

## **Xcel Energy Limited – Terms and Conditions**

- 1. General Terms**
- 1.1. These Terms and Conditions are for business customers (which includes Microbusiness Customers). They should be read alongside your Contract, which together make up the “Agreement” between us.
- 1.2. The Agreement is between us, (Positive Energy Limited) and you, where you have decided to enter into an Agreement for the supply of gas, electricity or both to Non-Domestic Premises.
- 1.3. Please note that any reference to the word ‘Property’ means Non-Domestic Property which are not or are not to become Green Deal Premises during the Contract.
- 1.4. Please note that references to the word ‘Energy’ means electricity or gas which we have agreed to supply to your Property, subject to these Terms and Conditions. These Terms and Conditions apply separately in respect of each account under which we supply you with Energy.
- 1.5. Please read them carefully so that you are fully aware and understand our mutual obligations and responsibilities. In the event of inconsistency with any other document, these Terms and Conditions will prevail over any other document between us including, your Contract unless otherwise agreed with you.
- 1.6. These Terms and Conditions apply to all Contracts unless specified otherwise in the Contract.
- 1.7. We may amend and update these Terms and Conditions from time to time. We will try to give you reasonable notice of any major changes.

## **2. Definitions**

Actual Meter Readings means a meter reading taken at the Property by us or an appointed agent, a meter reading taken remotely, or a meter reading taken by you read from your Metering.

Advanced Meter means type of Metering that measures consumption data in multiple time periods and such data can be accessed by us remotely.

Advance Payment means a sum of money equal to one, two, or 3 months’ billing based on your estimated annual consumption.

Available Capacity means the total agreed maximum amount of Energy that the local Network Operator is required to make available in relation to your supply, as set out in any contract between you and the Network Operator.

Agreed Capacity Charge means a charge for the amount of Energy that is reserved for your Metering to be used at any time expressed in pence per kilovolt ampere (kVA) per day, which is agreed between you and the Network Operator and passed through by us from the Network Operator.

Bill means an invoice or statement that informs you of the amount of money owed to us by you, including any detailed breakdown of our Charges.

Capacity Excess Charge means a charge for instances when the Agreed Capacity has been exceeded. Expressed in pence per kilovolt ampere (kVA) per day, which is set by the Network Operator and passed through by us from the Network Operator.

Charges means the amount of money you owe us, including any fees you may incur, payable by you to us in accordance with your Agreement with us.

Commencement Date means the date we confirm acceptance of our Agreement in writing.

Connection Point means, in respect of each Property, the point(s) at which the Energy flows between the Network and your Metering, pipes or wires.

Contract means the supply contract between us and you that forms part of your Agreement with us or Deemed Contract.

Current Transformer Meter means type of Metering which uses a current transformer as part of the mechanism for measuring the electric current.

Deemed Contract means a contract between you and us to supply Energy to the Property under these Terms and Conditions, without entering into a formal agreement with us for those services.

Director means a director as defined in the Companies Act 2006.

Due Date means the date by when we must receive the payment of Charges due from you, as specified in your Contract, in your Bill, or any other statement setting out amounts which you owe us.

End Date means the last date of the Fixed Term.

Fixed Term means the length of time during which your prices are fixed or flexed (as the case may be) as agreed between you and us and specified on your Contract.

Green Deal Premises means premises as defined in Condition 19C of the Standard Conditions of Electricity Supply Licence.

Guarantor means a Director of the company which has entered into an Agreement with us.

Half-Hourly Meter means type of Metering that measures consumption data in multiple periods and is able to provide such data in half-hourly periods.

Industry Codes means the codes and agreements referred to in our Supply Licence.

Large Gas Meter means type of Metering that is designed to operate with a maximum flow rate of greater than 11 cubic metres per hour.

Leaving Notice means a notice from you to us informing us of change of Property owner or occupier. The notice must include the following details:

- a) The date you are leaving the Property;
- b) Your new contact details; and
- c) If you are the occupier of the property, the details of the Property owner.

Metering means, for each connection point, the appropriate metering (and related equipment) used for measuring Energy consumption at the connection point and for the collection and transmission of such data.

Microbusiness Customer means a non-domestic customer who meets one of the following criteria:

- d) Employs fewer than ten (10) employees (or their full-time equivalent) and has an annual turnover or balance sheet no greater than €2million; or
- e) uses no more than 100,000 kWh of electricity a year; or
- f) uses no more than 293,000 kWh of gas a year.

Network means, as the case may be, either the electricity distribution network or the gas distribution network, through which you receive the supply of Energy.

Network Operator means, in respect of each property, the owner or operator of the Network.

Non-Domestic Property means Non-Domestic Premises as defined in Condition 6 of the Standard Conditions of Gas and Electricity Supply Licence.

Ofgem means the Office of Gas and Electricity Markets, an industry regulator set up by Parliament to protect the interests of energy customers.

Outstanding Charges means the amount of any Charges which are due to us from you, and which remain unpaid after the Due Date.

Property means any part of any land, building or structure that you wish to be supplied under your Agreement with us and at which the supply of Energy is used wholly or mainly for business purposes.

