General terms and conditions of sale

DENERGIUM S.A.S.

Version : 2024-02-14
(translated from the french version)

Clause n° 1 : Object and field of application

The present general sales conditions (GSC) constitute the basis of the commercial negotiation and are systematically sent or given to each buyer to enable him to place an order.
The general sales conditions described hereafter detail the rights and obligations of the company DENERGIUM and its customer within the framework of the sale of the following goods:

- Software License Agreement (Subscription License, Perpetual License, Software Maintenance Agreement) including all or part of the EnergyScopium Software Suite ;
- Service contract in SAAS mode, in particular for the EnergyScopium software suite in its entirety or in part;
- Associated services: software development, expertise, audit, training.

Any acceptance of the quote/order form, including the clause "I acknowledge having read and accepted the general sales conditions attached", implies the buyer's unconditional acceptance of these general sales conditions.

Clause n°2 : Definitions

- GSC : General Sales Conditions
- Client: designates the legal entity, co-contractor of DENERGIUM. This term also applies when the contract has no financial component, such as the use of the EnergyScopium RECORD solution alone.
- Contract: commercial contract concluded between the Client and DENERGIUM. It can be based on a quotation or an order form accepted by both parties. It includes the acceptance of the GTC.
- Software maintenance contract: support and update contract for a perpetual license.
- Credit: currency value that is converted into tokens for analysis. The conversion rate is available on the SAAS platform and on request from contact@denergium.fr
- Customer Data: the data provided by the customer and the data generated by DENERGIUM solutions
- EnergyScopium: DENERGIUM S.A.S. brand, software suite for energy analysis of IT infrastructures
- EnergyScopium in SAAS mode: the software suite is installed in the cloud and is accessible as a service
- Subscription license: subscription giving the right to use the software for a limited period. During this period, the customer benefits from support and updates.

- Perpetual license: sale of one copy of the software.
- Final deliverable : allows to materialize the delivery of an associated service. It can take the form of a presentation, an email, a report or a software. Its nature is indicated in the associated services contract.
- Software: any software application for which DENERGIUM holds an operating right
- On-Premise: the Software suite is installed at the customer's site on a physical or virtual server provided by the customer
- Delivery report: exchange in paper and/or electronic form between DENERGIUM and the customer to record the delivery
- SAAS (software as a service): the Software is installed on servers managed by DENERGIUM and is used as a service by the Customer
- Associated services: intellectual service subject to a specific contract.The associated service may be subject to travel at the expense of the customer.
- Token: unit of analysis

Clause n° 3: Price

The prices of the goods sold are those in force on the day the order is taken. They are denominated in euros and calculated without taxes. Consequently, they will be increased by the VAT rate.
The company DENERGIUM grants itself the right to modify its prices at any time. However, it undertakes to invoice the goods ordered at the prices indicated when the order is registered.

Clause n° 4: Rebates, discounts

The proposed prices include the discounts and rebates that DENERGIUM would have to grant taking into account its results or the assumption of responsibility by the Client of certain services.
No discount will be granted in case of early payment.

Clause n° 5 : Terms of payment

The payment of the orders is carried out:
- Either by credit card ;
- Or by SEPA transfer.

Payments will be made under the following conditions:
- Unless otherwise stated, payments are due
- Software license agreement :
  - Payment of the cost of the license
- Service contract in SAAS mode:
  - Payment of credits. The credits give rise to tokens that have a validity of (12) months.
  - Monthly and annual subscription
- Associated services :
  - For a service of less than 3 months and a total amount greater than or equal to 5000 €, payment of a deposit of 30% before the beginning of the service
  - Payment at 30 days of the remainder due upon receipt of the invoice

The sums paid can in no case be refunded, except valid clauses.

Clause n° 6 : Late payment

In case of total or partial non-payment of the delivered goods at the due date, the buyer must pay to the company DENERGIUM a late payment penalty equal to three times the legal interest rate.
The legal interest rate retained is the one in force on the day of the delivery of the goods.
This penalty is calculated on the amount including all taxes of the sum still due, and runs from the due date of the price without any prior formal notice being necessary.
In addition to the late payment penalties, any sum, including the deposit, not paid at its due date, will automatically result in the payment of a fixed penalty of 40 euros due for collection costs.
Articles 441-10 and D. 441-5 of the Commercial Code.

