

ONE ENERGY TERMS AND CONDITIONS OF SERVICE

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following terms have the following meanings:

"Actual Unit Price" the price per kwh of gas/electricity payable by Client to a Gas/electricity Supplier under a Gas/electricity Supply Contract;

"Additional Charges" any payments and charges other than Gas/electricity Charges payable by Client (including for any additional goods and/or services and any late payment charges);

"Additional Period" each 24 month period following the expiry of the Initial Period (or where a Contract is terminated part way through such a 24 month period, the period until the date of termination);

"Advance Payments" in respect of each month during the Term, the OE's estimate of the Gas/electricity Charges, Commission and Additional Charges plus any Tax thereon that will be payable by Client for that month;

"Billing Period" in respect of a Gas/electricity Bill, the period of time to which the Gas/electricity Bill relates;

"Client" the company, entity or person(s) identified as the client in the Order Form;

"Commencement Date" the date that OE accepts the Order Form;

"Commission Rate" the Maximum Unit Price less the Actual Unit Price (and if the Maximum Unit Price is less than the Actual Unit Price then the Commission Rate shall be zero);

"Commission" the Gas/electricity Usage multiplied by the Commission Rate;

"Conditions" these standard terms and conditions;

"Contract" these Conditions together with the Order Form;

"Equipment" any equipment whatsoever used to transport, measure and control Gas/electricity;

"Fixed Unit Price" the price per kwh of gas/electricity payable by Client to OE in respect of the Gas/electricity Charges and the provision of the Services as specified in the Order Form as may be amended each Additional Period in accordance with these Conditions;

"Gas/electricity Bill" a bill submitted by a Gas/electricity Supplier to Client for Gas/electricity Charges during the Term;

"Gas/electricity Charges" any and all charges paid and/or payable by Client to a Gas/electricity Supplier in respect of Client's use of gas/electricity at the Premises and the Gas/electricity Supplier's supply of

gas/electricity to the Premises (including any connection and equipment charges);

"Gas/electricity Supplier" a company, entity or person(s) authorised to supply gas/electricity to the Premises;

"Gas/electricity Supply Contract" a contract between a Gas/electricity Supplier and Client for the supply of gas/electricity to the Premises;

"Gas/electricity Usage" the amount of Gas/electricity that Client uses over a period of time;

"Information" any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with a Contract;

"Initial Term" the initial term set out in the Order Form and as set out in clause 11.6;

"Maximum Gas/electricity Charges" the Gas/electricity Usage multiplied by the Fixed Unit Price or variable Unit Price (as applicable);

"Maximum Unit Price" the Fixed Unit Price or variable Unit Price (as applicable) less 5% of the Fixed Unit Price or variable Unit Price (as applicable);

"Meter Reading" the amount of gas/electricity used by Client according to any Equipment;

"Out of Contract Rate" the rate charged by OE in the absence of a formal term agreement with a customer.

"Order Form" an order for the provision of Services by OE

to Client sent by Client to OE and accepted by OE in accordance with these Conditions;

"Premises" the premises identified in the Order Form;

"Rebate" any and all rebates in respect of the overpayment of Gas/electricity Charges (including any Taxes) by Client in respect of the supply of Gas/electricity to the Premises, whether occurring before the Commencement Date or during the Term;

"Services" the services set out in clauses 3.1 and 5 and any other services agreed to be provided by OE to Client under the Contract;

"Tax" any and all applicable taxes, charges, duties and levies (including United Kingdom Value Added Tax) calculated at the rate and in the manner prescribed by law from time to time;

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"**Term**" the period from the Commencement Date until the termination of a Contract in accordance with these Conditions;

"**Termination Charges**" the average of the Commission paid and/or payable by Client for each day during the 3 months prior to the date of termination of a Contract multiplied by the number of days remaining from the date of termination of a Contract until the end of the Initial Period or the then current Additional Period;

"**Variable Unit Price**" the price per kwh of gas/electricity payable by Client to OE in respect of the Gas/electricity Charges and the provision of the Services as specified in the Order Form and as revised by OE in accordance with these Conditions;

"**OE**" Adrian Francis Associates Limited (a company registered in England and Wales with company registration number 04509718), trading as One Energy, whose registered office is c/o Freedman Frankl & Taylor, Reedham House, King Street West, Manchester M3 2PJ.

