

S4E

General Terms and Conditions of

Sale of ENERGYSOFT services

(Revised 2018.3, applicable as of 1/11/2018)

S4E is a software editor specialized in the energy sector that supplies its software, products and services on the basis of Software As A Service ("Software"). Any subscription to one of the software implies the unreserved acceptance by the Customer of these General Terms and Conditions of Sale ("T&C") which shall prevail over any provisions to the contrary that may be stated on the Customer's order forms, its general conditions of purchase and any other document issued by it, unless specifically agreed otherwise in writing in advance by S4E.

The Customer acknowledges having verified that the services to be provided match with its needs and having received from S4E all necessary information and advice concerning the subscription to this contract.

This contract includes a "General Conditions for the Processing of Personal Data" appendix and this in compliance with the GDPR (General Data Protection Regulations of 27 April 2016, applicable as of 25 May 2018)

Article 1 - Definitions

"Contract" means all contractual elements consisting of the quote signed by the Customer, the as well as the registration by the Customer on the ENERGYSOFT website for the purpose of using the Software and the Services as specified in the quote.

"Customer" means any company or entity linked to S4E by Contract.

"Date of Effect" means (i) the date of the first receipt of Data by S4E in the context of a subscription, (ii) the date of the first initialisation of the SIM card by the Customer in the context of a subscription to the M2M Service as per Article 13 below.

"Data" means the information collected by the software.

"Hosting provider" means the company to which S4E subcontracts the hosting of the Software and the Customer Data.

"Mobile Operator" means the company to which S4E subcontracts the transmission of the Data via the GSM/GPRS network from the Customer's equipment to the servers of S4E.

"Login" means the user login name specific to the Customer as well as the password.

"Software" means the ENERGYSOFT software published by S4E, available in SaaS mode and made available to the Customer using Internet technology. The software allows the Customer to receive, to a space allocated to it, the information covering the operation and performance of its installations.

"Services" means the services offered by S4E that enable the use of the Software, access rights to the S4E server, the Data hosting, technical assistance as well as the maintenance of the Software and the Services.

"Site" means any structure housing an energy generating or consuming installation for which the Data is collected by the Software.

"Browser" means the computer program that enables connection to the ENERGYSOFT website, this is a recent or updated (within the last 6 months) version of an Internet browser

Article 2– Purpose of the contract

The purpose of the Contract is to define the conditions for the provision, non-exclusively, of the Services and in particular the Software by S4E to the Customer, for its own specific and personal requirements.

By subscribing to the Services, the Customer agrees that S4E can collect and host the Data.

Article 3– Period of the Contract

The Contract comes into force on the date of the signature of the Quote and takes effect on the “Date of Effect” and is agreed for the period as stated in the Quote. The Contract is then lawfully renewed automatically by tacit consent, for further periods of one year each unless terminated by either party subject to the terms as defined in Article 15 below.

Article 4 - Terms of use of the Software and of the Customer’s personal account

4.1. As of the signature of the Quote, S4E will inform the Customer of the procedure that allows it to create its company account and the account for its main Administrator on the r ENERGYSOFT website and to use the Software via an ADSL Internet connection and a Browser.

4.2. When connecting to its personal account, the Customer must use its login details. The Customer is solely responsible for protecting the confidentiality of its connection login details and agrees to take all useful measures to maintain absolute confidentiality. S4E cannot be held liable for any loss of the Customer’s login details.

4.3. The Customer has access only to the Software and Service(s) as stated in the agreed Quote.

4.4. The Data collected by the Software and hosted by S4E are and shall remain the property of the Customer.

4.5. The Data are held on servers administered by S4E in France or within the European Union.

4.6. The Customer is solely liable for the Data hosted by S4E, as well as its use of the Software.

4.7. The Customer agrees to use the Software in accordance with the instructions stated in its personal account.

4.8. The Customer is the solely liable for the use made of the Software.

4.9. The Customer has been informed that the parameters of the Software must be set by the Customer to ensure its correct operation and that these are the sole responsibility of the Customer, these include: Administration of users and access rights, definition of alert rules, specific configurations of sites, etc.

