

General Terms and Conditions - Smart Ass Energy B.V.

1. Parties

1. Smart Ass Energy: Smart Ass Energy B.V., registered with the Dutch Chamber of Commerce under number 98604392, having its registered office at Bayeuxlaan 9, 5654 AX Eindhoven, the Netherlands, and the user of these General Terms and Conditions.
2. Smart Ass Energy's contact details:
 Website: www.bigassbattery.com
 Email: info@smartassenergy.com
 Telephone: 085-0658060
 VAT Identification Number: NL868565209B01
3. Customer: the (prospective) purchaser or recipient of the services offered by Smart Ass Energy.

2. Applicability

1. These General Terms and Conditions apply to every offer made by Smart Ass Energy and to every agreement entered into between the parties, whether arising from such offer or otherwise, including agreements entered into by their respective legal successors. Unless expressly amended or superseded by more specific written agreements between the parties, these General Terms and Conditions shall also apply to all future contractual relationships between the parties and/or their legal successors.
 2. Any deviation from these General Terms and Conditions shall only be valid if expressly agreed in writing by both parties.
 3. The Customer's own general terms and conditions, including purchasing conditions, are expressly rejected and shall not apply.
 4. Any third party engaged by Smart Ass Energy in the performance of the Agreement may invoke these General Terms and Conditions as if it were Smart Ass Energy.
 5. If any provision, or part thereof, of these General Terms and Conditions is declared void, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. The parties shall consult with one another to replace the invalid provision with a valid provision that most closely reflects the purpose and intent of the original provision.

3. Offers, Accounts, and Formation of the Agreement

1. Every quotation, proposal, or other offer issued by Smart Ass Energy is non-binding, revocable, and valid for thirty (30) days unless otherwise stated in writing.
 2. All prices stated on the website or in any quotation or offer are expressed in Euros (€), exclusive of VAT and subject to applicable taxes, surcharges, and other applicable charges.
 3. All specifications provided by Smart Ass Energy, including but not limited to quantities, dimensions, colors, illustrations, drawings, photographs, videos, models, or other representations, are indicative only. Minor deviations shall not constitute a breach of the Agreement by Smart Ass Energy.
 4. Obvious clerical errors, typographical errors, and manifest mistakes in any offer shall not be binding upon Smart Ass Energy.
 5. An offer does not automatically apply to future assignments, repeat orders, renewals, or extensions.
 6. The Agreement is concluded when both parties have signed a written proposal, Smart Ass Energy has confirmed the Customer's written acceptance, an order placed through the website has been confirmed by Smart Ass Energy, or Smart Ass Energy, or a third party acting on its behalf, has commenced performance of the services.
 7. Smart Ass Energy is expressly not a party to any agreement entered into between the Customer and any third party. Any disputes arising from such agreements shall be resolved exclusively between those parties, and Smart Ass Energy shall bear no responsibility whatsoever.
 8. If an assignment is placed jointly by multiple customers, each customer shall be jointly and severally liable for all obligations arising from the Agreement. Where Smart Ass Energy accepts an assignment together with multiple contractors, each contractor shall only be responsible for its own acts and omissions. [Section 7:407\(2\) of the Dutch Civil Code](#) is expressly excluded.
 9. Login credentials are personal and may not be shared with third parties. The Customer may not use login credentials belonging to another person to obtain services. The Customer is responsible for all activities conducted through its account, whether authorized or unauthorized. The Customer shall immediately notify Smart Ass Energy of any unauthorized use of its account.
 10. Oral or written statements made by employees or contractors of Smart Ass Energy shall not be binding unless expressly confirmed in writing by an authorized representative of Smart Ass Energy.

4. Performance and Delivery

1. Smart Ass Energy shall perform the Agreement with due care and professional skill while safeguarding the Customer's interests within the scope of the assignment. Unless specific requirements, functions, or customer preferences are expressly included in the principal agreement or quotation, Smart Ass Energy shall retain full discretion regarding the manner in which the services are performed. Unless expressly agreed otherwise in writing, all services are provided on a best-efforts basis (obligation of means) rather than as an obligation to achieve a specific result. Accordingly, payment of fees shall never depend upon the outcome or success of the assignment.
 2. Smart Ass Energy shall use commercially reasonable efforts to perform the services within the estimated timeframe. Any delivery or performance date is indicative only and shall never constitute a strict deadline. Before exercising any remedy, the Customer must provide Smart Ass Energy with written notice of default and allow a reasonable cure period of at least thirty (30) days. Expiration of the estimated delivery period shall not entitle the Customer to terminate the Agreement or claim damages. After such period, both parties shall continue to cooperate in completing the Agreement within a reasonable timeframe.
 3. Smart Ass Energy may perform the Agreement in separate deliveries or phases and invoice each completed phase separately. Where the Agreement is

performed in phases, Smart Ass Energy may suspend work on a subsequent phase until the Customer has approved the previous phase in writing. Following such approval, Smart Ass Energy shall no longer be liable for defects that reasonably could have been discovered at the time of approval.

