

## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF **CLAUSE 8 (LIMITATION OF LIABILITY)**.

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause **5 (Charges and payment)**.

**Commencement Date:** has the meaning given in clause **2.2**.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause **11.4**.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Customer Default:** has the meaning set out in clause **4.2**.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form.

**Services:** the services supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** Energi North East Limited registered in England and Wales with company number 10412437.

**Supplier Materials:** has the meaning set out in clause **4.1(h)**.

#### 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes email.

## **2. Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## **3. Supply of Services**

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 The Customer acknowledges that the Supplier may provide the Services using either employees or contractors and the Customer shall not during the provision of the Services or for a period of two years after completion of the Services offer employment to, enter into a contract for the services of, or attempt to entice away from the Supplier, any individual who was involved in the provision of the Services.

#### 4. Customer's obligations

##### 4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the premises where the Services are to be performed, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the premises where the Services are to be performed for the supply of the Services, including but not limited to ensuring that the rooms or areas in which the Services are to be performed are cleared of any furniture and equipment, unless the Supplier advises the Customer that this is not necessary and ensuring that access to the property (including vehicular access where available) and any corridors and passageways are cleared of any furniture or equipment;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) which may be at the premises where the Services are to be performed in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (i) comply with any additional obligations as set out in the Specification; and
- (j) Save as specified in the Order, provide all fittings and other materials to be used for the Services.

##### 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer

remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **5. Changes to the Order or Specification**

- 5.1 If the Supplier or the Customer wishes to change the Order or Specification, the Supplier or Customer (as the case may be) shall give at least 7 days' notice to the other party of the changes.
- 5.2 If a notice under Clause 5.1 is given by either party, the Supplier shall inform the Customer of the impact of the proposed changes on the Charges payable and/or on any performance dates or deadlines previously agreed.
- 5.3 If the Customer accepts the impact of the proposed changes notified to it under Clause 5.2, the changes and the impact of those changes on the Charges and/or any performance dates or deadlines shall be set out in a written document, which shall be executed by a director of the Supplier and a director or partner of the Customer or some other person with the appropriate authority on behalf of the Customer, and that document shall become part of the Specification.

## **6. Charges and payment**

- 6.1 The Charges for the Services shall be calculated on a time and materials basis:
  - (a) unless otherwise stated in the Order, the Charges shall be calculated in accordance with the Supplier's hourly rates, as set out in the Order or otherwise notified to the Customer;
  - (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;

- (c) where any fittings or other materials (**Products**) are supplied or sourced by the Supplier for the provision of the Services, the following provisions shall apply:
  - (i) where the Charges are calculated in accordance with the Supplier's hourly rates, such Products shall not be recharged to the Customer (unless otherwise stated in the Order or otherwise agreed by the Customer), but the time taken for the acquisition of such Products shall be chargeable at the Supplier's usual hourly rates and any time spent repairing, removing, replacing or otherwise dealing with any failures of such Products shall be chargeable at the Supplier's usual hourly rates in accordance with clause 8.5; and
  - (ii) where the Charges are based on a fixed quotation, such Products shall be recharged to the Customer together with an uplift of 20% of the value of such Products and, without prejudice to any other provision of these terms, in the event that there any defects with such Products, the Supplier shall arrange for replacement of such Products without cost within 12 months of the date of the installation of the Products; and
- (d) where the Services require equipment for working at height, the Supplier shall hire such equipment and the cost of such hiring shall be recharged to the Customer together with an uplift of 5%,

6.2 The Customer shall pay for any travel required by the Supplier (or any of its employees or contractors) which exceeds 30 minutes in duration at the Supplier's ordinary hourly rate.

6.3 The Supplier shall invoice the Customer fortnightly in arrears, as detailed in the Order, save where the Services covered by the Order are of less than two weeks' duration, in which case the Supplier shall invoice the Customer on completion of the Services.

6.4 Where the Services covered by the Order are of less than two weeks' duration, the Customer shall pay each invoice submitted by the Supplier within 14 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer and in full and in cleared funds to a bank account nominated in writing by the Supplier and time for payment shall be of the essence of the Contract.

6.5 Where the Services covered by the Order are for two weeks' (or more) duration, the Customer shall pay each invoice submitted by the Supplier within 7 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer and in full and in cleared funds to a bank account nominated in writing by the Supplier and time for payment shall be of the essence of the Contract.

6.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable

supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time.

6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. Snagging List

7.1 Within 48 hours of completion of the Services, the Customer shall provide to the Supplier a list of any problems with the Project (**Snagging List**). The Snagging List produced shall be treated as a final and exhaustive list of all defects with the provision of the Services.

7.2 In the case of any latent defects in the Project, of which the Customer was not and could not be aware at the date of the Snagging List, such defects must be notified to the Supplier within 48 hours of the Customer becoming aware of such defects.

7.3 THE SUPPLIER SHALL HAVE NO LIABILITY FOR ANY DEFECTS AND/OR FAILURES OF THE SUPPLIER WHICH HAVE NOT BEEN NOTIFIED TO THE SUPPLIER UNDER CLAUSE 7.1 or 7.2.

## 8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

8.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.5 The Supplier will not be liable for any defects in any Products provided by the Customer or sourced by the Supplier from any third party except insofar as the Supplier has the benefit of any warranties as to such Products from a third party, in which case the Supplier will make all reasonable efforts to assign to the Customer all such warranty rights, and the Customer's sole claim to redress for any defects in those products or services will be against the original supplier(s) and any repairs or other issues which are remedied by the Supplier shall be charged at the Supplier's usual hourly rate.

8.6 This clause 8 shall survive termination of the Contract.

## **9. Termination**

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one week's' written notice prior to the start of the provision of the Services.

9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in **clause 9.2(b)** to **clause 9.2(d)**, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **10. Consequences of termination**

10.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Products which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.



10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 11. General

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 11.2 Assignment and other dealings.

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

### 11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.4 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.8 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.