Clause n° 7 : Resolutive clause

If within fifteen days following the implementation of the clause "Late payment", the buyer has not paid the remaining sums due, the sale will be automatically cancelled and may give rise to the right to claim damages for the benefit of the company DENERGIUM.

Clause n° 8: Delivery

DENERGIUM only sells immaterial goods.
The delivery is carried out:
- Software license contract: provision of the Software.The delivery date is the date of the beginning of the execution of the license agreement;
- Service contract in SAAS mode: new Credit on the client's account;
- Associated services: sending the final Deliverable.

If possible, a delivery report will be issued.

The delivery time indicated at the time of order registration is given as an indication only and is not guaranteed.

Consequently, any reasonable delay in the delivery of the products will not give rise to the benefit of the buyer to:
- The allocation of damages and interests;
- The cancellation of the order.

Clause n° 9: Force majeure

The responsibility of the company DENERGIUM cannot be implemented if the non-execution or the delay in the execution of one of its obligations described in the present general sales conditions results from a case of force majeure. In this respect, force majeure is defined as any external, unforeseeable and irresistible event within the meaning of Article 1148 of the Civil Code.

Clause n° 10: Limitations of DENERGIUM's responsibilities

DENERGIUM will only be responsible for direct and foreseeable damages resulting from a breach of its contractual obligations. In the event that DENERGIUM's liability is incurred, the overall and cumulative compensation, all causes combined, principal, interest and costs, to which the Client may be entitled, shall be limited to the direct and foreseeable loss suffered by the Client, without being able to exceed the sums paid by the latter, over the last twelve (12) months, in return for the element (Software) or Service at the origin of DENERGIUM's liability.

Clause n° 11: Assignment of contract

The Contract, as well as the rights or obligations that it provides for, may be the object of an assignment by the Client, whether total or partial, for a fee or free of charge, subject to the prior written agreement of DENERGIUM.

DENERGIUM may assign or transfer the Contract freely and without formalities. As of the written notification of the assignment to the Customer, DENERGIUM shall be released from its obligations under the Contract and may not be held jointly and severally liable for the performance of the Contract by the assignee.

Clause n° 12: Protection of personal data

Within the framework of its activities, the company DENERGIUM can be brought to treat personal data.

- for the follow-up of contracts
- for its customer relationship management and commercial prospecting database
- for the allocation of costs of services in SAAS mode
- for the assignment of the generated data to the right person

The data protection delegate is: Hervé MATHIEU (contact@denergium.fr)

Data retention is 12 months by default. It can be extended to the end of a contract and in case of a written or verbal exchange with the person be extended by 12 months.

Any person concerned can activate their rights of access, rectification, erasure and limitation of processing by sending an email to contact@denergium.fr

Clause n° 13 : Protection of customer data

The Customer is solely responsible for the safeguarding of the Customer Data that it processes or stores and acknowledges that it is its responsibility to :
- make backups of its Customer Data at a regular rate and adapted to its activity;
- regularly check the content of the backups made.
Prior to any intervention by DENERGIUM, the Client undertakes to make a backup of all its Client Data.

The Client must take all necessary measures for the protection of its information system and in particular with regard to protection against viruses, worms and other hostile intrusion processes. Any restoration or reconstitution of lost or damaged Customer Data, programs or files is not covered by this Agreement.

Clause n° 14: Customer Data

The client authorizes DENERGIUM to use the Client Data internally :
- for statistical purposes ;
- in order to improve the processing algorithms.

The client authorizes DENERGIUM to use the Client Data to illustrate internal and external publications. In this case, DENERGIUM will make every effort to hide the origin of the Customer Data.

Clause n° 15: Granting of rights to use the Software

A perpetual license is a sale. The customer acquires ownership of the copy of the software delivered, which he may use for an unlimited period of time.

In all other cases of licensing, the rest of this clause applies.

Any Software provided hereunder remains the property of DENERGIUM or its author.

Consequently, the Client acquires from DENERGIUM, by virtue of the Contract, only a personal, non-exclusive, non-transferable and non-transferable right of use of the Software appearing in the description of the Contract.

This concession is granted to the Client in consideration of the payment of a fixed fee stipulated in the Contract.

