

Annex: General Terms and Conditions

1. Scope

1.1. The following General Terms and Conditions shall apply to all deliveries and services rendered by Digital Energy Solutions GmbH & Co. KG. They shall apply to all contracts concluded between Digital Energy Solutions GmbH & Co. KG and its contractual partners / clients with respect to any projects and products, the provision of Software as a Service and other digital services as well as to agreements for the provision and use of the web portal ENERGY MONITOR and the CHARGE POINT OPERATOR.

1.2. The General Terms and Conditions shall not apply if the parties, on a case-by-case basis, agree on a contractual provision that varies from the General Terms and Conditions.

1.3. The client's general terms and conditions shall not become an integral part of the contract, even if Digital Energy Solutions GmbH & Co. KG does not expressly object to such terms and conditions. Digital Energy Solutions GmbH & Co. KG's General Terms and Conditions shall only apply to businesses within the meaning of Section 14 Paragraph 1 of the German Civil Code.

2. Quotations

2.1. Any and all quotations submitted by Digital Energy Solutions GmbH & Co. KG shall be subject to change and considered non-binding, unless otherwise explicitly specified as binding. Digital Energy Solutions GmbH & Co. KG may accept orders or commissions within 14 days of receipt. An order shall become binding upon Digital Energy Solutions GmbH & Co. KG (conclusion of contract) either upon a written order confirmation or upon the start of the execution of the order by Digital Energy Solutions GmbH & Co. KG.

2.2. The prices and the scope of delivery and services stated in the quotations submitted by Digital Energy Solutions GmbH & Co. KG shall apply.

2.3. Specifications provided by Digital Energy Solutions GmbH & Co. KG regarding the subject matter of the delivery or service as well as the description of these specifications provided by Digital Energy Solutions GmbH & Co. KG are only approximations, unless they have been confirmed as binding in writing by Digital Energy Solutions GmbH & Co. KG, and/or unless the usability for the contractually intended purpose requires exact conformity with the specifications provided. They do not constitute guaranteed quality features, but descriptions or distinctive features of delivery or service. Variations that are usual in the trade and discrepancies that result from legal provisions or constitute technical improvements and the replacement of components or elements with parts of the same standard are permissible, provided they do not adversely affect their use for the purposes intended by the contract.

2.4. Deadlines and dates for deliveries and services indicated by Digital Energy Solutions GmbH & Co. KG are only approximate deadlines and dates, unless a fixed deadline or fixed date is expressly confirmed or agreed.

3. Terms of Payment

3.1. All invoice amounts and prices are exclusive of the applicable statutory value added tax.

3.2. Digital Energy Solutions GmbH & Co. KG shall be entitled to perform partial services and invoice these separately.

3.3. Monetary claims for the benefit of Digital Energy Solutions GmbH & Co. KG shall be due for payment 14 days after invoicing without any deduction.

3.4. Digital Energy Solutions GmbH & Co. KG shall be entitled to perform or render outstanding deliveries or services against advance payment or a security deposit if, after the conclusion of the contract, Digital Energy Solutions GmbH & Co. KG obtains notice of circumstances likely to significantly reduce the creditworthiness of the contractor / client and thus, render the contractor / client incapable of settling the monetary claims for the benefit of Digital Energy Solutions GmbH & Co. KG from the respective contractual relationship (including those from other individual orders covered by the same framework contract). The exercise of a right of retention or set-off against monetary claims for the benefit of Digital Energy Solutions GmbH & Co. KG is only possible if based on expressly acknowledged monetary claims or claims enforced by law.

4. Retention of Title

Items and documents supplied by Digital Energy Solutions GmbH & Co. KG shall remain the property of Digital Energy Solutions GmbH & Co. KG until full payment of all monetary claims for the benefit of Digital Energy Solutions GmbH & Co. KG against the client from the order, unless ownership is transferred to the client for legal reasons. This retention of title shall also apply to all other claims that Digital Energy Solutions GmbH & Co. KG is entitled to until all liabilities from the business relationship with the client have been settled. Digital Energy Solutions GmbH & Co. KG shall be entitled to transfer the ownership of the delivered items to the client and demand payment on account for the supply of the transferred items.

5. Warranty

5.1. If Digital Energy Solutions GmbH & Co. KG provides inadequate services, the client may demand supplementary performance within a reasonable period. If supplementary performance fails, the client shall be entitled to reduce the remuneration to be paid to Digital Energy Solutions GmbH & Co. KG. The client shall not be entitled to any additional warranty rights; the legal liability of Digital Energy Solutions GmbH & Co. KG shall remain unaffected thereby within the scope of the contractual regulations stipulated under Clause 6.

5.2. The warranty period shall be one year, unless the subject matter of the contract is a construction work or work whose success consists in the provision of planning or supervisory services. An obvious defect must be notified within two weeks from the beginning of the warranty period. An obvious defect is a defect that becomes apparent to a client who is not an expert without closer examination of the service rendered. The notification of a defect must be received in writing to be effective.