Reactive Power Charge means a charge for the electricity used to power up certain industrial and commercial equipment before working electricity is used to operate it, such as equipment that generates a magnetic field before full operation, expressed in pence per kilovolt ampere reactive hours (kVArh). It is calculated by the Network Operator and passed through by us from the Network Operator.

Related Metering Points means two or more metering points that supply the same customer and are located at the same (or any part of the same) Property.

Relevant Metering means type of Metering that we are required by our Supply Licence or Industry Codes to install and operate at your Property, and which includes Smart Meters, Advanced Meters, Current Transformer Meters, Half-Hourly Meters or Large Gas Meters.

Responsible Supplier means, for each Property, the supplier registered under the Industry Codes as responsible for the supply of Energy to the Connection Point(s) at that Property.

Shipperless Property means a property that has no current registered shipper but previously had one, and for which it has been established that gas is being consumed through Metering.

Smart Meter means type of Metering that complies with the Smart Metering Equipment Technical Specification Version 2 or later and enables us to access the information held of the smart meter remotely.

Supplier of Last Resort Direction means when Ofgem appoints another supplier to take over responsibility for our customers.

Supply Licence means either, as the case may be, our electricity supply licence held under section 6 of the Electricity Act 1989 or our gas supply licence held under section 7A of the Gas Act 1986.

Supply Start Date means the date we aim to start your supply of Energy to the Property under your Agreement with us.

Supply Transfer means, in relation to any Property at which a supplier is supplying Energy (gas and/or electricity), the transfer of responsibility for that supply (gas and/or electricity) from one supplier to another.

Termination Fee means a payment by you where your Agreement with us is terminated before the end of the Fixed Term and this payment is calculated in accordance with clause 10.3.

Unregistered Property means a property that has never been registered by a shipper but where there is Metering fitted and it has been established that gas is being consumed through Metering.

**3. Deemed Contract** 3.1. If you have become responsible for the Property where we currently supply Energy to you or otherwise you have become legally responsible for the Metering at the Property supplied by us, you will have a Deemed Contract with us.

3.2. A Deemed Contract comes into force on either: 3.2.1. The date we began to supply you with Energy;

3.2.2. The date you began to take supply of Energy from us.

3.3. When a Deemed Contract arises because Ofgem tells us to begin to supply you with Energy, we will protect the amount of credit owed to you by your previous supplier to the extent we had made such commitment to Ofgem prior to our appointment as your new supplier.

3.4. If you have a Deemed Contract with us these Terms of Conditions should be read as follows: 3.4.1. The following obligations in section 4 apply: 4.4 and 4.7;

3.4.2. All obligations in section 5 apply except: 5.6 and 5.11;

3.4.3. All obligations in section 6 apply;

3.4.4. The following obligations in section 7 apply: 7.1, 7.2 and 7.6

3.4.5. All obligations in section 8 apply except: 8.1, 8.11.4, 8.11.6, 8.11.7, 8.18, 8.20, 8.21;

3.4.6. All obligations in sections 9, 10 and 11 are excluded;

3.4.7. All obligations in section 12 apply except 12.2.7;

3.4.8. All obligation in sections 13, 14, 15 and 16 apply.

3.5. We will charge you for the supply of Energy at our Deemed Contract prices. Our Deemed Contract prices are available on the website <https://positive.energy>.

3.6. Your Deemed Contract with us will end: 3.6.1. When you enter into an Agreement with us;

3.6.2. Following completion of a Supply Transfer to another supplier. Your Deemed Contract with us will end on the Supply Start Date with your new supplier;

3.6.3. When you give us a Leaving Notice that you no longer will be responsible for the Property or the Metering at the Property, we supply Energy to, prior the date when you stop being responsible for that Property or Metering;

3.6.4. When we permanently disconnect the supply of Energy to your Property;

3.6.5. When Ofgem makes a Supplier of Last Resort Direction.

3.7. For the avoidance of doubt, if you have a Deemed Contract we will not charge you a Termination Fee should you wish to complete a Supply Transfer to another supplier.

**4. Our obligations** 4.1. Your Agreement starts on the Commencement Date and will continue until either the End Date or the date your Agreement is terminated in accordance with clause 6.12 or section 9.

4.2. When you enter into a Contract with us we will confirm the initial prices of Energy. These form part of your Contract. We may change these prices from time to time, including (but be not limited to): 4.2.1. If a supply point is added, replaced, re-energised, re-connected, or its voltage, measurement class or profile class is amended;

4.2.2. If your actual consumption is greater than the estimated annual consumption of electricity/annual quantity of gas according to the amount stated on your Contract or held by the Industry, we reserve the right to vary the prices of energy for the increased amount. If your estimated annual consumption of electricity/annual quantity of gas is less than the amount as stated in your Contract or held by the Industry, we reserve the right to pass on to you any losses we incur in the course of a year on commodity prices as a result of your underconsumption.

4.3. During the term of your Agreement with us we will supply Energy to you in accordance with these Terms and Conditions. We will supply Energy via the relevant Network Operator who will deliver the Energy to each Connection Point on our behalf. The Network Operator is responsible for maintaining the network and the connection of each Property to the network and may disconnect the supply of Energy where it is in accordance with its legal rights to do so.

