

## Terms and Conditions of Service

### 1. Definitions

The following definitions apply in in these Terms.

**Cancellation of Contract Administration Fee:** has the meaning set out in Clause 3.7

**Contract Value:** a calculation of annual energy consumption by the Customer, based on the previous year's annual consumption usage.

**Credit Score Criteria:** means the credit rating requirements determined and required by SUM and/or the Supplier. This is to qualify Customers to use the Services and enter into an energy contract with the Supplier.

**Customer:** means any eligible non-domestic commercial customer whose business is registered in the UK, who is over 18 years old (where a sole trader), who satisfies Credit Score Criteria and is able to provide relevant information that enables SUM to provide the Services.

**Energy Procurement Service:** means the procurement service that SUM agrees to provide to the Customer to either facilitate the procurement of energy to the Customer or assist in the renegotiation of an existing supply contract. In either of these cases, the Customer accepts a Supplier's quotation provided as part of the Services.

**Existing Supplier:** means the Customer's existing energy supplier.

**Force Majeure Event:** means an event beyond the reasonable control of SUM including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

**Letter of Authority:** means a letter signed by the Customer appointing SUM to act on its behalf as its agent and authorising SUM to liaise with the Customer's Existing Supplier as well as potential new Suppliers, as and when required, in connection with the provision of the Services.

**Quotation:** means a quotation provided to the Customer by a Supplier which outlines the terms and prices upon which a Supplier may be prepared to supply the Supplier Services to the Customer.

**Services:** the energy brokerage and related services provided by SUM which include Energy Procurement Services.

**SUM:** means SK Utilities Limited t/a Smart Utility Management a company registered in England and Wales, Company Number 09069153. Registered Office, Dunns 3, Bowes Offices, Lambton Park, Chester Le Street, DH3 4AN

**Supplier:** means any utility supplier of energy services and/or products as may be selected by SUM including without limitation, the Existing Supplier (where applicable).

**Supplier Contract:** means the contract setting out the terms and conditions on which the Supplier provides the Supplier Services to the Customer.

**Supplier Services:** means the energy/utilities supply services and/or products as may be agreed to be provided by a Supplier to a Customer.

**Terms:** these terms and conditions setting out the basis on which the Services are provided by SUM.

## 2. Application of Terms

These Terms apply to the provision of Services to the Customer by SUM. These Terms shall apply in the place of, prevail over and supersede any other terms or conditions contained or referred to elsewhere (in correspondence or otherwise) or implied by trade, custom, practice or course of engagement unless specifically agreed to in writing by SUM or a SUM authorised representative.

## 3. Provision of Services

- 3.1 In order for SUM to provide the Services, the Customer must sign a Letter of Authority authorising SUM to contact and liaise with the Customer's Existing Supplier. The Customer agrees to assist SUM by providing access to all relevant information necessary for SUM to provide the Services.
- 3.2 Upon receipt from the Customer of a Letter of Authority, SUM will liaise with the Existing Supplier to obtain information to enable it to provide the Services, which shall include contract end date, notice period, current prices and Contract Value.
- 3.3 SUM will endeavour to negotiate and secure competitive and favourable Quotations on behalf of a Customer and will provide relevant Quotations obtained from the Suppliers to the Customer. SUM and the Suppliers reserve the right to revise, amend or withdrawn a Quotation at any time before acceptance by the Customer by informing the Customer in advance and in writing.
- 3.4 The provision of a Quotation by a Supplier via SUM constitutes an invitation to treat and does not form an offer to the Customer. The terms of and period for acceptance of Quotations will vary between different Suppliers. The acceptance of a Quotation by a Customer, whether verbally or in writing, constitutes a non-revocable offer by the Customer to request the Supplier to provide the Supplier Services and once an offer has been made by the Customer, the Customer shall be committed to the offer and shall not be entitled to withdraw the offer.
- 3.5 All offers made by the Customer shall be subject to the Supplier's acceptance and the Supplier may refuse to accept the Customers offer at their own discretion.
- 3.6 Where a Customer wishes to proceed with a Quotation from a Supplier, SUM will complete the provision of the Services by organising the written contract between the Supplier and Customer for the supply and purchase of the Suppliers Service.
- 3.7 To enable SUM to provide the Services, the Customer responsible for ensuring that all information provided by them is true and accurate. Any errors must be promptly made known to SUM.
- 3.8 SUM may receive commission from the Supplier as a result of the Customer entering into an energy supply Contract with that Supplier.

