

## TERMS AND CONDITIONS

### 1. SCOPE AND DEFINITIONS

- 1.1 These Terms and Conditions shall apply to all contracts for the supply of Services by the Supplier to the Customer and shall prevail over any other documentation or communication from the Customer.
- 1.2 Any variation to these Terms and Conditions shall not be applicable unless agreed in writing by the Supplier. Latest version available from our website: [www.elmhurstenergy.co.uk](http://www.elmhurstenergy.co.uk).
- 1.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services, by virtue of any statute, law or regulation.
- 1.4 Nothing in these Terms and Conditions shall affect the Customer's statutory rights as a Consumer.
- 1.5 In this document the following words shall have the following meanings:
- "Approvals" means accreditation or certification of individuals or companies or products against defined Scheme requirements;
  - "Consumer" shall have the meaning ascribed in section 12 of the Unfair Contract Terms Act 1977 as amended by the Sale and Supply of Goods to Consumers Regulations 2002;
  - "Customer" means any person or company who purchases the Services from the Supplier;
  - "Proposal" means the statement of work, accepted quotation, or other document or electronic communication describing the Services to be provided by the Supplier;
  - "Service or "Services" means the Services specified in the Proposal;
  - "Scheme" means a Service to recognise the competence of individuals or companies against a defined standard, e.g. EPBR, ESOS, and ventilation testing;
  - "Software" means Software downloaded, accessed online or otherwise used on mobile devices by the Customer under any agreement made pursuant to a Proposal on these Terms and Conditions;
  - "Supplier" means Elmhurst Energy Systems Limited of 16 St Johns Business Park, Lutterworth, Leicestershire, LE17 4HB and with the email address [enquiries@elmhurstenergy.co.uk](mailto:enquiries@elmhurstenergy.co.uk);
  - "Terms and Conditions" means the Terms and Conditions of supply set out in this document and any special Terms and Conditions set out in any Proposal or otherwise agreed in writing by the Supplier;
  - "Training" means any Service which consists of or comprises of face-to-face and/or online Training;
  - "Trainee" means any individual who is attending Training, whether or not that individual is also the Customer. Where the Training leads to an assessment of competence, then the individual shall remain a Trainee until he/she is awarded a certificate of competence by the Supplier or, in the event he/she fails to complete the Training, for a period of twelve months commencing from the first date of Training in accordance with clause 10.6 of these Terms and Conditions;
  - "Writing" means any form of written or typed communication, including emails;
  - The expression "the Act" means the Companies Act 2006, but so that any reference in these Terms and Conditions to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of the provision for the time being in force.

## 2. THE ORDER

- 2.1 All Orders for Services shall be deemed to be acceptance and contractual agreement of the Proposal pursuant to these Terms and Conditions. The contract between the Supplier and the Customer shall come into effect when the Customer indicates its acceptance of these Terms and Conditions by signing the Proposal by any means, e.g. email, or by clicking the acceptance button online, or by making use of the Service.

## 3. PRICE AND PAYMENT

- 3.1 The price for the Services are subject to any applicable charges and only where stated in the Proposal are inclusive of VAT. Where the price is not stated as 'VAT inclusive' they will be subject to the addition of VAT at the prevailing rate.
- 3.2 Payment of the price shall be in the manner specified in the Proposal.
- 3.3 The Supplier may increase prices at any time, giving one calendar month's notice of the increase.
- 3.4 If the Customer fails to make payment within 30 days of it becoming due, the Supplier shall be entitled to charge interest at the current base rate plus 2.00% per month on the outstanding amounts.
- 3.5 Failure to make payment on invoice(s) due after the 30 day Terms have lapsed will result in all outstanding balances becoming due & payable and, at the Supplier's discretion, cease the supply of all other Services.
- 3.6 The Supplier may charge an agreed sum (with a minimum order charge of £50) for data extracts, or re-presentation of information already supplied, such as copy invoices.

## 4. SERVICES

- 4.1 The Supplier shall provide Services supporting, but not limited to, Training, Software, and Approvals.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Software available 24 hours a day, 7 days a week, except for planned maintenance carried out at times notified to the Customer and unscheduled maintenance provided that the Supplier has used reasonable endeavours to give the Customer at least 5 hours' notice during normal business hours.
- 4.3 The Supplier will as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard Customer support during published office hours. Such support Services shall include technical advice and assistance to the Customer by telephone or email as may be reasonably necessary to assist the Customer in resolving any problems or requests for assistance which may arise. The Supplier shall be entitled to reclaim its reasonable costs and expenses in connection with any additional support provided to the Customer over and above that which is reasonably required to enable the Customer to submit an assessment.
- 4.4 Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the performance of Services.