4. Services shall only commence after the Agreement has been concluded.
 5. The Customer warrants that any digitally supplied materials do not infringe any third-party rights, are secure, and are free from viruses or other harmful code capable of damaging the systems or software of Smart Ass Energy or third parties.
 6. Unless Smart Ass Energy has provided prior written consent, the Customer may not resell, sublicense, distribute, or otherwise make the services available to third parties. Even where such consent has been granted, the Customer shall indemnify Smart Ass Energy against any third-party claims arising from defects in services supplied by Smart Ass Energy and subsequently provided by the Customer to third parties. The Customer shall not hack, attempt to hack, or create websites or applications that falsely appear to be part of Smart Ass Energy. The Customer may not reproduce, copy, duplicate, or resell any part of the software without prior written permission.
 7. Smart Ass Energy reserves the right to temporarily suspend servers, software, or other services for maintenance, upgrades, or improvements. Whenever reasonably possible, such maintenance shall be performed outside normal business hours. Smart Ass Energy shall not be liable for any damages resulting from such temporary unavailability.
 8. Smart Ass Energy will use reasonable efforts to maintain the quality and availability of its services throughout the agreed service period. However, Smart Ass Energy does not guarantee uninterrupted availability or continuous performance and shall not be liable for damages arising from temporary or partial unavailability of the services.
 9. Following delivery, services may cease functioning or may no longer perform optimally due to external circumstances beyond Smart Ass Energy's control, including but not limited to situations where a grid operator ceases support, a supplier becomes insolvent, or a template or plug-in is discontinued. In such cases, the Customer shall indemnify Smart Ass Energy against any resulting claims.
 10. Unless otherwise agreed, Smart Ass Energy may implement technical protection measures for equipment, software, or data files. Such measures may restrict the scope or duration of the Customer's use. The Customer shall not remove, disable, or circumvent such protection measures.
 11. For ongoing services, Smart Ass Energy may periodically release updates for maintenance or optimization purposes without requiring the Customer's consent. Updates may modify existing functionality. Smart Ass Energy does not guarantee that earlier software versions will continue to function after an update. The Customer acknowledges and accepts this risk and agrees to indemnify Smart Ass Energy accordingly. These General Terms and Conditions shall also apply to updated versions.
 12. Unless otherwise agreed, Smart Ass Energy is under no obligation to create or maintain backups for the Customer.
 13. Unless otherwise agreed, the Customer is solely responsible for implementing and maintaining adequate security measures.
 14. Unless otherwise agreed, the Customer is responsible for managing and monitoring the purchased services, including configuration settings. The Customer is likewise responsible for the configuration, maintenance, and continuity of any hardware required for Smart Ass Energy's services.

5. Customer Obligations

1. The Customer shall provide Smart Ass Energy with all cooperation reasonably required to perform the Agreement. This includes, but is not limited to, the following obligations:
 a) ensuring that Smart Ass Energy timely receives all approvals, authorizations, permits, and information necessary for the performance of the Agreement;
 b) ensuring that any work and/or deliveries to be performed by third parties, which do not form part of Smart Ass Energy's scope of work, are completed in such a manner and within such time that they do not delay Smart Ass Energy's performance;
 c) ensuring that the location where on-site services are to be performed is prepared in such a way that Smart Ass Energy can commence the work immediately upon arrival. The location must comply with all applicable legal and safety requirements;
 d) ensuring that Smart Ass Energy has unrestricted access to the premises, equipment, or facilities where the services are to be performed. The Customer shall therefore be present during performance or otherwise provide suitable access, for example by supplying keys or access credentials;
 e) refraining from imposing conditions on access to the premises or worksite where Smart Ass Energy performs its services, including requirements relating to footwear or the materials and equipment used by Smart Ass Energy;
 f) providing Smart Ass Energy with access to all systems, software, documentation, and other information reasonably required for the performance of the Agreement.
 2. If the Customer fails to comply with any obligation set forth in paragraph 1, the Customer shall promptly notify Smart Ass Energy. Smart Ass Energy shall be entitled to charge the Customer for any additional costs incurred as a result, including travel expenses, labor costs, delay costs, or other consequential expenses. Smart Ass Energy shall not be liable for any delays in delivery or performance resulting therefrom.
 3. The Customer expressly bears the risk of damage resulting from:
 a) inaccuracies in designs, instructions, methods, or specifications required by the Customer;
 b) defects in the movable or immovable property on or in which the services are performed;
 c) defects in materials, equipment, or tools supplied by the Customer.
 4. The Customer grants Smart Ass Energy permission, free of charge, to display its name and promotional materials in connection with the performed services.