1.2 Headings are included for convenience only and shall not affect the construction or interpretation of these Conditions. The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

1.3 In the event of conflict between the Order Form and these Conditions, the following order of precedence shall apply: (i) any terms set out in the Order Form which are unambiguously and expressly stated to vary the terms of these Conditions (but then only to the extent of such variation); (ii) these Conditions; and (iii) the other parts of the Order Form.

2 APPOINTMENT

2.1 OE may accept or reject any Order Form sent by Client to OE at OE's discretion. No Order Form or Contract shall be legally binding unless and until accepted by OE.

2.2 If OE accepts an Order Form:

2.2.1 Client appoints OE as its exclusive provider of the Services and Client shall not during the Term itself (or through any third party) carry out any activity or services which are the same as or similar to the Services;

Client shall not during the Term or prior to the date of the notice served in accordance with clause 11.2, whichever is the earlier, commence negotiations with any third party to provide services that are the same as or similar to the Services; and any failure to comply with this clause 2.2 shall be deemed

to be a material breach of these Conditions which is incapable of remedy.

Client may not cancel or vary any Order Form which OE has accepted orally or in writing without OE's express written consent. OE reserves the right to charge Client reasonable cancellation charges in the event of such cancellation.

2.3 These Conditions apply to all Order Forms. Any different or additional terms and conditions contained on or referred to in any Order Form or any other documents or correspondence from Client shall not apply to the Order Form unless they are expressly accepted in writing by OE.

2.4 Save as expressly provided in a Contract, no variation of or amendment to a Contract shall be effective unless made in writing and signed by authorised representatives of the parties.

2.5 For the avoidance of doubt, OE provides services relating to the supply of Gas/electricity and does not itself act as a Gas/electricity transporter, Gas/electricity supplier or Gas/electricity shipper. The relationship of OE to Client is that of independent contractor and except as expressly provided in a Contract nothing in these Conditions creates a relationship of employer and employee, principal and agent or partnership between OE and Client.

3 SERVICES

3.1 In consideration of Client paying the Maximum Gas/electricity Charges and Commission and subject to Client's compliance with clause 4, from time to time during the Term OE shall use commercially reasonable endeavours to:

3.1.1 identify, as and when it deems reasonably appropriate, alternative Gas/electricity Suppliers in respect of the Premises;

3.1.2 negotiate, as and when it deems reasonably appropriate, the Gas/electricity Charges and any alternative Gas/electricity Supply Contracts on behalf of the Client, as OE and/or in Client's name;

3.1.3 sign and enter into alternative Gas/electricity Supply Contracts referred to in clause 3.1.2 on Client's behalf and/or in OE / Client's name;

3.1.4 notify Client of any emergencies notified to it by a Gas/electricity Supplier in respect of the Premises or notify the relevant Gas/electricity Supplier of any emergencies notified to it by Client in respect of the Premises (but for the avoidance of doubt OE shall not be

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responsible for management of any emergency for or on behalf of Client);

3.1.5 arrange for any Gas/electricity Bills to be sent by Gas/electricity Supplier to Client for the attention of OE and at OE's address;

3.1.6 liaise with the Gas/electricity Supplier and deal with any administration in respect of any Gas/electricity Bills for and on behalf of the Client; and

3.1.7 arrange for payment of any Gas/electricity Charges under any Gas/electricity Bills for and on behalf of Client in accordance with clause 5 (but for the avoidance of doubt Client shall remain primarily liable for and responsible for paying any Gas/electricity Charges)

3.2 Client consents to OE:

3.2.1 identifying, calculating, negotiating and agreeing the payment of Rebates with the relevant Gas/electricity Supplier or third party on behalf of the Client in Client's name;

3.2.2 receive payment of Rebates (whether by payment in cash or credit) on Client's behalf and in Client's name; and

3.2.3 retaining such Rebate and/or transferring such Rebate to OE.

3.3 Any time or date for performance of the Services or any of its obligations given by OE is given in good faith but is an estimate only and therefore time will not be of the essence.

4 CLIENT'S OBLIGATIONS

4.1 Promptly following the Commencement Date and from time to time during the Term as OE requests, Client shall (and shall procure that any relevant third parties shall) provide OE and its representatives with:

4.1.1 copies of its previous and existing Gas/electricity Supply Contracts;

4.1.2 details of its previous and current Meter Readings;

4.1.3 details of any Gas/electricity Charges paid by Client (including copies of any relevant invoices and receipts); and

4.1.4 access to such of its information, records, systems, facilities, premises (including the Premises), Equipment and staff as OE may reasonably require for the purpose of providing the Services.

