

Energynautics GmbH

General Terms and Conditions of Services

Date: October 2013

Section 1 Scope of Application

- (1) All offers and services of Energynautics GmbH (hereinafter referred to as "**Energynautics**") shall be subject to these General Terms and Conditions of Services (hereinafter referred to as "**Terms & Conditions**"). These Terms & Conditions are part of all contracts concluded between Energynautics and any business partner, governmental entity or any public separate estate (hereinafter referred to as "**Customer**") regarding the services provided and/or offered by Energynautics, whereas these Terms & Conditions shall also apply with respect to any future offers and services to the Customer, even though their application is not specifically agreed upon again.
- (2) Terms and conditions of the Customer or any other third party shall not apply, even though Energynautics has not rejected their application in each case. This shall also apply in particular in the event that Energynautics refers or replies to a notice of the Customer (e. g. a letter, fax, e-mail or similar document) which contains terms and conditions of the Customer or any third party or which refers to such terms and conditions of the Customer or any third party.
- (3) Energynautics reserves the right to amend and/or modify these Terms & Conditions, if necessary. Amendments and/or modifications of these Terms & Conditions shall be valid towards the Customer only if and to the extent
 - a) the Customer has been notified about such amendments and or modifications in writing and including the amended and/or modified Terms & Conditions as well as highlighting the amendments and/or modifications made;
 - b) the Customer has not contradicted those amendments and/or modifications within a time period of one (1) month following the receipt of the notice of amendment and/or modification as well as the amended and/or modified Terms & Conditions; and
 - c) the Customer, along with the submission of the amendments and/or modifications, has been indicated, that his right of contradiction will lapse after expiry of the aforementioned one month period and his silence hereto shall be deemed as his consent to the amendments and/or modifications.

Section 2 Scope of Services

- (1) Energynautics offers to its Customers various services within the field of grid integration of energy generation plants, whereas Energynautics mainly deals with the simulation of action alternatives regarding the grid connection as well as the fulfilment of the prerequisites of the applicable grid codes of the respective grid operators (hereinafter referred to as the "**Services**"). The Services are rendered at all time in consultation and collaboration with the Customer. The Customer insofar assumes the obligation to cooperate with Energynautics, in particular to provide the Customer Resources pursuant to Sec. 9 para. (4) of these Terms & Conditions as well as enlightenment of unclear facts and notification of all circumstances known to the Customer, necessary and important for providing the Services, in order to enable Energynautics to duly render the Services offered.
- (2) The whole content of a Service rendered or provided by Energynautics, in particular, but not limited to, graphics, formulas, procedures, data collections, empirical values, methods of investigation, studies and expert opinions (hereinafter referred to as the "**Deliverables**"), is - as far as legally admissible - the sole property of Energynautics or third parties, supplying and/or providing contents thereto, and protected by copyrights. The same applies to the total stock of Deliverables of the Services provided and/or rendered by Energynautics. This does not apply to Customer Resources. If and to the extent, Deliverables are subject to intellectual property rights, Energynautics alone shall have the right to apply for a registration of such Deliverable as an intellectual property right. For the duration of the agreement, Energynautics grants to the Customer - if and to the extent necessary and legally admissible - an exclusive, non-assignable, non-transferable and non-sublicensable license, unlimited in time and space and limited to the respective Service, regarding the utilisation of the Deliverables. Any exceeding utilisation of the licensed Deliverables is prohibited and subject to the prior written consent of Energynautics.
- (3) Without the prior written consent of Energynautics, contents and parts thereof may not be extracted and/or reused.

Section 3 Offer and Conclusion of an Agreement

- (1) All offers made by Energynautics are not binding and without obligation, as long as they are not expressly denoted as binding or include a determined term of acceptance. Orders of the Customer shall be subject to a twenty-one (21) days acceptance period of Energynautics, starting with the receipt of the offer of the Customer by Energynautics. The acceptance of an offer has to be at least in writing (Sec. 126b German Civil Code; e. g. e-mail).
- (2) The sole authoritative document for the legal relations between Energynautics and the Customer (hereinafter referred to as the "**Parties**") shall be the agreement concluded in writing, including these Terms & Conditions. The written agreement provides the whole understanding between the Parties regarding the subject matter of the agreement. Oral promises from En-

ergynautics before the conclusion of the written contract shall not be legally binding and shall be substituted by the written contract, unless it is expressly stated, that such oral promises shall continue to be binding in each case.