Within the framework of the concession of rights granted to the Client by DENERGIUM, the Client undertakes not to directly or indirectly infringe the property rights of DENERGIUM and the author of the Software and in particular :
- undertakes to use them only in accordance with their professional purpose, i.e. in accordance with their associated documentation and for the sole needs of its activity;
- undertakes not to delete any mention concerning the trademarks or property mentions;
- undertakes not to make them available to third parties, directly or indirectly, for any reason whatsoever, in any form and for any reason whatsoever, whether free of charge or in return for payment, without the prior, express and written authorization of DENERGIUM. In the event that the Client shares a site with third parties, the Client undertakes to take all measures to ensure that these third parties cannot benefit from the right to use or access the Software;
- agrees not to copy the Software, except to make one (1) backup and only for security purposes;

- undertakes not to divulge the content or to transfer his right of use in any way whatsoever;
- guarantees that its personnel will comply with these provisions.

The Customer expressly acknowledges that the License Agreement does not transfer to him any property right on the Software and refrains from making any corrections of errors, modifications, adaptations or translations of the Software.

In accordance with article L122-6-1-IV of the French Intellectual Property Code, the Customer undertakes not to decompile the Software for interoperability purposes, and DENERGIUM undertakes to provide the Customer, within a reasonable period of time, with all the information required for the interoperability of the Software with the Customer's information system existing at the date of signature of the Licensing Contract. The Customer undertakes not to use the knowledge it may have acquired during the operations defined above for any purpose other than interoperability, to the exclusion of any creation, production or marketing of a Software whose expression and basic principles would be similar to those of the Software.

Clause n° 16 : Control and audit

Verification of the use of DENERGIUM Software

Within the framework of the verification of the use by the Client of DENERGIUM Software in accordance with the rights of use granted at the time of the order, the Client is informed that DENERGIUM reserves the right to integrate a control mechanism into the DENERGIUM Software. The Client is not authorized to attempt to avoid or defeat this control mechanism.

In addition, DENERGIUM may carry out, once a year, an on-site or remote audit in order to verify that the Client complies with the terms of this Contract. DENERGIUM shall notify the Client by e-mail of its intention to carry out an audit with a minimum notice of fifteen (15) days. DENERGIUM will notify in this writing :
- the identity of the auditing structure retained, when it is an auditor external to DENERGIUM ;
- the Software and licenses concerned by this audit.

The Client undertakes to actively cooperate in this audit, in particular by giving DENERGIUM access to all relevant information and by providing the means necessary to carry out the audit. It is expressly agreed that any costs incurred by the Client for its collaboration in this audit will remain at its expense.
The results of the audit will be formalized in an audit report drawn up by DENERGIUM, which must be sent to the Client so that it can read it and make its observations within seven (7) days. In the event of a dispute, the Parties undertake to try to find an amicable solution before any legal action is taken.

In the event that the audit reveals use in excess of the rights granted, the additional royalties associated, if necessary, with an adjustment invoice covering all the periods since the overrun occurred will then be invoiced to the Client as well as the audit costs incurred by DENERGIUM. Furthermore, in the event of the Customer using a function or option for which he has not acquired rights, DENERGIUM will then invoice the additional fees in accordance with the tariff in force. The

Customer agrees to pay within thirty (30) days from the date of issue of the invoice. In the event of failure to pay within the aforementioned time limits, DENERGIUM shall have the right to terminate this Contract by operation of law and thereby revoke the licenses granted, and to initiate any legal proceedings.

The Client's information collected during the audit operations will be considered as confidential information within the meaning of the "Confidentiality" article herein and may only be used for the needs of the audit and any necessary regularization and/or in the event of legal proceedings.

Access control device for DENERGIUM Software

The Client is informed that DENERGIUM reserves the right to use a locking system and/or a license authorization key to control access to DENERGIUM Software. The Client is not authorized to neutralize the system used.

Clause n° 17: Maintenance and technical assistance

DENERGIUM is responsible for the corrective and evolutionary maintenance of the Software.

Maintenance and technical assistance services are included in the license contracts and during any period of paid use of the Software in On-Premise mode and in SAAS mode.

DENERGIUM undertakes to make at least one update per year.

Technical assistance is provided by e-mail. DENERGIUM undertakes to deal with requests for assistance as quickly as possible without any commitment to a deadline.

Clause n° 18 : Communication

The Client authorizes DENERGIUM to quote its name and/or to reproduce its logo in its commercial documents and press announcements, in any form or medium whatsoever.

Clause n° 19 : Competent court

Any dispute relating to the interpretation and execution of the present general sales conditions is subject to French law.
In the absence of amicable resolution, the dispute will be brought before the Commercial Court of Bordeaux.