6. Prices, Payment, and Suspension

1. The agreed pricing has been established through mutual consultation and is considered fair and reasonable by both parties. Smart Ass Energy reserves the right to modify or expand its software and functionalities. New functionalities may be provided free of charge or offered as optional paid modules. Existing functionalities shall not be discontinued or materially limited without compelling reasons.
2. A composite quotation does not obligate Smart Ass Energy to perform only part of the services at a proportionate part of the quoted price.
3. Unless otherwise agreed, payment shall be made on either a monthly or annual basis. During the Agreement, the Customer may request to change the billing frequency from annual to monthly or vice versa. A change from annual to monthly billing shall take effect after the expiration of the current contract term. A change from monthly to annual billing shall immediately commence a new one-year contract term.
4. Payment shall be made through the online portal by automatic direct debit. Smart Ass Energy shall be entitled to issue invoices immediately upon conclusion of the Agreement.
5. If payment is not received by the agreed due date or an automatic direct debit fails, Smart Ass Energy shall immediately be entitled to charge default interest at the rate of one percent (1%) per month on the outstanding principal amount, [extrajudicial collection costs](#) amounting to fifteen percent (15%) of the outstanding principal, with a minimum of EUR 100 (excluding VAT) and any administrative costs associated with a failed direct debit transaction.
6. Without Smart Ass Energy's prior written consent, the Customer is not entitled to set off, suspend, withhold, or otherwise reduce any payment obligation.
7. Smart Ass Energy may suspend its services, temporarily disable access to the services, or restrict their use for as long as the Customer fails to comply with any obligation under the Agreement or these General Terms and Conditions.
8. Service fees shall be indexed annually on January 1 in accordance with the annual Dutch Consumer Price Index (CPI) published by Statistics Netherlands (CBS), subject to a minimum increase of three and one-half percent (3.5%). In addition, Smart Ass Energy may adjust its fees upon renewal of the Agreement for operational or commercial reasons. In such event, the revised fees shall take effect upon renewal, and the Customer may terminate the Agreement within thirty (30) days after receiving notice of the adjustment. The annual indexation shall apply regardless of whether separate notice has been provided.

7. Term and Termination

1. Sections [7:408](#) and [7:764](#) of the Dutch Civil Code are expressly excluded with respect to Customers acting in the course of a business or profession. If such Customer nevertheless terminates the Agreement, the Customer shall remain liable for all financial obligations that would have become due had the Agreement continued until its regular completion, while Smart Ass Energy shall have no further obligation to perform the services. Smart Ass Energy may terminate the Agreement at any time.
2. The Customer may also upgrade or downgrade its subscription. An upgrade immediately commences a new one-year contract term. A downgrade takes effect after expiration of the current contract term and likewise starts a new one-year term.
3. Unless otherwise agreed in writing, continuing service agreements shall have an initial term of one (1) year. They may be terminated only at the end of the applicable term by giving at least three (3) months' prior written notice. In the absence of timely termination, the Agreement shall automatically renew for successive terms of equal duration.
4. Smart Ass Energy may terminate the Agreement with immediate effect by written notice, without prior [notice of default](#), if:
 - a) the Customer wholly or partially ceases its business operations, liquidates its business, materially changes its activities without prior written consent from Smart Ass Energy, or transfers its business to a third party;
 - b) the Customer is granted a suspension of payments (whether provisional or otherwise), is declared bankrupt, applies for debt restructuring, or becomes subject to guardianship, administration, or similar insolvency proceedings;
 - c) any attachment, levy, or seizure is imposed upon the Customer's assets or rights.
5. Upon termination pursuant to this Article, all amounts owed by the Customer shall become immediately due and payable. Smart Ass Energy shall furthermore be entitled to recover its positive contractual interest, as if the Agreement had remained in force until the earliest regular termination date.

