

# The New Motion General Terms and Conditions

Version April 2016

## 1. General

- 1.1 These General Terms and Conditions apply to all Products and Services, offered and provided by The New Motion to the Customer. Where indicated, the specific terms and conditions apply to particular types of Products and/or Services.
- 1.2 These General Terms and Conditions do not apply to products and/or services which are not offered and provided by The New Motion, but by a third party, such as a reseller, in which case the purchase agreement is entered with the third party and not with The New Motion.
- 1.3 By ordering Products or Services and by creating an account on the Portal the Customer and/or the End User is/are accepting the applicability and validity of these General Terms and Conditions.
- 1.4 The applicability of any Customer general terms and conditions is hereby expressly rejected.

## 2. Definitions

- 2.1 **Charge Card:** the Charge Card provided by The New Motion that gives access to the use of one or more Charge Points.
- 2.2 **Charge Point:** facility or facilities where an Electric Vehicle can be charged using a Charge Card and the power can be switched on and off by the End User.
- 2.3 **Charging Services:** all the services offered to the Customer by The New Motion in connection with the use of a Charge Card, including the use by the Customer of a Charge Card without a Subscription, with a Subscription, and use of the Portal.
- 2.4 **Consumer:** the Customer, being a natural person, not acting in the practice of a profession or the operation of a business.
- 2.5 **Consumer Purchase:** the purchase concluded between The New Motion and a Consumer in relation to one or more Products, being a movable property.
- 2.6 **Contract:** the contract between The New Motion and the Customer in relation to The New Motion Products or Services of which the General Terms and Conditions are an integral part.
- 2.7 **Customer:** the natural person or legal entity entering into a Contract with The New Motion or activating a Charge Card. A Customer is also an End User if it itself uses the Products and/or Services.
- 2.8 **Customer Service:** the customer service department of The New Motion that Customers and End Users can approach in the event of queries and/or complaints.
- 2.9 **Distance Contract:** the Contract by which, in the context of a system for the distance sale of Products or the distance provision of Services organised by The New Motion, one or more distance communication techniques, including but not limited to telephony and the internet, are used exclusively up to the conclusion of the Contract.

- 2.10 Distance Contract for the provision of Services:** the Distance Contract for the provision of Services between The New Motion and a Consumer.
- 2.11 Electric Vehicle:** a road vehicle with more than two wheels that is wholly or partially driven by an electric motor, this vehicle using or not using electricity stored in a battery, chargeable by using a Charge Point.
- 2.12 End User:** the natural person or legal entity using the Products and/or Services of The New Motion.
- 2.13 General Terms and Conditions:** these general terms and conditions, including any annexes.
- 2.14 Network:** The New Motion Network and the Partner Network together.
- 2.15 Other Services:** all the Services provided by The New Motion other than the Charging Services, including the installation of a Charge Point.
- 2.16 Partner Network:** the combination of all the Charge Points that can be used with the Charge Card and that are located outside The New Motion Network.
- 2.17 Portal:** the website [my.thenewmotion.com](https://my.thenewmotion.com) where the Customer can log in using its login details to, for example, manage its usage data and view its consumption.
- 2.18 Private Charge Point:** a Charge Point supplied to the Customer and installed, hosted, maintained and/or managed by The New Motion under the Contract that has not been opened as a Public Charge Point and that can be used using a Charge Card.
- 2.19 Product:** the physical product, including a Charge Point, supplied or to be supplied to the Customer by The New Motion.
- 2.20 Public Charge Point:** a Charge Point in the The New Motion Network that has been opened for use by all Customers with a Charge Card activated for this purpose.
- 2.21 Quotation:** the quotation issued by The New Motion in respect of one or more Product(s) and/or Service(s).
- 2.22 Right of Withdrawal Period:** the statutory period of 14 calendar days, as referred to in Article 20 of these General Terms and Conditions, for Distance Contracts concluded between The New Motion and a Consumer.
- 2.23 Safety Instructions:** the instructions and usage regulations applying in respect of the use or the installation of a Charge Point, the use or the connection of the Electric Vehicle, the use of a charging cable, all as published by The New Motion or by other charging operators and suppliers.
- 2.24 Services:** the Subscriptions and Other Services offered by The New Motion through the Website or in some other way.
- 2.25 Subscription:** the subscription relating to a Charge Point or Charge Card offered to the Customer by The New Motion through the Portal or in some other way.
- 2.26 The New Motion:** the provider of the Services and Products, being The New Motion B.V., and the group companies allied to it as defined in section 2:24(a) to (c) of the Dutch Civil Code, including but not limited to The New Motion Snellaad B.V.
- 2.27 The New Motion Network:** the combination of all the Charge Points managed by The New Motion.
- 2.28 Unauthorised Use:** this includes the improper or incorrect use of Charge Points