4.4. We will take reasonable steps to complete a Supply Transfer in five (5) working days from the Commencement Date unless: 4.4.1. You have requested that the Supply Start Date is a later date;

4.4.2. You notify us that you do not wish for the Supply Transfer to take place;

4.4.3. The supplier who is the current Responsible Supplier raises an objection to the Supply Transfer in accordance with their terms and conditions;

4.4.4. We do not have all the information requested from you to complete the Supply Transfer, despite our reasonable efforts to obtain such information;

4.4.5. Your Property is part of an exempt distribution system;

4.4.6. Other circumstances beyond our reasonable control;

4.4.7. The Commencement Date is after 5pm on a working day, in which case we will take reasonable steps to complete a Supply Transfer in five (5) working days from the next working day after the Commencement Date.

4.5. If on the day after the Supply Start Date, the Property is still being supplied by another supplier, we may agree another Supply Start Date with you. If another Supply Start Date is agreed, your Commencement Date and End Date will remain as per your Agreement with us.

4.6. In the event that the supply of Energy to your Property is temporarily interrupted we will pass on any relevant compensation payments we receive from your Network Operator as a result of such temporary supply interruption.

4.7. We will report cases of suspected or actual theft to a central theft risk assessment service. We will refer individual cases to regional revenue protection services, who will carry out site visits and take any appropriate action.

**5. Your obligations** 5.1. You agree to carry out your responsibilities under this Agreement, including to take the Energy supplied to you by us and to pay any of the Charges due. This includes any additional Charges which may become due at any point during the term of our Agreement.

- 5.2. You agree that, so long as we are the Responsible Supplier, Energy supplied to your Property will be treated as having been supplied under our Agreement, even if you have a contract for the supply of Energy to your Property with any other person.
- 5.3. Ownership of the Energy will transfer to you at the Connection Point, where responsibility for the Energy will become your responsibility. Therefore, you will be responsible for Energy losses which are incurred on your side of the Connection Point.
- 5.4. You represent and warrant:
- 5.4.1. You are the owner or occupier of the Property (or will be on the agreed Supply Start Date);
- 5.4.2. The Property is and remains connected to the Network Operator's network at the relevant Connection Point;
- 5.4.3. All of the information provided by you (or on your behalf) in relation to the Contract is accurate and complete, and not misleading;
- 5.4.4. You have or will obtain authorisation from your landlord to install Metering and associated equipment relating to the Property;
- 5.4.5. Maintain all pipes, equipment, wires, meters, and cables, as well as any other fittings belonging to you and used in conjunction with the supply on your side of the Metering (which starts at the Connection Point) in good working order and safe condition in compliance with the law at all times;
- 5.4.6. Provide us with assistance and information that we reasonably require to enable us to comply with our obligations under your Agreement with us, our Supply Licence, and the Industry Codes.
- 5.4.7. Any and all Properties to which Energy is supplied under your Agreement with us are Non-Domestic Properties;
- 5.4.8. You will contact the National Gas Service Emergency Line immediately if you believe or suspect that there is or may be an escape of gas, by calling 0800 111 999 and allow the access necessary for the emergency services to be provided. In the case of an electrical emergency, you will dial 105.
- 5.4.9. You will inform us after any such emergencies and cooperate with any further steps required by us.
- 5.5. You agree to maintain and comply with all necessary agreements and consents for connection to the Network Operator's network at the relevant Connection Point.
- 5.6. You are responsible for terminating your agreement with your current supplier and ensuring that they have no cause to object to a Supply Transfer to us under your agreement with them.
- 5.7. When you are the occupier of the Property, you agree to provide us with the name, address, and telephone number of the owner of the Property at the start of your Agreement with us. If there are any changes to the Property owner, you agree to notify us of the changes in writing at least thirty (30) days prior the changes are due to be made or as soon as you become aware of them.
- 5.8. You agree to notify us in writing at least thirty (30) days prior the occurrence of the following events:
- 5.8.1. you make changes to the Property that are likely to alter the amount of Energy consumed or the time of day it is consumed;
- 5.8.2. if the Contract is for the supply of electricity, you install electricity generating equipment at the Property;
- 5.8.3. if the Contract is for the supply of electricity, you change the voltage at which you take the electricity supplied;
- 5.8.4. you make or anticipate any changes to the estimated minimum amounts of Energy you will require.
- 5.9. You agree to our contacting you in relation to your Agreement with us using any contact details provided to us by you.
- 5.10. You acknowledge that as part of the provision of Energy to your Property, we may require information from your previous supplier. We may obtain from your previous supplier (or other relevant parties) any information which we reasonably require in the course of supplying Energy to the Property.
- 5.11. You must inform us immediately if at any point during the term of your Agreement with us you either become or stop being a Microbusiness Customer. We will not change the tariff you pay for the Energy supplied or

the Terms of Conditions for the remainder of the term of your Agreement, however, you may be subject to additional taxes, duties or levies.

5.12. You must inform us immediately if at any point during the term of your Agreement with us if any Property we supply Energy to under your Agreement with us stops being a Non-Domestic Property. We will not change the tariff you pay for Energy supplied to any such Property or the Terms and Conditions in respect of any such Property for the remainder of the term of your Agreement with us, however, you may be subject to different taxes, duties or levies. We will arrange a Supply Transfer of any such Property to another supplier from termination.

