General Terms and Conditions of Delivery and Payment of AVS Aggregatebau GmbH

Teil A. General Provisions

1. Scope of Application

1.1 These General Terms and Conditions of Delivery and Payment apply to all our contracts in which we act as seller, contractor, or supplier, in particular to contracts for the sale and/or delivery of movable property and other services, including ancillary services such as development, design, and consulting (hereinafter referred to as “sales transactions”).

1.2 These terms and conditions do not apply to our purchasing transactions or contracts with consumers.

1.3 Our General Terms and Conditions of Delivery and Payment shall also apply even if we perform our services without reservation while being aware of terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Delivery and Payment. Terms and conditions of the customer that we do not acknowledge in writing by express confirmation are not binding on us, even if we do not expressly object to them.

1.4 These terms and conditions, in their respective current version, also form the basis for all future services and deliveries pursuant to Section 1.1 , even if their inclusion is not expressly agreed upon again.

1.5 To the extent that these terms and conditions require “written form” or “in writing,” written form pursuant to Sections 127, 126(2) of the German Civil Code (BGB), electronic form pursuant to Sections 127, 126a of the German Civil Code (BGB), or text form pursuant to Sections 127, 126b of the German Civil Code (BGB) are permissible.

1.6 The processing of our customers’ personal data is governed by our Privacy Policy, which is available at **https://www.avs.energy/datenschutz/**.

2. Offers and Conclusion of Contract

2.1 Our offers are subject to change without notice. We are bound by our offers for 30 days. Contracts and other agreements become binding only upon our written confirmation (order confirmation). Information contained in our offers and/or order confirmations, on our website, or in brochures that is based on an obvious error—namely, a clerical or calculation error—is not binding on us. Rather, the obviously intended statement shall prevail.

2.2 The information, drawings, illustrations, technical data, and descriptions of weight, dimensions, and performance contained in brochures, catalogs, newsletters, advertisements, price lists, on our website, in social media, webinars, online calculators, etc., or in the documents accompanying the offer are non-binding unless they are expressly designated as binding in the order confirmation. Cost-saving and payback calculations are non-binding projections unless they are expressly designated as binding in the order confirmation.

2.3 All property rights and copyrights to the offer and the accompanying documents remain with us. They are intended exclusively for the client and may not be disclosed, published, or reproduced without our permission, nor may they be used for any purpose other than the agreed-upon one. In the event of non-acceptance of an order or termination of the contractual relationship, the documents must be returned immediately without retaining any copies.

2.4 Any collateral agreements, reservations, amendments, oral assurances, or additions to the contract require our written confirmation to be valid.

2.5 Our services are based on the scope of services outlined in our offer, the information contained in our technical description, and—if available—the scope of services set forth in the requirements specification and confirmed by us in writing.

3. Compliance with Foreign Trade Regulations

3.1 The Client is responsible for compliance with all foreign trade laws, regulations, and other provisions. Our offers are generally subject to the condition precedent of foreign trade admissibility and to the proviso that no foreign trade authorization is required. If the contract is not admissible under foreign trade law or requires a foreign trade authorization, we are not bound by our offer and the contract does not take effect. If performance of the contract has already begun, we may terminate the contract extraordinarily without notice or withdraw from it with immediate effect within a period of six weeks after becoming aware of such circumstances. In this case, we shall not be liable for any damages or costs incurred by the client.

3.2 If an authorization under German, European, or international foreign trade law is required for the performance of the contractual services or becomes required after the conclusion of the contract, we are also entitled, without prejudice to the foregoing rights, to withhold the performance owed until the relevant authorizations have been obtained. Any binding delivery deadlines agreed upon shall begin to run no earlier than upon the Gräting of the necessary authorizations.

3.3 If a necessary foreign trade authorization is not granted, or if substantive conditions or ancillary provisions are not fulfilled or are not fulfilled in a timely manner, we shall be released from our obligation to perform.

3.4 If we handle the approval process, the client undertakes to cooperate in an appropriate manner and, in particular, to immediately provide or obtain all necessary information and documents upon request. The client shall bear any costs incurred in obtaining the necessary information and documents.

3.5 Any foreign trade information provided by us is non-binding and does not relieve the client of the obligation to conduct its own review or of its own responsibility for ensuring compliance with foreign trade regulations.

3.6 If a foreign trade licensing procedure takes longer than six months, we are entitled to terminate the contract for cause or to withdraw from the contract with immediate effect.