(including the use of charging cables without a 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 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 it; the use of a Product or some other item other than as stated in the (Safety) Instructions of The New Motion, the (Safety) Instructions of operators of the Charge Points and the Partner Networks or the applicable statutory (safety and other) regulations; and any acts or omissions of the Customer or the End User causing damage.

- 2.29 Website:** the public website [www.thenewmotion.com](http://www.thenewmotion.com) and the Portal and any other website used by The New Motion at any time for Products and/or Services in the Netherlands.

### **3. Identity**

#### **3.1 The New Motion B.V.**

Rigakade 20  
1013 BC Amsterdam  
Postbus 3966  
1001 AT Amsterdam  
Chamber of Commerce number: 32158064  
VAT identification number: NL821197782B01

### **4. Charge Card**

- 4.1** If a Customer takes out a Subscription, purchases a Charge Point or on application, he is provided with a Charge Card.
- 4.2** A Charge Card has a two---year warranty against material defects and manufacturing faults. The replacement costs referred to below are charged in the case of a defect that is not attributable to a manufacturing fault or material defect.
- 4.3** In the event of loss or theft of the Charge Card, the Customer must notify The New Motion as soon as possible on telephone number +31 (0)88 --- 0109 500 (flat rate) or via [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com). The New Motion will then block the Charge Card. The Customer is fully liable for any damage resulting from loss, unauthorised use, theft or misuse of the Charge Card until such time as the card is blocked. All transactions made with the Charge Card before the Charge Card has been blocked will be for the Customer's account.
- 4.4** The replacement costs for a Charge Card are EUR 10 (ten euros) ex VAT.
- 4.5** A Charge Card and the (electronic) data processed on the Charge Card remain the property of The New Motion at all times.
- 4.6** On termination of the use of the Charge Card(s) provided, the Customer will immediately return them by post to: The New Motion B.V., Postbus 3966, 1001 AT Amsterdam, The Netherlands.

### **5. Use of Charge Card and Charge Points**

- 5.1** The Customer must handle the Charge Card and the Charge Point(s) in a proper manner and with due care, use them in accordance with the Safety Instructions and

- refrain from any Unauthorised Use thereof.
- 5.2** If the Customer discovers damage, defects or irregularities at a Charge Point when using that Charge Point, it must notify The New Motion of this as soon as possible on telephone number +31 (0)88 --- 0109 500 (flat rate) or via [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com).
- 5.3** If the Customer attempts to rectify a fault on a Public or Private Charge Point or arranges its rectification itself, in no way whatsoever is The New Motion liable for the resulting damage.
- 5.4** The New Motion does not give any guarantee regarding the extent of the The New Motion Network or the proper operation, the availability and the accessibility of Public Charge Points.
- 5.5** Use of the Charge Points in the Partner Network is subject to the conditions of the operator of the Charge Point concerned. The Customer is obliged to familiarise itself with these conditions and adhere to them. If the Customer fails to do so, or fails to do so properly, then it is in default in the fulfilment of its obligations towards The New Motion under the Contract.
- 5.6** The New Motion is entitled to remove one or more Charge Points from the The New Motion Network and/or to deny any further access to a Charge Point in the Partner Network without prior notice and without any obligation towards the Customer at any time.
- 5.7** If the Customer wishes to open a Private Charge Point to all other Customers and End Users and The New Motion agrees to this, The New Motion will include the Charge Point concerned in the The New Motion Network as a Public Charge Point. The Charge Point is to be regarded as a Public Charge Point from this point on. The Customer will clearly display any specific usage, precautionary and safety measures for the Charge Point concerned at the Charge Point.
- 5.8** In so far as reasonably within the power of the Customer and/or End User, it must ensure that peripheral equipment it uses (including mobile telephones and computers) and connections are sufficiently secure, for example from unauthorised use by third parties, by setting a password, and from viruses.
- 5.9** The Customer guarantees to The New Motion that the personal details it provides when activating a Charge Card and taking out a Subscription, such as name, bank account number, billing address and email address, are current, complete and correct and that The New Motion is immediately notified of any changes in these details via [my.thenewmotion.com](http://my.thenewmotion.com).
- 5.10** The New Motion is entitled to terminate activated cards and/or the Subscription immediately and/or to block the Charge Card immediately:
- a. if the direct debit cannot be collected successfully several times, or
  - b. in the event of the Customer's bankruptcy, court protection from creditors, debt rescheduling or placement in administration, or
  - c. if the Customer or the End User has caused damage to a Charge Point.