4.2 Client shall (and shall procure that any relevant third parties shall) promptly sign and execute such document and do all acts as OE and its representatives may reasonably require for the purpose of providing the Services from time to time, including to

confirm to any Gas/electricity Suppliers or any third parties that they are authorised to:

4.2.1 request and receive information and documentation regarding Client and Client's previous and existing Gas/electricity Supply Contracts;

4.2.2 negotiate, agree and manage the administration of any Gas/electricity Supply Contracts on behalf of Client; and

4.2.3 negotiate, agree and receive payment of Rebates.

5 PAYMENT OF GAS/ELECTRICITY BILLS

5.1 OE may invoice Client for the Advance Payments monthly in advance. OE may increase the Advance Payments at any time upon written notice.

5.2 Following receipt of a Gas/electricity Bill:

5.2.1 OE shall calculate the actual Gas/electricity Usage, Actual Unit Price, actual Gas/electricity Charges, actual Maximum Gas/electricity Charges, actual Commission, actual Additional Charges and actual Tax on each of those items for the relevant Billing Period;

5.2.2 OE may deduct the actual Commission and any Tax thereon payable by Client for the relevant Billing Period from the Advance Payments;

5.2.3 if the Maximum Gas/electricity Charges for the relevant Billing Period are greater than actual Gas/electricity Charges for the relevant Billing Period, OE shall pay the actual Gas/electricity Charges and any actual Additional Charges and any Tax thereon for the relevant Billing Period on behalf of Client from the balance of the Advance Payments after deduction of any amounts under clause 5.2.2;

5.2.4 if the Maximum Gas/electricity Charges for the relevant Billing Period are less than actual Gas/electricity Charges for the relevant Billing Period, OE shall pay the actual Gas/electricity Charges (up to and including the value of the actual Maximum Gas/electricity Charges) and any actual Additional Charges and any Tax thereon for the relevant Billing Period on behalf of Client from the balance of the Advance Payments after deduction of any amounts under clause 5.2.2 and shall pay the balance of any Gas/electricity Charges over the value of the Maximum Gas/electricity Charges and any Tax thereon on behalf of Client from its own funds; and

5.2.5 if the balance of the Advance Payments after deduction of any amounts under

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clause 5.2.2 is less than the amounts payable by Client under clause 5.2.3 or clause 5.2.4 then at OE 's option OE shall either:

- (a) pay the amounts payable by Client under clause 5.2.3 or clause 5.2.4 from the Advance Payments to the extent available and pay any shortfall on behalf of Client from its own funds, and invoice Client in arrears for such shortfall; or
- (b) invoice Client in advance for any shortfall and, once such shortfall has been paid to OE , pay the amounts payable by Client under clause 5.2.3 or clause 5.2.4 from the Advance Payments and such shortfall payments.

- 5.3 OE may allocate any credits given to Client by a Gas/electricity Supplier against any Gas/electricity Bills as it deems appropriate.
- 5.4 OE shall provide Client with a statement showing the actual Gas/electricity Usage, actual Gas/electricity Charges, actual Commission, actual Additional Charges and actual Tax on each of those items for the relevant Billing Period.

6 COMMISSION AND PAYMENTS

- 6.1 OE may charge Client the Commission for the provision of the Services.
- 6.2 Unless expressly provided otherwise in a Contract, OE may invoice Client for any sums due under a Contract in arrears.
- 6.3 Unless otherwise expressly agreed between the parties in writing, all sums due under a Contract shall be paid in pounds sterling by variable direct debit. Client shall complete and sign a direct debit form in conjunction with an Order Form as requested by OE from time to time. Client authorises OE to alter Client's direct debit instructions according to the actual amounts invoiced under a Contract.
- 6.4 OE may adjust the date of invoice for the Advance Payments and/or any other sums due under a Contract to coincide with its billing cycles from time to time.
- 6.5 Client shall pay all invoices in full and without any deduction or set off (whether in relation to such invoice or otherwise) within the timescales specified in the relevant invoice or, if not so specified, within 30 days of the date of OE's invoice. Time of payment shall be of the essence.
- 6.6 All sums payable under a Contract are exclusive of Tax, which shall be invoiced in addition at the rate and in the manner prescribed by law from time to time.

