

# Powersave Direct Limited

## Terms and Conditions

Date Terms and Conditions Printed: 25 April 2022

WE SPECIFICALLY DRAW YOUR ATTENTION TO CLAUSES 2.1, 5.1, 5.5, 5.8, 5.12, 5.13, 5.14, 6, 7, 8.1 AND 11.5

### 1. Interpretations

1. Us, We and Our shall mean Powersave Direct Limited.
2. You and Your shall mean the other party to the Agreement.
3. The Agreement shall mean this document, the Powersave Proposal Acceptance Form and the Information Checklist Form.
4. Lead Time means the number of weeks between acceptance of a Utility Company's quote and the commencement of the Works.
5. The Works means the supplies and connections stated to be provided on the Powersave Proposal Acceptance Form.
6. Utility company means the provider of the utility supply stated in the Powersave Proposal Acceptance Form.
7. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Contract.
8. Unless otherwise specified, words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;

### 2. Acceptance

**2.1** Receipt by Us of a signed Powersave Proposal Acceptance Form and completed Information Checklist Form from You shall be deemed as a contract between You and Us. Return of these documents is Your acknowledgement that You have read and accepted these terms and conditions.

**2.2** You acknowledge and accept that the supply of the Works are also subject to the terms and conditions of each Utility Company contracted to provide the relevant utility supply in addition to these terms and conditions. We will provide You with a copy of each Utility Company's terms and conditions where they have been provided to Us.

### 3. Your Duties

**3.1** You will:

**3.1.1** provide all required information as determined by each Utility Company and requested by Us, including drawings, plans and designs (the 'Original Plans'), to enable Us to complete and submit an application to the appropriate Utility Company. It is Your responsibility to ensure the Original Plans provided to Us meet both Your requirements and the requirements of each Utility Company. In the event Powersave Direct have to obtain additional copies of plans any charges associated with this are payable by you.

**2.** complete the Information Checklist Form and return it to ourselves as soon as possible.

**3.** advise Us of non attendance of a Utility Company or their subcontractors at a scheduled appointment. We shall not be liable for any costs incurred as a result of a missed appointment for whatever reason.

**4.** make payment of any increase in costing that has been agreed on site with a representative of a Utility Company. Any variation to the Utility Company's quotation must be first agreed in writing by Us.

**5.** ensure the site is fully prepared for work commencement in lieu of the agreed start dates. We are not responsible for any preparatory work that must be carried out to enable the Works to be commenced nor for any losses suffered if the Utility Company is not able to start the Works at the agreed start dates for whatever reason.

**6.** provide Us with a schedule of on site works, which must take into consideration the Lead Times for work commencement by each Utility Company as set out in the quotations obtained.

**7.** provide Us with the details of the new owner/occupier of each plot (the 'New Occupier Details') following completion of the Works. You will remain liable for any gas, water, electricity and telecomm usage costs for any given plot/unit on the project until the applicable utility companies have been notified of the new occupier details.

**8.** Pay all invoices presented relating to any application charges incurred from the utility companies applicable to your project.

**9.** pay all invoices presented by Us in accordance with these terms and conditions.

**10.** inform Us if You accept a quotation direct with a Utility Company and You grant Us actual authority to deal with the Utility Company in relation to that utility supply in order to complete the Works.

**3.1.11** You will be responsible for payment of all bills and invoices issued by the utility companies in relation to any consumption or standing charges following connection of the supplies.

### 4. Our duties

**4.1** We will:

**1.** use our reasonable endeavours to submit to each Utility Company their completed application form and other necessary details.

**2.** liaise with each Utility Company to obtain a quotation for the utility supply to be installed and provide You with these quotations.

**3.** liaise with each Utility Company in order to obtain commencement dates for the installation of each utility supply upon the acceptance of their quote by You.

**4.** use our reasonable endeavours to ensure the Works are completed within any specified time frame. We provide no warranty that the works will be completed within such a time frame and time shall not be of the essence in providing the Works. Any such dates are for indication purposes only.

**5.** not be held responsible for the lead times and performance of each utility authority.

**6.** not be held responsible for the production, quality or accuracy of each utility authority's proposal.

## 5. Payment

**5.1** You will pay Us the amounts stated in any invoice incurred as a result of the Works together with value added tax, where applicable within 14 days of the date of the invoice. Punctual payment shall be of the essence of this Agreement.