## **6. Fees for Charging Services**

- 6.1** The fees stated on the Website will be charged for charging at Public Charge Points in the Network. These fees consist of not more than three components: any subscription charges, the tariff charged by the Charge Point provider and the transaction fee for each charging session.
- 6.2** The Customer can activate a Charge Card for charging at Public Charge Points via the Portal by entering his/her account details and linking them to the card concerned.

- 6.3** Access to and/or charging at PublicCharge Points or at Private Charge Points available to the public are subject to the tariffs and conditions used by the provider concerned. A Customer can choose either (at its own expense and risk) to agree to these terms and conditions and to activate the Charge Card for these Charge Points too or to let the Charge Card remain inactive for these Charge Points.
- 6.4** If the Charge Card is used for charging in the Partner Network, the information from the Charge Point operator on the Customer's consumption and the tariffs used by this operator are binding. The Customer is obliged to pay the charges concerned to The New Motion, subject to any evidence to the contrary supplied by the Customer being upheld by The New Motion, the Customer having to provide this evidence within one month of the invoice date, subject to forfeiture of the claim.

## **7. Subscriptions**

- 7.1** A subscription is activated via the Portal or accepted by the Customer in some other way. A Subscription is taken out for a month, starting on the date on which it is activated or accepted in some other way, and is then tacitly renewed for an indefinite period of time.
- 7.2** Notice to terminate a Subscription may be given by the Customer on a monthly basis, must be given via the Portal with the settings intended for the purpose or must be given in writing by means of a letter to this effect to The New Motion B.V., Postbus 3966, 1001 AT Amsterdam or an email to this effect to [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com), quoting the Customer's name and address, postcode, place of residence or place of business and the desired date of termination.

Subject to the Right of Withdrawal for consumers, as referred to in Article 20 of these Terms and Conditions, there will be no refunds of previous subscription payments.

- 7.3** The applicable charges for the different forms of Subscription can be found on the Website. The Customer is billed the charges for the power consumption from charging at a Private Charge Point directly by the Customer's electricity supplier. The Customer is billed the charges for using a Public Charge Point in accordance with the tariffs laid down by the Public Charge Point provider concerned. These charges are not therefore included in the cost of the subscription.

## **8. Other Services**

- 8.1** A Contract for the provision of Other Services is formed at the point that The New Motion has received the Quotation, complete with all the necessary details, signed by the Customer or accepted by email, unless the parties have agreed a different method of formation.
- 8.2** Unless otherwise expressly stated, the delivery times and delivery dates issued by or on behalf of The New Motion are not deadlines.
- 8.3** A Quotation is valid for the period of time indicated in the Quotation. In the absence of such an indication the period of validity is one month following the date of issue.
- 8.4** A Contract for the provision of Other Services can also be formed in some way other than as laid down in this Article, including distance sale or service via telephone or internet.