- (3) Data made by Energynautics regarding the Services as well as depictions thereof (e. g. drawings and images) shall be decisive only if and to the extent, the usability with regard to the intended contractual purpose requires the compliance with such data and/or depictions. They shall not be deemed as guaranteed characteristics, rather being descriptions or labels of the Services. Deviations which become necessary due to mandatory legal provisions or which represent technical improvements are admissible, insofar as they do not impair the usability with regard to the intended contractual purpose.
- (4) Energynautics unrestrictedly reserves all intellectual property rights or copyrights on all offers and cost estimates made by Energynautics as well as all drawings, images, calculations, models, studies, expert opinions and other documents and auxiliaries (hereinafter referred to as the "**Service Items**"), being provided to the Customer. Without the prior written consent of Energynautics, the Customer is not allowed to (i) grant any third party access to such Service Items nor to the contents contained therein, (ii) provide such Service Items to third parties or (iii) exploit or duplicate such Service Items, neither by itself nor by any third party. On Energynautics' request, the Customer is obliged to completely and promptly return the Service Items to Energynautics and to destroy any possible copies thereof if and to the extent, the Service Items are not necessary for the orderly business operations of the Customer or if negotiations between the Parties do not lead to the conclusion of an agreement.

Section 4 Price and Payment

- (1) All given prices are for the contractually agreed scope of services. All prices are in Euro, plus the respectively applicable rate of value added tax. Additional or extra services (e. g. participation in the workshops offered by Energynautics or generally incurred additional expenses, such as postal charges or delivery charges) as well as reasonable expenses in connection with providing the Services incurred to Energynautics (e. g. travel and accommodation costs) are to be remunerated separately.
- (2) Invoice amounts become due and payable twenty-one (21) days following the date of invoicing, without any deductions. The date on which Energynautics has finally and unconditionally received the payment (in particular, a final and unconditional credit of the payment to the account of Energynautics in case of stipulation of a bank wire transfer) shall be decisive for the compliance of the Customer regarding the term of payment. Cheques count as payment only after they have been cashed. In case the Customer fails to (completely) pay payments which are due, the outstanding amounts shall bear interest at eight (8) per cent p.a. in excess of the base rate since the due date, insofar as the Customer is responsible for such delay; the application of a higher interest rate and additional damages in case of late payment remains unaffected.
- (3) The Customer may only offset with counterclaims or withhold payments because of such claims if the Customer's claims have already been found to be final and absolute by the court or if they have already been expressly recognized by Energynautics in writing.
- (4) In the event, Services have been jointly commissioned by several Customers, those Customers shall be jointly liable regarding the amounts invoiced by Energynautics (Sec. 421 et. seq. German Civil Code).
- (5) Energynautics is entitled to fulfil pending Services or parts thereof only against security deposit or prepayments of the Customer if, after conclusion of an agreement, circumstances become known to Energynautics, that are appropriate in reducing the creditworthiness of the Customer and by which the payment of the outstanding claims of Energynautics within the framework of the existing contractual relationship are endangered. Furthermore, Energynautics is entitled to request prepayment if and to the extent Energynautics has to procure cost-intensive advance performances and/or expenses in connection with the provision of the Services.
- (6) Energynautics shall be entitled to a right of retention regarding the Customer Resources provided by the Customer, unless the Customer has finally and completely paid all outstanding, due and enforceable claims (Sec. 273 German Civil Code), even though such Customer Resources have been provided in course of another contractual relationship between Energynautics and that Customer, the claims of which arising from that respective contractual relationship have been finally and completely paid.
- (7) Within a contract for the performance of a continuing obligation or any other agreement, the fulfilment of which occurs more than four (4) months after its conclusion, Energynautics shall be entitled to increase the agreed upon prices up to a maximum of ten (10) %, insofar as the market conditions have changed after the conclusion of such agreement and therefore the costs and expenses incurred by Energynautics due to the purchase of performances of third parties in order to provide the Services to the Customer, in particular wage increases, rise in price relating to energy and/or raw materials or general rise in prices, have increased. In case, such price increase exceeds a reasonable level acceptable by the Customer, the Customer shall be entitled to rescind from the agreement, subject to a written declaration towards Energynautics without undue delay.