**6. Supply, Access, and Meters** 6.1. We may arrange for Metering to be installed, as necessary, for the Property supplied with Energy under your Agreement with us. Where relevant, you confirm that you are legally able to and have permission to allow us or agents working on our behalf into the Property and you will give us full access to the Metering whenever we require access (including agreeing to our gaining remote access).

6.2. Where we install the Metering, it will either belong to us or to a third-party with which we have a contractual relationship. You will not own the Metering and will not be able to object to its replacement with alternative Metering or the transfer of ownership of the Metering if replacement takes place.

6.3. You agree to, at all reasonable times, allow your Network Operator or us (including relevant employees, representatives, agents, and subcontractors) to have safe, full, and free access to the Property and Metering, including any equipment, wires, cables, and other fittings used in connection of the supply of Energy to your Property under your Agreement with us in order to install, read, maintain, inspect, remove or replace the Metering or any associated equipment. If there are any obstructions that prevent us (or any of our agents or contractors) from gaining access to your Property and Metering, you are responsible for removing the obstruction and for the cost of doing so.

6.4. You will take reasonable steps to ensure that all Metering and associated equipment (whether it belongs to us or a third-party) on or at your Property is not lost, stolen, or damaged. You agree to pay us for any costs we may incur (either directly or indirectly) in replacing or repairing lost, stolen, or damaged Metering unless the damage is caused by our act or omission.

6.5. Where we agree to replace the Metering at your request, you will reimburse us for any loss or expense that we incur (including abortive visit charges) in regard to such a change, where such a request is due to some reason other than that arising due to our failure to meet our obligations.

6.6. If you cancel your appointment less than seventy-two (72) hours prior to the appointment date, we will charge you an appointment cancellation fee of one hundred (100) GBP.

6.7. It is your responsibility to provide us with meter readings on a monthly basis. We will use the readings you provide to us so long as that they are not inconsistent with the readings taken by us or our designated industry approved agents. We may, at our discretion, make arrangements for the Actual Meter Readings to be provided to us.

6.8. For the Properties that have Half-Hourly Meters, you will contract with a meter operator agent (as defined in the Industry Codes) for the maintenance of those meters. You will notify us of the entity with which you have contracted at least thirty (30) days in advance of the Supply Start Date (and in advance of any replacement).

Where this clause 6.8 applies, you will be responsible for the accuracy of the meters and you will compensate us for any losses and costs we incur as a result of the poor performance of your agent.

6.9. If an Actual Meter Reading is not available or, where provided by you, it is in our reasonable belief inaccurate, we will estimate the amount of Energy used by you and will charge you accordingly. The estimate will be based on the estimated annual consumption of electricity and annual quantity of gas according to the amount as held to be standard by the Industry. Any such estimates shall be subject to reconciliations as actual or more accurate information becomes available to us.

6.10. If you reasonably believe that the Metering at the Property is inaccurate, you may ask us to test it. If you make such a request, we will arrange for the Metering to be tested within a reasonable period of time. If the accuracy of the Metering is found to be within the limits prescribed by

the Industry Codes, you will reimburse us for the cost of the test. If the accuracy of the Metering is found to be outside the limits prescribed by the Industry Codes, we will repair or replace the Metering at our own cost and will apply a reasonable adjustment (up or down) to the Charges to reflect the inaccuracy.

6.11. We may need to change your Metering or related equipment in order to comply with Industry Codes or the Supply Licence. If we identify that your Metering needs to be changed, we will contact you to advise you on the next steps and any additional Charges that may become due as a result of the Metering change.

6.12. If we (including relevant employees, representatives, agents, and subcontractors) contact you to arrange to install Relevant Metering, you will allow us access to complete the installation without unreasonable delay.

Where we are unreasonably denied access, we may ask you to pay any costs we have incurred, and we reserve the right to terminate your Agreement with us.

**7. Charges** 7.1. The Charges will be based on the prices and any taxes, duties or levies at the prevailing rate. The prices as well as any taxes, duties or levies that are applicable to you will be stated in your Contract. New taxes, duties or levies introduced during the term of your Agreement with us will be charged to you in addition.

7.2. The Charges will include third party and industry charges. These charges relate to the cost of delivering Energy to you and investment in future generation.

7.3. Third party and industry charges can be fixed or pass through. Any third party and industry charges that we pass through will be detailed in the Contract.

7.4. If your third party and industry charges are fixed, they will not change subject to clause 7.5.

7.5. We may change the Charges as a result of an introduction of third party and industry charges, the way in which such charges are calculated or if your charges change following changes to your charging band allocation. If this results in increased costs to us and are payable by us for supplying your Energy, we will pass these on to you.

7.6. If you become subject to Agreed Capacity Charges, Reactive Power Charges, Capacity Excess Charges or any other industry charges during the term of your Agreement with us, they will be charged to you in addition.

7.7. If you have a contractual relationship with a third-party provider for meter maintenance and data collection and aggregation services, we reserve the right to apply an administration fee for each meter which requires migration to your third-party provider.

**8. Payment** 8.1. Your payment method will be stated in the Contract.

8.2. We will, each month or at such other intervals as stated in your Contract or otherwise agreed with you, send you a Bill for the relevant period. Bills are generated within forty-eight (48) hours after a meter reading is taken or provided to us by you.