4.10 The Customer has an FTP account for depositing the Data files using the communication gateways installed on Site and an FTP account for consulting the archives. These accounts must only be used for the purposes for which they were designed. The use of these accounts by third-party persons or companies, or with computer programs that have not been designed exclusively for the streaming depositing of Data files is strictly prohibited. In particular systems for the automatic reading of directory contents or bulk Data file deposits (exceeding one week’s worth of Data) are prohibited.

The Customer is responsible for ensuring the confidentiality of the access codes for these accounts.

Article 5 - Technical Assistance

The Customer will receive technical support in the use of the Software on working days at S4E a/ by phone, Monday to Friday, 09:00 to 12:00 (Paris time) or b/ by pre-booked phone appointment confirmed by email or c/ by email between 09:00 and 12:00 and between 14:00 and 17:00 (Paris time)

Article 6 – Maintenance

6.1. S4E will take all measures to ensure the availability of the Services and the Customer's Data 24 hours a day, 7 days a week subject to any preventive maintenance operations which S4E commits to carry out during off-peak hours corresponding to times when the Software is used at a minimum and excluding Force Majeure occurrences or External Events outside its control.

6.2. The Customer acknowledges that the techniques used by S4E are those of a complex computer science. Given this, **S4E commits to an obligation of means**. The Customer must therefore take all necessary measures to mitigate any interruptions of the Services resulting from, in particular, maintenance, the implementation of technical improvements or Force Majeure occurrences.

6.3. Any interruption of the Services because of a technical maintenance operation or the upgrading of the Services will not give rise to the right to any compensation.

Article 7 – Confidentiality of Data and Data Protection

S4E agrees to maintain the confidentiality of the Data, not to communicate it to any third-party - including the Hosting provider - by any means whatsoever, not to make, other than for technical requirements, any copy of the Data and not to use it for any other purposes than those defined for the execution of the Contract.

Specifically, no employee of the Apex Energies group of which S4E is a member shall have access to the production Data transmitted by the Customer's equipment, unless expressly authorised by this latter.

Only the technical staff (developers, operators) of S4E are authorised to work on the Databases for the purposes of maintenance and Software updates.

The Raw Data (files received or collected from the sites) belonging to the Customer and hosted by S4E, are and shall remain the property of the Customer.

The databases and their contents hosted on S4E's servers are the property of S4E. The Customer is free to consult and export these data using the tools supplied by S4E.

S4E guarantees the confidentiality of the Data in a Customer account relative to third parties. In this regard it is agreed that the Customer is solely responsible for the creation of third-party user accounts and the sharing of data with third-party accounts.

S4E can use, without restriction and including for services supplied to third parties, the operational Data (equipment, sensor data and in general any data from the sites) in an aggregated and anonymised form.

Article 8 – Intellectual property

8.1. S4E remains the owner of all intellectual property rights relating to the Software and the elements available on the ENERGYSOFT website (databases, management tools, platform, graphic charter, texts, photographs, images, icons, videos and more generally all information, in whatever form, made available to the Customer under the Contract) which are protected or can be protected by copyright.

8.2. The Contract does not transfer any ownership or other right to the Customer relating to the Software, the Customer Space, except for a non-exclusive right of use, as the final user for its own and personal requirements, for the period of this Contract and strictly within the conditions of the Contract.

8.3. The Customer is therefore forbidden from copying or reproducing in part or entirely the Software by any means and using any medium, existing or future, as well as from adapting and translating the Software into another language, or from carrying out any reverse engineering or using any other method to access the source codes or misappropriate the communication protocol between the browser and the S4E servers.

The Customer agrees not to try to understand the engineering, to decompile, translate, dismantle or attempt to identify in any way what the source codes for the Software are.

S4E reserves the exclusive right to modify the Software to enable it to be used in accordance with its intended use and in particular to correct any bugs. The Customer is thus formally forbidden from acting on or having a third-party act on the Software.

8.4. The Customer is strictly forbidden from modifying the Software or creating derivatives based on this, as well as from copying, reselling, sharing, renting, leasing (hire purchase), pledging, granting sub-licenses or lending all or part of the Software whether in full or in part.

In addition, the Customer is not authorised to create derivative products based on any part or all of the Software and/or documentation. The Customer is not authorised to trade the subscriptions it has agreed with S4E.