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Section 5 Performance Period

- (1) The Customer is aware of the fact that the Service/s to be provided by Energynautics are separated into individual services phases. In course of the first service phase, the information provided by the Customer to Energynautics will be viewed, evaluated and assessed regarding their usability in relation to the Service/s. In course of a second service phase, the findings gained will be utilised during the provision of the Service/s.
- (2) Periods and dates indicated by Energynautics are only approximate and relate only to the respective individual service phase pursuant to para. (1) above, unless a fixed period or date is expressly promised or agreed upon.
- (3) Energynautics is entitled – irrespective of any rights arising as a result of default by the Customer – to demand an extension of periods or a postponement of deadlines for the time period in which the Customer does not comply with its contractual obligations, in particular its duty to cooperate according to Sec. 2 para. (1) of these Terms & Conditions.
- (4) Energynautics shall not be liable for any delay in performance caused by force majeure or other circumstances, which could not be foreseen at the time of the conclusion of the agreement and which are beyond the control of Energynautics (e. g. interruption of operations of all kind, strike, lockouts, lack of labour force, energy or raw materials, difficulties in obtaining necessary governmental permits or government regulation measures). In the event, such occurrences considerably complicate the provision of the Service/s or even make it impossible and such occurrences are not of temporarily nature, Energynautics shall be entitled to withdraw from the agreement. In case the occurrences are of temporarily nature, the service periods shall be extended or the services deadlines shall be postponed according to the duration of such impediments plus an additional appropriate lead time, as the case may be. If the Customer can not be reasonably expected to accept the Service/s due to the delay, he may withdraw from the agreement by immediately submitting a written notice to Energynautics, however, those parts of the Service/s already rendered until the occurrence of such impediment, have to be remunerated by the Customer. It is agreed and understood between the Parties that the claim for performance of the Customer shall be suspended during the time period of the impediment and in case the performance of the Service/s is or becomes impossible, shall be excluded.
- (5) Energynautics is entitled to provide parts of the Service/s if such partial service
 - a) can be used by the Customer within the contractual purpose; and
 - b) does not lead to significant additional expenditures and does not incur additional costs for the Customer (unless Energynautics declares to bear such additional costs).
- (6) In case Energynautics falls behind with a Service or if such Service becomes impossible, irrespective of the reason, then the liability of Energynautics shall be limited to compensation according to the provisions in the following Sec. 8 of these Terms & Conditions only. The aforementioned Sec. 5 para. (4) of these Terms & Conditions remains unaffected.

Section 6 Place of Performance

Place of performance for all obligations of Energynautics resulting from the agreement shall be its registered office.

Section 7 Intellectual Property Rights

- (1) Each Parties remains the sole owner of all intellectual property rights already registered or applied for registration at the time of conclusion of the agreement or during its term, including any copyrights.
- (2) Within the scope of this Sec. 7, Energynautics hereby warrants that the Service/s and/or the Deliverables, unless not expressly stated otherwise and outside the scope of Sec. 2 para. (2) of these Terms & Conditions, is/are free from intellectual property rights of any third party (hereinafter referred to as "**Third Party Rights**") and in possession of all necessary copyrights and neighbouring rights of use, regarding the exploitation of the Service/s and/or Deliverables by the Customer. Each Party shall be obliged to immediately inform the respective other Party by written notice in case, any third party asserts claims against the informing Party based on the allegation of the infringement of such Third Party Rights.
- (3) In the event, a Service and/or Deliverable infringes a Third Party Right, Energynautics, in its sole discretion and on its own expense, shall be obliged to (i) modify such Service and/or Deliverable to the extent that no Third Party Rights are infringed anymore, albeit the Service and/or Deliverable continues to fulfil its contractual agreed upon function or (ii) procure the Customer with the right of use by concluding a respective licence agreement with the respective third party. If Energynautics fails to accomplish one of the aforementioned alternatives within an appropriate period of time, the Customer shall be entitled to withdraw from or to terminate the agreement. Any claim of compensation is subject to the limitations of the succeeding Sec. 8 of these Terms & Conditions.