- 4.5 Services specified in the Proposal will be provided by the Supplier to the Customer within the terms specified in the Proposal.
- 4.6 The Supplier reserves the right to withdraw/cease any Service(s) where a Customer is in breach of their obligations.

## 5. OTHER PRODUCTS AND SERVICES

- 5.1 The Supplier operates as an introducer appointed representative of Anthony James Insurance Brokers. All insurance products supplied under the Elmhurst Insurance Services brand are underwritten by Hiscox Limited for which separate Terms and Conditions apply.
- 5.2 The Supplier may resell products and hardware for which a 30 day warranty is applied; your Consumer rights are not affected

## 6. CUSTOMER'S OBLIGATIONS

- 6.1 To enable the Supplier to perform its obligations the Customer shall:
- co-operate with the Supplier;
  - provide the Supplier with any information reasonably required by the Supplier;
  - obtain all necessary permissions, licences and consents which may be required before the commencement of the Service(s), the cost of which shall be the sole responsibility of the Customer; and;
  - comply with such other requirements as may be set out in the Proposal, or otherwise agreed between the parties, and all other legal obligations;
  - only use the supplied Service(s) for agreed business purposes;
  - only use the Service(s) within the bounds of normal/fair use. To enable this, the Service(s) will be monitored for volume, frequency and duplicity by the Supplier
  - take reasonable security precautions in connection with use of the Services to ensure data integrity is maintained.
- 6.2 For the provision of Service(s) by the Supplier, the Customer must provide the Supplier with a proper contact address (PO Box is not acceptable) and any contact details as required by the Supplier and agree to inform the Supplier immediately in writing of any changes.
- 6.3 The Supplier reserves the right to remove/disconnect any Service(s) where a Customer is in breach of any of the above.
- 6.4 Where the Software permits the Supplier to allocate work to a third party, the Customer will be solely responsible for all the Supplier's charges.

## 7. SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier shall provide the Services with reasonable skill and care and to a reasonable standard in accordance with recognised standards and codes of practice.
- 7.2 The Supplier warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under any agreement made pursuant to these Terms and Conditions.

- 7.3 In the event that the Services do not conform to any warranty given by the Supplier, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of obtaining a desirable performance. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error free or that the Services will meet the Customer's requirements.
- 7.4 The Supplier is not responsible for any delays, delivery failures or other loss or damage of data, resulting from the transfer failures of that data, caused by but not limited to issues with either public or private networks, hosted and client hardware failures.

## 8. CANCELLATION AND FAILURE TO PROVIDE SERVICES

- 8.1 Where Services do not comply with the Proposal, the Customer must notify the Supplier in writing within 7 days.
- 8.2 Where the Supplier has had reasonable opportunity to remedy the situation but concludes that the Services did not comply with the Proposal, the Proposal may be cancelled by the Customer.
- 8.3 Where the Proposal has been cancelled, the Supplier will consider reasonable action, but refunds will not be made where:
- a) the Services being supplied comply with the contract; or
  - b) the Supplier has incurred expenditure to fulfil the order.

## 9. SOFTWARE

- 9.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable, non-refundable licence to use the Software for the duration of any agreement granted on these Terms and Conditions for the purposes of making use of the Services.
- 9.2 The Customer shall not: (a) copy or reproduce the Software; (b) merge the Software with any other Software; (c) translate, adapt, vary, or modify the Software; or (d) disassemble, decompile, or reverse engineer the Software, or otherwise attempt to derive the source code of the Software.
- 9.3 The Customer shall not attempt to make any part of the Software available to any third party, except as required by law and the Customer shall not use such Software for the benefit of any third party providing the business of computer consultancy.
- 9.4 The Software and all intellectual property rights of whatever nature in such Software shall remain the property of the Supplier.
- 9.5 The Supplier reserves the right to grant licences to use the Software to any other party or parties provided that any such licences do not affect the provision of any of the Services to the Customer under any agreement.

- 9.6 The Supplier shall ensure that there are regular scheduled backups of data stored within the Supplier's hosted Services environment.
- 9.7 The Supplier is not liable for the backup of data outside of the hosted environment and this remains the responsibility of the Customer.

