



# Commercial Terms and Conditions

## EvoEnergy Ltd

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## 1. Introduction and interpretation

1.1 These are the terms and conditions referred to in the attached Proposal. In these conditions 'we' means EvoEnergy Ltd and references to 'us' and 'our' are construed accordingly.

'You' means 'the Client' named in the Proposal and references to 'your' are to be construed accordingly.

1.2 Other definitions used are as follows:

- (a) **The Proposal:** means the proposal to which these conditions are attached
- (b) **The Contract:** means the contract made between the Client and EvoEnergy for which the services are required
- (c) **The Client:** means the individual or the organisation to whom the Proposal is addressed
- (d) **The Services:** means the services the subject of the Proposal. Including the documents issued by EvoEnergy defining the services to be provided and the price payable for the services
- (e) **Goods:** means all items supplied as part of the Service including all system components
- (f) **Price:** means the price specified in the Proposal or subsequently agreed between the parties
- (g) **Energy Performance Certificate:** means the certificate demonstrating the results of the Energy Performance Survey.
- (h) **Energy Performance Survey:** means a survey carried out to assess the energy performance rating of a building.
- (i) **Event Outside Our Control:** means a Force Majeure event in accordance with clause 18.
- (j) **Feed-in Tariff:** means the government backed scheme which gives financial rewards to households who generate their own renewable electricity, introduced under powers in the Energy Act 2008
- (k) **Feed-in Tariff Payment:** means payments made under the Feed-in Tariff.
- (l) **Final Payment:** shall have the meaning set out in clause 4.1(d)
- (m) **Installation:** Shall have the meaning set out in clause 5.1
- (n) **Order:** Your order for the Goods and Installation in the form of signed copy of an agreement between the parties or an instruction to proceed received via email or post.
- (o) **Terms:** the terms and conditions set out in this document.
- (p) **Timetable:** shall have the meaning set out in clause 12.
- (q) **Written Notice:** shall have the meaning set out in clause 19.



1.3 The following provisions will apply to the interpretation and construction of this Agreement.

- [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 personal representatives, 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 and e-mails

1.4 In these conditions;

- [a] Reference to a statute or statutory provision includes a reference to it as from time to time amended extended or re-enacted.
- [b] Words denoting the singular number only include the plural and vice versa
- [c] Unless the context otherwise requires reference to a clause is to a clause of these conditions
- [d] The headings are inserted for convenience only and do not affect the interpretation of these conditions.

1.5 These conditions shall apply to the contract for the Services described in our Proposal to the exclusion of all other terms and conditions including any terms or conditions which you may purport to apply under any quotation, form, invoice, order or other similar document. Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be of no effect unless agreed by us in writing by a suitable person (director grade).

## **2. Amending the Terms**

2.1 We have the right to revise and amend these Terms from time to time including to reflect changes in market conditions affecting Our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in Our system's capabilities. You will be subject to the policies and terms in force at the time that You order the Goods from Us, unless any change to those policies or these Terms is required by law or government or regulatory authority (in which case, it will apply to orders You have previously placed that We have not yet fulfilled).



### **3. Standard energy prediction disclaimer**

3.1 The performance of solar PV systems is impossible to predict with certainty due to the variability in the amount of solar radiation [sunlight] from location to location and from year to year. This estimate is based upon the Government's standard assessment procedure for energy rating of buildings [SAP 2009] and is given as guidance only. It should not be considered as a guarantee.

### **4. Price and payment**

4.1 The price shall be as stated in the Proposal. All figures exclude VAT unless otherwise stated. Our payment terms are as follows;

- [a] On order 25%
- [b] On agreement/completion of detailed designs 35%
- [c] Delivery of equipment to site 35%
- [d] Installation and commissioning [final payment] 5%

4.2 Our payment terms are 7 days from date of our invoice. On amounts due but not paid we reserve the right to charge interest at the statutory rate or 8% above the HSBC Bank plc base rate applicable at the time the payment was due whichever is the higher. No discounts on our Price shall be made nor retentions held against sums paid to us unless specifically agreed before an order is placed.

4.3 Any payments made by credit card will be subject to a 2% surcharge on the payment amount.

4.4 Our payment terms for charges that are not stated within the proposal are due 7 days from date of our invoice. On amounts due but not paid we reserve the right to charge interest at the statutory rate or 8% above the HSBC Bank plc base rate applicable at the time the payment was due whichever is the higher.

