

**TERMS & CONDITIONS FOR  
THE PROVISION OF SERVICES BY ENERGIST UK LIMITED**

**1. DEFINITIONS**

“We”, “our” or “us” means Energist UK Limited whose registered office is at College Farm, Tetbury Road, Cirencester, Gloucestershire, England, GL7 6PY;

“You”, “your” or “the client” means any person or entity who or which purchases or receives services from us;

“Services” means the services to be provided by us as set out in the Written Proposal;

“Written Proposal” means the Written Proposal form that we have supplied to you setting out the scope of the services we will provide and which is signed or submitted by you requesting the purchase of services from us.

**2. GENERAL TERMS**

- (a) These terms and conditions (together with the Written Proposal) will apply to your purchase of any Services from us and will form the basis of the contract between us. These terms and conditions will prevail over any other terms.
- (b) You agree to accept these terms by signing or submitting the Written Proposal to us or if you receive any of the Services from us or make any payment to us in advance of the supply of any Services
- (c) These terms can only be varied in writing and with our prior written consent
- (d) Your right to receive the Services is personal to you and cannot be transferred to any third party without our written consent.

**3. SERVICES TO BE PROVIDED BY US**

- (a) Subject to these terms, we will supply the Services to you. We and you will nominate a Project Lead who will be responsible for ensuring an orderly conduct the project of which the Services form part.
- (b) Where you require us to carry out work or provide services in addition to or beyond those set out in the Written Proposal we reserve the right to make additional charges and will endeavour to supply details of such additional charges to you before the extra work is carried out wherever practicable.
- (c) We will use reasonable endeavours to supply the Services within any time periods set out in the Written Proposal or, if no such time is stipulated, within a reasonable time. However, all timescales set out are approximate only and time shall not be of the essence. We will be under no liability for any loss or damage whatsoever arising directly or indirectly out of delay in or lateness of performance, whether due to our fault or not, nor shall such delay or lateness be a breach or repudiation of the contract.
- (d) We will take instructions only from the Project Lead referred to in clause 3(a) above or from such other person who you may nominate in writing.
- (e) All written plans you supply to us in connection with the carrying out of the project or Services will be retained or disposed of by us and will not be returned to you.

- (f) Any price or fees set out in the Written Proposal are subject to you supplying all information, data, drawings or equipment to enable us to proceed with or supply the Services. If you do not do so we shall be entitled to increase the price to reflect any increase in cost resulting from the delay or additional work required as a result.
- (g) In the case of Services being carried out at your property or a third-party property, we will ensure our staff or agents take reasonable care and attention whilst on those premises, but it remains wholly your responsibility to ensure any such premises are safe and do not contain any unreasonable risks or hazards to health and safety. You will give to us or procure that we are given full and unrestricted access for the purpose of data collection and required testing and we reserve the right to refuse to continue to provide the Services if we deem the property to be unsafe for our employees, agents or representatives to enter. In such circumstances a cancellation charge will be payable by you.
- (h) Except as otherwise set out in these terms, it is expressly agreed that no representation, condition or warranty, expressed or implied, statutory or otherwise is given or deemed to be given by us in respect of the work carried or services supplied to you.
- (i) All descriptions, drawings, illustrations, particulars of weights and measures, ratings, standards, performance figures, specifications or other descriptive matter given within the Written Proposal, or verbally or in writing, whether or not contained in a contract document, are approximate only and shall not form part of the description of the Services. Further, the content of any catalogues, price lists, advertisements, or other published matter are intended to present a general idea of our goods and services and shall not form part of the contract between us or be considered a collateral warranty or a representation inducing the same.
- (j) We do not provide a design service and only provide advice based upon the designs you or third parties supply to us. As such we accept no responsibility for the accuracy or efficacy of any design and provide no design warranties in any respect.

#### **4. FEES AND PAYMENT**

- (a) Unless otherwise stated in the Written Proposal, the fees quoted are approximate and are given for guidance purposes only. We will endeavour to work within the authorised financial limit but reserve the right to make charges based on the actual cost of providing the Services. If at any time it becomes clear that the Services cannot be completed within any authorised financial limit from you we will notify you and limit expenditure to the authorised amount pending further instructions from you. In the event of the suspension of the project by your instructions, or as a result of a lack of instructions from you, any extra expense thereby incurred will be charged to you.
- (b) The fees quoted within the Written Proposal shall, unless expressly specified, be deemed to be exclusive of all duties and taxes in respect of the provision of Services and exclusive of any export and/or import duties on any goods involved in the supply of Services, all of which duties and taxes shall be paid by you.
- (c) Unless otherwise agreed by us in writing, you will pay to us the full amount of the fees set out in the Written Proposal for the supply of Services at the time of signing or submitting the Written Proposal to us. We reserve the right not to start supplying any of the Services until we have received full payment from you. We will invoice you on or at any time after delivery of the Services.