## 10. TRAINING

- 10.1 Seminars, Training (face to face or online) and other similar events are offered in good faith by the Supplier and are based on current standards. The Supplier cannot accept any responsibility for changes to legislation, technical methodology and practice that may take place after the event has passed.
- 10.2 Payment is to be made prior to the start of Training. Places at events will be reserved on receipt of the Customer's payment.
- 10.3 Any cancellations will be subject to a fee of 25% of the cost of the course, with a minimum of £25.00, to cover administration costs. If a delegate cancels within 48 hours, fails to attend or fails to complete the course the fee is non-refundable and non-transferable.
- 10.4 The Supplier reserves the right to cancel courses without liability to delegates. In the event of a course cancellation or postponement, delegates will be offered the opportunity to attend the course on an alternative date or be given a full refund.
- 10.5 Where appropriate, the Supplier will register the Trainee with the relevant qualification body. The registration fee is non-refundable.
- 10.6 For all Training that leads to an assessment of competence which extends beyond the course, Trainees have 12 months from the first day of the course to complete their assessment. Failure to do so will require the Trainee to re-train at their own cost.
- 10.7 Trainees must keep a copy of all evidence submitted to the Supplier for assessment. Requests for their return will incur a cost to cover postage and administration.
- 10.8 Elmhurst will endeavour to keep all Trainees informed of any additional requirements via our website, regular email updates, technical bulletins and newsletters.
- 10.9 If a Trainee needs to re-take any part of the assessment, the Supplier reserves the right to charge additional costs as appropriate.
- 10.10 On completion of Training, the Supplier does not provide or in any way guarantee employment opportunities.
- 10.11 All manuals, Training materials and associated forms are the copyright of the Supplier and reproduction or distribution of any of these materials in whole or part is forbidden without written consent of the Supplier.

## 11. CONFIDENTIALITY

- 11.1 All correspondence received and business information acquired by the Supplier will be treated as confidential and will not be disclosed or supplied to any third party outside of the Supplier or partner companies as agreed in the Proposal. The duty of confidentiality by the Supplier to the Customer does not apply when the Supplier is required by law to provide information to the police, or other organisations empowered by statute, or regulations currently in force, or is required to fulfill its responsibilities as an Approval body.

## 12. DATA PROTECTION

- 12.1 All parties shall comply with their respective obligations under prevailing Data Protection legislation and no party shall engage in any act that puts the other party in breach of its obligations set out in this term. Nothing in any agreement made between parties shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with Data Protection legislation.
- 12.2 The Supplier has a lawful basis for processing its members' personal data as part of their legal obligation to comply with the Energy Performance of Buildings Regulation (EPBR), and other legitimate interests. The Supplier may be required to share the personal data of members with third parties as part of their legal obligation to comply with the EPBR and for other legitimate interests.
- 12.3 The parties acknowledge that the Customer alone shall determine the purpose and manner for which Personal Data is to be processed in connection with the Services, as defined in prevailing Data Protection legislation. The Customer shall be the Data Controller (as defined in data protection legislation) in respect of all Personal Data processed;
- 12.4 In the event that the Supplier processes Personal Data, sufficient technical and organisational measures shall be maintained by the Supplier in order to prevent unauthorised or unlawful processing of Personal Data and to prevent any loss, destruction or unauthorised disclosure of Personal Data, having regard to the nature of the Personal Data to be processed;
- 12.5 The Supplier shall in all respects provide reasonable assistance to the Customer as necessary to allow the Customer to comply with prevailing data protection legislation;
- 12.6 The Customer shall fully and effectively indemnify the Supplier against any loss, liability for costs incurred by the Supplier as a result of any breach of prevailing data protection legislation by the Customer;
- 12.7 The Supplier shall ensure that there are regular scheduled backups of assessment data stored within the Supplier's hosted Services environment. In the event any assessment data is lost or corrupted, the Supplier shall take all reasonable efforts to reconstruct the data in accordance with the Supplier's business resilience plan;
- 12.8 The Customer shall own all rights, title and interest to its data, inclusive of Personal Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such data.

- 12.9 The Customer shall take reasonable security precautions in connection with use of the Services to ensure data integrity is maintained.

### 13. LIMITATION OF LIABILITY

- 13.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Supplier for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or for fraud or fraudulent misrepresentation.
- 13.2 The Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (inclusive of negligence), breach of statutory duty, misrepresentation or otherwise, for any loss of profit, loss of data or any indirect or consequential loss arising out of or in connection with the use or provision of the Services.
- 13.3 The Supplier gives no representation or warranty that the Services as used by the Customer or any calculation or assessment will achieve any particular result or level of accuracy and the Supplier shall not be liable for any consequence arising out of or in connection with the Customer's use of the Services.
- 13.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from any of the Terms and Conditions.
- 13.5 The Supplier's total liability to the Customer in respect of all losses arising out of or in connection with the provision of the Services (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) that are not excluded by these Terms and Conditions shall be limited (at the Supplier's election) to either re-performance of the Services or to a sum not exceeding the amounts paid by the Customer with respect to the subject matter of the relevant Proposal.
- 13.6 These limitation of liability Terms and Conditions shall survive termination or expiry of any contract for the supply of the Services.
- 13.7 For the avoidance of doubt, time shall not be of the essence and the Supplier shall incur no liability to the Customer in respect of any failure to complete the Services by any agreed completion date.

