

## Switch Energy: terms and conditions

In these terms and conditions Stercap Energy Ltd of registered office Unit 2 Batley Business Park, Technology Drive, Batley, England, WF17 6ER registered company number 05333324 trading as Switch Energy is referred to as Switch

The customer of Switch is referred to as the Customer

### Definitions

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

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

“**Business Day**”: every weekday other than a public holiday in England and Wales

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

“**Commission Payment**”: the payment Switch is entitled to receive from the Supplier as 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, water or telephone services and as part of the Services and any extensions to this Agreement.

“**Letter of Authority**”: such letters of authority being level 1 or level 2 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:

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 Switch.

The Customer agrees that in return for Switch receiving the Commission Switch shall supply the Services to the Customer as per this Agreement.

Switch is not a price comparison service. Although Switch works with many suppliers of energy, water and telephone services it does not have access to every such supplier. Switch does not guarantee that it will arrange what a third party may claim is the cheapest supply available. Switch considers a number of factors when assessing which suppliers and which supply contracts are best suited to the Customer.

Switch 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.

The Customer is not liable to make any payment to Switch other than a Breach Fee or payments due direct from the Customer to Switch as agreed from time to time.

## 2. CUSTOMER'S OBLIGATIONS

The Customer agrees:

(i) to co-operate with Switch in all matters relating to the Services;

(ii) to comply at all times with this Agreement as well as any applicable terms and conditions of any Supplier relating to the Contract;

(iii) to provide such information, data or documents as Switch may request from time to time to;

(vi) to ensure that all information and documents provided to Switch is complete, up to date and accurate at all times;

(v) to provide such assistance as Switch may reasonably require from time to time in relation to the Services

(vi) to immediately inform Switch in the event there is any change in the Customer's circumstances which may affect the provision of the Services;

(vii) to comply with the provisions of the Bribery Act 2010 and any other applicable legislation; and

(viii) not to enter into any other contract (for any reason including due to a change in tenancy or change in occupancy) for the supply of energy, water or telephone services ("Other Contract") for the intended period of the Contract whereby that Other Contract provides 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: it sets out the consequences of the Customer breaching this agreement***

Without affecting any other right or remedy available to it Switch 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 Switch'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 Switch is relieved of all its obligations under the Agreement.

Further in the event of termination (that may conclude suspension) the Customer will on receipt of demand pay to Switch the Breach Fee representing the Commission Payment (or such balance of the Commission Payment yet to be paid to Switch) which Switch would have received from the Supplier but is not received due to the Customer Breach.

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 represents the reimbursement of money that were it not for the Customer Breach would be paid to Switch by the Supplier. It does not represent an unfair gain or windfall on the part of Switch that is in the nature of or is capable of falling within the definition of a penalty.

### **4. CONSEQUENCES OF TERMINATION**

Termination or expiry of the Contract 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 Switch in the event of a Customer Breach.

### **5. COMMISSION PAYMENTS TO SWITCH**

***The Customer's attention is drawn to this clause: it sets out the commission payments that will be made to Switch***

The Customer agrees and acknowledges the Commission Payment will be due to be made to Switch. The timing and amount of the Commission Payment varies from Supplier to Supplier. Examples of Commission Payments made by Suppliers:

Energy: 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 0.1 per unit then the amount payable per unit under the Contract by the Customer would be (i) base price of the unit plus (ii) 0.1p per unit.

Water: a single Commission Payment is made.

Telephone Services: an initial Commission Payment followed by residual Commission Payments at rates set by the Supplier.

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

## **6. LIMITATION OF LIABILITY**

*The Customer's attention is drawn to this clause: it limits the liability of Switch to the Customer*

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

Switch'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 Switch.

The Customer acknowledges and agrees that Switch's 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 Switch 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 Switch then it must notify Switch in writing to that effect:

- (i) 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
- (ii) 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 Switch shall have no liability to the Customer.

Switch 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.

## **7. DATA PROTECTION**

Switch 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 Switch 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 in force from time to time.

## **8. CONFIDENTIALITY**

Neither party shall disclose to any third party any Confidential Information in respect of the other at any time acquired in connection with this 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.

## **9. 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).

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 Business Day after posting or at the time recorded by the delivery service.

## **10. 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.

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

Switch 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 Switch 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 Switch'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.