

Smart Power and Gas Ltd: terms and conditions

In these terms and conditions Smart Power and Gas Ltd company registered number 15851277 whose registered office is 1st Floor Lingfield House, Office Suite 10, Darlington, DL1 1RW is referred to as SmartPG.

The customer of SmartPG is referred to as the Customer

Definitions

“Agreement”: the contractual relationship between SmartPG and the Customer as set out in these terms and conditions and Letter of Authority.

“Breach Fee”: payment due from the Customer to SmartPG in the event of a Customer Breach.

“Commencement Date”: has the meaning given in clause 1.

“Commission Payment”: the payment SmartPG is entitled to receive from the Supplier as a result of the Customer entering into the Contract.

“Confidential Information”: means such information as one party may provide to the other as part of or in relation to this Agreement.

“Contract”: the contract entered into by the Customer (or by SmartPG on the Customer’s behalf) with the Supplier for the supply of energy and as part of the Services and any extensions to this Agreement.

“Customer Breach”: any act or omission of the Customer that represents a breach of the terms of this Agreement by the Customer.

“Customer Obligations”: as set out in clause 2.

“Data Protection Legislation”: all relevant data protection and privacy legislation in force from time to time in England and Wales a non exhaustive list of which includes the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

“Letter of Authority”: such letters of authority being as the Customer may sign from time to time.

“Services”: the services that SmartPG will provide to the Customer include presenting the Customer with details of a proposed supply contract(s) from one (or a number) of Suppliers from SmartPG’s portfolio of suppliers for the Customer to choose to accept and as set out in the Letter(s) of Authority.

“Supplier”: the supplier that the Customer chooses to enter into a Contract with.

“Working Day”: Monday to Friday other than a public holiday in England.

1. SUPPLY OF SERVICES

The Customer agrees that:

(i) the Letter(s) of Authority constitutes a request by the Customer to purchase Services in accordance with these conditions. This Agreement shall come into existence (Commencement Date) when the Letter(s) of Authority signed by the Customer is received by SmartPG;

(ii) in return for it requesting SmartPG to provide the Services SmartPG shall do so and shall supply the Services to the Customer as per this Agreement; and

(iii) SmartPG is not a price comparison service. Although SmartPG works with many suppliers of energy it does not have access to every such supplier.

SmartPG does not guarantee that it will arrange what a third party may claim is the cheapest supply available. SmartPG considers a number of factors when assessing which suppliers and which supply contracts are best suited to the Customer.

SmartPG will seek the option(s) that in its opinion is/are best suited to the Customer with price of the supply being just one of the factors to consider.

2. CUSTOMER’S OBLIGATIONS

The Customer agrees:

(i) to co-operate with SmartPG in all matters relating to the Services and not in any way

through acts or omissions hinder, prevent or delay the provision of the Services;

- (ii) to comply at all times promptly and completely with both this Agreement and any terms and conditions of the relevant Supplier relating to the Contract including for the avoidance of doubt the obligation to make all payments promptly to the Supplier under the Contract;
- (iii) to provide such information, data or documents as SmartPG may request from time to time;
- (vi) to ensure that all information and documents provided to SmartPG is complete, up to date and accurate at all times;
- (v) to provide such assistance as SmartPG may reasonably require from time to time in relation to the Services;
- (vi) to immediately inform SmartPG in the event there is any change in the Customer's circumstances which may affect the provision of the Services and or impact the Contract or proposed Contract;
- (vii) to comply with the provisions of the Bribery Act 2010 and any other applicable legislation;
- (viii) not at any time whether directly or indirectly instruct, direct, permit, cause or allow the Supplier to cease or withhold the payment of any Commission Payment to SmartPG; and
- (ix) not at any time to have entered into or enter into any other contract (for any reason including due to a change in tenancy or change in occupancy) for the supply of energy ("Other Contract") for the intended period of the Contract whereby that Other Contract provides energy and/or the Services, whether in whole or in part, to be provided under the Contract.

3. CUSTOMER'S BREACH OF THE AGREEMENT: SUSPENSION AND TERMINATION

The Customer's attention is drawn to this clause: the consequences of the Customer breaching this agreement

Without affecting any other right or remedy available to it SmartPG may as it sees fit terminate or suspend the Agreement with immediate effect by giving written notice to the Customer if:

- (i) the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach to SmartPG's satisfaction within fourteen days of the Customer being notified in writing to do so;
- (ii) the Customer 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), is subject to a winding up process (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), has a receiver appointed to any of its assets or ceasing to carry on business; or
- (iii) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

In the event of such termination or suspension SmartPG is relieved of all its obligations under the Agreement.