Article 9 - Force Majeure - External Factors

In accordance with the provisions of Article 1218 of the French Civil Code, S4E cannot be held liable in any way with regard to the Customer in the event of interruption to the Services for whatever reason in the event of a Force Majeure occurrence or event outside its control.

Force Majeure occurrences are those as defined by French legal precedent.

Occurrences outside its control include any occurrence external to S4E making it impossible for it to fulfil all or some of its obligations under the Contract in accordance with the agreed conditions. The Parties therefore agree that any failure in the Customer's equipment using the Software, malfunctions or interruptions in the electricity supply, Internet malfunctions or interruptions or failures on the part of telecommunications operators or of the Hosting provider, and in general any event over which S4E has no control or beyond the control of S4E, shall be deemed as being External Factors within the meaning of this Article.

Article 10 - Guarantees – Liability

10.1. S4E provides no express, implied, legal or other guarantees on the performance or the results of the information it distributes or the Services it supplies. The information distributed by S4E does not imply any sort of advice. The Software is deemed made available to the Customer "as is" without any specific adaptations. These are standard software packages that are not designed for every specific requirement of the Customer. It is therefore the responsibility of the Customer to check that the Services supplied by S4E are appropriate for its requirements and to take all necessary precautions.

10.2. The Customer acknowledges its awareness of the characteristics and limitations of the Internet as described below:

- That the reliability of data transmitted over the Internet is relative as these use heterogeneous networks with a range of characteristics. As a result, the operation of the Internet cannot be guaranteed, and this applies in particular to the transmission of emails, SMS and smartphone notifications.

- That data transmitted over the Internet is not protected against possible misappropriation and that therefore the communication of passwords, confidential codes, Logins, etc. is undertaken by the Customer at its own risks;

- That it is its responsibility to take all appropriate measures to protect its data and/or the software on its servers from contamination by attempted unauthorised access to its information systems by third parties.

The Customer also acknowledges that it understands all its obligations and in general all the conditions arising from its use of the Services supplied by S4E.

10.3. The Customer therefore hereby agrees that under no circumstances can either S4E or its shareholders, officers, subsidiaries, shareholdings, employees, suppliers and service providers be held liable, on any basis whatever, for any damage, whether direct or indirect, contingent or otherwise, a fortuitous event or arising from negligence, etc., including loss of profits, enjoyment, data or other intangible losses, loss of earnings that the Customer or any third party may suffer as a result (a) of the use of the Software or the impossibility of using the Software, (b) unauthorised access to transmissions or Data or alterations to these, or (c) any other issues relating to the Software including in the case of S4E having been notified of the possibility of such damages or losses. S4E cannot be held liable under any circumstances for direct or indirect damages such as a loss of data, markets, customers, operations, income and more generally any commercial issues that may arise following the use of the Software.

In the event of the liability S4E being incurred, the reparations for losses suffered cannot exceed the amount of the annual subscription paid by the Customer for the Services in question.

Article 11 - Price and Invoicing

11.1. Prices for the Services

The use of each Software and the Services are subject to annual subscriptions. The subscription price, the payment terms and details are stated in the Quote accepted by the Customer.

The price is based on the number of Sites monitored and the characteristics of each Site (nominal power, number of measure points). The price can be revised upwards or downwards depending on the number of Sites and the actual characteristics. Payment of the price is mandatory, and sums paid cannot be refunded. The invoices are generated by S4E on the basis of the Quote accepted by the Customer and Article L.441-3 of the French Commercial Code. The billing period starts with the first transmission of Data from a monitored Site. All annual periods started are due in full regardless of the actual period of the monitoring.

In accordance with Article L.441-6 of the French Commercial Code, any sum unpaid on the due date will be increased by late payment penalties calculated using the interest rate applied by the European Central Bank plus ten percentage points. The late payment penalties become due without formal notice or a reminder being required. In addition, any Customer in arrears will be lawfully required to pay to S4E a contractually fixed amount of compensation for recovery costs in the amount of 40 euros. In the event of a regulatory change in the amount of this fixed compensation, the new amount will be lawfully substituted for that as stated in the Contract.

The prices for the Services are reviewed twice a year, on January 01 and July 01 each year, applying the following formula:

$$P = P0 \times (S/S0)$$

Where:

P represents the price after the review

P0 represents the prices applied in the preceding year

S represents the SYNTEC index applicable on the date of the review

S0 represents for the first review, the SYNTEC index applicable on the date of effect of the subscription, for subsequent reviews, the SYNTEC index applicable on the date of the previous price review.

