

# Safe, Scalable, Simple energy storage



**We build**  
modular, flexible and  
scalable



**We are**  
here to contribute to  
the global energy  
transition



**We believe**  
in a sustainable  
future

## About SmartGrid

We believe that within the energy transition, energy storage is the foundation from which great systems and solutions are built. Our systems are designed for the most demanding applications and will stand the test of time. Discover the SmartGrid® energy storage system that's right for you.

Europalaan 202  
7559 SC Hengelo (OV)  
The Netherlands  
+31 88 020 3900  
info@SmartGrid.com



## GENERAL TERMS AND CONDITIONS OF SALE SMART GRID B.V.

### Article 1. Definitions

- 1.1 In these General Terms, the following words and expression shall have the following meanings except where the context otherwise requires:  
 "Customer" means the person or persons, firm or company procuring the Product(s) or Services.  
 "General Terms" means these General Terms and Conditions of Sale & Service.  
 "Party" means the Customer or Smart Grid and "Parties" means both of them.  
 "Product(s)" means the energy container offered for sale by Smart Grid.  
 "Smart Grid" means Smart Grid B.V. including its successors, agents and assigns.
- 1.2 The headings in these General Terms are for convenience only and shall be ignored in construing these General Terms and shall not affect their interpretation.
- 1.3 Words (including words defined in the Agreement) importing the singular also include the plural and vice-versa where the context requires. The words "written" and "in writing" include any means of visible reproduction.
- 1.4 All offers, order confirmations, tenders, deliveries or agreements of product(s) offered for sale are subject to these General Terms. The applicability of any other terms and conditions (such as the Customer general terms of purchase) is expressly excluded. Deviating stipulations and any general purchase conditions of the Customer apply only to the extent that such deviating stipulation or purchase conditions have been expressly accepted by Smart Grid in writing, and only for the agreement with regard to which they have been accepted. Any other general terms and conditions are explicitly excluded by Smart Grid.
- 1.5 Accepting an offer and/or placing an order implies that the Customer accepts the applicability of these General Terms.
- 1.6 Orders and changes thereto shall be binding for Smart Grid only if they have been accepted and confirmed by Smart Grid in writing. Smart Grid reserves the right to refuse to carry out an order, without stating the reasons. Smart Grid cannot be held liable for any direct or indirect damage arising from such refusal.
- 1.7 These General Terms shall apply for the entire duration of the business relationship, i.e. for subsequent requests, negotiations or agreements as well.

### Article 2. Offers/Agreements

- 2.1 All offers of Smart Grid and the prices and conditions stated in those offers are always non-binding offers. Smart Grid expressly reserves the right to revoke the offer or to change the prices at any given time, particularly when required to do so pursuant to statutory provisions or pursuant to price increased by its suppliers.
- 2.2 Illustrations, drawings, specifications of dimensions and weight which form the basis of the offer or order confirmation, shall as a rule only be seen as approximate values, insofar as they are not exclusively designated to be binding.
- 2.3 All offers of Smart Grid are subject to subsequent correction in case of any errors, including typographical and clerical errors and errors in engineering.
- 2.4 An agreement between the Customer and Smart Grid is concluded subject to the acceptance of the Customer's order by Smart Grid. Smart Grid is entitled to refuse orders and/or to attach certain conditions to the delivery. If an order is not accepted, Smart Grid shall use reasonable efforts to notify the Customer within five (5) working days of receiving the order and Smart Grid shall immediately refund any amounts paid, if any. Smart Grid reserves the right to also refuse orders after five (5) working days of receiving the order.
- 2.5 Smart Grid shall be and remains the owner of all documents, supplied models, samples or examples relating to offers or an agreement, and these cannot be supplied to or made available to third parties for inspection, or multiplied or imitated in any way without the written approval of Smart Grid. Upon request of Smart Grid, such documents, supplied models, samples or examples shall be returned to Smart Grid within fourteen days in sound condition, DDP in conformity with the Incoterms 2010.