8. Warranty and Liability

1. The Customer shall only be entitled to a warranty and/or remedy for non-performance where such warranty or remedy is expressly provided for in the principal agreement or these General Terms and Conditions.
2. The Customer shall inspect all deliveries and services immediately upon completion, and in any event within forty-eight (48) hours, for conformity with the agreed quantity and quality. If the services fail to conform to the Agreement, taking into account the best-efforts obligation described in Article 4.1, the Customer shall notify Smart Ass Energy in writing within seven (7) days after discovering, or reasonably having been able to discover, the defect.
3. After receiving such notice, Smart Ass Energy shall, at its reasonable discretion, repair or replace the defective service free of charge. If neither remedy reasonably resolves the defect, the Customer may terminate the Agreement solely with respect to the defective part. Such termination shall not entitle the Customer to any compensation or damages.
4. Smart Ass Energy may postpone commencement of any subsequent project phase until the Customer has approved the preceding phase in writing.
5. The Customer shall forfeit any right to warranty or remedy if the defect results from an error attributable to the Customer, modifications made by or on behalf of the Customer, late notification of the defect, approval of the relevant project phase, authorization to commence a subsequent phase, improper or negligent use of the services or use of the services after delivery despite the existence of the defect. The burden of proving that the defect is attributable to Smart Ass Energy shall rest with the Customer.

6. The existence of a defect shall not suspend the Customer's payment obligations.
7. The Customer shall exercise due care in using the services and shall ensure that its employees are properly instructed in their correct use in accordance with the user manuals and instructions provided by Smart Ass Energy. Such manuals and instructions have been carefully prepared and are intended to prevent damage. Accordingly, Smart Ass Energy shall not be liable for any damage, or any portion thereof, that could have been avoided had the Customer complied with the applicable instructions or user guidelines.
8. Smart Ass Energy shall only be liable for direct damages suffered by the Customer. Direct damages shall exclusively mean:
 - a) the reasonable costs of determining the cause and extent of the damage, insofar as such determination relates to damage covered under these Terms and Conditions;
 - b) the reasonable costs incurred to have Smart Ass Energy's defective performance brought into conformity with the Agreement, to the extent such costs are attributable to Smart Ass Energy; and
 - c) the reasonable costs incurred to prevent or limit damage, provided that the Customer demonstrates that such costs resulted in the mitigation of direct damages as referred to herein.
9. If Smart Ass Energy is held liable, its aggregate liability shall be limited to the amount actually paid under Smart Ass Energy's professional liability insurance, commercial general liability insurance, or other applicable liability insurance. If no insurance coverage applies or no payment is made under such insurance, liability shall be limited to the aggregate invoiced amount for the three (3) months immediately preceding the event giving rise to the claim.
10. Under no circumstances shall Smart Ass Energy be liable for consequential or indirect damages, including but not limited to indirect losses, non-material damages, delay damages, property damage, loss of goodwill, reputational damage, loss of revenue, loss of profits, business interruption, or similar losses.
11. The limitations of liability set forth in this Article shall not apply where the damage results from intentional misconduct or gross negligence on the part of Smart Ass Energy.
12. The Customer shall indemnify and hold Smart Ass Energy harmless against any third-party claims arising out of the Agreement where such claims result from Smart Ass Energy acting, including any omission, based on incorrect, incomplete, or untimely information, data, or documents supplied by the Customer.
13. Any claim for damages and/or any other right of action, other than claims relating to defects referred to above, shall lapse unless submitted to Smart Ass Energy within twelve (12) months after the Customer became aware, or reasonably should have become aware, of the existence of such claim. The Customer shall immediately notify Smart Ass Energy of any damage and shall take all reasonable measures to mitigate such damage.
14. Smart Ass Energy accepts no liability whatsoever for the transmission or distribution of virus-infected information.
15. Smart Ass Energy accepts no liability for the consequences of actions by third parties who unlawfully gain access to the Customer's software or information, including but not limited to hacking, internet fraud, or unauthorized alterations.
16. The Customer remains solely responsible for its own use of Smart Ass Energy's services and shall carefully test the services before operational use. If any actual or suspected adverse effects occur, the Customer shall immediately discontinue use.
17. Smart Ass Energy shall not be liable for damages resulting from improper, negligent, abnormal, or unintended use of its services. Smart Ass Energy shall likewise not be liable for the manner in which the Customer implements or applies the services in practice.
18. The Customer acknowledges that Smart Ass Energy may use Artificial Intelligence ("AI") in providing its services. The Customer further acknowledges that AI-generated results may involve unforeseen circumstances or inaccuracies. Accordingly, the Customer shall independently verify all outputs generated through Smart Ass Energy's services.
19. The Customer remains solely responsible for the final use, implementation, and any legal or practical consequences of AI-generated results. Except in cases of intentional misconduct or gross negligence, Smart Ass Energy expressly disclaims all liability for damages arising out of or relating to the use of AI-generated output.
20. Where Customer data is used for AI-related services, the Customer represents and warrants that it is authorized to use such data, has obtained all required third-party consents, and that such data does not infringe any third-party rights. The Customer shall indemnify and hold Smart Ass Energy harmless against all third-party claims arising from the processing or use of such data.