6.7 If full payment is not received by OE by the due date for any reason (including by reason of failure of any direct debit payment due to insufficient funds or cancellation for any other reason), this may be deemed to be and regarded as a material breach and, without prejudice to its other rights OE may:

- 6.7.1 charge Client an additional fee of £25 in respect of its additional administrative costs and expenses in connection with pursuing that payment; and/or
 - 6.7.2 sue for the outstanding amount; and/or
 - 6.7.3 terminate the Contract and charge the Termination Charges; and/or
 - 6.7.4 charge interest on the outstanding amount (both before and after any judgment) accruing on a daily basis and compounded monthly at the rate of 5% over the base lending rate from time to time of the Royal Bank of Scotland plc; and/or
 - 6.7.5 suspend the provision of any and/or all Services; and/or
 - 6.7.6 continue to supply any and/or all Services but apply an Out-of-Contract Rate to the outstanding amount and any sums accrued thereafter.
- 6.8 Client may request quarterly updates on charging which OE can amend from time to time. In any event, OE will submit a statement during the Initial Period and each Additional Period.

7 REVIEW OF PRICING

- 7.1 The Fixed Unit Price and Variable Price are based on what Client has told OE and OE reserves the right to change the same at any time if:
 - 7.1.1 Client moves, adds or removes Premises;
 - 7.1.2 Client changes its payment method;
 - 7.1.3 the information used to calculate the Fixed Unit Price and Variable Price is found to be incorrect; or
 - 7.1.4 there is a change in taxation or government levies which affects or applies to the supply of energy.
 - 7.1.5 Client changes / amends business name but that remains part/of or/in same premises
- 7.2 Save as specified above, OE shall not change the Fixed Price Unit during the Initial Period. OE reserves the right at its sole discretion to review and change the Fixed Unit Price before or during each Additional Period.
- 7.3 OE may change the Variable Unit Price at any time and for any reason (including to reflect

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increases in OE's direct costs) on written notice.

- 7.4 OE shall periodically supply to the Client details of the then current Variable Unit Price together or as a pricing reconciliation (such information to be sent not less than once every 24 months). Client may, on written request, require OE to provide such information from time to time (but in no event shall OE be obliged to provide such information more than once each quarter).

8 CONFIDENTIALITY

8.1 Each party shall:

- 8.1.1 keep the other's Information confidential;
- 8.1.2 not divulge the other's Information to any third party except for the purposes of a Contract (and shall procure that any such third party is aware of and complies with these obligations of confidentiality); and
- 8.1.3 use the other's Information only for the purposes of a Contract.

8.2 The provisions of clause 8.1 shall not apply to any Information that the receiving party can show:

- 8.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of a Contract or any other obligations of confidentiality;
- 8.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
- 8.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 8.2.4 was developed independently of and without reference to confidential information disclosed by the other party.

8.3 During the term of a Contract, OE may use the Client's name as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material without the prior written consent of Client. Client may withdraw such consent at any time upon reasonable written notice to OE.

9 WARRANTIES

9.1 Client warrants and represents to OE (and it is a condition of a Contract) that it has full capacity and authority and all necessary consents to enter into and to perform its obligations under a Contract.

9.2 OE warrants that the Services will be performed with reasonable skill and care.

9.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

10 LIABILITY

10.1 Save as provided in clause 10.3:

10.1.1 OE's total aggregate liability in respect of all causes of action arising out of or in connection with a Contract (whether in contract, tort (including negligence), misrepresentation or otherwise) shall not exceed the greater of the aggregate of the Commission paid by Client under the Contract in the 12 months prior to the date that such cause of action arose and £5,000; and

10.1.2 OE shall not be liable for any claim to the extent that the claim relates to loss of profits, goodwill, anticipated savings, business opportunity, data or use of data, injury to reputation, third party losses or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether OE knew or had reason to know of the possibility of the loss, injury or damage in question.

10.2 OE shall not be liable for any failure or delay in the performance of any of its obligations under a Contract due to:

10.2.1 any failure of Client, any Gas/electricity Supplier or any Equipment; or

10.2.2 any fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage or official strike or similar labour disputes; or

10.2.3 any events or circumstances outside the reasonable control of OE ;

and OE shall be allowed a reasonable extension of time for the performance of its obligations.

10.3 Nothing in a Contract shall limit or exclude OE's liability for:

10.3.1 death or personal injury resulting from negligence;

10.3.2 fraud or fraudulent misrepresentation; or

10.3.3 any other liability the exclusion or limitation of which is not permitted by English law.

10.4 Client will fully indemnify and hold OE harmless from and against any and all losses,

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damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against OE as a result of or in connection with:

- 10.4.1 the condition or use of any Equipment;
- 10.4.2 the negligence of Client or its servants or agents; or
- 10.4.3 any breach by Client of a Contract.