### **5. Goods Warranty**

5.1 We warrant that on Installation, and for a period of 12 months after the date of Installation [the "Goods Warranty Period"], the Goods shall:

- [a] conform in all material respects with the manufacturer's specification;
- [b] be of satisfactory quality;
- [c] be fit for any purpose We say the Goods are fit for or for any reasonable purpose for which You Use the Goods;
- [d] be free from material defects in design, material and workmanship; and
- [e] comply with all applicable statutory and regulatory requirements



5.2 This warranty is in addition to Your legal rights in relation to Goods which are faulty or which otherwise do not conform with these Terms.

5.3 This warranty does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by You or any third party, if You Use the Goods in a way that We do not recommend, Your failure to follow our instructions, or any alteration or repair You carry out without our prior written approval.

5.4 These Terms apply to any repaired or replacement Goods We supply to You in the unlikely event that the original Goods are faulty or do not otherwise conform with these Terms.

5.5 We warrant that all of the Goods installed are MCS approved

## **6. Defective goods and returns**

6.1 In the unlikely event that the Goods do not conform to the relevant standards as set out in clause 3.1 during the Goods Warranty Period, You must let Us know as soon as possible. We will inspect the Goods on a date agreed between Us and You and once We have confirmed that the Goods do not conform with the relevant standards in clause 3.1, We will:

- [a] replace the Goods; or
- [b] repair the Goods.
- [c] in some cases if We are unable to replace the Goods with an identical model we will replace the Goods with an equivalent product.

6.2 These Terms will apply to any repaired or replacement Goods We supply to You.

## **7. Installation Warranty**

7.1 We will install the Goods in accordance with the Proposal and the Timetable, subject to any amendments made in accordance with the Terms [“the Installation”].

7.2 We aim to complete the Installation on time. However, there may be delays due to an Event Outside Our Control. See clause 18 for Our responsibilities when an Event Outside Our Control happens.

7.3 We may have to suspend the Installation if We have to deal with technical problems, or to make improvements or additions agreed between You and Us in writing to the Installation. We will contact You to let You know in advance where this occurs, unless the problem is urgent or in an emergency. This does not affect Your obligation to pay for any invoices We have already sent You except if the Installation is suspended for more than 30 days at which time you may cancel this Agreement in accordance with clause 13.

7.4 We Warrant that for a period of 2 years following the Installation [“the Installation Warranty Period”] all works carried out by Us will be of satisfactory quality.



- 7.5 This warranty does not apply to any defect in the Installation arising from the following: fair wear and tear, wilful damage, accident, negligence by You or any third party, if You use the Goods in a way that We do not recommend or contrary to any guidance supplied by the manufacturer, You fail to follow Our instructions, You carry out alterations or repairs without our prior written approval from Us.
- 7.6 This warranty is in addition to Your legal rights in relation to the Installation which is faulty or which otherwise do not conform with these Terms.
- 7.7 In the unlikely event that the Installation is not carried out with reasonable skill and care you must let Us know as soon as possible [must be within 10 working days of completion]. We will inspect the Installation works on a date agreed between parties and once We have confirmed that the problems identified with the Installation are due to a lack of reasonable skill and care by Us, We will repair the Installation Works.
- 7.8 You will not have to pay us to repair the Installation works if carried out in accordance with this clause 7.7.
- 7.9 We will not enter into any collateral warranty unless you have advised us prior to the commencement of delivery of the Services a collateral warranty will be required. Sufficient time shall be allowed for negotiating any warranty.
- 7.10 Any additional warranty provided by us relating to the Services is stated in the Proposal. We will also pass on to you the benefit of any warranty given by the manufacturer of the Goods.

## **8. Title and risk**

- 8.1 The Goods will be Your responsibility from the time of Installation.
- [a] Legal and beneficial ownership of all goods sold by us shall remain vested in EvoEnergy Ltd. until payment in full of the Services detailed in this proposal. Until such time you must keep those goods distinct from other property, and must not purport to sell or otherwise transfer legal or beneficial ownership of them. Until ownership has transferred to you, you have full licence to make use of the goods in your business, but at any time at which payment of
- [i] the invoice relating to those goods and
- [ii] any other invoice is late for payment, or that you are subject to any form of insolvency or to any debt recovery action or occurrence [save for litigation defended by you and not yet the subject of a judgement], then we may without notice recover possession of the goods. For this purpose you hereby irrevocably licence EvoEnergy Ltd. and its agents to enter the property [or the property where are goods are installed] and [as far as reasonably necessary] to disassemble any machinery. In addition you undertake to obtain equivalent licences for any third party on whose property the goods will be sited and agree to indemnify the failure to obtain such licences, or otherwise from EvoEnergy Ltd.'s recovery of the goods in accordance with this clause