9. Intellectual Property

1. Smart Ass Energy reserves the right to use the knowledge acquired, software developed, and other intellectual property created during the performance of the Agreement for other purposes, including improving and optimizing its software, provided that no confidential information of the Customer is disclosed to third parties.
2. Smart Ass Energy retains all intellectual property rights and remedies available under the [Dutch Copyright Act](#) and all other applicable intellectual property laws and regulations. Unless otherwise agreed, the Customer receives only a non-exclusive, non-transferable, and non-sublicensable license to use the services provided. The Customer shall not sell, transfer, modify, or otherwise exploit the software. Smart Ass Energy may freely reuse all or part of its work product without limitation.
3. Unless otherwise agreed, the Customer shall not acquire ownership of any delivered service, including software or software applications. Ownership shall only transfer where expressly agreed or where the applicable licenses have been purchased, or if the Customer separately purchases a copy of the software application in the agreed programming language.
4. All rights to materials supplied by Smart Ass Energy remain exclusively vested in Smart Ass Energy. No part of any publication or material may be reproduced,

stored in any retrieval system, or made public by any means whatsoever without the prior written consent of Smart Ass Energy. The Customer may not provide such materials to third parties.

10. Force Majeure

1. Force Majeure means any circumstance beyond the reasonable control of Smart Ass Energy that prevents or delays performance, whether foreseeable or unforeseeable, including but not limited to cyberattacks (including SynFlood, DoS, and DDoS attacks), war, business interruptions, strikes, traffic disruptions, unforeseen stagnation, interruptions in energy supply, failures of internet or telecommunications services, transportation disruptions, fire, loss or damage during transport, epidemics, pandemics, failures of third parties upon whom Smart Ass Energy depends, and governmental measures.
2. During a Force Majeure event, Smart Ass Energy's obligations shall be suspended. If performance remains impossible for more than two (2) months, or if continued performance would become unreasonably burdensome, Smart Ass Energy may terminate the Agreement in whole or in part by written notice without court intervention and without any obligation to pay damages.
3. If, at the commencement of the Force Majeure event, Smart Ass Energy has already partially performed the Agreement, it shall be entitled to invoice the completed portion separately or, where advance payments have been made, issue a proportional credit.
4. Upon termination of the Agreement pursuant to this Article, all amounts owed by the Customer shall become immediately due and payable.

11. Amendments to these General Terms and Conditions

Smart Ass Energy reserves the right to amend or supplement these General Terms and Conditions. Amendments shall also apply to existing Agreements, provided that a notice period of thirty (30) days is observed following notification of the amendment. Minor amendments may be implemented at any time. If the Customer does not wish to accept an amendment, the Customer must notify Smart Ass Energy in writing before the amended General Terms and Conditions become effective.

12. Assignment, Governing Law, and Jurisdiction

1. Smart Ass Energy may assign its rights and obligations under the Agreement to a third party. The Customer may assign its rights or obligations only with the prior written consent of Smart Ass Energy.
2. The Agreement, as well as all other agreements concluded between the parties, shall be governed exclusively by the laws of the Netherlands, excluding the [United Nations Convention on Contracts for the International Sale of Goods \(CISG\)](#). Any non-contractual obligations arising between the parties shall likewise be governed exclusively by Dutch law.
3. Any dispute arising out of or relating to the Agreement shall be submitted exclusively to the competent court in the [judicial district](#) in which Smart Ass Energy has its principal place of business. The same court shall also have exclusive jurisdiction over any disputes concerning non-contractual obligations between the parties.