Further in the event of:

- (i) termination (that may conclude suspension); or
- (ii) any breach of a Customer Obligation for whatever reason

the Customer will on receipt of demand pay to SmartPG the Breach Fee. The Breach Fee shall be a payment of whichever is higher either:

- (i) representing the Commission Payment (or such balance of the Commission Payment yet to be paid to SmartPG) which SmartPG would have received from the Supplier but is not received or will not be received due to the Customer Breach; or
- (ii) a fixed amount of £750 per meter.

The Customer agrees that the Breach Fee, whether fixed or Commission Payment based, represents the reimbursement of loss suffered by SmartPG resulting from the Customer Breach. It does not represent an unfair gain or windfall on the part of SmartPG that is in the nature of or is capable of falling within the definition of a penalty.

The Commission Payment for the purposes of this clause is calculated on the basis of the consumption as set out in the Contract or related documents.

The Breach Fee is due to be paid as per this clause irrespective of any date or dates the Supplier may have been due to make the Commission Payment to SmartPG.

4. CHANGE OF TENANCY

The Customer's attention is drawn to this clause: the requirement to notify SmartPG of a change of tenancy (as defined) and the consequences of failing to do so

Where a customer enters into a contract through SmartPG but permanently vacates the relevant premises either before the supply of energy commences or during the period of supply under that Contract the Contract will terminate. This is called a change of tenancy ("a COT").

A COT involves either (i) a party not connected to or associated with the Customer taking over the premises (a party is connected to the Customer if it falls within the definition set out in sections 1122 and 1123 Corporation Tax Act 2010) or (ii) the premises becoming vacant for a minimum period of three months following the Customer's departure.

SmartPG's fees are adjusted by a Supplier if a COT occurs. It is therefore important that SmartPG receives from the Customer at least fourteen Working Days before the date of vacating the premises written confirmation of the change together with evidence of the COT satisfactory to SmartPG, this may include (a non exhaustive list by way of example only) a land sale contract/TR1, assignment or surrender of a lease certified by the Customer's solicitor.

The written notice from the Customer must include a letter from the Customer's solicitor confirming that the vacation of the premises is a COT as set out above and provide sufficient detail to enable SmartPG to satisfy itself as to the nature of the COT.

Failure to so notify SmartPG in the event of a COT will incur a fee for the loss/reduction in the commission the supplier pays to SmartPG. In those circumstances SmartPG reserves the right to charge the Customer a one off fee of £750 per meter or the total value of the Commission Payment SmartPG would have received in relation to the Contract, whichever is the higher figure. In calculating the said fee PreAction Client will apply a discount percentage to reflect Commission Payment that has actually been received (subject to a minimum failed Contract fee of £750 per meter).

5. CONSUMPTION TOLERANCE

The Customer's attention is drawn to this clause: in the event the Customer's consumption of energy under the Contract falls below a certain level it will be liable to make a payment to SmartPG

The Contract provides an estimate of the Customer's consumption. SmartPG's Commission Payment is calculated by reference to such anticipated consumption.

In the event the actual consumption under a Contract as confirmed by the relevant Supplier is more than 20% less than the anticipated consumption as per the Contract over the term of the Contract the Customer shall on demand pay to SmartPG an amount equal to the balance of the Commission Payment SmartPG would have received had the consumption decrease not exceeded a 20% decrease of the total anticipated consumption under the Contract.

6. LITIGATION COSTS

The Customer's attention is drawn to this clause: should the Customer and SmartPG become involved in court proceedings then the Customer shall reimburse SmartPG's legal costs and expenses

In the event of the Customer and SmartPG becoming party to any court proceedings for whatever reason and howsoever commenced or caused the Customer shall reimburse SmartPG on demand on an indemnity basis for all legal costs and expenses incurred by SmartPG directly or indirectly in connection with those court proceedings.

7. CONSEQUENCES OF TERMINATION

Termination or expiry of the Agreement shall not affect:

- (i) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry;
- (ii) the liability of the Customer to SmartPG in the event of a Customer Breach; and

(ii) in any event any liability of the Customer to make a payment to SmartPG of this agreement.

8. COMMISSION PAYMENTS TO SMARTPG

The Customer's attention is drawn to this clause: the commission payments that will be made to SmartPG

The Customer agrees and acknowledges the Commission Payment will be due to be made to SmartPG. The timing and amount of the Commission Payment varies from Supplier to Supplier. The Commission Payment is included within the price charged per unit of energy in the Contract. By way of example if the Commission Payment for the supply of energy was 0.5 per unit then the amount payable per unit under the Contract by the Customer would be (i) base price of the unit plus (ii) 0.5p per unit.