## **9. The services and programme**

- 9.1** The Services to be provided by us are defined in the Proposal. No materials will be ordered or allocated for the Services until an order is placed. We shall not be liable for any delay in any programme caused by your failure to place a confirmed order sufficiently early.
- 9.2** In some cases we will require additional payments prior to delivery of equipment to site. We will make you aware when this is the case and the payment terms will be adjusted accordingly following agreement between the parties.
- 9.3** The estimated time for delivery of the Services is stated in the Proposal. The Client shall allow at least 12 weeks between placing an order and delivery of the Goods to site. Unless otherwise agreed time shall not be of the essence.
- 9.4** All Services will conform to the agreed specifications where possible and shall be performed with reasonable skill care and diligence in accordance with accepted professional standards of a competent contractor. EvoEnergy will make every effort to install the system as specified and on the date agreed. In cases where equipment is not available we will look to replace equipment with equivalently priced products of the same quality.
- 9.5** Our contract with you does not cover changes to your electricity metering arrangements or any authorisations for the installation of our system on your property. You are responsible for making these arrangements, obtaining these authorisations and for paying any associated charges. We accept no liability whatsoever for unauthorised use of a grid connected electricity generating system or any delays to your programme caused by changes to your electricity metering.
- 9.6** The scope of works agreed is as shown in the Proposal. EvoEnergy is not responsible for the accuracy of the PV system layout created using drawings and information provided by You. If the drawings or plans are not an accurate representation and the proposed panel layout cannot be accommodated You are liable for any reasonable costs associated with changing the panel layout or any amendments to the Proposal. This may include but is not limited to the costs of additional labour at the hourly rate of £40 [excluding VAT] per person [with the minimum charge being an eight hour day per person], parts, delivery, travel and accommodation, associated fees or fines. These additional costs are subject to the payment terms set out in clause 4.4.
- 9.7** Any additional site visits requested by you that have not been agreed within the scope of works on the original proposal will be subject to an additional £300/day fee per person. These fees will be subject to the terms set out in clause 4.4.
- 9.8** If you agree to carry out preparatory work beforehand, these conditions will be agreed in writing. The work must be carried out by a competent person and completed by the agreed date. If these conditions are not met, meaning we cannot carry out the work on the dates prescribed, then we reserve the right to charge extra labour at the rate and terms described in 9.6.



9.9 You are obliged to offer a practical and comfortable working environment. This includes but is not limited to provision of water, washing facilities and toilets; use of electricity supply; adequate storage space and ease of access to working areas.

## **10. Delivery, risk and property**

10.1 Delivery shall be of the whole or such part of the Goods and at such time or times shall be directed by us. Unless otherwise agreed, risk in all Goods passes on delivery to site and you will be responsible for the secure storage of the Goods. Our price is on an ex works basis.

10.2 Title shall pass on the basis of the following;

- [a] Legal and beneficial ownership of all goods sold by us shall remain vested in EvoEnergy Ltd. until payment in full of the Services detailed in this proposal. Until such time you must keep those goods distinct from your own property, and must not purport to sell or otherwise transfer legal or beneficial ownership of them. Until ownership has transferred to you, you have full licence to make use of the goods in your business, but at any time at which payment of
  - [i] the invoice relating to those goods and
  - [ii] any other invoice is late for payment, or that you are subject to any form of insolvency or to any debt recovery action or occurrence [save for litigation defended by you and not yet the subject of a judgement], then we may without notice recover possession of the goods. For this purpose you hereby irrevocably licence EvoEnergy Ltd and its agents to enter upon your property [or the property where are goods are installed] and [as far as reasonably necessary] to disassemble any machinery or equipment. In addition you undertake to obtain equivalent licences for any third party on whose property the goods will be sited and agree to indemnify the failure to obtain such licences, or otherwise from EvoEnergy Ltd's recovery of the goods in accordance with this clause.

## **11. Communication devices**

11.1 Goods that we install may interface with Customer owned equipment such as computers or mobile devices. We are not responsible for compatibility between Your equipment and the Goods installed.

11.2 We will attempt to connect any of the Goods that require protocols such as a Bluetooth, Zigbee or IP or similar connection to operate [“the Communication Devices”] as part of our standard Installation process.

11.3 Where there are issues with the connection on any Communications Devices due to the distance of the connection or the construction of Your property:

- [a] We reserve the right to charge reasonable additional amounts to remedy connection problems. These amounts are subject to the payment terms set out in clause 4.4.