### Article 3. Prices and payment

- 3.1 Prices and rates are in Euro, exclusive of VAT. The prices are on ex works Smart Grid factory basis in conformity with the Incoterms 2010 and exclusive of handling and dispatch costs, travel and accommodation cost and taxes or other levies imposed by any applicable government, such as withholding taxes or import duties, unless stated otherwise in writing.
- 3.2 All payments shall be made according to the agreed payment conditions without setoff or any other form of deduction to the designated bank account. Payments are deemed to have been made at the time at which it is received on Smart Grid's bank account. Payment will be made in full before delivery of the Product(s) unless explicitly otherwise agreed in writing by Smart Grid for a specific order.
- 3.3 If the Customer fails to make full payment on the due date, then the Customer will automatically be in default and without prejudice to any other right or remedy available to Smart Grid, Smart Grid shall be entitled to:
- terminate the Agreement or suspend any further Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
  - at its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and Smart Grid, including but not limited to deposits or security payments, towards the payment of the relevant invoice; and/or
  - charge the Customer interest on the amount unpaid on a daily basis at the rate of five per cent (5%) per annum above the average interest rate from the due date until payment in full is received by Smart Grid. All legal fees for collecting the outstanding amount shall be for the account of Customer.
- 3.4 The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to Smart Grid unless agreed in writing by Smart Grid.
- 3.5 If the cost price or the prices at which Smart Grid purchases parts, product(s) and/or services offered by third parties are subject to change or in the event of changes in law or engineering standards applicable to or affecting the Product(s) between the day on which the agreement with the Customer was entered into and the day of delivery, Smart Grid shall be entitled (at its option) to increase the price accordingly or to cancel the order. Smart Grid cannot be held liable for damage arising directly or indirectly from such amendment and/or cancellation. In the event of such price increase, the Customer is entitled to cancel the order free of charge within ten (10) days of Smart Grid having announced the price increase.
- 3.6 Disputes between the Customer and Smart Grid regarding quality, delivery or any other complaint submitted by the Customer shall not entitle the Customer to suspend payment or terminate the agreement.
- 3.7 The prices and rates are based on uninterrupted performance. In case of a delay in the performance, which is the consequence of circumstances on the Customer's side, the Customer is obliged to pay Smart Grid for the extra costs that are the consequence of such delay.

### Article 4. Transport and shipping

- 4.1 Unless agreed otherwise, prices and deliveries are ex works Smart Grid factory in conformity with the Incoterms 2010 and exclusive of any shipping and transportation costs. In case Smart Grid assists in any way with the loading of the Product(s), the Customer shall release, indemnify and hold harmless Smart Grid from any responsibility or liability relating hereto.
- 4.2 If Parties agree that Smart Grid will arrange the transport of the Product(s), the shipping and insurance costs shall be borne by the Customer. Smart Grid will indicate such costs separately on the invoice.
- 4.3 The transport shall take place at the Customer's risk, even if the carrier has explicitly stipulated that all shipping documents must state that any and all damage resulting from the transport shall be at the expense and risk of the sender.
- 4.4 Any delivery time frames communicated by Smart Grid are for indicative purposes only. If Smart Grid exceeds the delivery term, this does not give the Customer any right to claim any compensation, nor does it give the Customer the right to cancel the Customer's order or to terminate the agreement, unless the delivery term has been demonstrably exceeded to such extent that the Customer cannot reasonably be expected to honor the agreement. In that event, the Customer is entitled to cancel the order and/or to terminate the agreement by means of a written notice. Such cancellation or termination is subject to the Customer returning any Product(s) already delivered to the Customer to Smart Grid at Customer's cost.
- 4.5 The cancellation of orders is subject to the written confirmation of Smart Grid. In the event of cancellation Smart Grid shall be entitled to claim compensation of costs it had to make related to the order, such as, but not limited to dispatch costs if the order was already dispatched but not collected or purchase of raw material or components that cannot be used for other Customers. Any such costs shall be charged to the customer or set off from any amount already paid by the Customer.

- 4.6 The ordered Product(s) are delivered to the address as indicated by the Customer when ordering. If the Customer wants to change the delivery address before the moment of dispatch, the Customer must notify Smart Grid of such new address in writing. A change of address may be subject to administration costs and/or a higher handling fee and dispatch costs.

