



## TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

- 1 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 2 **Charges:** the charges payable by the Customer for the supply of the Services (and any Supplementary Services for which any additional charges are agreed) in accordance with clause 6 (Charges and payment).
- 3 **Commencement Date:** has the meaning given in clause 2.2.
- 4 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.5.
- 5 **Contract:** the contract between the customer and NGP for the supply of Services and any agreed Supplementary Services, incorporating the Letter of Authority and these Conditions.
- 6 **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
- 7 **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
- 8 **Customer:** the person or firm who purchases Services and any agreed Supplementary Services from NGP.
- 9 **Customer Default:** has the meaning set out in clause 5.2.
- 10 **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- 11 **Energy Contract:** the contract entered into by the Customer (or by NGP on the Customer's behalf) with the Energy Supplier, as part of the Services.
- 12 **Energy Supplier:** the energy supplier the Customer chooses to enter into a Contract with.



- 13 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.
- 14 **NGP:** referring to Northern Gas & Power Limited, a company registered in England and Wales under company number 08430003, with registered address as Baltic Place East Tower, South Shore Road, NE8 3AE, together with our group companies and subsidiaries, (*including but not limited to NGP Utilities Limited, NGP SME Limited, NGP EMS Limited, Energies France Limited, and Global Procurement Group*).
- 15 **Services:** the services supplied by Northern Gas & Power to the customer pursuant to this Contract, including negotiating supply contracts, and presenting the Customer with details of the proposed contracts, as well as providing account management, including bill checking.
- 16 **Supplementary Services:** any additional services such as account management, bureau services, single point of contact, access to online review portal, discounted access to energy management platforms (specifically, ClearVUE) that are agreed between the parties.
- 17 **Specification:** the description or specification of the Services and any Supplementary Services provided in writing by the NGP to the Customer.
- 18 **UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including 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.
- 1.2 Interpretation:
- (a) 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.
  - (b) 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 term preceding those terms.
2. **Basis of contract**
- 2.1 The Letter of Authority constitutes an offer by the Customer to purchase Services and any agreed Supplementary Services in accordance with these Conditions.



- 2.2 The offered referred to at clause 2.1 shall only be deemed to be accepted when the Letter of Authority signed by the Customer is received by NGP at which point this Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, illustrations, descriptive matter or advertising issued by NGP, are issued or published for the sole purpose of giving an approximate idea of the Services and any agreed Supplementary Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These 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 trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Energy Supplier, via NGP, shall not constitute an offer, and is only valid for the period specifically stated when the quotation is offered.
- 3. Supply of Services and any agreed Supplementary Services**
- 3.1 NGP shall use all reasonable endeavours to meet any performance dates specified by us, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and any agreed Supplementary Services.
- 3.2 NGP warrants to the Customer that the Services and any agreed Supplementary Services will be provided using reasonable care and skill.
- 3.3 NGP are not a price comparison service. Although we work with many suppliers, we do not have access to every supplier and to every deal that could be available to the Customer. There is never any guarantee we will have access to the objectively cheapest deal on the market.
- 3.4 NGP take into account a number of factors when assessing which suppliers and which specific contracts are best suited to the business needs of the Customer. These include, but aren't limited to: the length of the contracts available, the price guarantee available, the quality of the services and services available from each Energy Supplier, and specific Customer needs (including your energy consumption pattern, budget, green credentials etc.).
- 3.5 Best value for money is one of our main considerations when putting forward different suppliers / specific contracts. For the avoidance of doubt, these deals may not, at face value, be the cheapest on the market, but are the deals which we believe will give you the greatest overall benefit for your money spent, and NGP makes does not warrant to always offer the Customer the 'cheapest deal'



#### 4. Agency & Partnership

4.1 NGP is an independent energy consultant, and nothing in these Terms is intended to, or shall be deemed to, establish any partnership between the parties, or constitute any party the agent of another party.

#### 5. Customer's obligations

5.1 The Customer warrants, represents and undertakes:

- (a) To co-operate with NGP in all matters relating to the Services and any agreed Supplementary Services, including providing all relevant information in a timely manner as may be required;
- (b) To comply at all times with these Terms, as well as any applicable Terms & Conditions of any relevant supplier, relating to any energy supply contract;
- (c) To comply with all applicable legislation;
- (d) To immediately inform NGP of any change in the Customer's circumstances, or business(es); which may affect the provision of services, or the fulfilment of any energy supply contract

5.2 If NGP's performance of any of its obligations under the Contract is impacted, prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, NGP shall have the right to suspend performance of the Services and any agreed Supplementary Services 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 NGP, or the Energy Supplier's performance of any of its obligations;
- (b) NGP shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the NGP's, or the Energy Suppliers failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Customer shall reimburse NGP on written demand for any costs or losses sustained or incurred by NGP arising directly or indirectly from the Customer Default.