8.3. The Charges may be based on a reasonable estimate of how much Energy you have used, on information we have about the Property, and the estimated annual consumption of electricity and annual quantity of gas as stated by the Industry. You must pay the Charges shown on the Bill by the Due Date, including where the Charges are based on such an estimate. 8.4. We will send the Bill to your e-billing account or prepaid post subject to additional charges for paper Bills. For customers wishing to receive paper Bills, an administration fee of two (2) GBP will be added to each Bill.

8.5. E-billing facilities may at our discretion entitle us to send the Bill to an e-mail address maintained by you or upload it onto your e-billing account. You will maintain an email address for this purpose and notify us of any changes to your email address. If an e-billing account is used, you will keep your password secure and confidential. We may close your e-billing account at any time without notice if we have reasons to believe that the account is being accessed or used in an unauthorised manner.

8.6. We will create your direct debit mandate within ten (10) days from the Commencement Date or the date you contact us to do so. If for any reason we are unable to create your direct debit mandate, for instance if the information you have provided us is incorrect, we will treat this as a direct debit cancellation, and you may incur an administration fee.

- 8.7. If you pay by fixed direct debit, the first payment will be taken on or around the tenth (10<sup>th</sup>) day of the month. Ongoing Direct Debit payments will be taken on or around the same day of each month as the first payment. We reserve the right to increase or decrease the amount of fixed direct debit billed to you within a reasonable margin, depending on shifts in your usage patterns.
- 8.8. If you pay by variable direct debit, payment will be debited from your account within seven (7) to ten (10) days from a Bill being issued.
- 8.9. If you pay by BACS/CHAPS, electronic transfer or debit/credit card, cleared funds must reach us by the Due Date and payment must be correctly referenced. If we are unable to identify your payment because of your failure to correctly reference it, we may treat it as non-payment and take steps in accordance with clause 8.11.
- 8.10. You must make sure that there is enough money in your account to cover the Charges. If you cancel your direct debit without prior notice before we can collect any payment due, you must contact us immediately to confirm your new payment method.
- 8.11. If you do not pay the Charges by the Due Date, we will be entitled to take any of the following steps: 8.11.1. Charge you interest on the overdue amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1988 (which is eight (8) per cent above the Bank of England base rate);
- 8.11.2. Charge you an administration fee in accordance with the Late Payment of Commercial Debts (Interest) Act 1988;
- 8.11.3. Demand payment of all unpaid Bills under your Agreement with us which will be deemed to be immediately due and payable;
- 8.11.4. Change the amount you pay or the payment method by which you pay. This may include charging you our Out Of Contract prices published at <https://positive.energy> for the remainder of the Contract;
- 8.11.5. Charge you reasonable expenses incurred in obtaining the money owed to us your Agreement with us, including costs associated with disconnecting, reconnecting, or replacing Metering;
- 8.11.6. Require you to make an Advance Payment or pay the Charges for each month in advance based on our estimate of likely Energy consumption in that month);
- 8.11.7. Pay a performance bond, in an amount which we reasonably determine to be the approximate value of three (3) months' supply of Energy;
- 8.11.8. Require you to pay us a deposit in an amount equal to our estimate of our likely exposure to you under your Agreement with us (in which case title to such amount will vest in us, but we will pay you an equal amount after the payment of the final Bill following the end of the Contract) (subject to any amounts deducted by us in settlement of Outstanding Charges under your Agreement with us); and
- 8.11.9. Pass information relating to you onto a credit reference agency.
- 8.12. If the Charges remain unpaid after the Due Date, the Guarantor irrevocably and unconditionally undertakes and guarantees to pay any Outstanding Charges. The Guarantor agrees that this guarantee will remain in full force and effect and be binding until your Agreement with us is satisfied.
- 8.13. If you disagree with the Charges, you should contact us immediately to submit an Actual Meter Reading and provide any attendant evidence (such as photographs) as required. You must still pay the Charges shown on the Bill by the Due Date. Failure to do, will result in us taking steps in accordance with clause 8.11. Following our investigation, any debits or credits will be reconciled in the following month's Bill. Your obligations under this clause 8.13 still apply even if you appoint a third-party agent to provide bill processing or validation services.
- 8.14. If you have difficulty paying the Charges, you should contact us immediately. We will discuss your payment methods options and try to help in line with our policies and code of practice.
- 8.15. In the event of continued non-payment, we may refer you to our partner debt collection agency and reserve the right to charge you the cost of recovering any Outstanding Charges as well as the cost of collection.
- 8.16. Any refund amount due to you will be set-off against amounts owed and will be paid back through your e-billing account over the course of the term of your Agreement with us. For the avoidance of doubt, offset will settle both the amount owed to you and the amount you owe.



8.17. Where a credit arises, we will deduct the amount of credit from the total we take by direct debit. However, if we have consented to payment terms other than by direct debit or if the credit is greater than the amount owing to us, then we will credit the amount to an account operated by us for that purpose. We will pay any such amount to you on request. We will send the reconciliation notice or credit note to your address as held by us, unless we are aware that you are no longer in occupation of the Property and you have not provided a forwarding address.