**Article 5. Components supplied by or on behalf of the Customer and other obligations of the Customer**

- 5.1 If the Customer has undertaken to supply components for the manufacturing of the ordered Product(s), these components must be delivered DDP in conformity with the Incoterms 2010 at the Smart Grid factory, free of charge, in time for the manufacturing process.
- 5.2 Notice of defect of the components will be made by Smart Grid as soon as the defect is evidential within a normal course of business. The Customer herewith waives the objection of a late notification of defects.
- 5.3 In case of delayed or defective delivery or deficient quality of such components, all possible agreed upon delivery times will end and the Customer shall indemnify and hold harmless Smart Grid for any additional costs and expenses as well as for damages and losses incurred because of such delay, deficiency or defectiveness. In these events, Smart Grid is entitled at its discretion to interrupt the manufacturing process until receipt of such components in the adequate and proper form, quantity and quality and in accordance with the order.
- 5.4 The Customer shall at all times take care of and at its own expense and risk guarantees that:
- all licenses and permits required and necessary for the execution of the agreement are present;
  - all local, regional and national regulations regarding planning have been complied with;
  - the Customer shall act in accordance with all applicable laws and regulations, including, but not limited to those relating to recycling.
- 5.5 Damages and expenses resulting from failure to (timely) comply with conditions contained in this Article, will be for the account and risk of the Customer.

**Article 6. Delivery, delivery period and acceptance**

- 6.1 Unless agreed otherwise, the period of delivery begins at the latest of the following moments:
- date of the order confirmation by Smart Grid;
  - date of approval of the final drawings by the Customer;
  - date of fulfilment of all technical, administrative, commercial and financial requirements on the part of the Customer;
  - the date on which Smart Grid receives the payment for the Product(s).
- 6.2 Delivery dates and delivery periods given in offers or order confirmations and/or other written correspondence are guidelines only and are never fatal. If, in deviation of the aforementioned, a firm delivery date is expressly agreed upon between Parties and this firm delivery date is exceeded, Customer shall provide Smart Grid with a written notice giving Smart Grid the possibility to remedy the delivery within a reasonable period of at least 15 business days.
- 6.3 Partial deliveries are allowed.
- 6.4 As of the moment of delivery by Smart Grid, the Customer shall have care, custody and control of the Product(s) and shall carry the full risk of the Product(s).
- 6.5 If Smart Grid has notified the Customer that the Product(s) is ready and the Customer requests a delayed delivery, Smart Grid reserves the right to charge the costs related to the delayed delivery (including, but not limited to, storage and transport costs) to the Customer. Smart Grid shall be entitled to send an invoice to Customer as if the Product(s) was delivered on the initially indicated delivery date.
- 6.6 The place of performance shall be the place of the Smart Grid factory where the Product(s) is delivered.

**Article 7. Retention of ownership**

- 7.1 Ownership of the Product(s) that has been delivered to the Customer shall pass to the Customer upon payment of the entire purchase price, including interest and costs to Smart Grid as stipulated in the agreement. Any risk in respect of the Product(s) shall pass to the Customer at the time of delivery in accordance with the applicable Incoterm. It shall be duty of the Customer to store and control the Product(s) with due care.

**Article 8. Extra work to the Products and Cancelled Delivery of the Product(s)**

- 8.1 The performance of additional work to the Product(s) or the cancellation of the delivery of the Product(s) must be agreed in advance in writing. If the work to the Product(s) is varied without any such written agreement, Smart Grid shall be entitled to determine the price for such additional work to the Product(s) in question unilaterally and Smart Grid will charge Customer separately on the basis of the usual prices and rates.

**Article 9. Acceptance and completion**

- 9.1 The Product(s) shall be considered to have been accepted as follows:
- if no acceptance test has been agreed: upon delivery; or
  - if the Parties have agreed on an acceptance test in writing: on the first day following the test period; or
  - if the Customer has made any use of the Product(s) prior to the moment of acceptance: upon commencement of that use.
- 9.2 The Customer may not withhold acceptance on grounds other than those relating to the specifications expressly agreed between the Parties, nor on the ground of minor errors, which are understood to mean errors which do not stand in the way of the Product(s)'s use or productivity.

