

1. Definitions

1.1. In these Terms and Conditions the following definitions apply:

Service Provider: Autarco Group BV or any of its legal subsidiaries

Beneficiary: Client or the buyer who enters into an Agreement with Autarco for the sale of Services;

Services: Services that directly or indirectly related to Autarco's Energy Management offering;

Agreement: The agreement between Autarco and Customer to purchase Services.

2. Recitals

- 2.1. Autarco BV ("Service Provider") is the provider of the Energy Management System (EMS) solution.
- 2.2. The Beneficiary has installed a solar energy system and seeks to optimize its performance through the EMS provided by the Service Provider.
- 2.3. The Beneficiary has installed a solar energy system and seeks to optimize its performance through the EMS provided by the Service Provider.
- 2.4. Service Provider agrees to provide EMS services to the Beneficiary under the terms and conditions stated in this Agreement.

3. Scope of Services

- 3.1. Service Provider will deliver the following services, subject to their purchase by the Beneficiary:
 - A. Negative Price Response: Managing energy usage to respond to negative electricity prices, including adjusting energy consumption patterns to take advantage of negative pricing periods.
 - B. Smart Charging: Optimizing the charging of batteries to ensure efficient energy use and cost savings.

4. Performance Guarantee

- 4.1. Service Provider guarantees the effective functioning of the EMS as per the specifications agreed upon.
- 4.2. If a kWh Guarantee has been issued before signing the EMS contract, the following terms will be added to the already signed kWh Guarantee:
 - 4.2.1. Any period during which the System's inverter is shut off or power production is curtailed due to negative energy prices as controlled by the Energy Management System.

5. Obligations

- 5.1. The Beneficiary agrees to:
 - 5.1.1. Ensure that the EMS is connected to a stable internet connection.
 - 5.1.2. Allow Service Provider access to the EMS for maintenance and troubleshooting.
 - 5.1.3. Notify Service Provider of any changes or issues that may affect the EMS performance.
 - 5.1.4. Contact the Dealer/Installer for all other service needs and refrain from demanding support outside the EMS contract from Autarco.
- 5.2. The Service Provider agrees to:
 - 5.2.1. Conduct regular maintenance and updates specifically for the EMS to ensure it operates efficiently and effectively.
 - 5.2.2. Ensure that all data collected from the EMS is stored securely and used in compliance with applicable data protection laws and regulations.
 - 5.2.3. Protect the confidentiality and integrity of the Beneficiary's data and prevent unauthorized access or disclosure.
 - 5.2.4. Implement any necessary upgrades or improvements to the EMS to enhance its functionality and performance.
 - 5.2.5. Ensure timely and professional communication with the Beneficiary regarding any EMS service-related matters.

6. Liabilities

- 6.1. Liability of the Service Provider:
 - 6.1.1. The Service Provider shall not be liable for any indirect, incidental, special, consequential, or punitive damages, including but not limited to loss of profits, data, or use, incurred by the Beneficiary or any third party, whether in an action in contract, tort, strict liability, or imposed by statute or otherwise, even if advised of the possibility of such damages.

- 6.1.2. The Service Provider's total liability under this Agreement shall not exceed the amount paid by the Beneficiary for the EMS services during the twelve (12) months preceding the event that gave rise to the liability.
- 6.2. Liability of the Beneficiary:
 - 6.2.1. The Beneficiary shall be liable for any damages to the EMS caused by misuse, neglect, or unauthorized modifications.
 - 6.2.2. The Beneficiary agrees to indemnify and hold harmless the Service Provider from and against any and all claims, damages, losses, and expenses arising out of or in connection with the Beneficiary's use of the EMS.
- 6.3. Indemnity
 - 6.3.1. Each Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other Party (the "Indemnified Party") from and against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorney's fees, arising out of or resulting from:
 - A. Any breach by the Indemnifying Party of its representations, warranties, or obligations under this Agreement.
 - B. Any negligent or willful misconduct of the Indemnifying Party in connection with the performance of its obligations under this Agreement.
- 6.4. Limitation of Liability:
 - 6.4.1. Notwithstanding anything to the contrary in this Agreement, the Service Provider's liability shall not extend to any damages or losses caused by:
 - A. Force Majeure events as defined in Section 10.
 - B. Actions or omissions of the Beneficiary or any third party not under the control of the Service Provider.

