business interruptions, third party damage, corruption or loss or degradation of data, goods, materials, or software of third parties) is explicitly excluded under all circumstances.
- 20.2. Notwithstanding the previous subsection, NewMotion is required to compensate or indemnify End Users that are consumers under the Consumer Law for damage suffered by a faulty Product in accordance with the Consumer Law and either (a) the End User has died or sustained personal injury; or (b) if the damage was caused by the Product to another item that is the property of the End User, this item would usually be intended for use or consumption in the private sphere and has primarily been used or consumed by the End User in its private life, in which event NewMotion cannot be held liable for damage less than £ 500 (five hundred GBP) or the statutory threshold amount applicable at such time.
- 20.3. Subject to the provisions laid down in the previous subsection, where NewMotion is obliged to compensate direct damages, this compensation is at all times limited to a maximum amount of £ 5,000 (five thousand GBP) per event.
- 20.4. Under no circumstances is NewMotion ever liable for damage that is or that is partly due by Unauthorised Use by or on behalf of the Customer or the End User, or for damage that has been caused in part because the Customer failed to comply with the applicable Safety Instructions, or any other regulations for the Charge Point concerned or the Electric Vehicle concerned, or any other relevant regulations.
- 20.5. When the Customer concludes an Agreement with NewMotion, and the Customer makes the Products and/or Services available to third parties, including End Users, in any way whatsoever, the Customer indemnifies NewMotion, at its first request to do so, for any liability for damages, entitlements, and claims arising from the agreement between the Customer and a third party, including an End User.
- 20.6. NewMotion is not liable in any way for the damage that results from any act or omission of the Customer in violation of statutory and/or contractual provisions, including these General Terms and Conditions. The Customer is liable towards NewMotion for damage as a result of acts and/or omissions in breach of statutory and/or contractual provisions, including these General Terms and Conditions.
- 20.7. All possible claims by the Customer for compensation for damage must be submitted by e-mail to [customerservice@newmotion.com](mailto:customerservice@newmotion.com), within 10 business days following the day in which the Customer has discovered or could reasonably discover the damage or shortcoming, under penalty of forfeiture of these claims.
- 20.8. To the extent legally possible, NewMotion will not be liable for any damage caused

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to the Customer or to third parties by its employees and/or third parties engaged by it. The limitation of liability in this clause also applies, among other things, to third parties engaged by NewMotion for the performance of the Agreement, as well as with regards to persons for whom NewMotion is responsible.

20.9. The limitations referred to in this clause 20 will lapse if and insofar the damage is the result of intent or gross negligence on the part of NewMotion. However, NewMotion is not liable for damage due to intent or gross recklessness of non-supervisory staff or of third parties engaged by NewMotion.

20.10. Nothing in the Agreement excludes or limits in any way either party's liability to the other for:

- a. death or personal injury caused by that party's negligence or the negligence of its employees, agents or subcontractors;
- b. fraud or fraudulent misrepresentation;
- c. for defective products under the Consumer Law (if applicable); and
- d. for any other liability that cannot be excluded or limited at law.

## 21. Force majeure

21.1. NewMotion is not obliged to fulfil any obligation in the event of force majeure. Amongst other things, the term force majeure means any circumstances or occurrences beyond NewMotions' reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which NewMotion cannot reasonably be required to execute its obligations and means delay at or breach of contract by suppliers and/or third parties engaged by NewMotion, internet faults, electricity network faults, e-mail traffic faults, and faults or changes in technology, supplied by third parties, transport difficulties, strike action, government measures, delays in the supply, omissions of suppliers and/or manufacturers of NewMotion and of auxiliary staff or persons, sickness of staff, faults of resources or means of transport, and any other circumstance that interferes with the performance or execution of the Agreement.

21.2. In the event of force majeure, NewMotion is entitled to cancel or postpone performance of the Agreement without judicial intervention, for a period of 6 months, or to terminate the Agreement in whole or in part, without any liability towards the Customer or End User.