- (d) If you have an approved credit account with us you must pay all invoiced amounts within 30 days of the date of our invoice or otherwise in accordance with such credit terms as may have been agreed in writing between us.
- (e) Where the period for providing the Services is to exceed, or is likely to exceed, two months we shall be entitled to submit interim invoices which you will pay within 30 days of the date of invoice.
- (f) If, by reason of any rise or fall in the cost of materials, fuel, power, overheads, equipment, labour or transport, or of confirming to any Act of Parliament or any order, regulation, or by-law made with statutory authority by Government Departments or by local, or other, authorities after the date of quotation the cost to us of performing our obligations under the contract or providing the Services shall be increased, then a fair and reasonable estimate of the amount of such increase shall be added to the fees due from you, provided that no account shall be taken of any amount by which any cost incurred by us has been incurred as a result of our default or negligence.
- (g) You will make all payments due to us without any deduction or set off whatsoever.
- (h) If you fail to make any payment to us on its due date then we are entitled to charge you interest at the rate of 4% per annum above the base rate of the Bank of England on any outstanding amounts and we will be entitled to recover from you all legal and professional charges we may incur in pursuing full payment from you.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- (a) The final product of any work developed or arising in the course of the carrying out any work for you or in the supplying the Services, and in particular all copyright, arising from or relating to such product, shall remain our property until the full performance or satisfaction of your obligations, including full payment of all fees due to us, whereupon the same shall become your property. Until such time you will, except with our prior written consent, hold the same confidential and shall not divulge the same to, or use the same for the benefit of any other person.
- (b) Subject to clause 5 (c) below, all patents, trademarks, registered designs and all other intellectual property rights resulting from the final product of the work referred to in clause 5 (a) above shall be ours unless otherwise agreed in writing between you and us. In the event of you having some right to the patents, trademarks, or registered designs as referred to above, we will thereupon at your request and cost take or concur in all such reasonable action as you may request for the purpose of obtaining any such patents, trademarks, or registered designs.
- (c) In the case of a project sponsored by two or more Clients, any such patents, trademarks, or registered designs as referred to in clause 5(b) above shall be vested in us or a subsidiary company nominated by us.
- (d) Notwithstanding clause 5(a) you will not in any publication or publicity materials at any time make use of any report or statement issued by us, nor any extract therefrom, nor refer to the fact that any product or process has been the subject of a contract with us, in any publication or publicity material without our express written permission, (unless legislation requires us to provide the report for public inspection).

## **6. TERMINATION**

- (a) You may terminate the contract between us at any time by giving to us 14 days prior written notice. In such circumstances the contract will terminate on the expiry of such notice and the following will apply:
- (b) For Services being supplied or carried out at our offices we will invoice you and you will pay for all work carried out to the date of termination together with expenses incurred, or 30% of the fees set out in the Written Proposal, whichever is the greater.
- (c) For Services being or to be supplied or carried out at your property or the property of a third party and where any of the following conditions apply we will invoice you and you will pay the entire fee set out within the Written Proposal:
  - a. You postpone a test at your site or a third-party site with less than 3 working days notice to us
  - b. You cancel a test at your site or a third-party site with less than 5 working days notice to us
  - c. We arrive on any site and deem it not to be ready for the test
- (d) We may terminate or suspend the contract between us forthwith by written notice to you:
  - a. If you fail to pay sums due to us
  - b. If you commit any other material breach of these terms
  - c. If you are declared bankrupt, become insolvent or enter into administration, liquidation or receivership or a voluntary arrangement or any other scheme with your creditors, or are subject to any other similar process.
  - d. If we are prevented from carrying out our obligations under these terms or supplying the Services by circumstances beyond our reasonable control including (without prejudice to the generality of the foregoing) government or public authority intervention, strikes, labour disputes, accidents, late delivery or unavailability of good or raw materials, fire damage, emergency repair works, Acts of God, national or local disasters, war or terrorist acts.
  - e. If we believe there is any other good reason why termination or suspension is appropriate.

## **7. LIMITATION OF LIABILITY**

- (a) We will not be liable for any damage or loss suffered by you or any of your clients as a result of any breach by us of any of these terms (whether express or implied) caused other than by our negligence or wilful default, and in any event our liability for any such loss and damage shall not exceed twice the amount of the fees set out in the Written Proposal.
- (b) We will not be liable under any circumstances for any indirect or consequential loss of profit or other economic loss that you or any of your guests may suffer however that may be caused.
- (d) Nothing in these terms affects our liability for personal injury or death suffered by you as a result of our negligence.

## **8. AGREEMENT GOVERNED BY ENGLISH LAW**

These terms and the contract between you and us shall be governed in all respects by English Law and any dispute arising in relation to it shall be subject to the exclusive jurisdiction of the English Courts.

## **9. MISCELLANEOUS**

- (a) In the case of a contract between us and two or more Clients the obligations of such Clients shall be joint and several and the provisions of these terms and conditions shall apply thereto, allowing for any necessary changes, and in particular we shall have the rights set out in clause 5 and 6 above upon the occurrence of any event described therein with respect to one only of such Clients.
- (b) In the event that any of the provisions of this contract or these terms are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this contract.
- (c) Unless you notify us to the contrary, by instructing us you agree that communication may be made by email. Email is not a confidential means of communication: by using it to communicate with us and by allowing us to use it to communicate with you, you accept the risk that the contents of such communications may become known to others.
- (d) We undertake that personal data will be dealt with in accordance with the prevailing data protection legislation and will only be processed for the purpose of providing email, phone or post information relating to our services and developments, technology, news or events that we consider may be of interest to you. You may ask us to amend, correct or update personal data held about you which we will do within a reasonable amount of time.