3.7 If the performance of the contract fails due to the non-granting of foreign trade authorizations, specifically due to the lack of necessary approvals, we shall in any case be released from our delivery obligations. Our claim to the agreed-upon compensation for services rendered up to that point remains unaffected by this. The same applies if we terminate the contract for cause or declare our withdrawal.

4. The Client's Obligations to Cooperate

4.1 The client is obligated to inform us of all circumstances relevant to the contract.

4.2 All prerequisites necessary for us to perform our services—such as obtaining permits, establishing the necessary infrastructure, verifying structural requirements, and providing any items required for installation or assembly—are the responsibility of the client and must be fulfilled by the client. We may request appropriate documentation from the client prior to performing our services.

5. Delivery, Delivery Times, and Delays; Force Majeure

5.1 Unless otherwise specified in the order confirmation, delivery of the goods shall be EXW Ehingen (Incoterms 2020).

5.2 The delivery time stated in the quotation or order confirmation is generally non-binding. We will make every effort to meet the specified delivery times but cannot provide any guarantee or warranty in this regard. Delivery times are binding only if they are expressly designated as binding in the quotation or order confirmation.

5.3 Delivery delays resulting from the client requesting changes to the original order shall be borne by the client. This also applies if the client fails to fulfill its obligation to provide data and/or documents in the agreed-upon form, or fails to do so in a timely manner, or if the data or documents provided are defective and require rework.

5.4 In the event of force majeure or other unforeseeable, extraordinary and circumstances beyond our control—e.g., difficulties in procuring materials, operational disruptions, strikes, lockouts, lack of transportation, government intervention, energy supply difficulties, terrorism, war, embargoes, pandemics, etc., even if they occur at upstream suppliers—the delivery period shall be extended by a reasonable amount if we are prevented from fulfilling our obligation on time. If the aforementioned circumstances render the delivery or service impossible or unreasonable, we shall be released from our delivery obligation. If the delivery delay lasts longer than 6 months, the customer is entitled to withdraw from the contract. The client may withdraw earlier if the delay in delivery is unreasonable for the client. If the delivery period is extended due to force majeure or if we are released from our delivery obligation, the client may not derive any claims for damages from this. We may invoke the aforementioned circumstances only if we notify the client thereof without delay.

6. Prices and Payment Terms, Cancellation and Processing Fees

6.1 The prices quoted by us are net prices. Value-added tax at the applicable statutory rate shall be added to the prices. Unless otherwise agreed, prices are ex our location in Ehingen and do not include the costs of freight, unloading, transportation, and installation, unless this has been expressly agreed upon.

6.2 Unless specific payment terms—in particular, advance payment or cash discounts—are agreed upon in our order confirmations for individual cases, the invoices we issue are due for payment without deduction upon receipt by the client within the specified payment terms, but no later than 14 days. We are entitled to demand the following partial payments:

a) 30% of the agreed-upon remuneration upon the client's receipt of the order confirmation,
b) 70% of the agreed-upon compensation upon our notification that the goods are ready for delivery.

6.3 If the client's payment is received by us late, we are entitled to charge annual interest at a rate of 9 percentage points above the base rate, effective from the due date. We reserve the right to claim additional financing costs and other damages resulting from the client's default. Furthermore, we are entitled to withhold all deliveries until all outstanding claims arising from the business relationship with the client have been settled in full.

6.4 The cancellation or termination of an order placed with us is permitted only for good cause attributable to us. In the event of cancellation or termination for good cause, we are entitled to the full amount of the agreed-upon compensation; however, we must offset any expenses we have saved as a result of the termination of the contract or any income we have earned through the alternative use of our labor. We are entitled to demand 10% of the agreed-upon compensation attributable to the portion of the services not yet rendered, unless the client provides evidence to the contrary in individual cases.

7. Transfer of Risk and Acceptance

7.1 Our services must be accepted upon completion if this is contractually agreed. This also applies to self-contained partial services.

7.2 If acceptance is contractually agreed upon, the risk of accidental loss passes to the client upon acceptance.

7.3 If the client defaults on acceptance, the risk shall pass to the client at the time of default. The same applies if an agreed-upon installation is interrupted for reasons attributable to the client, and if we have, by mutual agreement, transferred the services rendered up to that point into the client's custody.

7.4 Unless acceptance is required or agreed upon, the risk passes to the client no later than upon shipment of the goods, even if partial deliveries are made or we have assumed other obligations, such as shipping costs or delivery and installation.