**Article 10. Notice of defects**

- 10.1 Upon delivery or immediately after performance the Customer is obliged to immediately verify whether the Product(s) is damaged or defective. In the event that any such damage or defect has arisen, the Customer must notify Smart Grid thereof as soon as possible, in any event no later than three (3) days of delivery, by means of accurate, written statement, stating the damage or defect and where possible a photograph. Failure to inspect the Product(s) and inform Smart Grid within the stated time or the use of the Product(s) at any time shall be conclusive evidence that Smart Grid has satisfactorily tendered delivery. At the request of Smart Grid, the Customer is obliged to send the defective Product(s) to the Smart Grid factory, DDP in conformity with the Incoterms 2010.
- 10.2 In the event that the Customer demonstrates that any of the delivered Product(s) do not conform to the agreement, Smart Grid (at its option, upon having received those Product(s) returned by the Customer) has the option to either repair or replace such Product(s) by new Product(s), or to refund the invoice value, exclusive of any dispatch costs.
- 10.3 If a Product(s) is manufactured based on instructions of the Customer, warranty for the efficiency/operability and warranty of fitness of the Product(s) for a specific purpose are expressly excluded. Any warranty in relation to parts delivered by the Customer are expressly excluded.
- 10.4 Disputes between the Customer and Smart Grid regarding quality, delivery or any other complaint submitted by the Customer shall not entitle the Customer to suspend payment.
- 10.5 Return of a defective Product(s) is only allowed after the prior written approval of Smart Grid. In case a Product(s) is to be returned such return shall be at the sole risk and cost of the Customer (DDP in conformity with the Incoterms 2010). Acceptance of the returned Product(s) or Smart Grid's examination of the defect does not entitle Customer to any claims or legal consequences. Smart Grid does not warrant any fitness for purpose or suitability for a specific use whatsoever.

**Article 11. Warranty and liability**

- 11.1 Smart Grid grants a two year limited warranty for damages caused by manufacturing defects starting at the time of delivery. Damages caused by manufacturing defects do not include damage resulting from (a) normal wear and tear, (b) short circuit, (c) overcharging, (d) deep discharging, (e) overheating of Smart Grid Product(s), (f) failure of the distribution network (g) installation or maintenance of the Smart Grid Product(s) by persons unskilled to work with electro-technical devices or components, (h) any other wrongful use contrary to the Smart Grid's operation or maintenance manual or the safety instruction, (i) any use contrary to the product specification of that Product(s), (j) disassembly, modification or repairs not done by Smart Grid (k) any acts of force majeure or otherwise caused from the outside. Any costs incurred outside the repair or replacement will be charged separately to the Customer (if applicable: travel costs, man-hours, transport, installation, removal, etc.).

- 11.2 The warranty period for parts of the Product(s) which have been repaired or replaced under the warranty, shall be limited to twelve (12) months from the date of repair or delivery of the replacement, unless the remaining part of the period mentioned in Clause 11.1 is longer. The length of the warranty for such parts of the Product(s) shall, however, under no circumstances extend beyond two years after the completion of the first warranty work.
- 11.3 Smart Grid makes no warranty, whether express or implied, including without limitation any implied warranty of merchantability and fitness for a particular purpose or any warranty arising from any course of dealing, course of performance or usage of trade and specifically disclaims any representation or warranty that the Product(s) will meet Customer's requirements, perform any specific function or achieve a desired result other than expressly stated by Smart Grid in writing.
- 11.4 Any liability to the Customer in any case ceases to apply in the event that the Customer fails to notify Smart Grid of the existence of the defect within ten (10) days of having discovered the defect, in writing, in order to enable Smart Grid to investigate the damage. Some of Smart Grid's Product(s) electronically store usage data, including charging/discharging data, in order to enable Smart Grid to analyze such data retroactively when investigating damage.
- 11.5 Smart Grid is only liable to the Customer for damage to the Product(s) supplied if and to the extent that this damage is the direct and immediate result of a shortcoming in the fulfilment of the agreement by Smart Grid and to the extent that this damage is the direct and immediate result of a shortcoming in the fulfilment of the agreement by the Smart Grid.
- 11.6 Notwithstanding anything to the contrary in the Agreement, Smart Grid's total cumulative liability for any act or omission, whether in contract, at law (including negligence or strict liability), any legal or equitable theory or otherwise, shall not exceed in the aggregate 50% of the invoice amount of the relevant Product(s) in the order confirmation, unless such damage has been caused by gross negligence or willful misconduct of Smart Grid. Smart Grid can never be held liable for:
- loss of or damage caused by any of the circumstances mentioned in Clause 11.1 and 11.3, leading to damage to the Smart Grid Product(s) and/or to any other device, object, person or (other) property located near those Product(s) and/or
  - consequential or indirect loss, howsoever caused or arising, including but not limited to and whether directly or indirectly caused, any loss of profit (actual or anticipated), loss of use, loss of production (including loss of hydrocarbons), loss of contracts, loss of opportunities, loss of revenue, cost of capital, costs of replacement, loss of goodwill, loss of reputation, loss of information or data, loss from any third party contracts, loss due to business interruption, loss of interest, loss of power, cost of purchased or replacement power, contractual claims from third parties or any indirect, incidental, special or consequential losses or damages arising from or in connection with its performance or non-performance under this Agreement and whether based upon contract, tort, or any other legal theory.
- 11.7 To the extent that a court determines that the limitation of liability as meant in this Article 11 cannot be invoked against a particular claim for damages by the Customer, Smart Grid's liability for loss of property, damage to property, and bodily injury (including death) caused by the application of those particular Smart Grid Product(s) shall in any event be limited to the amount actually paid out by Smart Grid's insurance company to Smart Grid in accordance with the insurance cover of that insurance policy for that particular type of loss or damage. Smart Grid has taken out insurance against certain risks, as described in the respective insurance policies. These policies contain a usual limitation of insurance payment to be paid out to Smart Grid if, and to the extent that, the event is a covered event.
- 11.8 Any and all consequences of the use of the Product(s) by the Customer as a single source of energy supply and storage, are for the sole risk and account of the Customer.
- 11.9 Customer is obligated to indemnify, defend and hold Smart Grid harmless for and from all claims of third parties for compensation of damages in connection with the delivered Product(s).

