

## CONDITIONS FOR SUPPLY OF ENERGY SERVICES BY ENVIROTECH ENERGY MANAGEMENT LIMITED

### 1. DEFINITIONS AND 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 bank holiday in England;

**Change of Control:** any sale or other disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the equity share capital of a corporation (including control over the exercise of voting rights conferred on that equity share capital or control over the right to appoint or remove directors);

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.1;

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

**Contract Year:** the period starting on the Effective Date and ending on the date which is one calendar year later and each such subsequent period of 12 calendar months starting on the anniversary of the Effective Date;

**Customer:** the Customer named in the PO Form;

**Data Protection Law:** any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the processing of their personal data to which a party is subject (including the Data Protection Act 2018), together with any guidance or codes of practice issued by the Information Commissioner, as updated from time to time;

**Effective Date:** has the meaning given in clause 2.2;

**Equipment:** the Green Energy Equipment set out in the PO Form;

**Final Payment:** the final payment specified in the PO Form;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Interim Payment:** the interim payment specified in the PO Form;

**PO Form:** the Purchase Order Form at the front of these Conditions;

**Premises:** the premises of the Customer named in the PO Form;

**Provider:** the Provider named in the PO Form;

**Routine Maintenance:** (i) testing that the Equipment is functional; (ii) making any adjustments as may be required to ensure that the Equipment remains in good working order; and (iii) replacing any consumables comprised in the Equipment that require replacing;

**Services:** the Green Energy Services (if any) including the supply of the Green Energy Equipment as set out in the PO Form and the Specification;

**Specification:** the description or specification of the Services (including the timetable for performance) provided in writing by the Provider to the Customer;

**Supplier:** the Supplier named in the PO Form, to be appointed by the Provider to supply, install and maintain the Equipment;

**Warranty:** the warranty provided by the manufacturer of the Equipment.

1.2 Interpretation:

1.2.1 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.

1.2.2 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 terms preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

**2. BASIS OF CONTRACT**

2.1 The PO Form, once signed by the Customer and issued to the Provider, constitutes an offer by the Customer to purchase the Equipment and (where specified in the PO Form) the Services in accordance with the Conditions.

2.2 The PO Form shall only be deemed to be accepted when the Provider issues its signed copy of the PO Form to the Customer, at which point and on which date the Contract shall come into existence (**Effective Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Provider, and any descriptions or illustrations contained in the Provider's catalogues or brochures, or any predictions regarding the possible energy savings resulting from the installation and use of the Equipment, are issued, published or made for the sole purpose of giving an approximate idea of the effect of the Equipment or the Services (if any) described in them. They shall not form part of the Contract or have any contractual force.

2.4 The 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 law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Provider shall not constitute an offer, and shall only be binding when it is included in a PO Form accepted by the Provider under clause 2.2.

**3. SUPPLY OF SERVICES**

3.1 The Provider shall supply the Services (if any) to the Customer in accordance with the Specification in all material respects.

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

3.3 The Provider 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 Provider shall notify the Customer in any such event.

3.4 The Provider warrants to the Customer that the Services (if any) shall be provided using reasonable care and skill.

**4. EQUIPMENT INSTALLATION, MAINTENANCE AND WARRANTY**

4.1 The Provider shall procure that the Supplier, using reasonable care and skill, installs the Equipment at the Premises.

4.2 The Equipment shall be used by the Customer in accordance with the instructions provided by the Supplier and, unless agreed otherwise by the Supplier, the Customer shall not allow any

person other than the Supplier or its appointed agent to adjust, maintain, repair, replace, or remove the Equipment or any part of it.

- 4.3 The Parties intend the Customer to have the benefit of the Warranty and, if necessary under the terms of the Warranty, the Provider shall use reasonable endeavours to procure the assignment of the Warranty to the Customer. Until the completion of such assignment, the Provider shall:
- 4.3.1 at the Customer's cost, co-operate with the Customer in relation to any claims under the Warranty and do all things reasonably requested by the Customer in pursuit of such claims (including executing documents); and
  - 4.3.2 not do anything that might invalidate the Warranty, agree any amendments to the Warranty or assign or otherwise transfer the Warranty to any third party.
- 4.4 The Customer's sole remedy in relation to the Equipment is set out in the Warranty, and the Provider has no liability whatsoever to the Customer for any defects in or failure of the Equipment. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Agreement.
- 4.5 The Equipment is and remains the property of the Supplier at all times.
- 4.6 The Supplier or its appointed agent shall be responsible for the Routine Maintenance of the Equipment, and the Provider shall use reasonable endeavours to procure that the Supplier or its appointed agent proposes to the Customer a maintenance contract for the Routine Maintenance of the Equipment on reasonable terms.