21.3. If a situation of force majeure lasts for more than 30 days, NewMotion has the right to terminate the Agreement, in which case any part of the Agreement that has already been performed must be paid for pro rata, and neither party will be liable to the other for any reason.

## 22. Liability of the Customer

22.1. The Customer guarantees that all obligations from these General Terms and Conditions apply legally binding on the End User, being a customer of the Customer

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and/or a third party to whom the Customer has granted permission or has actually enabled the use of the Products and/or Services.

- 22.2. The Customer warrants and guarantees that both himself and the End User, as described in clause 22.1, will not make Unauthorised Use of the Products and/or Services. The Customer indemnifies NewMotion for any damage, including all costs reasonably incurred or that might be incurred by NewMotion as a result of such acts and/or omissions and any claims for damages of third parties and/or End Users in connection with situations in which the Customer is liable as set out in this clause.
- 22.3. The Customer undertakes to perform the Agreement with due observance of the interests of NewMotion. The Customer shall not obstruct NewMotion in any way in the delivery of its Services. For example, the Customer is not permitted to take any action of which, in the reasonable opinion of NewMotion, it can reasonably be assumed that it could damage the Products and/or Services of NewMotion.
- 22.4. The Customer guarantees to NewMotion that in no way whatsoever the Charge Card, or the coding, details, or other data stored on the Charge Card, will be copied or recreated. This means the whole or partial transfer of the coding, details, and data to other data carriers, such as telephones or digital keychains.

## OTHER PROVISIONS AND APPLICABLE LAW

### 23. Suspension

- 23.1. To the extent permitted by law, NewMotion is entitled at all times to suspend or interrupt its obligation in respect of the Product and/or Services if the Customer fails to fulfil its obligations. Any resumption of performance by NewMotion will only take place after the Customer has fulfilled its obligations in full, including payment of extra costs incurred by NewMotion.
- 23.2. Postponement or suspension of Services and/or forced unavailability of a Product does not release a Customer from its obligation to pay the outstanding invoice(s) to NewMotion.
- 23.3. In the event NewMotion exercises its right of suspension, no right to compensation or restitution for the Customer will arise.
- 23.4. Insofar as permitted by law and unless explicitly agreed otherwise, any right of suspension and/or to set-off and/or right to retention of title by the Customer is excluded.
- 23.5. Where the Customer is a Consumer:
- a. the Consumer may contact NewMotion to end the Agreement at any time before NewMotion has delivered the Products and/or Services and the Consumer has paid for it, subject to payment of any sum NewMotion may charge the Consumer in accordance with clause 23.5(c);

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- b. if the Consumer intends to end the Agreement for a reason set out at clauses 23.5(b)(i) to 23.5(b)(v), the Agreement will end immediately and NewMotion will refund the Consumer in full for any Products and/or Services which have not been provided or have not been provided properly. The reasons are:
  - i. NewMotion has notified the Consumer about an upcoming change to the Products and/or Services or these terms which the Consumer does not agree to;
  - ii. NewMotion has notified the Consumer about an error in the price or description of the Products and/or Services ordered and the Consumer does not wish to proceed;
  - iii. there is a risk that supply of the Products and/or Services may be significantly delayed because of events outside NewMotion's control;
  - iv. NewMotion has suspended supply of the Products and/or Services for technical reasons, or NewMotion has notified the Consumer that NewMotion intends to suspend them for technical reasons, in each case for a period of more than 90 days; or
  - v. the Consumer has a legal right to end the Agreement due to an act or omission of NewMotion resulting in NewMotion's breach of the Agreement; and
- c. if the Consumer intends to end the Agreement and it is not for one of the reasons set out in clause 23.5(b), then the Agreement will end **[immediately OR [PERIOD] following the Consumer first confirming its intention to end the Agreement]** and NewMotion will refund any sums paid by the Consumer for Products and/or Services not provided but NewMotion may deduct from that refund (or, if the Consumer has not made an advance payment, charge the Consumer) reasonable compensation for the net costs NewMotion will incur as a result of the Consumer ending the Agreement.