8.18. If you are a Microbusiness Customer, when we send you a Bill, we can only look to recover Charges for the Energy supplied to you in the last twelve (12) months from the date on which we issue you the Bill, unless: 8.18.1.

We have already sent you a Bill and are in contact with you about payment of previously billed Charges;

8.18.2. You behave in an obstructive or unreasonable way (for example you do not allow us or agents acting on our behalf to access to your Metering to read them without good reason, physically blocking more than one reasonable attempt to access your Metering, or you are behaving unlawfully by stealing Energy or, where you are responsible for your Metering and you fail to keep it in proper working order), or

8.18.3. Any other circumstances specified by Ofgem.

8.19. Unless clause 8.18 applies, we reserve the right to reconcile and recover Charges for the Energy supplied to you in the last twenty-eight (28) months from the date when we issued you the Bill.

8.20. If at any time during the term of your Agreement with us we receive credit reports which we are not satisfied with, we may ask for an Advance Payment or an increase in the Advance Payment.

8.21. If you are required to make an Advance Payment during the term of your Agreement with us, the Advanced Payment will be reconciled as part of a Bill issued to you in the final month of your Agreement with us.

**9. Renewal and Termination** 9.1. If you renew your Contract with us for another Fixed Term, you will enter into another Agreement with us which will start on the day after the End Date and will end on a new End Date.

9.2. If you do not renew your Contract for another Fixed Term or your Agreement with us is not terminated by the End Date, we will move you to standard variable rates from the date after the End Date.

9.3. Your Agreement can be terminated on the End Date provided that: 9.3.1. there are no Outstanding Charges on the account; and

9.3.2. your Supply Transfer has gone ahead on a Supply Start Date which is on the date after the end of the Fixed Term; or

9.3.3. the Energy supply to the Property is disconnected at the end of the Fixed Term.

9.4. If you terminate or try to terminate your Agreement with us prior to the End Date or we terminate your Agreement with us in accordance with our rights, we may charge you a Termination Fee.

9.5. On or around sixty (60) days before the End Date, we will send you a renewal notice.

9.6. Where you will no longer be the owner or occupier of a Property, you must give us at least thirty (30) days' prior Leaving Notice of the date the change in ownership or occupier is expected to occur. Your Agreement with us in respect of the Property will end the day after you have left the Property provided that we have received the Leaving Notice from you prior to the date you are leaving the Property. If we do not receive the Leaving Notice prior to the date you are leaving the Property, you will be liable for some or all of the Charges in respect of the Property until we enter into an Agreement for the Property with another party (which may deem to occur under law).

9.7. We may terminate your Agreement with us at any time for any or all of the Properties with Metering if: 9.7.1. We give you a notice of suspension of supply relating to the case where any legally authorised third party asks you to stop or limit the amount of Energy you use at the site such as where somebody's property or safety is in danger;

9.7.2. You fail to pay the Charges in full within ten (10) days after us informing you of such failure;

9.7.3. You are in material breach of any of the provisions of your Agreement with us (other than failure to pay a Bill or other Charges) and such breach is not remedied to our reasonable satisfaction within two (2) days after you receive notice from us informing you of such breach;

9.7.4. We serve you with written notice because you stop trading or you are deemed in accordance with law to be unable to pay your debts, or any legal proceedings or other steps are taken in relation to your winding-up or liquidation, the appointment of a liquidator, receiver, administrator, administrative receiver or similar officer in respect of you or your assets, a composition, assignment, or arrangement with your creditors;

9.7.5. It becomes unlawful for you or us to comply with any material provision of your Agreement with us;

9.7.6. A landlord's consent is required for us to become the Responsible Supplier for the Property (including for us to use a network that is not operated by a statutory licensee), and you have not obtained such consent on terms acceptable to us (or that consent ends);

9.7.7. We have not been able to become the Responsible Supplier for the Property within thirty (30) days from the Commencement Date;

9.7.8. You have failed to make an Advance Payment to us two (2) days before the Supply Start Date or by the date specified by us;

9.7.9. We cannot access or are prevented from accessing the Property;

9.7.10. We establish that the Property is a Shipperless Property or Unregistered Property;

9.7.11. Supplying you with Energy would put us in breach of the terms of our Supply Licence;

9.7.12. We cannot support the Metering at your site through our existing systems; or

9.7.13. Our Supply Licence is revoked, or Ofgem makes a Supplier of Last Resort Direction to another supplier;

9.7.14. Your Property becomes Green Deal Premises.

9.8. If we end your Agreement with us in respect of any or all the Properties, we will inform you of the end date (and, if your Agreement with us is not ending, of the affected Properties).

9.9. Following the ending or expiry of your Agreement with us, we will prepare a final Bill for you, setting out all Outstanding Charges that are owed to us by you. We may need a final meter reading for this.

9.10. The ending or expiry of your Agreement with us for whatever reason will be without prejudice to your and our rights and remedies which have accrued prior to the end or expiry of your Agreement with us.

9.11. Such ending or expiry will also be without prejudice to the continuing validity of any provision of your Agreement with us which expressly or by implication is intended to come into or remain in force on or after the end or expiry of your Agreement with us.

**10. Termination Fee** 10.1. Without prejudice to our rights to pursue any additional remedy in addition to any Charges owed by you, we reserve the right to charge you a Termination Fee if any of the circumstances in clause 10.2 arise.