## **9. Other Services: Installation of a Charge Point**

- 9.1** At the request of the Customer The New Motion can provide for the Installation of a Charge Point.
- 9.2** A Charge Point can only be installed at a site meeting the relevant requirements and must be capable of connection to an electrical installation meeting the relevant requirements, in accordance with the installation instructions and the applicable legislation and regulations.
- 9.3** The installation and the turnkey delivery of a Charge Point are carried out by third parties brought in by The New Motion, unless otherwise agreed.
- 9.4** The New Motion will contact the Customer or have the Customer contacted within a reasonable period of time following the conclusion of the Contract to agree an installation date.
- 9.5** The Customer guarantees that all the information it provides is correct and accurate. The New Motion bases its Quotation on the information that the Customer provides. If this information proves to be incorrect on installation, all additional costs are for the Customer's account.
- 9.6** Costs of additional installation work are agreed with the Customer on site by the installation engineer and the Customer signs for them.
- 9.7** All damage in connection with the information provided by the Customer, including information provided by the Customer on the use of the different cut-outs in the meter cupboard, are for the Customer's account and risk.
- 9.8** Installation agreements may be cancelled by the Customer free of charge up to 48 hours in advance. If the Customer cancels an installation agreement less than 48 hours in advance or if the Customer fails to meet the installation engineer at the agreed time, a fixed penalty of €150 (one hundred and fifty euros) ex VAT is payable to The New Motion by the Customer.
- 9.9** The New Motion is not liable for damage arising as a result of or in connection with the temporary disconnection of the electricity when a Charge Point is installed. The Customer will, at its own expense and risk, take/arrange all the necessary precautions to make a safe and smooth installation possible. The Customer indemnifies The New Motion and the third parties brought in by The New Motion against all the damage they sustain if these precautions prove insufficient.
- 9.10** Completion takes place as soon as the installation is finished. The Customer must be present at completion. The installation engineer goes through a completion checklist with the Customer. The Customer must report all the defects that it finds or reasonably can find to the installation engineer in the course of completion. The installation engineer will note the defects found on the completion checklist and rectify them within a reasonable period of time in consultation with the Customer.
- 9.11** Completion is accepted by the Customer as soon as the completion checklist has been gone through and the Customer has signed it. Acceptance of completion means that the Customer has accepted the installation, subject to any defects noted on the completion checklist.
- 9.12** Minor defects that do not prevent the Charge Point being taken into use and that can be rectified by the installation engineer within a reasonable period of time are not reason for the Customer to refuse acceptance of completion.
- 9.13** Defects that have not been reported on completion are accepted by the Customer through the acceptance of completion.
- 9.14** If the Charge Point is taken into use before the acceptance of completion has taken place, the taking into use counts as acceptance of the Charge Point by the Customer.

- 9.15** If the Customer does not accept completion, it must say why not in writing to [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com) within 48 hours. The New Motion or the installation engineer will then contact the Customer within a reasonable period of time to arrange a new completion. The new completion will take place in accordance with the provisions laid down for completion in this Article.
- 9.16** The Customer is fully liable for and indemnifies The New Motion against all damage that The New Motion sustains in connection with the installation in so far as it is caused by a third party brought in by or on behalf of the Customer. If The New Motion is asked to carry out a fault investigation by the Customer and/or to undertake repair work in such a case, the associated costs (including the reasonable installation, material, repair and callout charges) are for the Customer's account.
- 9.17** The New Motion reserves the right to monitor, maintain and where necessary provide new software to Charge Points it has installed remotely, from its back office system.

## **10. Products**

- 10.1** The Customer is obliged to check a Product supplied immediately on receipt. If a Product supplied turns out to be wrong, faulty or incomplete, the Customer must immediately (before returning it to The New Motion) report these defects in writing via [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com). Any defects in, or an incorrectly supplied, Product may be reported to The New Motion up to two weeks following delivery, subject to forfeiture of the right to complain and return.
- 10.2** The Product must be returned in its original packaging (including accessories and associated documentation) and in new condition to the address given to the Customer by The New Motion for this purpose.
- 10.3** Taking or giving into use, damaging and/or resale of the Product causes the right to complain and return to lapse.
- 10.4** If The New Motion considers the Customer's complaint justified, The New Motion has the choice of either replacing the items supplied free of charge or repaying the Customer the purchase price paid.
- 10.5** Article 10.4 does not apply if in the reasonable opinion of The New Motion: a) the Customer is in default in respect of The New Motion, b) the Customer has repaired and/or modified the Product itself or had it repaired and/or modified by third parties, c) the Product has been exposed to abnormal conditions or has otherwise been handled carelessly or has been handled contrary to the instructions of The New Motion and/or directions for use on the packaging, or d) the faultiness of the Product is wholly or partially the consequence of regulations that the authorities have laid down regarding the nature or the quality of the materials used.

