

Path Energy Ltd trading as EnergySwitchers.com: terms and conditions

In these terms and conditions Path Energy Ltd company registered number 14198553 whose registered office is C/O Ground Floor, St. Pauls House, 23 Park Square South, Leeds LS1 2ND is referred to as EnergySwitchers.com.

The customer of EnergySwitchers.com is referred to as the Customer.

These terms and conditions provide for amongst other matters the provision of services to the customer. A separate document sets out terms and conditions for the use of Path Energy's website.

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Definitions

"Agreement": the contractual relationship between EnergySwitchers.com and the Customer as set out in these terms and conditions and Letter of Authority.

"Breach Fee": payment due from the Customer to EnergySwitchers.com in the event of a Customer Breach.

"Commencement Date": has the meaning given in clause 1.

"Commission Payment": the payment EnergySwitchers.com 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.

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

"Contract": the contract entered into by you (or by us on your behalf) with the Supplier for the supply of energy and as part of the Services and any extensions to this Agreement.

"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 we will provide to you including presenting you with details of a proposed supply contract(s) from one (or a number) of Suppliers from our portfolio of suppliers for you to choose to accept and as set out in the Letter(s) of Authority.

"Supplier": the supplier that you chose 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 EnergySwitchers.com;

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

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

EnergySwitchers.com does not guarantee that it will arrange what a third party may claim is the cheapest supply available. EnergySwitchers.com considers a number of factors when assessing which suppliers and which supply contracts are best suited to the Customer. EnergySwitchers.com 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 EnergySwitchers.com 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 EnergySwitchers.com may request from time to time;
- (iv) to ensure that all information and documents provided to EnergySwitchers.com is complete, up to date and accurate at all times;
- (v) to provide such assistance as EnergySwitchers.com may reasonably require from time to time in relation to the Services
- (vi) to immediately inform EnergySwitchers.com 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 to EnergySwitchers.com; 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 EnergySwitchers.com 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 EnergySwitchers.com'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 EnergySwitchers.com 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 EnergySwitchers.com 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 EnergySwitchers.com) which EnergySwitchers.com 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.

VAT is due to be paid on a Breach Fee.

The Customer agrees that the Breach Fee is due to 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.

The Customer agrees that the Breach Fee, whether fixed or Commission based, represents the reimbursement of loss suffered by EnergySwitchers.com resulting from the Customer Breach. It does not represent an unfair gain or windfall on the part of EnergySwitchers.com 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 EnergySwitchers.com.

4. CHANGE OF TENANCY

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

Where a customer enters into a contract through EnergySwitchers.com 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 and Corporation Tax Act) or (ii) the premises becoming vacant for a minimum period of three months following the Customer's departure.

EnergySwitchers.com's fees are adjusted by a Supplier if a COT occurs. It is therefore important that EnergySwitchers.com 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 EnergySwitchers.com, 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 EnergySwitchers.com to satisfy itself as to the nature of the COT.

Failure to so notify EnergySwitchers.com in the event of a COT will incur a fee for the loss/reduction in the commission the supplier pays to EnergySwitchers.com. In those circumstances EnergySwitchers.com reserves the right to charge the Customer a one off fee of £750 per meter or the total value of the Commission Payment EnergySwitchers.com would have received in relation to the Contract per meter, whichever is the higher figure. In calculating the said fee EnergySwitchers.com 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. 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; and
- (ii) the liability of the Customer to EnergySwitchers.com in the event of a Customer Breach.

6. COMMISSION PAYMENTS TO ENERGYSWITCHERS.COM

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

The Customer agrees and acknowledges the Commission Payment will be due to be made to EnergySwitchers.com. 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 EnergySwitchers.com

7. LIMITATION OF LIABILITY

The Customer's attention is drawn to this clause: limits to the liability of EnergySwitchers.com to the Customer

The Customer acknowledges and agrees that by entering into the Contract the Customer contracts directly with the Supplier and not EnergySwitchers.com for the supply of energy. The Customer therefore further acknowledges that EnergySwitchers.com 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 EnergySwitchers.com's liability to the Customer where such liability arises from dishonesty on the part of EnergySwitchers.com or death or personal injury on the part of the Customer.

EnergySwitchers.com'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 EnergySwitchers.com.

The Customer acknowledges and agrees that EnergySwitchers.com, 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 EnergySwitchers.com 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 EnergySwitchers.com then it must notify EnergySwitchers.com 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 EnergySwitchers.com shall have no liability to the Customer.

EnergySwitchers.com 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

EnergySwitchers.com 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 EnergySwitchers.com 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 this 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).

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; and
- (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.

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. If any such dispute cannot be settled amicably through ordinary negotiations by the respective representatives the dispute shall be referred to the senior representatives nominated by the Parties who will meet (physically or virtually) in good faith in order to try and resolve the dispute.

If the dispute or difference is not resolved as a result of such meetings either party may (at such meeting or within fourteen days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator (the Adviser) before resorting to litigation with costs shared equally.

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

12. GENERAL MATTERS

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 EnergySwitchers.com 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.

EnergySwitchers.com 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 EnergySwitchers.com 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 EnergySwitchers.com'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.