7.5 At the client's request, we will insure the shipment at the client's expense against theft, breakage, transport damage, fire, water damage, and other insurable risks.

8. Liability for Material Defects and Damages

8.1 We assume no responsibility for the suitability of the goods and/or our services for a specific purpose or for a use intended by the customer, unless we have expressly agreed to such liability in writing.

8.2 The warranty period is one year from delivery or, if acceptance is required, from the date of acceptance. This period does not apply to the client's claims for damages arising from injury to life, limb, or health; from guarantees or claims under the Product Liability Act; or from intentional or grossly negligent breaches of duty by us or our agents, which are subject to the statutory limitation periods in each case.

8.3 Liability for material defects does not extend to wear-and-tear parts or to damage incurred by the client due to natural wear and tear, moisture, excessive heating of the premises, other temperature or weather-related influences, improper handling, force majeure, overuse, the use of unsuitable operating fluids or lubricants, or failure to follow maintenance and care instructions.

8.4 Claims for subsequent performance, damages, reduction in price, or rescission within the meaning of Sections 437 and 634 of the German Civil Code (BGB) due to obvious defects expire upon acceptance without complaint, but no later than when the client fails to notify us of the defect immediately—that is, within two weeks of acceptance or handover.

8.5 We shall bear the expenses necessary for the purpose of subsequent performance, in particular transportation, travel, labor, and material costs to the location to which we delivered the goods. If the goods are located at a place other than the delivery location—in particular in cases of resale—we are not obligated to bear any resulting additional costs for transportation, travel, labor, and materials.

8.6 At our discretion, the goods shall be returned to us at our expense, provided this is technically feasible, or made available at the place of delivery for repair. If the goods are returned, the most cost-effective mode of transportation—generally via a freight forwarder and not by air—shall be selected, provided this is not unreasonable for the customer.

8.7 We may refuse to provide subsequent performance, without prejudice to our rights under § 275(2) and (3) of the German Civil Code (BGB), if it is possible only at disproportionate cost.

8.8 Instead of repairing the goods, we may, at our discretion, also deliver a replacement item. If we deliver a replacement item, we may demand that the customer return the defective item in accordance with §§ 346–348 of the German Civil Code (BGB). If the rectification fails, we refuse to provide a replacement, or we fail to provide it within a reasonable period, the client may reduce the payment or withdraw from the contract. A rectification is deemed to have failed after the third unsuccessful attempt, unless the nature of the item or the defect, or other circumstances, indicate otherwise.

8.9 Insignificant, reasonable deviations in dimensions and specifications—particularly in the case of repeat orders—do not entitle the client to file a complaint, unless compliance with dimensions and tolerances has been expressly agreed upon. Technical improvements and necessary technical modifications are also considered to be in accordance with the contract, provided they do not result in a reduction in value.

8.10 If the client specifies the use of a particular material, provides us with the material to be used, or requires a specific method of execution that deviates from standard manufacturing practices, we shall not be liable for any defects or damages arising

therefrom that either affect our product or result in defects in the product to be manufactured. We are not liable for parts, materials, or other equipment manufactured by the client or on the client's behalf.

8.11 All claims for material defects shall be void if the customer, either directly or through third parties, makes changes or modifications to the goods without our written approval. The warranty also expires if the client uses replacement parts that have not been approved by us, unless the client can prove that the defect would have occurred even if an original replacement part or one approved by us had been used.

8.12 All claims for damages by the customer arising from breach of duty, default, impossibility of performance, positive breach of contract, fault at the time of contract conclusion, tort, and other legal grounds are excluded, provided that the damages or consequential damages—which did not occur to the delivered goods themselves—were not caused by intentional or grossly negligent conduct on our part. This limitation of liability applies to the same extent to our agents and vicarious agents.

8.13 The exclusion of liability under Section8.12 does not apply if essential contractual obligations are breached or if the client asserts claims for damages due to the absence of a warranted characteristic. In such cases, however, our liability is limited to the damage foreseeable at the time the contract was concluded.

8.14 In the event of defects in components from other manufacturers that we cannot remedy for licensing or practical reasons, we shall, at our discretion, either assert warranty claims against the manufacturers and suppliers on behalf of the customer or assign such claims to the customer. Warranty claims against us for such defects shall exist, subject to the other conditions and in accordance with these General Terms and Conditions of Delivery and Payment, only if the judicial enforcement of the aforementioned claims against the manufacturer and supplier has been unsuccessful or, for example, due to insolvency, is futile. During the duration of the legal dispute, the statute of limitations on the Client's relevant warranty claims against us is suspended.