## 24. Assignment to Third Parties

- 24.1. The Customer is not permitted to assign its rights or obligations under the Agreement as a whole or in part to a third party, except with the prior written consent of NewMotion. This provision has effect under both Contract Law and Property Law.
- 24.2. NewMotion is entitled to assign its rights and obligations under the Agreement as a whole or in part to a third party. The Customer hereby grants its consent for such assignment in advance.

## 25. Intellectual Property

- 25.1. The Customer accepts that all intellectual property rights (including copyrights, trademark rights, database rights, and patent rights) contained in the Products and/or Services remain the property of NewMotion and/or its licensors. In the context of the supply of the Products and/or Services, NewMotion may use or develop products, materials, and methodologies containing data provided by the Customer or information derived from it, in which case any such products, materials, and

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methodologies will belong to the proprietary rights of NewMotion. The Customer must refrain from violating or infringing the intellectual property rights, and any other rights, of NewMotion.

- 25.2. The Customer is not permitted to remove or change any markings related to intellectual property rights (such as logos and copyright claims) on or related to the Products and/or Services supplied by NewMotion, or on or in any software, hardware, equipment, NewMotion Apps, Website, or materials provided.
- 25.3. The Customer shall not and shall not allow or assist third parties to:
- a. create or attempt to, or aid or permits others to, create by reverse, copy, engineering, disassembly, decompilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organization of any Product and/or Documentation, unless explicitly permitted by Law, or
  - b. copy, modify, translate, or create derivative works of the same for any purpose (including error correction or any other type of maintenance) included in any Product and/or Documentation, unless with NewMotion's prior consents in writing, or
  - c. separate the Product into component parts for distribution or transfer to a third party.

## 26. Privacy

- 26.1. NewMotion processes specific Customer and/or End User data, including personal data, when providing the Products and Services. NewMotion complies with the applicable regulations in force, including GDPR, when processing personal data. The way in which NewMotion handles the personal data of the Customer and/or the End User is set out in the Privacy Policy, which can be found on the Website.
- 26.2. When using NewMotion's Products and/or Services, the Customer shall comply with all applicable regulations, including the GDPR. Pursuant to the GDPR, NewMotion may send personal data provided by the Customer or End User to third parties in the context of the performance of an agreement. If the Customer itself is also the controller of these personal data, the Customer is obliged to inform the data subject hereof. Customer will enter into a data processing agreement as provided by NewMotion if needed according to clause 28 GDPR.

## 27. Other Provisions and Applicable Law

- 27.1. To the extent permitted by law, NewMotion shall at all times have the right to unilaterally change the contents of the Services, the rates and tariffs, and these General Terms and Conditions. Changes will take effect on the date on which they are published on the Website or the Portal, unless otherwise specified, and will void the General Terms and Conditions and/or rates that applied until that time. Changes to the General Terms and Conditions will also apply to ongoing Agreements. Only if the Customer is entitled to do so in accordance with mandatory law, he may terminate the Agreement, subject to a notice period of 30 days, in case he does not

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want to accept a change that is applicable to him, unless the change concerns only a minor change to the General Terms and Conditions.

- 27.2. Nothing in the Agreement should be interpreted as attempting to exclude, restrict or modify the application of any applicable provision of the Consumer Law, any liability of NewMotion for failing to comply with these provisions of the Consumer Law or a Consumer's right to make a claim under any other provision of the Consumer Law.
- 27.3. NewMotion is entitled to engage third parties for the performance of the Agreement.
- 27.4. In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In that event, NewMotion and the Customer will negotiate to agree on new provisions to replace the voided or nullified provisions. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- 27.5. Where these General Terms and Conditions state "including" or "among other things", this will be read and interpreted to mean "including but not limited to".
- 27.6. NewMotion has an adequately published complaints' procedure as published on the Website and handles complaints according to this procedure.
- 27.7. The Agreement and these General Terms and Conditions are governed exclusively by the laws of England and Wales. Any disputes related to or arising from the Agreement or these General Terms and Conditions must be filed with the competent courts of England and Wales.

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