Article 10, as mentioned in article 1.2, only applies to products, which have been purchased by the Customer directly from The New Motion (and not from third parties, such as resellers).

## **11. Charge Point warranty**

- 11.1** A Charge Point supplied by The New Motion is covered by a two---year warranty. During this time The New Motion will to the best of its ability try to repair or arrange the repair of any material or manufacturing defects free of charge within a reasonable period of time or, if repair is impossible, provide for a replacement Charge Point. Repair or replacement will only take place if the defect or fault has been reported to the The New Motion Help Desk by telephone or by email as soon as reasonably



possible following its discovery, the Customer having to provide as many details of the defect or the fault as possible. 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.

- 11.2** Article 11.1, as mentioned in article 1.2, only applies to products which have been purchased by the Customer directly from The New Motion (and not from third parties, such as resellers).

## **12. Tariffs and billing of Products and Services**

- 12.1** The tariffs specified in detail in the Quotation or, failing that, according to the prices, tariffs and conditions made known or to be made known by The New Motion in some other way are payable by the Customer.
- 12.2** All tariffs are exclusive of (turnover) tax(es), surcharges and other levies. The New Motion is entitled to pass on directly to the Customer (interim) increases in tax, surcharges and other levies imposed by the authorities, including those for current quotations, at any time.
- 12.3** The New Motion either sends invoices for Subscriptions (including fees for use of Public Charge Points) and Products to the Customer by email or publishes them on the Portal and notifies the Customer of them by means of an email. Invoices for Other Services are sent to the Customer by email only, unless otherwise agreed in writing.
- 12.4** In the case of Subscriptions (including fees for use of Public Charge Points) the invoiced amount is debited from the bank account given by the Customer by monthly direct debit subject to the applicable SEPA time frames, unless otherwise agreed or if The New Motion wishes to invoice in some other way. The Customer must ensure that the invoiced amount is collectible by direct debit.
- 12.5** In the case of charges for Products and Other Services the Customer must transfer the invoiced amount within the payment term shown on the invoice.
- 12.6** Complaints about invoices must be made to The New Motion by email before the end of the payment term via [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com). If a Customer wrongly complains about an invoice more than three times per calendar year, The New Motion is entitled to charge this Customer administrative costs in the amount of not less than €15 (fifteen euros) ex VAT and/or to cancel the Contract.
- 12.7** The Customer must pay undisputed amounts of an invoice within the payment term laid down.
- 12.8** A Consumer can have a direct debit reversed without giving reasons up to 56 days from the collection date. A Consumer has 14 calendar days following the reversal date to pay The New Motion the amount owing, failing which it will be in default with the consequences described in the next subsection.
- 12.9** If the direct debit cannot take place or cannot take place in full for whatever reason or if the payment by the Customer does not take place within the payment term laid down by The New Motion, the Customer is in default by operation of law and without further notice of default and owes (contractual) interest of 1% per month or a part thereof, this part being counted as a whole month. The New Motion is then also entitled to charge the Customer administrative costs in the amount of not less than EUR 40 ex VAT and any extrajudicial collection costs in the amount of 15% of the outstanding invoice amount, with a minimum of €25 (twenty five euros) ex VAT, without prejudice to all The New Motion's other compensation claims under section 6:96 of the Dutch Civil Code.
- 12.10** The New Motion has the right to suspend the provision of the Services or the supply of



the Products from the date on which the Customer is in default until such time as The New Motion has received the amount owed by the Customer in full.

- 12.11** The Customer is liable for all the judicial costs to be incurred by The New Motion (including the reasonable costs of legal assistance) connected with the collection of amounts owed by the Customer.

For the determination of the amounts owed at any time (including any costs in connection with charging sessions in the Partner Network) the records of The New Motion alone provide evidence of the electricity consumption and the payments made by the Customer, subject to any evidence to the contrary provided by the Customer that the Customer must provide within one month of the invoice date, subject to forfeiture of the claim.