5.3 If the Customer uses NGP's Services in order to obtain a Contract, which then fails to go live, or is cancelled and the Customer chooses not to proceed with the Contract for any reason, including but not limited to the agreeing of duplicate contracts, or submitting a COT / COO, then NGP will be entitled to charge a Default Fee of the value equating to 5% of the total value of a Contract to the Energy Supplier plus VAT.

5.4 The Customer acknowledges that by entering into an energy supply Contract with an Energy Supplier, the Customer is contracting directly with the Energy Supplier in this respect, and not with NGP. As such, the



Customer agrees that NGP is not liable in relation to any transactions, dealings, or arrangements made between the Customer and the relevant Energy Supplier, and that any such transactions, dealings, or arrangements (including any payment obligations) are the Customer's sole responsibility.

## **6. Charges and payment**

- 6.1 Notwithstanding the Default Fee detailed in clause 5.3, there is no fee due directly from the Customer to NGP for the provision of services.
- 6.2 NGPs remuneration for the Services provided will already be included within our supplier proposals that we present. We will then receive this directly from the successful Energy Supplier on any contract that we have placed with them.
- 6.3 Any Default Fee due to NGP is payable no later than 30 days from the date of invoice.
- 6.4 If the parties agree any additional fee for and any agreed Supplementary Services, it shall be paid by the Customer as agreed between it and NGP when they agree those Supplementary Services

## **7. Intellectual property rights**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services and any agreed Supplementary Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by NGP.
- 7.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 7.
- 7.3 The Customer grants NGP a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Energy Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **8. Data protection**

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 8, **Applicable Laws** means (for so long as and to the extent that they apply to NGP) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and NGP is the processor.



8.3 The Customer acknowledges that any additional data relating to the Energy Contract may be accessed and processed until three months after any contract NGP has negotiated has ended.

**9. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

9.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation;

9.2 NGP's total liability to the Customer shall not exceed the amount of 5% of the average annual value of a Contract to the Energy Supplier plus VAT. NGP's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract

9.3 Subject to this clause 9.1, NGP shall not be liable to the Customer, whether in contract, tort, (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this contract for:

- (a) Loss of profits;
- (b) Loss of sales or business;
- (c) Loss of agreements or contracts;
- (d) Loss of anticipated savings;
- (e) Loss of use or corruption of software, data, or information
- (f) Loss of / damage to goodwill;
- (g) Indirect or consequential loss

9.4 Unless the Customer notifies NGP that it intends to make a claim in respect of an event within the notice period, NGP shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9.5 This clause 9 shall survive termination of the Contract.

**10. Termination**

Without prejudice to the foregoing, and any other rights and remedies that NGP may have, NGP shall be entitled to terminate or suspend the Services and any agreed Supplementary Services immediately upon written notice to the Customer in the event that:



- (a) The Customer is in breach of any of the provisions of these Terms and that in the case of breach capable of remedy such breach shall not have been remedied within 7 days of written notice from NGP to the Customer specifying such breach; or
- (b) NGP suspects on reasonable grounds that the Customer may have committed or attempted to have committed any fraud against NGP and/or any relevant Energy Supplier

## 11. Consequences of termination

- 11.1 The Customer hereby agrees to indemnify, keep indemnified, defend, and hold NGP and its parent companies, subsidiaries, affiliates, and each of their respective officers, directors, employees, owners, agents, suppliers, contractors, partners, information providers, and licensors harmless from and against any and all claims, damages, liability, demands, losses, costs, and expenses (including legal fees) (whether or not foreseeable or avoidable) incurred or suffered by any of such parties and any claims or legal proceedings which are brought or threatened arising out of or in connection with any use by or conduct of the Customer in relation to any of the Services and any agreed Supplementary Services, any transactions, dealings, or arrangements made with any third party as a result of using the Services or any breach of any of the provisions of these Terms or of any law or the rights of any third party
- 11.2 On termination of this contract the Customer shall immediately pay to NGP all of NGP's outstanding unpaid invoices and interest and, in respect of Services and any agreed Supplementary Services supplied but for which no invoice has been submitted, NGP shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 11.3 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. General

- 12.1 **Force majeure.** 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 result from events, circumstances or causes beyond its reasonable control.

### 12.2 Assignment and other dealings.

- (a) NGP 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 the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of NGP



### 12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b). For the avoidance of doubt, this shall include any potential fee paid to NGP, whether directly from the Customer or from the Energy Supplier.
- (b) Each party may disclose the other party's confidential information:
  - (i) 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 the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 12.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**12.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.



**12.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**12.8 Notices.**

- (a) Any notice, or other communication, given to a party under or in connection with the Contract 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 sent by email.
- (b) Any notice, or communication, 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; and
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 09.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**12.9 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**12.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.



**12.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.