Therefore a supply of 40,000 units per year over a two year period would result in total commission payment of £400 for that two year supply.

Should at any time the Customer wish to be provided with more information as to the Commission Payment then it should contact SmartPG

9. LIMITATION OF LIABILITY

The Customer's attention is drawn to this clause: limits to the liability of SmartPG to the Customer

The Customer acknowledges and agrees that by entering into the Contract the Customer contracts directly with the Supplier and not SmartPG for the supply of energy. The Customer therefore further acknowledges that SmartPG incurs no liability arising from or in connection with the Customer's obligations and liabilities arising under the Contract.

The Agreement does not seek to avoid SmartPG's liability to the Customer where such liability arises from dishonesty on the part of SmartPG or death or personal injury on the part of the Customer.

SmartPG's total liability (including any principal, interest, costs and charges whatsoever and howsoever arising) to the Customer shall not in any event exceed the amount of the Commission Payment received by SmartPG.

The Customer acknowledges and agrees that SmartPG, its representatives, agents and employees shall incur no liability to the Customer by virtue of the Agreement or in relation to it save where such liability is incapable of being excluded by law.

Subject to the above SmartPG incurs no liability to the Customer that arises under or in connection with this Agreement in respect of:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of or damage to goodwill; or
- (vi) indirect or consequential loss.

Should the Customer assert liability on the part of SmartPG then it must notify SmartPG in writing to that effect:

within six calendar months of the first event said to give rise to such liability coming to the attention of the Customer, its agents or representatives; or

within six calendar months of the first event said to give rise to such liability which ought reasonably to have come to the attention of the Customer.

The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail and provide copies of all relevant documents and information.

In the absence of such timely notification SmartPG shall have no liability to the Customer.

SmartPG makes no express warranties and specifically disclaims any implied warranties with respect to the performance of Services to the extent permissible by law.

This clause survives termination of the Agreement.

8. DATA PROTECTION

SmartPG does not anticipate receiving any personal data (as defined in data protection legislation from time to time) from the Customer other than contact details of the relevant personnel who are responsible for dealing with the Agreement.

The Customer agrees that SmartPG may share such contact details with the Supplier, its agents and representatives.

Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

9. CONFIDENTIALITY

Neither party shall disclose to any third party any Confidential Information in respect of the other at any time acquired in connection with the Agreement and no reference is to be made to this Agreement by either party in any advertising publicity or promotional material without prior written consent of the other party.

10. NOTICES

Any notice given to a party under or in connection with the Agreement 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 by email (to such email address as the parties notify each other from time to time)

Any notice shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

(iii) if sent by email the Working Day after the email was sent.

11. DISPUTE RESOLUTION

The parties will each use their reasonable efforts to negotiate in good faith and settle any major or material dispute that may arise out of or relate to the Agreement. The dispute shall be referred to representatives (internal or external) nominated by the Parties who will communicate in good faith in order to try and resolve the dispute.

If the parties fail to reach agreement in the structured negotiations within twenty one days either party may then refer any dispute to litigation.

12. GENERAL MATTERS

The Customer agrees that any payment it is due to make to SmartPG under the Agreement or otherwise shall be paid within seven days of receiving demand for the same and that it enjoys no right of set off, defence, counter claim or other reason to withhold or delay payment.

VAT is due to be paid on any amount owed by the Customer to SmartPG.

If any term or provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if the Agreement had been agreed with the invalid, illegal or unenforceable provisions eliminated.

The Agreement constitutes the entire agreement between the parties and supersedes any previous agreement or understanding. The Agreement may not be varied except in writing between the parties.

No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

The parties acknowledge and agree that the Agreement shall not establish or constitute any relationship of partnership, joint venture, franchise or agency between the parties and except as otherwise expressly provided or agreed neither party shall have the power to bind the other without the other's prior written consent.

The Customer agrees not to assign, mortgage, charge, transfer, subcontract, delegate, declare a trust over or deal otherwise with any of its rights and obligations under this Agreement.

The Customer grants SmartPG a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials and information provided by to the Customer to a Supplier in relation to a potential Contract.

SmartPG will use its reasonable endeavours to deliver the Services in a timely manner but time shall not be of the essence for performance of the Services.

The Customer agrees that SmartPG does not incur any liability for delay in performing, or failure to perform, any of its obligations as per this Agreement in the event such delay or failure result from partially or entirely events, circumstances or causes beyond SmartPG's reasonable control.

Unless it expressly states otherwise this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.