5.3. Claims for defects shall be excluded if the defect can be attributed to the violation of operating, storing, maintenance or installation instructions, unsuitable or improper use, incorrect or careless handling by the client or natural wear or tear. The same applies if products provided by Digital Energy Solutions GmbH & Co. KG are incorrectly installed by the client or by a third party commissioned by the client, or are otherwise carelessly handled or treated beyond the scope of the purpose of use, or if interruptions are due to inappropriate equipment, replacement materials, mechanical, chemical, electrochemical or electrical effects.

6. Liability

6.1. Unless otherwise stated in these General Terms and Conditions, including the following provisions, Digital Energy Solutions GmbH & Co. KG shall be liable in case of violation of contractual and noncontractual obligations in accordance with applicable legal provisions. Digital Energy Solutions GmbH & Co. KG shall be liable for damages – irrespective of the legal cause – in case of intent and gross negligence. In the case of simple negligence, Digital Energy Solutions GmbH & Co. KG shall only be liable for damages resulting from loss of life, personal injury or damage to health or for damages from the violation of a material contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partners can regularly rely on); in this case, the liability of Digital Energy Solutions GmbH & Co. KG shall be limited to the replacement of the foreseeable, typically occurring damage. Liability for indirect damages, i.e., loss of profit, consequential damages and damages, which were typically not foreseeable upon the conclusion of contract – shall be excluded, except in the case of intent or gross negligence – irrespective of the legal reason. Exclusion or limitation of the liability of Digital Energy Solutions GmbH & Co. KG shall also apply to the legal representatives and vicarious agents of Digital Energy Solutions GmbH & Co. KG. If Digital Energy Solutions GmbH & Co. KG provides technical information or acts as an advisor and if this information or advice is not part of the contractually agreed scope of delivery, it shall be made at no expense and under the exclusion of any liability.

6.2. In the case of culpably caused default Digital Energy Solutions GmbH & Co. KG shall only be obliged to pay the current statutory rate of interest on arrears; liability for any other losses caused by default shall be – to the extent permitted by law – excluded.

7. Termination

Contracts of unlimited duration may – subject to Sentence 2 – be terminated by either party with a notice period of 3 months to the end of a calendar quarter. For contracts with a limited term or minimum term, ordinary termination during the contract term and/or the minimum contract term shall be excluded. The right of termination of the contract for cause shall remain unaffected. Termination shall only be effective if made in writing. Extraordinary termination for cause expressed by Digital Energy Solutions GmbH & Co. KG is particularly indicated after setting and unsuccessful expiry of a reasonable deadline for remedial action, if the client is in default of payment with his payment obligation for more than 14 days, or if the client violates essential client obligations and does not remedy such violation within 14 days after being requested to do so.

8. Subcontracting

Digital Energy Solutions GmbH & Co. KG shall be entitled to have all or part of the contractual services performed by a third party commissioned by Digital Energy Solutions GmbH & Co. KG.

9. Protection of Intellectual Property

9.1. If Digital Energy Solutions GmbH & Co. KG provides or makes accessible to the client documents or files, especially plans, drawings, statements, calculations, information etc. within the scope of the order execution, all intellectual property rights (i.e. copyrights) in it shall exclusively remain with Digital Energy Solutions GmbH & Co. KG and Digital Energy Solutions GmbH & Co. KG grants the client the right of use limited to the term of the contractual relationship and to the purpose required for implementing the contract.

9.2. All rights of use under copyright law, data, industrial property rights and legal positions similar to intellectual property rights created by Digital Energy Solutions GmbH & Co. KG during the provision of the services under this contract and all other written, machine-readable and other work results created within the scope of the provision of services shall remain the property of Digital Energy Solutions GmbH & Co. KG.

10. Other provisions

10.1. The relationship between Digital Energy Solutions GmbH & Co. KG and the client shall be exclusively governed by the laws of the Federal Republic of Germany. Jurisdiction for any disputes arising from the business relationship between Digital Energy Solutions GmbH & Co. KG and the client shall be Munich with Digital Energy Solutions GmbH & Co. KG being entitled to file an action against the client with the competent court at the client's place of business.

10.2. Verbal collateral agreements to this contract do not exist. Amendments and supplements as well as the cancellation of the contract require the written form to be effective. This shall also apply to the abolition of this written form clause. If this contract or the General Terms and Conditions contain loopholes, the legally effective provisions to fill these loopholes that are deemed to be agreed are those that the parties would have agreed, had they been aware of the loopholes in order to fulfil the economic objectives of the contract and the purpose of these General Terms and Conditions.

11. Permission for data processing

11.1. Digital Energy Solutions GmbH & Co. KG shall be entitled to process all data obtained in the context of the business relationship relating to the client within the scope of applicable legal provisions. Order processing is performed by Digital Energy Solutions GmbH & Co. KG by means of automatic data processing. The client hereby expressly consents to the processing of the client data which Digital Energy Solutions GmbH & Co. KG obtains within the scope of the contractual relationship and which are necessary for order processing.

11.2 User-related data received or collected by Digital Energy Solutions GmbH & Co. KG within the scope of the business relationship with the client may be used in anonymized form for research and/or commercial purposes (i.e. quality control or advancement of services) and forwarded to third parties to be used by them accordingly; expressly excluded from this are personal data.