Section 8 Liability

- (1) Energynautics is neither responsible nor liable for the economic success of a Service or the results, the Customer has expected from the provision of the Service/s or the suitability of the Service/s and/or Deliverables for another purpose than the one contractually agreed upon.
- (2) The liability of Energynautics to pay compensation, irrespective of the legal basis, in particular due to impossibility of performance, default, defective or incorrect performance, infringement of contractual obligations, violation of obligations during contract negotiations and unlawful actions, insofar as it is at fault, shall be limited in accordance with this Sec. 8.
- (3) In all cases of slight negligence, the liability of Energynautics as well as its institutions, legal representatives, employees and other vicarious agents shall be excluded, unless this does not result in a violation of essential contractual obligations. Essential shall be such contractual obligations, the fulfilment of which is a prerequisite for enabling the proper fulfilment of the agreement in the first place and in which the Customer may normally trust. The same shall apply in all cases of gross negligence of Energynautics, its institutions, legal representatives, employees and other vicarious agents.
- (4) Insofar as according to the preceding Sec. 8 para. (3) Energynautics bears liability to pay compensation in principle, the liability shall be limited to such damages which Energynautics has been able to foresee as a result of a breach of contractual obligations or under the circumstances, which have been known or should have been known to Energynautics, applying due diligence, however, in any case not exceeding the value of the contractually owed performance. In addition, any liability for indirect damages and consequential damages as well as loss of profits and damages in reputation are - as far as legally admissible - excluded.
- (5) The liability of delay of Energynautics (Sec. 286 German Civil Code) shall be limited to 10 % of the value of the performance, the fulfilment of which Energynautics is in default.
- (6) Claims to compensation of the Customer shall become time-barred within eighteen (18) months following the origination of the claim and obtaining the knowledge or ought to be known of the facts on which the claim is based as well as the person of the debtor.
- (7) Insofar as Energynautics provides technical advice or performs consulting work and such advice or consulting work does not belong to the contractual obligations of Energynautics, such advice and consulting work shall be provided free of charge and under exclusion of any liability.
- (8) The exemptions or limitations from liability according to this Sec. 8 shall not apply to the liability of Energynautics due to wilful misconduct or damages to life, limb or health. The same shall apply in case of Energynautics' liability according to the provisions of the German Product Liability Act.

Section 9 Performance

- (1) Energynautics provides the Service/s, at its own discretion, through its officials, employees, affiliates or sub-contractors (hereinafter referred to as the "**Service Providers**"). The Customer hereby expressly declares its consent hereto. Energynautics shall be entitled to wholly or partially replace the Service Providers anytime.
- (2) All Services will be properly rendered by suitable qualified personnel acting with reasonable care.
- (3) As a matter of principle, Energynautics shall render the Service/s at its registered office. If and to the extent necessary, the Parties shall reach a mutual understanding regarding the provision of the Service/s or parts thereof at the Customer's registered office or any other third party, designated by the Customer. The Customer or the third party designated by the Customer is obliged to support Energynautics in the elimination of impediments regarding the provision of the Service/s or parts thereof, insofar as these are attributable to the Customer or the third party designated by the Customer.
- (4) Energynautics shall be entitled to totally or partially refuse or discontinue the provision of the Service/s or parts thereof if and to the extent there are reasonable grounds supporting the assumption that otherwise Third Party Rights will be infringed or laws and/or other relevant rules will be violated. The same shall apply with reference to the information, documentation, forms, data, values, statements and other materials (hereinafter referred to as the "**Customer Resources**"), provided by the Customer according to the Customer's obligation to cooperate pursuant to Sec. 2 para. (1) sentence 4 of these Terms & Conditions and in connection with the Service/s to be provided. On Energynautics' request, the Customer shall be obliged to proof the legitimacy, correctness and completeness of the Customer Resources. Sec. 10 para. (3) of these Terms & Conditions remains unaffected.

Section 10 Representations

- (1) Information by telephone from Energynautics shall only be binding if and to the extent they have been confirmed in writing. Information by telephone from the Customer have to be confirmed in writing without undue delay and on request from Energynautics (e-mail or fax sufficient).