### **13. The New Motion Customer Service**

- 13.1** The New Motion Customer Service is available by email via [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com) and/or on telephone number +31 (0)88 --- 0109500 (flat rate).
- 13.2** Complaints must be submitted to Customer Service as soon as possible following discovery and be described in full and clearly.
- 13.3** The New Motion will make every effort to help all its Customers and End Users as best 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.

### **14. The New Motion App**

- 14.1** The New Motion App is provided free of charge and can be downloaded onto a smartphone. The App shows which Public Charge Points are available at the App user's location in real time. Other Charge Points can also be found using the App, the applicable tariffs being shown. This information comes from third parties. The New Motion is not liable for any incompleteness or incorrectness of the information in the App.

### **15. Assignment to Third Parties**

- 15.1** The Customer is not permitted to assign its rights or obligations under the Contract as a whole or in part to a third party without the prior written consent of The New Motion.
- 15.2** The New Motion is entitled to assign its rights and obligations under the Contract as a whole or in part to a third party. The Customer hereby grants its consent for such an assignment in advance.

### **16. Liability of The New Motion**

- 16.1** The liability of The New Motion for indirect loss (including consequential damage, loss of profits, lost savings, reduced goodwill, loss through business interruption, third-party damage, corruption or loss of data, goods, materials or software of third parties) is expressly excluded in all cases.
- 16.2** Notwithstanding the previous subsection, The New Motion is obliged to pay compensation if the damage is due to a faulty Product as defined in section 6:186 of

- the Dutch Civil Code and either (a) the Customer has died or sustained personal injury, or (b) if the Customer is a Consumer and the damage in question has been caused by the Product to another item that is the property of the Consumer, this item usually being intended for use or consumption in the private sphere and also chiefly used or consumed by the Consumer in the private sphere, in which case The New Motion cannot be held liable for damage less than €500 (five hundred euros).
- 16.3** Subject to the provisions laid down in the previous subsection, where The New Motion is obliged to compensate direct damage, this compensation is at all times limited to a sum of €5,000 (five thousand euros) per event, a series of connected events being regarded as one event.
- 16.4** A Charge Point operates using (public or otherwise) infrastructure, including (mobile) internet connections and the electricity network. The New Motion is not liable for damage resulting from faults in this infrastructure or in the supply of electricity to the Charge Point.
- 16.5** Under no circumstances is The New Motion ever liable for damage that is or that is partly due to 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 fails to comply with the applicable Safety Instructions, with any other regulation for the Charge Point concerned or the Electric Vehicle concerned or other relevant regulations.
- 16.6** General information about the Products and Services offered by The New Motion is provided on the Website and on the Portal. The New Motion compiles this information with care, but cannot be held liable for any incompleteness or incorrectness of the information.
- 16.7** Any damage must be reported by the Customer by email to [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com) as soon as possible, but within not more than 10 working days following the day on which the Customer has discovered or could reasonably discover the damage or shortcoming.
- 16.8** The limitation of liability in this Article also applies in respect of third parties that The New Motion brings in for the performance of the Contract and in respect of persons for whom The New Motion is liable.
- 16.9** The New Motion is not obliged to fulfil any obligation in the event of force majeure. Amongst other things the term force majeure means delay or breach of contract by suppliers and/or other third parties brought in by The New Motion, internet faults, electricity supply faults, email 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 The New Motion and of auxiliary personnel, staff sickness and faults of resources or means of transport. The term force majeure also means force majeure of subcontract suppliers and/or third parties brought in by The New Motion.
- 16.10** The limitations referred to in this Article will lapse if and in so far as the damage is the result of intent or gross negligence on the part of The New Motion. The New Motion is not, however, liable for damage due to intent or gross recklessness on the part of non-supervisory staff and third parties brought in by The New Motion.

## **17. Liability of the Customer**

- 17.1** In so far as reasonably within the power of the Customer and the End User respectively, it must ensure that peripheral equipment it uses (including mobile telephones and computers) and connections are sufficiently secure, for example from unauthorised use by third parties and viruses.