## 5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- 5.1.1 ensure that the terms of the PO Form and any information it provides in relation to the Specification are complete and accurate;
  - 5.1.2 co-operate with the Provider in all matters relating to the provision of the Equipment and (if any) the Services;
  - 5.1.3 provide the Provider, the Supplier and its or their employees, agents, consultants and subcontractors, with such access to the Premises and other facilities as may reasonably be required;
  - 5.1.4 provide the Provider and the Supplier with such information and materials as may reasonably be required in order to provide the Equipment and supply the Services (if any), and ensure that such information is complete and accurate in all material respects;
  - 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the supply of the Equipment or the Services (if any) before the date on which the Equipment is to be installed or the Services are to start;
  - 5.1.6 comply with all applicable laws, including health and safety laws;
  - 5.1.7 comply with any additional obligations as set out in the Specification.
- 5.2 If the Provider'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**):
- 5.2.1 without limiting or affecting any other right or remedy available to it, the Provider shall have the right to suspend performance of the provision of the Equipment or supply of the Services (as the case may be) 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 Provider's performance of any of its obligations;
- 5.2.2 the Provider shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Provider's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- 5.2.3 the Customer shall reimburse the Provider on written demand for any costs or losses sustained or incurred by the Provider arising directly or indirectly from the Customer Default.

## **6. PAYMENT**

- 6.1 The Provider shall issue invoices to the Customer as follows:
- 6.1.1 an invoice for the Interim Payment once the Equipment has been procured from the Supplier but prior to the installation of the Equipment at the Premises; and
- 6.1.2 an invoice for the Final Payment once the Equipment has been installed at the Premises and prior to the delivery of the Services (if any).
- 6.2 The charge for the Services (if any) and the applicable payment terms shall be specified in the PO Form, and the Provider shall in addition be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom it 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 Provider for the performance of the Services, and for the cost of any materials.
- 6.3 All invoices issued by the Provider shall be paid by the Customer within **[10]** (**[ten]**) days of the Customer's receipt of the invoice.
- 6.4 The Provider shall be entitled, in addition to any other right or remedy, to receive interest at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 on any payment not made by the Customer from the date after the date on which payment was due up to and including the date of payment.
- 6.5 All payments to be made by the Customer to the Provider under the Contract shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings in Sterling for value on the day on which payment is due to the bank account of the Provider with such details as the Provider may notify to the Customer from time to time.
- 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 Provider to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable.

## **7. INTELLECTUAL PROPERTY**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (if any) (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Provider.
- 7.2 The Provider grants to the Customer, or shall use reasonable endeavours to procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use the Equipment and receive the Services (if any) in accordance with these Conditions.
- 7.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.

7.4 The Customer grants the Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Provider for the purpose of providing the Equipment or the Services (if any) to the Customer.

## **8. DATA PROTECTION**

8.1 The terms “controller”, “personal data” and “processor” shall have the meanings ascribed to them in Data Protection Law, and all cognate terms shall be construed accordingly.

8.2 The parties agree that their actions shall determine their classification as controller or processor for the purposes of Data Protection Law, however it is the intention of each party under these Conditions to act as a data controller in respect of any personal data which it may receive from the other party.

8.3 Each party shall comply with the requirements of Data Protection Law as it applies to their activities under these Conditions.

## **9. FORCE MAJEURE**

9.1 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 results from events, circumstances, or causes beyond its reasonable control.

## **10. LIMITATION OF LIABILITY**

10.1 The Provider has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £[AMOUNT] per claim. The limits and exclusions in this clause 10 reflect the insurance cover the Provider has been able to arrange, and the Customer shall make its own arrangements for the insurance of any excess loss.

10.2 The restrictions on liability under this clause 10 apply to every liability arising under or in connection with these Conditions including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, and breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to clause 10.3, the Provider’s total liability to the Customer shall not exceed £[AMOUNT].