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- (2) Energynautics does not assume any representation regarding the correctness and completeness of the Customer Resources.
 - (3) In case, the Customer provides Customer Resources in connection with the Service/s to be provided by Energynautics, the Customer hereby guarantees that (i) he is the owner of any rights of use and/or neighbouring rights which may be necessary for the exploitation of such Customer Resources or has been permitted, licensed or otherwise approved by the owner of such rights of use and/or neighbouring rights to exploit the Customer Resources, (ii) may freely dispose of the Customer Resources and (iii) the exploitation of the Customer Resources by Energynautics in connection with the provision of the Service/s is permitted.
 - (4) Furthermore, the Customer guarantees that he has thoroughly verified the contents of such Customer Resources and that such verification did not lead to believe to doubt their legitimacy, correctness and/or completeness, in particular that the Customer Resources do not show misleading contents and do not infringe any trademark rights, other intellectual property rights and/or copyrights. Energynautics is expressly not obliged to verify the Customer Resources with reference to their language, contents or compliance with the law, correctness and/or completeness.
 - (5) The Customer hereby assumes the obligation to indemnify Energynautics upon first demand against any and all claims of any third party arising from or in connection with any infringement and/or violation of rights attributable to such third party, due to the exploitation of the Customer Resources.
 - (6) Energynautics hereby assumes the obligation to store the Customer Resources free of charge for a period of six (6) months following its request towards the Customer to pick up the Customer Resources (or parts thereof), however, in any case not exceeding a time period of three (3) years. In case of execution of its right of retention according to Sec. 4 para. (5) of these Terms & Conditions, Energynautics shall be obliged to store the Customer Resources for a time period of five (5) years following the termination of the agreement, being the basis of the provision of the respective Customer Resources, at the longest. After expiry of one of the two aforementioned time periods, Energynautics is entitled to destroy the Customer Resources.
- (5) If one or several provisions of these Terms & Conditions or the respective agreement are or become completely or partially invalid, void or unenforceable, the validity of the remaining provisions of these Terms & Conditions and/or the agreement shall remain unaffected. Sec. 139 German Civil Code is expressly not applicable. The same shall apply if these Terms & Condition and/or the agreement contains a gap. If the invalid, void or unenforceable provision does not seek to ensure the protection of a Party, the Parties are obliged to agree upon a provision which, as far as legally possible, comes closest to what was intended by the Parties or what the Parties would have agreed upon instead of the invalid, void or unenforceable provision as well as the gap, considering the meaning of the invalid, void or unenforceable provision. If the invalidity, voidness or unfeasibility is based on the agreed upon scope or time period (e. g. deadline or date) of performance, the Parties are obliged to agree upon a provision that comes closest to what is permitted by law in that case. Apart from that, the invalid, void or unenforceable provision shall be replaced by the corresponding legal provision.

Note:

The Customer hereby acknowledges that Energynautics records the customer-related data provided by the Customer in the context of the business relation in accordance with Sec. 28 German Federal Data Protection Act for the purpose of data processing and reserves the right to transfer such data to third parties (e. g. insurances), to the extent necessary to fulfil its contractual obligations or to enforce its contractual claims.

Section 11 Confidentiality

- (1) The Parties are obliged to keep strictly confidential all information relating to the other Party and not being generally accessible, which are disclosed or become known to the respective other Party during the term of the agreement (the "**Confidentiality Obligation**"). No Party, neither directly nor indirectly, will provide such information to any third party or use such information for personal or other purposes.
- (2) Subject to the Confidentiality Obligation are in particular, but not limited to, without any restrictions, trade and business secrets of the respective other Party. Furthermore, the Confidentiality Obligation encompasses all information pertaining to the present, past or future businesses of the respective other Party, products, sources of supplies and materials, operating and other costs, data, customer lists, price lists and data relating to pricing of products and services of the respective other Party and which are incorporated in manuals, memorandums, forms, plans, drawings and drafts, specifications, data, sources of supplies, computer programs and documents and have been expressly or recognizably qualified as confidential information, respectively trade and business secrets, by the disclosing Party.
- (3) Every mandatory obligation and every obligation expressly stipulated in these Terms & Conditions or the respective agreement to keep confidential trade and business secrets as well as confidential information, in particular the Confidentiality Obligation, shall expressly survive any termination of the respective agreement and continue to exist.
- (4) Any violation of the Confidentiality Obligation shall be deemed to be an infringement of an essential contractual obligation.

Section 12 Miscellaneous

- (1) In principle, changes and amendments to the agreement as well as supplementary agreements shall be made in writing for evidence purposes. The legal preference of individual agreements according to Sec. 305b German Civil code remains unaffected.
- (2) All disputes arising from or in connection with the agreement (including its scope and validity) shall be - as far as legally admissible - resolved before the courts of Germany, whereas the courts of Frankfurt am Main shall have the exclusive jurisdiction. Mandatory legal provision regarding exclusive places of jurisdictions remain unaffected.
- (3) The relationship between Energynautics and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the provisions of the private international law and the UN Sales Convention.
- (4) If any breach of any provision of these Terms & Conditions or the respective agreement is not sanctioned by Energynautics, this does neither constitute any waiver by Energynautics to comply with the infringed provision nor any abrogation of the infringed provision by way of conclusive behaviour.