#### **Article 12. Termination**

- 12.1 In case of a cancellation or termination of the agreement by the Customer, Smart Grid is entitled to compensation of the total value of the agreement, including the calculated profit. In case of a rightful cancellation by the Customer on the basis of Clause 12.2 sub a, Smart Grid is entitled to reimbursement of the costs Smart Grid has made up and until the moment of cancellation.
- 12.2 Both Parties have the right to cancel the agreement in the following cases only:
- There is a deliberate or gross failure in the fulfilment of material obligations under the agreement by the other Party, and this failure is not remedied within a reasonable period given in writing by the affected Party; or
  - The other Party ceases or threatens to cease carrying on its business, becomes insolvent, files an application for bankruptcy, enters into a composition with its creditors or goes into liquidation.
- 12.3 Termination of the Agreement by Smart Grid shall not discharge the Customer from any existing obligation accrued due on or prior to the date of termination.
- 12.4 The rights and remedies granted to Smart Grid pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

#### **Article 13. Legal succession and Assignment**

- 13.1 Orders are binding also on the legal successor of the Customer or Smart Grid. The rights and obligations as determined in the agreement and these General Terms may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. The aforementioned will not apply in case of assignment to legal successor(s). Such an assignment will be valid upon the notification to the other party in writing.
- 13.2 Notwithstanding the foregoing Smart Grid may assign or subcontract its obligations under the agreement to third parties.

#### **Article 14. Force majeure**

- 14.1 Smart Grid shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of Smart Grid' obligations in relation to the Services, if the delay or failure was due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of Smart Grid such as, but not limited to any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. If any delay in performing, or any failure to perform the Agreement is caused by the delay of a subcontractor, supplier or service provider of Smart Grid, and is beyond the control and without the fault or gross negligence of Smart Grid, Smart Grid shall incur no liability for such delay.
- 14.2 Smart Grid shall inform the Customer and ensure that any inconvenience for the Customer is kept to a minimum. In the event that Smart Grid is hindered by reason of a force majeure event, Smart Grid is entitled to extend the delivery date by an appropriate period. In the event that the force majeure situation continues to exist for more than three months or as soon as it becomes evident that it shall continue to exist for more than three months, Smart Grid shall have the right to terminate the agreement, in whole or in part, insofar as it has not been carried out, and to claim payment for the parts carried out, without any obligation to pay damages to Customer.

#### **Article 15. Export Controls**

- 15.1 The fulfilment of the Agreement on Smart Grid's part is conditional upon the following:
- all necessary export licenses, permits, licenses and other permissions being obtained by the Customer from the relevant authorities for the destination and intended use of the Energy Container and/or Services;
  - If Smart Grid is required to have any permit or license from any governmental or other regulatory authority, such permit or license being granted to the Smart Grid at the required time;
  - such performance shall not be prevented by impediments on the grounds of national and international legal requirements, including but not limited to export control regulations, customs requirements, embargoes or other sanctions.
- 15.2 The Customer shall comply with all relevant statutes, rules and regulations and bye-laws affecting its obligations and the performance of the Agreement (including any laws and regulations concerning the export, re-export or import of Energy Container, technology or technical data and Services) and shall obtain at its own costs and expenses all necessary authorizations, permits and licenses. Smart Grid may suspend performance if the Customer is in violation of applicable laws or regulations.