- 17.2** The Customer guarantees that the Electric Vehicle and the charging cable used by it meet the requirements laid down by or pursuant to the legislation and regulations.
- 17.3** The Customer is liable for all damage resulting from or partly resulting from a defect in the Electric Vehicle or the charging cable.
- 17.4** The Customer is not permitted to circumvent or to remove technical safety devices or limitations on use in connection with the Products and/or Services. In the event that damage occurs because the Customer nonetheless circumvents or removes the technical safety devices or limitations on use, or attempts to do so, the Customer is liable for that damage.
- 17.5** The Customer guarantees to The New Motion that in no way whatsoever will the Charge Card and the coding, data and other details stored on the Charge Card be copied or reproduced. This means the whole or partial transfer of the coding, data and details to other data carriers, such as telephones or digital key chains.
- 17.6** The Customer is jointly and severally liable to The New Motion for all damage resulting from acts and/or omissions of third parties to whom the Customer has given consent or who the Customer has actually enabled to use the Products or Services as if they were an act and/or omission of the Customer itself. The Customer indemnifies The New Motion against all damage, including all reasonable costs incurred, that The New Motion sustains or might sustain as a result of these acts and/or omissions and any third-party claims connected with situations in which the Customer is liable as described in this Article.

## **18. Intellectual Property**

- 18.1** The Customer accepts that all the intellectual property rights (including copyright, trademark rights, database rights and patent rights) as contained in the Products and/or Services remain the property of The New Motion and/or its licensors. In the context of the supply of the Products and/or Services The New Motion may use or develop products, materials and methodologies containing data provided by the Customer or information derived from it, which then belong to the proprietary rights of The New Motion. The Customer must refrain from infringing the intellectual property rights and other rights of The New Motion.
- 18.2** The Customer is not permitted to remove or change any marking with regard to intellectual property rights (such as logos and copyright reservations) on or in connection with the Products supplied by The New Motion or software, hardware, Apps, Website or materials provided.

## **19. Privacy**

- 19.1** When providing Products and Services The New Motion processes certain Customer and/or End User data, including personal data. The New Motion complies with the regulations in force, including the Personal Data Protection Act, when processing personal data. The way in which The New Motion handles the Customer's personal data is set out in the Privacy Policy, which can be found on the Website.
- 19.2** Under section 8(b) of the Personal Data Protection Act The New Motion may provide personal data provided by the Customer or End User under the Contract to third parties for the purposes of the performance of the Contract. Under the aforementioned Act The New Motion may be obliged to provide personal data of the Customer to third parties if this is necessary under a statutory regulation. The New Motion does not need any consent from the Customer for these purposes.

## **20. Right of Withdrawal for Consumers**

- 20.1** This Article applies only to Distance Contracts for Products and/or Services concluded between The New Motion and a Customer who is also a Consumer.
- 20.2** Withdrawal by a Consumer is free of charge, which means that heT New Motion does not charge the Consumer any administrative costs or other costs in this regard.

### ***Right of Withdrawal for Products***

- 20.3** In the case of a Consumer Purchase the Consumer has the option to terminate the Contract without giving reasons during the Right of Withdrawal Period, which starts on the day after acceptance of the Product by or on behalf of the Consumer.
- 20.4** During the Right of Withdrawal Period the Consumer will handle the Product, the parts of the Product, the documentation supplied and the packaging with care. The Consumer will only unpack or use the Product to the extent necessary to decide whether it wishes to keep the Product.
- 20.5** The Consumer is entitled to test the Product during the Right of Withdrawal Period. In the case of purchase of a Charge Point the Consumer can carry out a test session to verify that the Charge Point is charging the Electric Vehicle. A Charge Point does not have to be installed for it to be tested.
- 20.6** The result of use of a Product involving more than the testing of the Product is that Product use exists, consequently the Consumer's right of withdrawal lapses. In the case of a Charge Point use exists, and the right of withdrawal therefore lapses, if the Consumer has had the Charge Point installed.
- 20.7** The right of withdrawal also lapses if the Consumer damages the Product.
- 20.8** A Consumer wishing to exercise its right of withdrawal must contact The New Motion by email to [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com) within the Right of Withdrawal Period. The Customer must then return the Product to The New Motion to the address given by The New Motion for this purpose, with all the accessories supplied, in the original packaging and (optionally) with signed model form within 14 days.
- 20.9** The costs of returning the Product are for the Customer's account.
- 20.10** As soon as the returned Product has been received by The New Motion or as soon as the Customer has shown that it has returned the Product to The New Motion, The New Motion will refund the amount paid by the Customer within 14 calendar days. The New Motion is entitled to charge the Customer any reduction in value of the Product if the Product has been damaged through the actions of the Customer.
- 20.11** The right of withdrawal is excluded if the Product has been made to the Customer's specifications (customisation).