8.15 We may not invoke the foregoing limitations of liability and the one-year warranty period set forth in Section8.2 if we have fraudulently concealed the defect or have provided a guarantee regarding the quality of the goods. Furthermore, the limitations of liability and the one-year warranty period set forth in Section8.2 do not apply to damages resulting from injury to life, body, or health, or in the case of guarantees or claims under the Product Liability Act.

9. Retention of Title

9.1 All delivered goods remain our property (goods subject to retention of title) until full payment of all claims to which we are entitled arising from the business relationship with the customer. This also applies to future and conditional claims, and even if payments are made toward specifically designated claims. This retention of title expires definitively upon settlement of all claims still outstanding at the time of payment and covered by this retention of title.

9.2 Any processing or treatment of the goods subject to retention of title is carried out on our behalf as the manufacturer within the meaning of § 950 BGB, without imposing any obligations on us. The processed or transformed goods shall be deemed goods subject to retention of title within the meaning of Section9.1 . If the client processes, combines, or mixes the goods subject to retention of title with other goods, we shall be entitled to proportional co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If ownership is extinguished through combination or mixing, the customer hereby assigns to us the ownership rights to which it is entitled in the new inventory or item to the extent of the invoice value of the goods subject to retention of title and shall hold them in safekeeping for us free of charge. Our co-ownership rights shall be deemed goods subject to retention of title within the meaning of Section9.1 .

9.3 The customer is entitled to resell the goods in the ordinary course of business as long as the customer is not in default of payment of the purchase price. The customer is not authorized to make extraordinary dispositions, such as pledging the goods or transferring ownership to third parties as security. In the event of resale, the customer hereby assigns to us, by way of security, all claims and other entitlements arising from the resale against its customers, including all balance claims from current accounts, together with all ancillary rights.

9.4 The Client is entitled to collect the assigned claims. The authorization to collect expires if the Client suspends payments, files for insolvency, or if insolvency proceedings are opened; in the event of an out-of-court settlement or restructuring proceeding; in the event of a restructuring proceeding under the StaRUG; or in the event of any other deterioration of the Client's financial situation. The same applies if it becomes apparent that our claim for payment is at risk due to the Client's inability to pay. In this case, we may demand that the Client disclose to us the assigned claims and their debtors, provide all information necessary for the collection of the claims, hand over the relevant documents, and notify the debtor of the assignment.

9.5 The client is prohibited from disposing of the resale claim—whether by way of security or assignment of the claim, including through the purchase of the claim—without our written consent, unless the assignment is made by way of genuine factoring, is notified to us, and the factoring proceeds exceed the value of our secured claim.

9.6 The client must notify us immediately of any attachment or other impairment of our goods subject to retention of title by third

parties. The client shall bear all costs incurred in lifting the attachment or in returning the goods subject to retention of title, unless such costs are reimbursed by third parties.

9.7 We undertake, at the client's request, to retransfer or release the security interests to the extent that the value of the security provided to us exceeds the total amount of our claim by more than 20%.

10. Confidentiality

10.1 The Client undertakes to keep strictly confidential all confidential information that it receives from us in connection with the business relationship or otherwise obtains, and to use such information exclusively in connection with the purpose of the contract and not for any other purposes.

10.2 The Client undertakes to take all reasonable and appropriate precautions to prevent access to the confidential information by employees, consultants, or third parties—including the Client's affiliated companies—who are not directly involved in the purpose of the contract. Disclosure to third parties, exploitation, or any other use of the confidential information by the receiving party is permitted only with the express prior written consent of the disclosing party.

10.3 The Client shall disclose confidential information only to employees or third parties who have a compelling need for it based on their duties and shall ensure that the employees and third parties they engage are also bound in writing to maintain confidentiality in accordance with this agreement or are required by law to maintain corresponding or professional confidentiality (such as attorneys or certified public accountants). Employees remain bound by confidentiality obligations even after their employment ends, to the extent permitted under labor law, unless such obligations already exist. We may require the Client to confirm that the foregoing obligation is being complied with.

10.4 The Client shall notify us immediately should it become aware that confidential information has been disclosed, exploited, or otherwise used.