# SmartGrid

CLEAN ENERGY STORAGE SYSTEMS

- 15.4 If the Customer transfers any Energy Container (hardware and/ or software and/ or technology as well as corresponding documentation regardless of the mode of provision and including all kinds of technical support) delivered or performed by Smart Grid or Services (including all kinds of technical support) to a third party, the Customer shall comply with all applicable national and international (re-) export control regulations.
- 15.5 Prior to any transfer of the Energy Container and/or Services provided by Smart Grid to a third party, the Customer shall in particular check and guarantee by appropriate measures that:
- (i) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those Energy Container and/or Services or by provision of other economic resources in connection with those Energy Container and/or Services, also considering the limitations of domestic business and prohibitions of by-passing those embargos; and
  - (ii) Such Energy Container and/or Services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
  - (iii) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- 15.6 If required to enable authorities or Smart Grid to conduct export control checks, the Customer, upon request by Smart Grid, shall promptly provide Smart Grid with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Energy Container and/or Services provided by Smart Grid, as well as any export control restrictions existing.
- 15.7 The Customer shall indemnify and hold harmless Smart Grid from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Customer, and the Customer shall compensate Smart Grid for all losses and expenses resulting thereof.

## Article 16. Intellectual property and other protected rights

- 16.1 Where Product(s) are manufactured on the basis of ideas, proposals, models, drawings or samples of the Customer, the Customer guarantees that no protected rights of third parties are breached. In any legal proceedings relating to the (alleged) infringement of patent rights, trademark rights, protection of designs, trade secrets or copyrights of third parties, the Customer will indemnify and hold harmless Smart Grid from all (damage) claims of third parties and resulting costs. The Customer shall participate in or take over legal proceedings immediately if Smart Grid asks Customer to do so.
- 16.2 The Customer acknowledges that any ideas, discoveries, inventions, patents, designs, samples, works protected by copyright, design rights, trademarks, and trade secrets and all knowhow or other intellectual property related to the Energy Container and/or any product(s) manufactured or generated within the execution of an agreement, and all techniques applied by Smart Grid to execute this Agreement, preliminary to or upon processing of an order or other rights arising directly or indirectly out of or in the performance of this Agreement shall always remain or become as the case may be the exclusive sole (intellectual) property of Smart Grid.
- 16.3 Other than as specifically provided for in this General Terms, nothing in these General Terms assigns, transfers or grants a license to a Party over or in relation to pre-existing intellectual property rights owned by the other Party, Smart Grid's supplier or a third party.

## Article 17. Confidential information and confidentiality

- 17.1 All intellectual property rights in all materials (whether in hard copy or electronic form) which Smart Grid creates or supplies to the Customer in the course of performing the Services under this Agreement will, as between the Parties, be owned by Smart Grid. Upon request of Smart Grid, the Customer shall return this information to Smart Grid, in sound condition within fourteen (14) days, or destroy it.
- 17.2 The Customer acknowledges the confidential nature of, and the technology and design of the replacement parts and spare parts for the Energy Container and items associated with the Energy Container including, but not limited to, documentation, forms, trade marks, instructions, operating manuals, business information, know-how concerning Smart Grid and other information.
- 17.3 The Customer shall not, without Smart Grid' prior consent in writing, copy or cause to be copied or disclosed any details of such technology, design, procedure or items to a third party.
- 17.4 The Customer may only make use of such details to the extent necessary to enable the Energy Container to be used in a manner reasonably contemplated by Smart Grid.
- 17.5 The Customer may only disclose such details to those of its employees by whom it is required to enable the Energy Container to be used in a manner reasonably contemplated by Smart Grid.
- 17.6 Notwithstanding the confidentiality obligations of the Parties, the Customer hereby agrees that Smart Grid may use the name of the Customer and general information about the project for publicity and reference purposes.
- 17.7 The Customer's obligations under this clause 17 shall survive the termination of this Agreement.