10.5 In no event shall the Provider be liable to the Customer for any indirect, consequential or speculative losses (including loss of future profits or business opportunity, loss of agreements or contracts, loss of anticipated savings (including savings in energy consumption), loss of use, corruption of software, data or information, or loss of or damage to goodwill), punitive, exemplary or special damages, whether by statute, in tort, contract or otherwise, arising in any way out of these Conditions or any breach of the Contract.

10.6 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.7 This clause 10 shall survive expiry or termination of the Contract.

## **11. TERMINATION**

11.1 Without prejudice to any other right or remedy it may have, the Customer may terminate the

Contract by written notice to the Provider if the Provider commits a material breach of the Contract other than as a consequence of a breach by the Customer of its obligations under the Contract. In the case of such a material breach which is capable of remedy, the Provider shall have **sixty (60) Business Days** after receipt of written notice from the Customer giving reasonable particulars of the breach and requiring it to be remedied.

- 11.2 Either party may terminate the Contract immediately on written notice to the other party if the other party is declared or becomes insolvent, or liquidation or insolvency proceedings are initiated against, or a receiver or administrator is appointed to the other party (other than where such action is for the purposes of amalgamation or restructuring), or the other party ceases to carry on business or is generally unable to pay its debts as they fall due.
- 11.3 Without prejudice to any other right or remedy it may have, the Provider may terminate the Contract immediately by written notice to the Customer upon the occurrence of any of the following:
- 11.3.1 The Customer commits a material breach of its obligations under the Contract other than as a consequence of a breach by the Provider of its obligations under the Contract and such breach shall materially adversely affect the ability of the Provider to perform its obligations under the Contract. In the case of such a material breach which is capable of remedy, the Customer shall have **sixty (60) Business Days** after receipt of written notice from the Provider giving reasonable particulars of the breach and requiring it to be remedied;
  - 11.3.2 The Customer fails to allow reasonable access to the Premises in accordance with the terms of the Contract;
  - 11.3.3 There is a failure by the Customer to pay any sum or sums due to the Provider under the Contract which, either in single or in aggregate, exceed(s) **[ten thousand pounds] (£[10,000.00])**, and such failure continues for **thirty (30) Business Days** from receipt by the Customer of a notice of non-payment from the Provider;
  - 11.3.4 There is a Change of Control of the Customer.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 On termination of the Contract under clauses 11.2 or 11.3:
- 12.1.1 the Customer shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices and interest and, in respect of Services (if any) supplied but for which no invoice has been submitted, the Provider shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 12.1.2 the Provider shall be entitled to remove the Equipment from the Premises (and the Customer hereby grants an irrevocable licence to the Provider (or the Supplier acting on the Provider's behalf) to enter upon the Premises and to recover the Equipment (including any documentation relating thereto supplied by the Provider or the Supplier)).
- 12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

### **13. GENERAL**

13.1 These Conditions may not be modified or amended except in writing and signed by or on behalf of the parties.

13.2 The Provider 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 these Conditions.

13.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any manner with any of its rights and obligations under these Conditions.

13.4 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.5.

13.5 Each party may disclose the other party's confidential information (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under these Conditions (and each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with clauses 13.4 and 13.5); and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.6 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under these Conditions.

13.7 All notices, certificates or instructions to be served by the parties under these Conditions shall be in writing and shall be sent by first class post, courier, recorded delivery or by hand delivery to the relevant address for the party on the PO Form. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) four (4) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. In proving the giving of notice it shall be sufficient to prove that the notice was left at the relevant party's address, or that the envelope containing the notice was properly addressed and posted and receipt of the notice was confirmed and/or acknowledged by an authorised representative on behalf of the relevant party.

13.8 No term of these Conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.

13.9 The invalidity, unenforceability or illegality of any provision (or part of a provision) of these Conditions under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

- 13.10 No delay by or omission of either party in exercising any right, power, privilege or remedy under these Conditions shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in these Conditions are cumulative and not exclusive of any rights and remedies provided by law.
- 13.11 The Contract contains the whole agreement between the parties in respect of its subject matter and supersedes and replaces any prior written or oral agreements, representations or understandings between the parties. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause operates to limit or exclude any liability for fraud.
- 13.12 The Contract including any non-contractual obligations arising out of or in connection with the Contract shall be governed by and construed in all respects in accordance with the law of England and Wales. The parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Contract (including any non-contractual obligations).