### ***Right of Withdrawal for Subscriptions***

- 20.12** A Consumer may terminate a Subscription within the Right of Withdrawal Period, starting on the day after its conclusion, in writing and without any obligation by means of an email to this effect to [klantenservice@thenewmotion.com](mailto:klantenservice@thenewmotion.com).

### ***Right of Withdrawal for Other Services:***

- 20.13** When concluding a Distance Contract for the provision of Other Services the Consumer has the option to terminate the Contract without giving reasons within the Right of

Withdrawal Period, starting at the point that The New Motion has informed the Consumer by email that the order has been accepted for processing.

- 20.14** A Consumer wishing to exercise its right of withdrawal from Other Services must contact The New Motion to this end within the Right of Withdrawal Period by email to [installaties@thenewmotion.com](mailto:installaties@thenewmotion.com).
- 20.15** If the Consumer has already used the Service, then it is obliged to pay a proportionate part for it.
- 20.16** The New Motion will refund the amount paid by the Customer within 14 calendar days of the withdrawal, subject to offsetting of the payment for use, where relevant.
- 20.17** The right of withdrawal for Other Services lapses if the Contract to provide the Services has already been fulfilled by The New Motion and (a) this fulfilment started with the express prior agreement of the Consumer and (b) the Consumer has declared to waive its right of termination as soon as the provision by The New Motion has been fulfilled.

## **21. Other provisions and governing law**

- 21.1** The New Motion is entitled to change the content of the Services, the tariffs and the General Terms and Conditions unilaterally at any time. Changes take effect on the date of their publication on the Website or the Portal, unless otherwise stated, and supersede the General Terms and Conditions and/or tariffs applying until then. Changes in the General Terms and Conditions also apply in respect of current Contracts. Changes in the tariffs and Services apply as soon as the Contract concerned is renewed (tacitly or otherwise). If the Customer is unwilling to accept a change applying to it, it can cancel the Contract subject to 30 days' notice, unless the change is only a minor amendment of the General Terms and Conditions.
- 21.2** The New Motion is entitled to bring in third parties for the performance of the Contract.
- 21.3** If any provision of these general terms and conditions proves to be invalid or void, the other provisions remain in full force and the parties will mutually agree on a replacement provision, the purpose and the effect of the provision to be replaced being retained as far as possible.
- 21.4** Where the term "including" appears in these General Terms and Conditions, it means "including but not limited to".
- 21.5** The New Motion has an adequately published complaints' procedure and handles complaints according to this procedure.
- 21.6** Complaints about the execution of the Agreement must be submitted fully and clearly to The New Motion within 7 days after the Customer has taken notice of the cause of the complaint.
- 21.7** Complaints submitted to The New Motion are answered within 14 days from the date of receipt. If a complaint requires a longer period to process, The New Motion sends a confirmation of receipt within 14 days, and an indication on the term to expect a full answer.
- 21.8** If the complaint cannot be solved in mutual agreement, there is a dispute which qualifies for the dispute procedure.
- 21.9** Complaints, which cannot be solved in mutual agreement, are to be addressed to Stichting WebwinkelKeur ([www.webwinkelkeur.nl](http://www.webwinkelkeur.nl)), which will mediate free of charge. If after this a solution has not been found, the Customer must address the complaint to De Geschillencommissie ([www.degeschillencommissie.nl](http://www.degeschillencommissie.nl)). Its decision is binding and both The New Motion and the Customer agree with this decision. Costs are associated with submitting a complaint to this complaints' board, which need to be paid by the

Customer to the board. It is also possible to submit complaints via the European ODR platform (<http://ec.europa.eu/odr>).

- 21.10** The Contract and these General Terms and Conditions are governed by Dutch law. Any disputes connected with them and/or resulting from them must be submitted exclusively to the competent court in Amsterdam.