7. General Conditions

- 7.1. Term: This Agreement will commence on the date specified in the agreement and will continue for a specified period unless terminated earlier in accordance with the terms herein.
- 7.2. Governing Law: This Agreement shall be governed by the laws of The Netherlands.

8. Termination

- 8.1. Autarco may terminate this Agreement with immediate effect if:
 - 8.1.1. The Beneficiary commits a material or persistent breach and fails to remedy it within twenty (20) business days.
 - 8.1.2. The Beneficiary is subject to insolvency or bankruptcy.

- 8.1.3. The Beneficiary fails to provide necessary access to the Site for a period exceeding ten (10) business days.
- 8.2. Upon termination:
 - 8.2.1. Certain articles of this Agreement, such as Insurance, Indemnities, Liability, and Governing Law, shall survive termination.
 - 8.2.2. Termination will not affect accrued rights and obligations of either Party.
- 8.3. The Beneficiary may terminate this Agreement:
 - 8.3.1. The Beneficiary may terminate this Agreement by giving one month's notice. The Agreement will terminate on the last day of the following month after the notice is given. Cancellation of the Agreement can be managed in MyAutarco, which is accessible for the Beneficiary.

9. Force majeure

- 9.1. Responsibilities of the Parties during a Force Majeure Event
 - 9.1.1. If a Force Majeure Event occurs, the Affected Party shall advise the Non-Affected Party in writing ("Force Majeure Notice") of:
 - A. The date of commencement of the Force Majeure Event;
 - B. The nature and expected duration of the Force Majeure Event; and
 - C. The actual and anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.
 - 9.1.2. The Affected Party shall send the Force Majeure Notice under a reasonable time after the date on which the Affected Party first had knowledge of the Force Majeure Event. If the Affected Party does not deliver the Force Majeure Notice in accordance with this clause 10.1, the Affected Party is not entitled to any relief under clause 10.2 (Effect of a Force Majeure Event) until such time as a Force Majeure Notice is delivered by the Affected Party in accordance with this clause 10.1.
 - 9.1.3. The Affected Party shall:
 - A. Make all reasonable efforts to prevent, reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event;
 - B. Take any action in accordance with the standards of a Reasonable and Prudent Operator to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure Event as promptly as possible and otherwise perform its obligations in accordance with this Agreement; and
 - C. For the duration of any Force Majeure Event, regularly (and in any event upon the reasonable request of the Non-Affected Party) provide the Non-Affected Party with updates in relation to the Force Majeure Event, including the information required under Clause 10.1.i above.

- 9.1.4. No later than five (5) business days following the cessation of any Force Majeure Event, the Affected Party must notify the Non-Affected Party of the cessation of the Force Majeure Event and shall submit to the Non-Affected Party reasonable proof of the nature of the event and its effect on the performance by the Affected Party of its obligations under this Agreement.
- 9.2. Effect of a Force Majeure Event
- 9.2.1. The Affected Party is excused from performance of its obligations under this Agreement to the extent that performance thereof is impeded or prevented due to a Force Majeure Event and shall not be liable for the non-performance of such obligation during the period of Force Majeure. The Affected Party shall, however, continue to perform all of its obligations under this Agreement, which are not affected by a Force Majeure Event in accordance with the terms of this Agreement.
- 9.2.2. If a Prolonged Force Majeure Event occurs, which wholly or partially prevents performance by either Party, then the Affected Party may upon twenty (20) business days' notice to the other Party provided that such Prolonged Force Majeure Event is continuing, terminate this Agreement. In this event, the Service Provider shall no later than ten (10) business days of such notice being delivered comply with its obligations under clause 10.
- 9.3. Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by the other Party of any right pursuant to this article 10.

10. Miscellaneous

- 10.1. Entire Agreement: This Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any previous agreement or arrangement between the Parties relating to the subject matter of it. It excludes any representation, warranty, promise, assurance, or other undertaking implied by Law, custom, or course of dealing.
- 10.2. Variation: This Agreement may only be varied in writing and signed by each Party.
- 10.3. Severability: If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable, or illegal, such provision (or part) shall, to that extent, be deemed not to form part of this Agreement. The other provisions of this Agreement shall remain in force.