### 14. INDEMNITY

- 14.1 The Customer agrees to indemnify each of the Supplier, its officers, directors and employees, agents and subcontractors against:
- 14.1.1 the consequences of any use of the Services by the Customer;
  - 14.1.2 all claims by third parties and any other claim under common law or by statute arising out of any such use of the Services by the Customer;
  - 14.1.3 all damages, penalties, costs and expenses to which each or any of them may become liable as the result of any use of the Services which involves the infringement by the Customer of any intellectual property right of any third party.

- 14.2 The Customer accepts that notwithstanding the intended use of the Services including assessment and proposed certification, the Supplier does not know every purpose for which the Services are used or every circumstance under which results from the use of the Services are expected to be obtained or whether the persons using the Services are competent to do so or appropriately trained and accordingly in the light of these considerations, the Customer accepts the provisions of the indemnity and limitation of liability terms herein as being reasonable ones.
- 14.3 The Supplier shall defend the Customer, its officers, directors and employees, agents and subcontractors, against any claim that the Services or the Software infringe any intellectual property rights of any third party and shall indemnify the Customer of any amounts awarded against the Customer in judgment or settlement of such claims provided that the Supplier is given prompt notice of such claim. In which the Customer provides reasonable co-operation to the Supplier in the defence or settlement of such claim at the Supplier's expense. The Supplier is given sole authority to defend or settle the claim and in no event shall the Supplier, its employees, directors, agents or sub-contractors shall be liable to the Customer to the extent that the alleged or actual infringement is based on a modification of the Services by anyone other than the Supplier or the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier or the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

## 15. VARIATION

- 15.1 The Supplier may vary the Proposal (including price) at any time giving 30 days' notice. Customer acceptance may be in writing, or any action which indicates acceptance e.g. use of Service.
- 15.2 The Supplier is not liable for failing to give appropriate notice (in 15.1) where disbursements and charges are applied by a third party, e.g. Register fees.

## 16. TERMINATION

- 16.1 The Supplier shall have the right to terminate any agreement with the Customer forthwith on giving notice in writing to the Customer on the occurrence of any one or more of the following events:
- breach of the terms of any agreement within these Terms and Conditions by the Customer which the Customer is unable to remedy within 30 days of receipt of notice by the Supplier to do so;
  - if a petition is made for the Customer's insolvency or an insolvency order is made against the Customer or if the Customer makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;
  - where the Customer is a company; if any action is taken for or with a view to its winding up, or a petition is presented for an administration or a winding up order against it or such an order is made, or it becomes insolvent or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an administrative receiver, receiver or manager of its undertaking is duly appointed by a creditor or by the court, or possession is taken of any of its property by an encumbrancer and in that event such termination shall not affect any



rights which the Supplier may have against the Customer in consequence of the breach by the Customer;

- if without reasonable cause the Customer withholds either an agreed interim or full payment to the Supplier in respect of this contract or any other contract between the two parties; or
- if it is the Supplier's belief that the Services are being used with fraudulent or criminal intent.

16.2 The Supplier reserves the right to terminate any agreement where activity related to the Proposal ceases for any time in excess of 6 months.

## 17. WAIVER

17.1 Failure by either party to enforce or exercise any rights granted under any agreement made on these Terms and Conditions shall not affect such party's rights or constitute a waiver or forfeiture of such rights.

## 18. THIRD PARTY RIGHTS

18.1 Any person who is not a party to any agreement made on these Terms and Conditions shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of any agreement and to enforce any of these Terms and Conditions. This term does not affect any right or remedy of any person which exists or is available or otherwise pursuant to such Act.

## 19. FORCE MAJEURE

19.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## 20. SEVERANCE

20.1 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 21. ASSIGNMENT AND TRANSFER OF RIGHTS AND OBLIGATIONS

21.1 The Customer shall not be entitled to assign its rights or obligations under any contract with the Supplier without the prior written consent of the Supplier.

21.2 The Supplier may at any time in the fulfilment of its contract may, for reasons of either resource availability or the need for specialist skills, subcontract all or part of the contract to any other individuals or organisations, as it sees necessary.

21.3 The Supplier may novate, dispose of, sub-licence or otherwise transfer all of its rights and obligations to any third party.

## 22. NOTICES

- 22.1 Where a notice is to be given to any party hereto it may be served by leaving it at the registered office or last known address of that party. Otherwise it may be sent by first class letter post to the registered office or the last known address of that party, when it shall be deemed to have been served at the expiration of 48 hours after it has been posted.

## 23. GOVERNING LAW

- 23.1 These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.