11.4 We may provide software support in relation to any of the Bluetooth Devices, but are under no obligation to do so.

## **12. Timetable**

12.1 We will agree an intended installation date with You (“the Proposed Installation Date”) but this date will be changeable dependent on:

- [a] obtaining the appropriate grid-connection permissions required from the Distribution Network Operator;
- [b] obtaining the appropriate planning permissions;
- [c] availability of Our staff and any third party contractors; and
- [d] availability of the Goods.

12.2 Once We have confirmed a final date for Installation You will be able to change this date without recourse to additional expenditure where You provide us with 10 working days’ notice before the start date of Installation. Where such notice is not provided We reserve the right to charge any additional costs reasonably incurred. This cost may include but is not limited to the cost of labour, delivery, travel and equipment. These costs are subject to the terms set out in clause 4.4.

## **13. Cancellation**

13.1 You may cancel the Order and receive a full refund of Your Deposit [provided work (including design) has not started] by sending Written Notice no later than 7 working days beginning the day after receipt of the Order Confirmation.

13.2 You may at any time after Installation has begun but not finished amend or cancel an Order by providing Us with Written Notice. If You amend or cancel an Order in accordance with this clause, Your liability to Us shall be limited to payment to Us of all costs We reasonably incur in fulfilling the Order until the date that We receive Your amendment or cancellation, except that where the amendment or cancellation results from our failure to comply with these Terms You shall have no liability to Us for it.

13.3 We reserve the right to cancel the Installation when it is deemed by Us that a health and safety risk is present.

## **14. Energy Performance Certificate**

14.1 If requested by You, We will carry out an Energy Performance Survey.

14.2 The Energy Performance Certificate will be provided to You within 5 days of receipt by Us of the Final Payment.

14.3 Where an Energy Performance Certificate is provided other than by Us We are not responsible for its results or production and can accept no responsibility for any failure to register the System for the Feed-in Tariff due to the results produced in that certificate.

## **15. MCS certificate**

15.1 We will provide You with Your MCS certificate within 5 days of receipt by Us of the Final Payment or in accordance with any other timescale agreed between You and Us and confirmed in writing.

## **16. Feed-in tariff**

16.1 We are not responsible for Your registration with the Feed-in Tariff scheme or for any failure to successfully apply for this Scheme where We have acted in accordance with these Terms.

16.2 We are not responsible for any loss of Feed-in Tariff payments.

## **17. Our liability to You**

17.1 We will make good any damage to Your property caused by Us in the course of the Installation. However, We are not responsible for the cost of repairing any pre-existing faults or damage to Your property that We discover in the course of installation by Us.

17.2 We do not exclude or limit in any way Our liability for:

- (a) death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 [title and quiet possession];
- (d) breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 [description, satisfactory quality, fitness for purpose and samples]; and
- (e) defective products under the Consumer Protection Act 1987.

## **18. Events outside our control**

18.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (a "Force Majeure Event").

18.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular [without limitation], the following:

- (a) unavailability of the Goods or equipment necessary for Installation from Our suppliers
- (b) strikes, lock-outs or other industrial action;
- (c) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war [whether declared or not] or threat or preparation for war;
- (d) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;



- (e) impossibility of the Use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (f) impossibility of the Use of public or private telecommunications networks;
- (g) the acts, decrees, legislation, regulations or restrictions of any government.
- (h) pandemic or epidemic.
- (i) weather conditions that in Our reasonable opinion will make the Installation unsafe

**18.3** Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and We will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

## **19. Notices and communications**

**19.1** If You wish to contact Us in writing, or if any clause in these Terms requires You to give Us notice in writing (for example, to cancel the contract), You can send this to Us by e-mail at [info@evoenergy.co.uk](mailto:info@evoenergy.co.uk) or by hand or by pre-paid post to EvoEnergy at 27 Eldon Business Park, Nottingham, Nottinghamshire NG9 6DZ OR We will confirm receipt of this by contacting You in writing. If We have to contact You or give You notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address You provide to Us in the Order.

## **20. General**

**20.1** If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, that term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

**20.2** If We fail, at any time while these Terms are in force, to insist that You perform any of Your obligations under these Terms, or if We do not exercise any of our rights or remedies under these Terms, that will not mean that We have waived such rights or remedies and will not mean that You do not have to comply with those obligations. If We do waive a default by You, that will not mean that We will automatically waive any subsequent default by You. No waiver by Us of any of these Terms shall be effective unless We expressly say that it is a waiver and We tell You so in writing.

**20.3** A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999 except as set out in clause 20.1.

**20.4** These Terms shall be governed by English law and We both agree to the non-exclusive jurisdiction of the English courts.