10.5 The obligation of confidentiality pursuant to the foregoing provisions shall not apply if the client can prove that the confidential information was already publicly known at the time it was disclosed, was already in the client's possession at the time of disclosure, is the result of work performed by the client's own employees without the use of our confidential information or parts thereof, or became publicly known after its disclosure, specifically as of the time it became publicly known, was made available to the Client by a third party after its disclosure in a legally permissible manner and without restrictions regarding confidentiality or use, effective as of the date of such disclosure by the third party; or must be disclosed due to mandatory provisions or court or governmental orders, and the Client can prove that it previously informed us of the impending disclosure and its content.

10.6 The Client agrees not to reverse engineer, decompile, disassemble, or otherwise examine the composition and/or manufacture of confidential information, unless this is necessary for the project and we have expressly consented to it.

11. Prohibition on Set-off, Contractual Penalty

11.1 The Client may set off claims against our demands for payment of the agreed compensation only if the Client's counterclaim has either been acknowledged by us or has been established by a final and binding court decision. Likewise, the Client's rights of retention are excluded.

11.2 We will accept contractual penalties only if they have been contractually negotiated and set forth in writing. Contractual penalties contained in the Client's General Terms and Conditions are not binding on us under any circumstances.

11.3 All contractual penalties include our rights under Sections 339 et seq. of the German Civil Code (BGB), provided that the party seeking to assert rights arising from a contractual penalty clause must demonstrate and prove all prerequisites for doing so. Any contractual penalty may be offset against other claims for damages. We reserve the right to prove that no damage, or only minor damage, has been incurred as a result of the contractual penalty and to reduce the contractual penalty accordingly.

11.4 If a contractual penalty is disproportionately high, it may be reduced by court order pursuant to § 343 BGB. § 348 HGB does not apply.

12. Place of Jurisdiction, Governing Law, Contract Language

12.1 The place of performance and venue for all disputes arising from the contractual relationship shall be our registered office, provided that the Client is a registered merchant, a legal entity under public law, or a special fund under public law.

12.2 The contractual relationship between the parties shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the conflict-of-laws rules of private international law. The language of the contract is German. The German version of these terms and conditions shall be solely authoritative for the contractual relationship.

13. Severability Clause

Should one or more of the provisions of this contract, other than the principal obligations, be or become invalid, this shall not affect the validity of the remaining provisions of this contract. In such a case, the parties agree to negotiate a new provision that comes as close as possible to the economic purpose of the invalid provision and that they would have agreed upon had they been aware of the invalidity.

Teil B. Special Terms and Conditions for Our Online Store

1. Scope of Application of the Special Terms and Conditions for Our Online Store

1.1 In addition to the provisions under Section A (General Provisions), the provisions listed in this Section B shall also apply to all our contracts for the sale and/or delivery of movable goods and other services concluded exclusively through our online store.

1.2 In the event of any conflict between Section A and Section B, the Special Terms and Conditions set forth in Section B shall prevail.

1.3 Our online store is intended exclusively for business customers as defined in § 14 of the German Civil Code (BGB).

2. Registration in Our Online Store and Processing of Personal Data

2.1 In our online store, goods can be ordered as a guest or as a registered user. Registration does not create any obligation to purchase the goods we offer. The customer may cancel their registration at any time.

2.2 The processing of our customers' personal data is governed by our Privacy Policy, which is available at **https://www.avs.energy/datenschutz/**.

2.3 Prior to the conclusion of a contract, we may require the customer to provide sufficient proof of their status as a business entity, e.g., by providing a VAT ID or other appropriate documentation.

3. Offers and Conclusion of Contracts

3.1 The presentation of our goods, products, and services in the online store does not constitute a legally binding offer, but rather an invitation to the customer to submit an offer by placing an order (invitatio ad offerendum).

3.2 The ordering process in our online store consists of a total of five steps:

- Selecting the merchandise and adding it to the shopping cart
- Entering customer information, including shipping and billing addresses
- Selecting payment methods—for new customers, only prepayment is available
- Reviewing the items in the shopping cart, customer information, shipping and billing addresses, and payment methods
- Placing a binding order by clicking the "Place Order with Obligation to Pay" button.

3.3 By clicking the "Place Binding Order" button in the final step of the ordering process, the customer submits a binding offer to purchase the items displayed in the order summary.

3.4 After submitting the order, the customer receives a confirmation of receipt; however, this does not yet constitute acceptance of the contract offer. A contract is not bindingly concluded until we provide written confirmation (see Part A, Section **Fehler! Verweisquelle konnte nicht gefunden werden.**)

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