

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

1. DEFINITIONS

“Agreement” means the agreement between you and us which comprises these terms and conditions and the Written Proposal.

“Project” means the project and associated address relating to this fee proposal.

“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.

- 1.1. Where a conflict exists between these terms and conditions and the Written Proposal, the Written Proposal shall prevail.

2. GENERAL TERMS

- 2.1. This Agreement 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.
- 2.2. 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
- 2.3. Except as set out in these terms, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 2.4. Your right to receive the Services is personal to you and cannot be assigned to any third party without our written consent.

3. SERVICES TO BE PROVIDED BY US

- 3.1. 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.
- 3.2. We shall exercise reasonable skill and care in the performance of the Services and shall use reasonable endeavours to meet any performance dates set out in the Written Proposal. If no such time is stipulated, we shall do so within a reasonable time. However, all timescales set

out are approximate only and time shall not be of the essence.

- 3.3. 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.
- 3.4. To the extent to which we are either obliged to specify or approve products or materials for use in works relating to our Services or do so specify or approve, we shall exercise reasonable skill and care not to specify or approve any products or materials which are identified in The British Council for Offices, Good Practice in the Selection of Construction Materials 2011 as being deleterious.
- 3.5. 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.
- 3.6. We will take instructions only from the Project Lead referred to in clause 3.1 above or from such other person who you may nominate in writing.
- 3.7. 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. Any price or fees set out in the Written Proposal are subject to your obligations as set out in clause 4. If you fail to comply with your obligation under clause 4 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.
- 3.8. 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.
- 3.9. 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.
- 3.10. 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.
- 3.11. 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. YOUR OBLIGATIONS

- 4.1. You shall co-operate fully with us in all matters relating to the Services and supply us with such information and instructions as we may reasonably require in a timely manner and ensure that such information is complete and accurate in all material respects.
- 4.2. Unless expressly stated to be part of our Services, you shall be responsible for obtaining and maintaining all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

5. FEES AND PAYMENT

- 5.1. Unless otherwise stated in the Written Proposal, the fees quoted are approximate, are given for guidance purposes only and are not intended to be a fixed fee. 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.
- 5.2. 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.
- 5.3. Unless otherwise agreed by us in the Written Proposal, 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.
- 5.4. The due date for payment of each invoice is the date stated on the invoice. The final date for payment is 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.
- 5.5. Where the period for providing the Services is to exceed, or is likely to exceed, two months we shall be entitled to submit monthly interim invoices which you will pay within 30 days of the date of invoice.
- 5.6. 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.
- 5.7. If you intend to pay less than the sum stated due our invoice, not later than 10 days before the final date for payment, you will give us written notice of that intention, stating the sum that you consider to be due to us and how such amount has been calculated. Where such notice has been given, the sum to be paid on or before the final date for payment shall not be less than the amount stated as due in the notice.

- 5.8. If you fail to make any payment to us by the final date for payment, 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.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. For the purpose of this clause 6
- 6.1.1. “Intellectual Property Rights” means: all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 6.1.2. “Documents” means: all drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium created and/or developed by us for you in the course of performing the Services. This does not include drafts or other documents produced for internal use only
- 6.2. Subject to the following provisions of this clause 6 all Intellectual Property in the Documents will remain vested in us.
- 6.3. Upon payment of all fees due to us we shall grant to you an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Services) to use and to reproduce all Documents for their intended purpose, in connection with the Development. The licence allows you to use but not reproduce the Documents in relation to the extension of the Development.
- 6.4. We will not be liable for any use you may make of the Documents for any purpose other than their intended purpose.
- 6.5. In the case of a project sponsored by two or more Clients, any such Intellectual Property Rights shall be vested in us or a subsidiary company nominated by us.
- 6.6. 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).

7. PROFESSIONAL INDEMNITY INSURANCE

- 7.1. We will, at our own cost, take out and maintain professional indemnity insurance with a limit appropriate to the scope of work which we are undertaking, from the date of this Agreement until 6 years after the completion of the Services and shall provide you with evidence (on your reasonable request) that such insurance is being maintained.

8. TERMINATION

- 8.1. Either party may immediately terminate this Agreement by written notice if the other party is insolvent as defined by the Insolvency Act 1986 (or such legislation as may supersede that

act).

- 8.2. Either party may terminate this Agreement by giving 14 days written notice if they are unable to comply with their obligations for reasons beyond their reasonable control (force majeure).
- 8.3. Either party may terminate this Agreement if the other party is in material and persistent breach of their obligations under this Agreement and fails to remedy the same after receiving a written 14 day notice specifying the breach and requiring its remedy. The terminating party shall be entitled by written notice to the party at breach to immediately terminate their engagement in connection with the Development.
- 8.4. On termination of this Agreement you shall immediately pay to us all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you by the final date for payment in accordance with clause 5.4.
- 8.5. Termination of this Agreement 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 this Agreement which existed at or before the date of termination.
- 8.6. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1. 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 the level of our Professional Indemnity insurance however that liability might arise..
- 9.2. No action or proceedings for any breach of this agreement shall be commenced against us after the expiry of 6 years from the earlier of practical completion of the Development and the last date on which we perform the Services.
- 9.3. We will not be liable for any loss or damage to documents, electronic data, equipment as a result of any transmission from us.
- 9.4. 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.
- 9.5. Nothing in these terms affects our liability for personal injury or death suffered by you as a result of our negligence.

10. AGREEMENT GOVERNED BY ENGLISH LAW

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

11. MISCELLANEOUS

- 11.1. Collateral Warranties

11.1.1. Where indicated in our Written Proposal that we will provide collateral warranties in respect of this Development, we shall use reasonable endeavours to execute and deliver to you duly executed collateral warranties substantially in the same form of this Agreement in favour of:

- (a) the freehold owner or landlord of the property for which providing the Services (if not the you);
- (b) any person or institution providing finance in connection with or secured upon the Development or any part of it.

11.1.2 Where the Written Proposal is silent on collateral warranties we will consider providing collateral warranties to the parties set out above and will provide you with a fee of providing the same.

11.2. Joint and Several Liability

11.2.1. 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.

11.2.2. 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.

11.3. Third Parties

Nothing in the agreement between us and you confers or purports to confer on any third party any benefit or any right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.4. Communication

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.

11.5. Entire Agreement

11.5.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

11.5.2. Each party acknowledges that in entering into this Agreement 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 this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

11.6. Data Protection

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.