10.2. The circumstances referred to in clause 10.1 are: 10.2.1. Where your Agreement with us is wrongfully terminated by you;

10.2.2. Where your Agreement with us is terminated by us as a result of your material breach of your Agreement with us;

10.2.3. Where you have failed to provide us with a Leaving Notice prior to the date you are leaving the Property;

10.2.4. Without prejudice to our rights to object to a Supply Transfer, where you try to arrange a Supply Transfer to another supplier prior to the end of the Fixed Term. The Termination Fee will become due on the date we receive notice of a Supply Transfer from another supplier.

10.3. The Termination Fee is worked out as follows: 10.3.1. If following your Commencement Date, we have not yet started supplying to you:

$$TT = CH \times 60\%$$

Where:

"T" in GBP means Termination Fee;

"CH" in GBP means based on the estimated annual consumption of electricity/annual quantity of gas as stated on your Contract or held by the Industry, the amount of Charges that will be due for the supply of Energy between the Commencement Date and End Date.

10.3.2. If following your Commencement Date, we already started supplying to you:

$$TT = CCCCTTTT - CCCC \times (EEEE - TTTT) \times 60\%$$

Where:

“T” in GBP means Termination Fee;

“CH” in GBP means the amount of the Charges due to us for the supply of Energy between CD and TD;

“CD” means Commencement Date;

“ED” means End Date;

“TD” means the date when your Agreement with us is to be terminated.

**11. Objection** 11.1. In addition to our other rights, and subject to any restrictions imposed by law or under the Industry Codes, if we receive notice of a Supply Transfer from another supplier for a Property supplied under your Agreement with us, we reserve the right to object to the Supply Transfer if any of the circumstances in clause 11.2 apply.

11.2. Clause 11.1 will apply in any of the following circumstances: 11.2.1. You have Outstanding Charges in relation to the Property supplied with Energy (or in connection with the supply of Energy) under your Agreement with us;

11.2.2. You are in a material breach of any of the provisions of your Agreement with us and such breach is not remedied to our reasonable satisfaction.

11.3. If we object to the Supply Transfer, we will notify you within one (1) working day from making the objection to another supplier and explain the reasons for it and how you may dispute or resolve such objection.

11.4. If you believe that your Supply Transfer to another supplier has been initiated in error, let us know and we will take reasonable steps to cancel your Supply Transfer.

**12. Disconnection** 12.1. We will give you notice of our intention to disconnect the supply of Energy to a Property in accordance with our obligations under the law, our Supply Licence, and the relevant Industry Codes.

12.2. We will have the right to disconnect the supply of Energy to a Property, if: 12.2.1. You do not pay the Charges by the Due Date;

12.2.2. You commit a material breach of your Agreement with us;

12.2.3. In our reasonable belief the Energy intended to be supplied to you is being stolen or redirected;

12.2.4. In our reasonable belief there has been interference with the network or Metering;

12.2.5. It is necessary to do so to avoid danger or a breach of an Industry Code;

12.2.6. We are obliged to disconnect the Property under law, regulation, our Supply Licence of any Industry Code; or

12.2.7. After we terminate your Agreement with us in accordance with section 9.7, if we remain the Responsible Supplier.

12.3. Where a disconnection is to occur, a several stage process will be initiated, including a site and pre-disconnection visit during which contact with you will be ongoing and resolution is to be encouraged. A letter of intent will be provided to you before further legal action is initiated.

12.4. You agree that we and our designated agents may access a Property for the purposes of disconnecting the supply of Energy to that Property. You also agree that we may disconnect the supply remotely if the Metering allows for this.

12.5. If the Energy supply to the Property is disconnected because of something you have done or omitted to do, you will: 12.5.1. Compensate us for any loss or costs incurred through disconnecting the Energy supply;

12.5.2. Compensate us for any costs incurred in re-connecting the supply of Energy; or

12.5.3. Pay any associated costs relating to the disconnection such as fees involved in getting a warrant to enter your site to disconnect it or any costs associated with our chasing payment of any Charges owed to us under your Agreement with us.

**13. Liability** 13.1. We are only legally responsible to you to the extent expressly set out in these Terms and Conditions. We have no other duty or legal responsibility to you. All other legal responsibilities, guaranties, and conditions or warranties implied by law or otherwise are disapplied to the greatest extent permitted by the law.

13.2. We will not be responsible for the quality or consistency of the Energy supplied at your Property. If we cannot make sure that you are supplied with Energy for some reason that is beyond our reasonable control because of third party supply (for instance, by a supplier or distributor, shipper, re-seller, or transporter), we will not be held to account for broken arrangements or breach of contract. Thus we have no obligation in respect of the Energy supply if the supply is shut-down, interrupted, delayed, reduced or impaired because of any actions by the Network Operator. Further, we will not be liable to you for any damages or equipment installed or stored at a property belonging (either occupied or in legal possession) to third parties.

13.3. We are not legally responsible to you in any way for: 13.3.1. direct or indirect loss of business, profit, goodwill, interest, or lost opportunity or loss of contract or loss of income or loss or corruption of data or interference with business; or

13.3.2. for any other indirect, special or consequential loss or damage, whether or not caused by the acts of omissions or negligence of our employees or agents and regardless of whether we have been informed of the possibility of the likelihood of such damages.