## 18. Personal data

- 18.1 If the Customer receives personal data from Smart Grid within the framework of the agreement, regarding which the Customer qualifies as a processor, the Customer guarantees that the Customer complies with the General Data Protection Regulation and all other applicable laws and regulations regarding data protection (hereinafter referred to as 'GDPR'). In that case, Parties will make further arrangements in a data processing agreement. Parties will also conclude a data processing agreement if Smart Grid receives personal data from the Customer within the framework of the agreement regarding which Smart Grid cannot be considered to be the controller.
- 18.2 If the Customer has to be considered to be the controller under the GDPR, the GDPR applies directly to the Customer and the Customer guarantees that it acts in accordance with the GDPR.

## Article 19. Business Ethics

- 19.1 Both Parties shall uphold the highest standards of business ethics in the performance of the agreement. Honesty, fairness and integrity shall be paramount principles in the dealings between the Parties.
- 19.2 Neither Party shall knowingly involve itself in any business in connection with, or use information arising from, the agreement, in any manner which conflicts with the interests of the other Party.
- 19.3 Both Parties agree that they will not, directly or indirectly, receive from, or give or offer to give to each other, or to other suppliers, or to government officials or any other persons anything of material value which would be regarded as an improper inducement to any party. Any breach of this obligation shall constitute a material breach of the agreement.

## Article 20. General Provisions

- 20.1 Smart Grid is a member of the group of companies ("the Smart Grid group of companies") and accordingly Smart Grid may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of this group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Smart Grid. The Customer shall not assign any of its rights or obligations under the Agreement without the prior written consent of Smart Grid, such consent to be signed by its authorized representatives. Smart Grid may sub-contract the performance of this Agreement or any part of this Agreement without obtaining the prior consent of the Customer.
- 20.2 The fulfillment of the Agreement on Smart Grid' part is subject to the proviso that this shall not be prevented by impediments on the grounds of national and international legal requirements.
- 20.3 Any notice required or permitted to be given by either Party to the other under the Agreement shall be in writing and signed by the authorized representatives of the Party addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the Party giving the notice. Notices may be delivered by hand, or by prepaid registered post or by facsimile and shall be deemed to have been served:
- (i) if by hand, at time of delivery;
  - (ii) if by prepaid registered post, 3 working days after posting;
  - (iii) if by facsimile, on the date printed on the facsimile transmission report produced by the sender's machine.
- 20.4 No waiver by either Party of any breach of the Agreement by the other Party shall be considered as a waiver of any subsequent breach of the same or any other provision. If either Party delays, neglects or chooses not to enforce its right under the Agreement, it shall not affect its right to do so at a later date.
- 20.5 If any provision of the Agreement or these General Terms is held by any competent authority to be invalid or unenforceable in whole or in part such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of





# SmartGrid

CLEAN ENERGY STORAGE SYSTEMS

- the other provisions of the Agreement and these Conditions and the remainder of the provision in question shall not be affected but shall remain in full force and effect.
- 20.6 No terms shall survive the expiry or termination of the Agreement unless expressly provided.
- 20.7 This Agreement is the entire agreement between the Parties and may not be changed unless agreed in writing by properly authorized representatives of both Parties.
- 20.8 The relationship between Smart Grid and the Customer is one of independent contractor and nothing in this Agreement shall be construed as creating any relationship of partnership, employment, joint venture or agency between Smart Grid and the Customer.
- 20.9 Save for the Smart Grid group of companies, the Parties do not intend that any term of the Agreement should be enforceable, by virtue of the Contracts Rights of Third Parties Act or otherwise, by any person who is not a party to the Agreement.

#### **Article 21. Applicable Law and Disputes**

- 21.1 All rights, obligations, offers, orders and agreements to which these General Terms apply are governed solely by the Laws of the Netherlands with the exclusion of the rules of international conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is also excluded.
- 21.2 The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations between representatives of the Parties, the dispute shall be referred to the management of each Party who will meet in good faith in order to try and resolve the dispute.
- 21.3 All negotiations connected with the dispute will be conducted in complete confidence and the Parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality and such negotiations shall be without prejudice to the rights of the Parties in any future proceedings.
- 21.4 In the event any such dispute is unresolved after thirty (30) days of the commencement of such negotiations referred to in Clause 17.2, such disputes arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be exclusively submitted to the competent court in the district of Amsterdam, the Netherlands, unless Smart Grid chooses to submit the dispute to any other competent court.

#### **Article 22. Language**

- 22.1 These General Terms have been drafted in English. In case of discrepancies between the English version and any translated version the original English version shall prevail in all cases.