11 TERM AND TERMINATION

11.1 A Contract shall commence on the Commencement Date and shall continue for the Initial Period and thereafter for subsequent Additional Periods unless and until it is terminated in accordance with these Conditions.

11.2 Either party may terminate the Contract on 90 days' prior written notice provided always that such notice is received not more than 120 days or less than 90 days before the expiry of the Initial Period or Additional Period.

11.3 Either party may terminate a Contract at any time immediately upon written notice to the other if:

11.3.1 the other commits a material breach of the Contract and, where the breach is capable of remedy, has failed to remedy such breach within 30 days of written notice requiring remediation; or

11.3.2 the other makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts (within the meaning of section 123 of The Insolvency Act 1986) for a continuous period of more than 30 days or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise.

11.4 OE may terminate a Contract at any time immediately upon written notice to Client if Client disposes of or vacates the Premises, if the Premises is unoccupied for more than 90 days or if there is a change of control of Client.

11.5 In the event that OE is entitled to terminate a Contract under clauses 11.3 and 11.4 then without prejudice to its right to terminate a Contract OE may elect to suspend a Contract.

11.6 OE may at times and within reason reduce or extend the contract 'term' on the order form providing the client has written notice not less than 30 days' to end the term adjacent

to any OE agreed supply agreement; OE reserve the right to amend the above in the initial period or any additional periods only once per agreement with the client but should this be the case; OE will cease to charge the client commission for any extension to the order form should the term have already been provided by the client and accepted by OE in line with these conditions.

12 POST-TERMINATION

12.1 Save as provided below, each party's rights, liabilities and obligations under a Contract shall cease upon its expiry or termination.

12.2 Each party's accrued rights, liabilities and obligations and the rights, liabilities and obligations of each party that are expressly or by implication intended to come into force upon or, remain in force following, the termination of a Contract (including under clauses 6, 8, 10, 12 and 13) shall survive any termination of a Contract.

12.3 On termination of a Contract for any reason except for termination of this Contract by Client under clause 11.3, OE may invoice Client and Client shall immediately pay the Termination Charges. The provisions of clause 6 shall remain in force following the termination of a Contract until full payment of such invoice has been received by OE.

12.4 On termination of a Contract for any reason:

12.4.1 all amounts due to OE under the Contract shall become immediately due and payable;

12.4.2 OE may set off any Advance Payments held by OE on behalf of Client that have not been paid to a Gas/electricity Supplier against any amounts due to OE under a Contract, and thereafter will refund any outstanding balance of those Advance Payments to Client; and

12.4.3 at its own cost each party shall promptly destroy all of the other's Information and personal data in its possession or control.

13 GENERAL

13.1 Client may not assign, transfer, sub-contract, sub-licence or otherwise dispose of the whole or any part of a Contract without OE's prior written consent. OE may assign, transfer, sub-contract, sub-licence or otherwise dispose of the whole or any part of a Contract without Client's prior consent.

13.2 All notices shall be given in writing and sent by post.

13.3 Neither party's failure to enforce or rely on or delay in enforcing or relying on any right will prevent that party from later enforcing or relying upon that or any other right and shall

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not constitute or be construed as a waiver of such right.

- 13.4 If a court or other regulatory body finds that any part of a Contract is invalid or unenforceable, the remainder of the Contract shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.
- 13.5 The remedies available to the parties under a Contract shall not limit or exclude any other rights that either party may have against the other.
- 13.6 A Contract contains all the terms agreed by the parties relating to its subject matter and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract. Each party acknowledges and accepts that, in entering into the Contract, it has not relied upon any representation, undertaking or promise except as set out herein.
- 13.7 If any dispute as to the construction or performance of a Contract arises between the parties (which is not resolved to the satisfaction of both parties under any escalation procedures agreed under the Contract from time to time in writing) a director or representative of from each party shall within twenty-eight (28) days of a written request, meet in good faith in an effort to resolve the dispute without recourse to legal proceedings. Notwithstanding the twenty-eight (28) days' notice above, either party may seek and enforce injunctive or similar relief at any time.
- 13.8 Nothing in a Contract shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.9 Each Contract (and any associated non-contractual claims or disputes) between OE and Client shall be given and construed in accordance with English law. Client submits to the jurisdiction of the English courts but OE may enforce any judgement in any court of competent jurisdiction.

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