

Eaga plc – Standard Terms for the Supply of Energy Audit Services

The Customer's attention is particularly drawn to the provisions of clause 11.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Acceptance Date: has the meaning set out in clause 2.2.

Agent: Make It Cheaper Limited, registered in England and Wales with company number 5949018.

Audit: an energy, water and CO2 saving and/or monitoring audit carried out for a Customer for the purpose of identifying Measures.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services as set out in the Order.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.9.

Contract: the contract between the Customer and Eaga for the supply of Services in accordance with these Conditions and the Order.

Customer: the person or firm who purchases Services from Eaga in accordance with clause 2.

Eaga: Eaga plc, registered in England and Wales with company number 3858865.

Intellectual Property Rights: all copyright, design rights, registered designs, database rights, patents, utility models, business names, trade marks, service marks, trade names, rights arising in domain names, knowhow, trade secrets and rights in confidential information and any other intellectual property rights or rights of a similar nature (in each case whether or not registered) and all applications for any of them which may subsist anywhere in the world.

Measures: any measures identified in a Report the installation of which would assist the relevant Customer to: (i) facilitate monitoring or reduce its CO2 emissions; or (ii) reduce its energy consumption; or (iii) reduce its water consumption.

Order: the Customer's order for the supply of Services.

Report: a report produced by Eaga for a Customer identifying and suggesting Measures arising from an Audit.

Request: has the meaning set out in clause 6.1.

Services: together, the Audit, the Report and any other services to be provided by Eaga to the Customer under the Contract as set out in the Order.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes but not e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services from Eaga in accordance with these Conditions.

2.2 The Order shall be accepted by Eaga on payment in full by the Customer to the Agent for the Services (**Acceptance Date**), following which Eaga shall perform its obligations under clause 5.

3. SUPPLY OF SERVICES

- 3.1 Eaga shall supply the Services to the Customer in accordance with the terms of the Contract.
- 3.2 Eaga has the right to make any changes to the Services which are reasonably necessary in Eaga's opinion to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Eaga shall notify the Customer in writing in any such event.
- 3.3 No warranty is provided that the Measures shall provide actual performance savings, as the effectiveness of any Measures is ultimately governed by the Customer's own behaviour.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall ensure that the terms of the Order and any information it provides to Eaga are complete and accurate and shall co-operate with Eaga in all matters relating to the Services.

5. EAGA'S OBLIGATIONS

- 5.1 Eaga shall:-
 - (a) contact the Customer within 4 Business Days of the Acceptance Date, to arrange an appointment for an Audit to be carried out;
 - (b) carry out the Audit within 12 Business Days of the Acceptance Date (unless a later date is requested by the Customer, whether pursuant to clause 6 or otherwise);
 - (c) produce and send the Report to the Customer within 10 Business Days of the Audit;
 - (d) provide the Services with reasonable care and skill;
 - (e) provide the Services in accordance with all applicable laws and regulations relating to the performance of the Services (if any); and
 - (f) contact the Customer to discuss the potential installations of Measures, which would be subject to a separate agreement between the parties.

6. RESCHEDULING AN AUDIT

- 6.1 Any request by the Customer to reschedule an Audit must be received by Eaga not less than 72 hours before the time scheduled for the Audit (**Request**).
- 6.2 Eaga shall process the Customer's first Request free of charge. Subject to clause 6.5, each subsequent Request shall only be processed on payment by the Customer of an administration fee of £99, to cover Eaga's reasonable costs for rearranging the Audit.
- 6.3 Eaga shall contact the Customer following its receipt of a Request, with a view to agreeing an alternative date for the Audit and to take payment of any administration fee due in accordance with clause 6.2.
- 6.4 If, within 10 Business Days, an alternative date for the Audit cannot be agreed with the Customer, or the Customer has not paid in full any fees due under clause 6.2, Eaga shall have the right to retain all the Charges and to terminate the Contract with immediate effect by giving written notice to the Customer, unless cancelled under clause 7.
- 6.5 Under no circumstances will an Audit be rescheduled on more than 3 occasions. If the Audit does not take place on the third rescheduled appointment, unless Eaga is itself at fault, Eaga shall have the right to retain all Charges and to terminate the Contract with immediate effect by giving written notice to the Customer.

7. CANCELLATION

- 7.1 Either party may terminate the Contract with immediate effect by giving the other party not less than 5 Business Days' notice before the time scheduled for an Audit (including any rescheduled appointment in accordance with clause 6).
- 7.2 If the Customer exercises its rights under this clause 7, Eaga shall be entitled to retain from the Charges an administration fee of £99, to cover its reasonable costs arising from the cancellation. The remaining balance of the Charges shall be remitted by Eaga to the Customer within 25 Business Days.

8. CHARGES AND PAYMENT

All amounts payable by the Customer under the Contract (including without limitation any administration fees due under clauses 6 or 7) are exclusive of amounts in respect of value

added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Eaga to the Customer, the Customer shall, on receipt of a valid VAT invoice from Eaga, pay to Eaga such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

9. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Eaga.

10. CONFIDENTIALITY

Subject to clause 14, a party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in these Conditions shall limit or exclude Eaga's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.2 Subject to clause 11.1:

- (a) Eaga shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
- (b) subject to clause 11.3, Eaga's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total amount due from the Customer to Eaga under the Contract.

11.3 Eaga's liability for damage to the Customer's physical property arising under or in connection with the Contract shall be limited to £1,000,000.

11.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.5 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if the other party (**Defaulting Party**):

- (a) commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) becomes or is declared insolvent or a resolution is passed for the winding up of the Defaulting Party or the Defaulting Party convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or any person takes any step to appoint an administrator or a liquidator, an administrative receiver, a receiver, manager, trustee, custodian or analogous officer is appointed in respect of all or any party of its property, undertaking or assets.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract for any reason:

- (a) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (b) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. DATA PROTECTION

14.1 The parties agree that Eaga may pass information relating to the Customer to any subcontractor engaged to provide the Services and to the Agent, and that any such subcontractor and the Agent may pass information in relation to the Customer to Eaga.

14.2 Eaga may use this information to:-

- (a) provide the Services; and
- (b) inform the Customer about Measures or similar services which Eaga may provide (unless the Customer informs Eaga in writing that it does not want to receive this information).

14.3 Eaga and/or the Agent may also use this information in an anonymous format in press releases or other positive publicity relating to the effectiveness of the Services and how they have helped customers to save energy, water and/or CO2 emissions.

15. GENERAL

15.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent Eaga from providing any of the Services for more than 4 weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to Eaga.

15.2 Assignment and subcontracting:

- (a) Eaga may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Eaga, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

- (a) Any notice, service of documents, or other formal communication (including any in contemplation or in respect of legal proceedings) to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

15.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.5 Severance:

(a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Entire agreement: The Contract constitutes the entire agreement between the parties. Each party acknowledges that it has not relied on any statements, promise or representation made or given by or on behalf of the other party which is not set out in the Contract. These Conditions apply to the Contract to the exclusion of any other terms that either party may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

15.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.9 Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Eaga.

15.10 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