**5.2** An account administration fee of £55.00 plus VAT per plot ('the Administration Fee') will be applied to each gas and electric supply being provided under the Works. These costs will be revised annually and any cost increase will be applied. We shall pay you a sum equal to the Administration Fee for that plot within 28 days of receipt of an invoice from You for that amount but any such invoice cannot be submitted to Us until completion of the Works or Us receiving the New Occupier Details from You, whichever is the later. Payment of this account administration fee will only be paid for a period of 6 months following completion of the installation of incoming gas and electric supplies to each plot. Payment will only be made following receipt of payment from the appointed supplier. Any invoices received after this time will not be paid.

**5.3** A management fee ('the Management Fee') will be applied to each plot under the Agreement as detailed in the Powersave Proposal Acceptance Form. If, after entering into the Agreement, a utility supply for whatever reason is no longer required, there will be no reduction in the Management Fee.

**5.3.1** Following on from our appointment if further works, including diversions, additional connections or disconnections are required from our original Powersave proposal an additional management fee will be charged.

**5.4** We reserve the right to require payment of all Management Fees prior to obtaining quotes from the each Utility Company. In addition we reserve the right to require all Management Fees to be paid before we instruct each Utility Company to complete the Works.

**5.5** We shall invoice You 60% of all the Management Fees under this Agreement 3 months after entering into the Agreement if you have not accepted a quotation by each Utility Company by that time or if the project is delayed, postponed or suspended for any period of time after the first utility proposal has been issued.

**5.6** Should the project be cancelled a percentage of the administration fee will be payable based on the stage that the project is at as detailed below:

If the project is cancelled without any applications sent to the various utility companies – 20% of the administration fee is payable.

If the project is cancelled when a utility company response has been received at Powersave Direct – 40% of the administration fee is payable.

If the project is cancelled after the first the utility company quotation has been issued to yourselves – 60% of the administration fee is payable. If the project is cancelled or postponed and more than one quotation has been issued all quote fees will also be due.

If the project is cancelled after the utility company quotations have been accepted and paid for – 90% of the administration fee is payable. In addition to this 2% of any refund received from the utility company will be payable to Powersave Direct.

**5.7** We reserve the right to charge any outstanding Management Fees on any other agreement between You and Us as if they were incurred under this Agreement.

**5.8** Where applicable, we shall claim back the BT rebate from BT

as a matter of course upon completion of the works. Once the rebate has been received from BT, we shall pay you a sum equal to this BT Rebate within 28 days of receipt of an invoice from You. Payment of this BT rebate will only be paid for a period of 6 months following completion of the final connection to your site. Any invoices received after this time will not be paid

**5.9** We reserve the right to charge interest of 8% above the Bank of England base interest rate at the date the invoice becomes payable for overdue invoices in addition to any associated costs resulting from the debt recovery.

**5.10** Where a refund is applicable to You from a Utility company, we will start processing the refund after the funds have cleared in our account. All refunds payable will have a deduction of a 2% administration charge or £90 applied to it, whichever is greater.

**5.11** Where any refund is due, We reserve the right to set off against any amounts still owed to us.

**5.12** Should the duration of the project exceed 12 months from initial appointment, we reserve the right to charge an additional administration fee.

**5.13** Should revised proposals be required, whether this be owing to a variation of works or the original proposal expiring, we reserve the right to charge an additional £215.00 plus vat administration fee per quotation for the management of this. These costs will be revised annually and any costs increases will be applied.

**5.14** Should planned on site works need to be re-scheduled more than once, we reserve the right to charge an additional £80.00 administration fee per utility for the management of this.

**5.15** Should additional works be required over and above that originally requested and authorised variation management fee costs will be included in any subsequent proposal associated with the additional works.

**5.16** Should additional materials be requested and ordered over and above those included within the proposal, a fee of £95.00 will be added to the cost of each material type

**5.17** Where applicable, infrastructure charges will be included on the proposal relating to the clean water connection. Where the sewerage infrastructure charge has been excluded or is being invoiced by a company different to that providing the clean water supply, Powersave Direct will submit a separate invoice relating to any additional costs incurred that were not originally in the clean water proposal, including any increase costs applied over a financial year.