- 3.9 SUM will not be responsible to the Customer for any delay or failure in relation to the transfer of supply of energy to the Customer from an Existing Supplier to a new Supplier which is caused by a Supplier or Existing Supplier.
- 3.10 As a result of the provision of the Services by SUM to the Customer, SUM will incur certain costs and expenses. Where the Customer has entered into a Supplier Contract with a Supplier as a result of the Services and subsequently cancels that Supplier Contract prior to the provision of the Supplier Services by that Supplier, and/or agrees to any other Supply Contract following the agreement entered into by SUM, SUM may charge the Customer a fee for the Services which represents SUM's reasonable costs and expenses of providing the Customer with the Services and arranging for it to enter into the Supplier Contract with the Supplier.
- 3.11 The Customer agrees that SUM is not liable in any way for or in relation to any transaction, dealing or arrangements of any kind made between the Customer and a Supplier. Any transactions or dealing are at the Customer's sole risk and responsibility.

#### 4. Fees

Any Cancellation of Contract Administration Fee as detailed in clause 3.9 above shall be payable by the Customer to SUM by no later than 30 days from the date of the invoice.

#### 5. Limitations of Liability

- 5.1 Nothing in these Terms shall limit or exclude the SUM's liability for:
- 5.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 5.1.2 fraud or fraudulent misrepresentation; or
  - 5.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 5.2 Subject to clause 5.1:
- 5.2.1 the SUM shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms or the supply of the Services by SUM; and
  - 5.2.2 the SUM's total liability to the Customer in respect of all other losses arising under or in connection with these Terms or the supply of the Services to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5000.
- 5.3 SUM will take reasonable care and skill in the provision of Services. The Services are, however, dependent upon third parties, including Suppliers and Existing Suppliers. SUM is, therefore, unable to guarantee any time for completion of the Services or to accept

responsibility for any failure or delay caused by third parties or should Customers provide inaccurate, unreliable or incomplete information that delays or inhibits the Services being provided by SUM.

- 5.4 SUM will use reasonable endeavours to ensure that pricing information provided by it to the Customer will, be accurate and reliable. However, SUM does not warrant, and excludes all liability for, any information provided to or accessed by the Customer as a result of the Customer's use of Services.

## **6. Data Protection**

- 6.1 Customer details, including name, contact details and address and payment records may be submitted to a credit reference agency and the Customer's personal data will be used, disclosed and processed by the Supplier and SUM for this purpose. The Customer acknowledges and agrees to the use of its personal data for this purpose.

- 6.2 Customers' details in relation to its consumption and use of utility and energy products and services may be held and used by SUM to market additional services to the Customer. The Customer has the right to request SUM to cease use of such details and can exercise that right by notifying SUM using the email address: [customercare@smartutilitymanagement.co.uk](mailto:customercare@smartutilitymanagement.co.uk)

## **7. Customer Obligations**

- 7.1 The Customer will comply at all times with these Terms and those contained in a Supply Contract.
- 7.2 The Customer will provide accurate and true information in a timely manner as requested by SUM and/or the Supplier in order for each of them to provide the Services and the Supplier Services.

## **8. Termination**

Without prejudice, SUM shall be entitled to terminate or suspend the Services immediately:

- 8.1 at any time by giving written notice to the Customer
- 8.2 if SUM suspects, on reasonable grounds, that the Customer may have committed or attempted to commit fraud against SUM and/or a Supplier

## **9. Transfer of rights and Obligations**

- 9.1 The Customer may not assign, transfer, charge or dispose of any of its rights or obligations under these Terms and/or any rights or obligations arising within them without prior written consent from SUM.

9.2 SUM may assign, transfer, charge, sub contract or dispose of any of its rights or obligations under these Terms and/or any rights or obligations arising within them at any time.

9.3 These Terms remain binding on SUM and the Customer and on both parties' successors and assigns.

**10. Force Majeure**

The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under these Terms as a result of a Force Majeure Event

**11. Variation**

Except as set out in these Terms, no variation of these Terms or the basis upon which the Services are provided, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by SUM

**12. Governing Law and Jurisdiction**

These Terms are governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.