13.4. We will not be legally responsible to you for any loss or costs which you have suffered or incurred as a result of your legal responsibility to any other person or party.

13.5. Our liability to you is not otherwise excluded by anything in this Liability Section. Our total responsibility to you under the law is limited to one thousand (1000) GBP for any one incident and will, in no circumstance, exceed the average total charges paid to us in each year where it is in relation to all claims brought against us under this Agreement.

13.6. However, nothing in this Agreement limits or excludes our liability to you in respect of:

13.7. death or injury to persons caused by our negligence; or

13.8. our fraud or fraudulent misrepresentation; or

13.9. any other liability which cannot by law be limited or excluded by us.

13.10. Each of the clauses 13.1 to 13.5 can be enforced separately. If for any reason one or more of these terms are found not to be valid or to be unreasonable, we may still enforce the remainder of the clauses.

**14. Other Conditions** 14.1. **Notice:** All notices or other communications to be given by either party in relation to your Agreement with us must be: (i) in writing and addressed and sent to the recipient's registered address as shown on the Contract and (ii) by email. All notices or other communications sent will be deemed to have been received (i) when delivered, where delivered by hand or courier; (ii) on the third day following the date of posting, where done by prepaid first class post; (iii) when sent from the recipient's email server if sent within normal business hours, where by email, otherwise at 9:00am hours on the next normal working day.

14.2. **Assignability:** We may assign or transfer all or any of our rights (including the right to demand that you pay any charges owed ) and legal responsibilities under this Agreement without your permission. You shall be notified of such a change and will be deemed to have consented to such a transfer from the time of notification. We can also subcontract any of our obligations under this Agreement without your permission.

14.3. **Transfer:** Your rights and responsibilities under this Agreement are personal to the business and you are not entitled to transfer any part of the obligations or rights arising under your Agreement with us to any third party without our prior written permission.

14.4. **Change of Law:** We may stop, suspend, or restrict the supply of Energy to the Property due to a change in law, including an Act of Parliament or any regulation made pursuant to it. Whilst any such law is in force you must not use Energy, or if required, comply with any limits set on the amount of Energy you can use. You will be provided with more information if this situation arises. If any of the provisions of any industry code are amended

or varied or cease to apply, you will, at our request, agree to amend the contract to accommodate any such amendment, variation or cessation in such manner as we reasonably require.

14.5. **Severability:** If a provision of your Agreement with us is declared invalid, illegal, or otherwise unenforceable, that provision shall be deemed severed and omitted from this agreement and the remaining provisions shall continue to be enforce and apply to the parties.

14.6. **Force Majeure:** If either party is unable to perform any of the obligations under this Agreement (other than payment obligations as per section 8), because of some unforeseeable event or circumstance beyond the performing party's reasonable control, then the contract will remain in full effect but the performing party will have no liability for such failure to perform.

14.7. **Waiver:** Any delay or omission by us in asserting any right or remedy under your Agreement with us shall not be construed as a waiver of such right or remedy nor shall a partial assertion preclude an assertion of the same at a later date.

14.8. **Third Party Rights:** No provision of this Agreement shall be enforceable by a third party, whether under the Agreements (Rights of Third Parties) Act 1999 or otherwise.

14.9. **Entire Agreement:** The terms and conditions of this Agreement along with the pricing information, the Contract and its annexes or schedules, and any other documents referred to in these terms and conditions constitutes the entire agreement between you and us. You hereby acknowledge that you have not relied on any representation, statement, promise, assurance, or guarantee outside this Agreement.

14.10. **Governing Law:** This Agreement is interpreted and governed by English law and any disputes arising under it shall be subject to the exclusive jurisdiction of the courts of England and Wales.

**15. Confidentiality** 15.1. During the term of your Agreement with us and for a year after its termination, you and us agree to keep the commercial and financial parts of our Agreement strictly confidential. This will not prevent our sharing of information: 15.1.1. As required by law or under the rules of any recognised stock exchange or competent authority; or

15.1.2. To your appointed representative or agent.

**16. Privacy and Data Protection** 16.1. We respect your right to privacy. We process the personal data you provide to us or which we legally receive from another entity in connection with your Agreement with us. This includes collecting personal data about you, your employees, contactors, agents, clients, tenants or customers. We may also obtain information about you or your business from credit reference, regulatory, and fraud prevention agencies in order to assess your ability to pay for services provided to you. We process the personal data in accordance with the Privacy Notice, as amended from time to time, on our website

<https://positive.energy/privacy-policy>.

**17. Complaints** 17.1. If you are dissatisfied with our service, you may contact us on 0333 370 9900. We aim to resolve any complaint within 5 working days. If you require further assistance, we invite you to escalate the matter in accordance with our complaints process <https://positive.energy/complaints>.

17.2. If you are a Microbusiness Customer you may contact the Citizens Advice Bureau which offers free, independent advice regarding to your rights.

17.3. If you have an active complaint after eight weeks, and you are not satisfied with the way we have handled your complaint, you can contact the Energy Ombudsman on <https://www.ombudsman-services.org/sectors/energy>.