## 6. Termination

**6.** We reserve the right to terminate the Agreement if:

**6.1.1** You suspend, or threaten to suspend, payment of Your debts or are deemed to be unable to pay Your debts as they fall due for payment or admit an inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986; or

**6.1.2** You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or enter into any composition or arrangement with Your creditors generally; or

**6.1.3** an order is made or resolution is passed, or a notice is issued convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken for the winding-up, administration or dissolution of You, being a body corporate; or

**6.1.4** any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, You or any part of Your business or assets; or

**6.1.5** a creditor or encumbrancer of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days; or

**6.1.6** You fail to provide Us with instructions for a period of 4 months following a request by Ourselves.

**6.2** Upon termination of this Agreement, all outstanding amounts payable to Us under this Agreement shall be immediately payable by You and all potential Rebates will no longer be owed to you.

**6.3** Upon termination of this Agreement, We reserve the right to cancel any or all applications to the applicable utility companies which have been applied for in our name.

## **7. Limit of Liability**

**7.1** No terms, conditions or warranties, whether express or implied, about the quality or fitness for purpose of the Works shall be incorporated unless expressly set out in the Agreement. We give no warranty as to level of care and skill that will be given in relation to the Works.

**7.2** We will obtain quotations from each Utility Company using the information You have provided to Us. As such, We do not warrant that the Works or Original Plans will meet Your specific requirements and it is Your responsibility to ensure the information is correct. We do not warrant or make any representation regarding the use of the Works in terms of their correctness, reliability or otherwise.

**7.3** We shall not be responsible for any loss of profits, business, contracts, revenue, damage to your reputation or goodwill, anticipated savings, and or any other indirect or consequential loss or damage whatsoever as a result of a delay by a Utility Company in completing the Works.

**7.4** Save in respect of death or personal injury resulting from our negligence, our liability to you under this Agreement shall be limited as follows:

**7.4.1** We shall not be liable for loss of profits, business, contracts, revenue, damage to your reputation or goodwill, anticipated savings, and or any other indirect or consequential loss or damage whatsoever.

**7.4.2** Our entire liability to you under this Agreement, including but not limited to the Works, shall not exceed the total of the Management Fees.

**7.5** We take no responsibility for any works carried out as a result of You accepting any quotation direct with a Utility Company.

## **8. Indemnity**

**8.1** You shall indemnify Us from and against any and all loss, damage or liability whatsoever howsoever arising to any third party arising out of or in connection with the provision of the Works set out on the Powersave Proposal Acceptance Form.

**8.2** You shall, if required by Us, produce evidence that You hold a current policy of insurance against third party risks.

## **9. Intellectual Property**

**9.1** All intellectual property rights (including, but not limited to copyright) in the Original Plans provided under this Agreement shall vest in You (or Your licensors) but, for the avoidance of doubt, You hereby grant to Us (and Our sub-contractors) an irrevocable license to store and use the Original Plans for the life of the Agreement for purpose of fulfilling Our obligations under this Agreement to You.

**9.2** All intellectual property rights (including, but not limited to copyright) created by Us under this Agreement shall vest in Us.

## **10. Data Protection**

**10.1** Each party warrants to the other that each will observe its respective obligations under the Data Protection Act 1998 (the 'DPA') which arise in connection with the Works.

**10.2** You warrant that all information provided to Us has been obtained in accordance with the DPA and shall indemnify Us for any loss suffered as a result of any breach of the DPA by using such information.

## **11. Miscellaneous**

**11.1** This Agreement shall be construed in accordance with English law and the English courts shall have exclusive jurisdiction to determine disputes relating to this Agreement.

**11.2** Save as expressly provided, none of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

**11.3** Any failure or delay by either party in exercising its rights under this Agreement shall not be construed as a waiver of such rights and the obligations of the other party shall continue.

**11.4** In the event that any term of this Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court or other competent body having jurisdiction, the remaining terms shall remain in full force and effect.

**11.5** This Agreement shall supersede all previous agreements between the parties and represents the entire agreement between the parties.

**11.6** No variation of any term of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly signed by Us.

**11.7** No waiver by Us of any breach of this Agreement by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

**11.8** We may engage any person, firm or company as our sub-contractor to perform any or all of our obligations, and we may assign any or all of our rights and obligations under the Contract.

**11.9** Neither party shall be liable to the other for any delay in, or failure of, or performance of, its obligations under this Agreement arising from any cause beyond its reasonable control including act of God, government act, war, fire, flood, explosion or civil commotion.

**11.10** Neither party under this Agreement is acting as a consumer and no consumer rights are afforded to either party.