11.2. Cost of Data transfers on the GSM network

The Customer cannot hold S4E liable in the event of the fraudulent use of its SIM card. The Customer hereby acknowledges the risks associated with this functionality and accepts in particular any financial consequences.

The parties agree that the technical data from the electronic communication systems and devices of the Mobile Operator (such as charging records, their reproduction on any electronic form)) will be accepted as proof by them and shall be deemed to comply within the meaning of Article 1366 of the French Civil Code unless there is evidence of a clear error in these systems, in particular to calculate the invoices for the Services and/or in the event of complaints in the context of the delivery of the Services.

Article 12 – Subscription to the Services

The use of each Software is subject to an annual subscription. The invoices are issued at the start of the period. The billing period starts with the first transmission of Data from a monitored Site. All annual periods started are due in full regardless of the actual period of the monitoring.

If the billing is quarterly, a single invoice will be issued per quarter (at the start of the period). This invoice covers the subscriptions for the future period and the subscriptions for Sites commissioned in the preceding quarter. The start date for the subscription is aligned with the start of the month of the first receipt of Data.

Article 13 – M2M subscription

The use of a SIM card is subject to a subscription based on the pricing conditions as defined in Article 12.

Article 14 - Provisional suspension of access to the Services

In the event of non-payment or the failure by the Customer to fulfil any other obligation arising under the Contract, S4E has the right to lawfully suspend access by the Customer to the Services eight (8) days after written notice, including sent by email, reminding the Customer of the lapsed due date and the amounts owed or, depending on the case, to fulfil its obligations, being without effect. The suspension of the Services does not interrupt the subscription subscribed by the Customer which continues for the agreed period.

Article 15– Termination of the Contract

15.1. Termination of the Contract by the Customer

The Customer can terminate the Contract in the following cases:

- a/ Non-availability of the Services for a period in excess of seven (7) days without information from S4E on corrective actions to be implemented;
- b/ during the initial period of agreement the Customer can cancel the Contract on the anniversary date of the Date of Effect, subject to notice of two (2) months and the express condition that:
 - the ownership of the Site has changed when the Customer was the owner of the Site, or
 - the maintenance contract between the owner of the Site and the Customer is terminated, given that the non-renewal of that maintenance contract does not enable the Customer to terminate this Contract (with S4E).

The Customer will owe compensation equal to twenty percent (20%) of the total costs net of taxes of the subscription price due to S4E for the initial period of the agreement;
c/ following the initial period of agreement, the Customer can cancel the Contract on the anniversary date of the Date of Effect, subject to notice of two (2) months without other conditions or compensation.

S4E is notified of termination by registered letter with acknowledgement of receipt sent to S4E at its registered address.

15.2. Termination of the Contract by S4E

S4E can cancel the Contract at any time in the following cases:

- a/ the failure of the Customer to fulfil any of its obligations arising under this Contract;
- b/ the quantity of data uploaded and/or exchanged by the Customer causes operational incidents on the S4E servers.

The Customer is notified of termination by registered delivery letter with acknowledgement of receipt sent to the Customer at its registered address.

Regardless of the grounds for termination, this does not result in the reimbursement of the cost of the subscription for ongoing periods.

Article 16 - Complaints

Any complaint and/or dispute from the Customer with regard to S4E must be submitted by the Customer at the latest 48 hours as of the trigger event, or be disqualified.

Article 17 - Applicable Law and Settlement of disputes

This Contract shall be governed and construed in accordance with the laws of France. For any disputes arising from the Contract, S4E and the Customer will attempt to reach an amicable settlement prior to any legal action. If amicable agreement cannot be reached, exclusive jurisdiction is assigned to the Courts of Lorient (56), notwithstanding multiple defendants or the introduction of third parties, including for expedited proceedings and summary preservation measures or petitions.

Article 18 – Miscellaneous

S4E and the Customer are independent entities. This Contract is therefore not intended to create partnership, subordination or commercial agency relations between the parties.

This Contract represents the entirety of the agreement between S4E and the Customer and replaces any verbal or written communications, General Conditions or other documents, with the same purpose, issued by the Customer.