

EMP COMMERCIAL TERMS AND CONDITIONS

AS AT AUGUST 2017

Part One - Definitions of terms

1. 'Goods and services' means all goods and services we supply to you. It includes advice and recommendations. It also includes services described on any invoices, quotes, work authorisations or other forms we give to you, and on any of our web-sites.
2. 'We', 'us', and 'our' means EMP Ltd or any agent acting so authorised by EMP Ltd.
3. 'You' means the entity that has engaged EMP Ltd for the provision of services.
4. 'Liable' means responsible by law; legally answerable. 'The agreement' shall mean the agreement that you have engaged in with EMP Ltd for services. This can constitute an agreement, signed proposal, service sheet or written or verbal confirmation of services from you.
5. 'Term of agreement' means the time that the agreement was agreed to exist for.
6. 'Energy rate' means the fee you pay for the supply of energy, which can include but is not limited to; energy, government, metering and network fees.
7. 'EMP Fee' means specifically the price charged by EMP for services in addition to the energy rates charged for your energy supply.
8. 'Energy agreement' means the contract for the supply of energy to you between you and the energy provider.
9. 'Connection' means the point of connection for either electricity or gas, usually identifiable by an ICP number. This is the point at which the energy is sold to you.
10. 'Point of Supply' has the same meaning as connection.
11. 'Energy retailer' means a type one retailer of energy that buys and sells electricity or gas as a trader on the national registry and/or via the Electricity or Gas markets. EMP are, under no circumstances, an energy retailer by this definition as EMP only purchase energy from energy retailers and not from the market.
12. 'Provided through EMP' means the arrangement where EMP are the named customer on an agreement with the energy retailer while energy is actually being provided to you.

Part Two - Energy Management Services

Procurement and assessment services

- a. EMP may provide you with procurement and assessment services if you have signed an authority form and/or requested an assessment to be conducted of your connections or you are an active client of EMP. These services may include but are not limited to:
 - i. Assessing your current energy supply arrangements
 - ii. Analysing your consumption of energy
 - iii. Liaising with providers for you in an effort to procure new supply agreement options which may be beneficial to you.
 - iv. Assessing the benefits of any new supply agreement options
 - v. Setting you up with a new energy supply agreement.
- b. If you are an active client of EMP we may conduct this exercise at regular intervals during the tenure of your agreement with us in an effort to identify any new opportunities that may be in your benefit.
- c. All customers must fill out an authority form with EMP before this service is commenced. The authority will allow EMP to gain access to information about your energy accounts, connections and any other information related to your supply of energy from your retailer.
- d. If no signed authority is provided this agreement is still binding.

Free assessments

- e. In some cases, we may choose to conduct a free assessment of your energy accounts before requiring your commitment to an agreement. This will only be the case if we have clearly stated this in the agreement, even if we have implied otherwise.
- f. Free assessments require a signed authority form completed by you, detailing all information relevant to the free assessment.

- g. Unless otherwise expressly stated in the agreement a free assessment holds no financial obligation for you.
- h. If EMP conduct a free assessment for you, you agree that you shall not attempt to take advantage of the assessment by seeking rates or energy contracts that reasonably result from the efforts of EMP's assessment.
- i. Upon engaging EMP for a free assessment you agree that where an energy provider presents you with rates or benefits that can reasonably be construed as resulting from the efforts of EMP, you will advise EMP of this immediately and decline to accept these directly from the provider or retailer.
- j. If you breach clauses 2(h) and/or 2(i) above, you agree that you will be liable to pay to EMP the default management fee of \$2/day/ICP and \$0.03/kWh for the reasonably expected consumption of energy on any agreements for the duration of those agreements that have resulted from that breach.

Administration and management services

- k. In some instances, EMP may provide you with administration and management services as part of our service agreement with you. This may include:
 - i. Monitoring your rates, consumption and billing information for accuracy
 - ii. Providing you with an energy dashboard
 - iii. Receiving your invoices on your behalf
 - iv. Invoicing you for energy consumed by you
 - v. Receiving payment for invoices from you for energy consumed
 - vi. Paying the energy provider or retailer for the energy consumed by you, on your behalf with the funds received from you.
 - vii. Helping you with any questions or issues you may have regarding your electricity or gas supply.
 - viii. Providing you with the requisite information needed for general reporting in regard to energy consumption and expenditure.
 - ix. Acting as the main point of contact for any member of your organisation, so that they may be able to contact us directly with issues and questions as they arise.
 - x. Providing you with general support when it comes to your energy. This might include managing planned outages or meter maintenance, readings, billing, access or other energy related tracking and advice.
- l. The fees for services in Part 4(k), or similar services are distinct from the costs of energy supply. The fees payable to EMP for energy management service will be detailed in the agreement. If the agreement does not state what the EMP fee is or if you are outside you agreed term, EMP reserve the right to charge you the default fee for energy management services being \$2/day and \$0.03/kWh consumed.

Technical Assistance

- m. In some cases, EMP will be providing you professional or technical services either as a part of the service package offered to you or independently. This will only be offered if it expressly states in the agreement.
- n. You agree that technical services, unless otherwise expressly stated in the agreement, shall be provided at the discretion of EMP.
- o. EMP may passively monitor for instances where we may be able to provide technical services and advise you of those before acting.
- p. Where appropriate EMP will provide you with a work order detailing the technical services to be conducted and the costs or cost estimations before commencing the technical service.

Part Three – EMP is not your energy retailer

- a. EMP is not an energy retailer under any circumstances and unless otherwise stated in the agreement the energy retailer is your supplier.
- b. For the purposes of this agreement, where the agreement does not expressly state that you "agree to take supply of energy from EMP Ltd" for any particular ICP, Part 3 of these terms and conditions shall apply and Part 4 shall not apply.
- c. You agree that the agreement for the supply of energy shall exist between you and the energy retailer.
- d. You agree that you will be bound by all the terms of the supply agreement between you and the energy provider.
- e. You agree that EMP have authority to act on your behalf in pursuance of these agreements for supply and shall act as your agent for the term of the agreement to the extent that the agreement intends.

- f. EMP as agent are authorised to change energy retailer(s), seek information and make any other changes to your account necessary to give effect to the agreement.
- g. You are liable for all obligations under any agreements for energy supply whether they have been agreed to and/or signed by yourself or EMP.

Part Four – When EMP is your energy supplier

- a. In some cases, there may be added benefit for you that EMP is the named customer on the energy supply agreement with the energy retailer. In these instances, EMP will be buying that energy from the energy retailer and supplying it to you. For the purposes of this agreement Part Four of these terms shall only apply if it is expressly stated in our agreement with you that you “take supply of energy from EMP Ltd” and only for the ICPs that the agreement states are supplied as such.
- b. In the event that we supply you with energy in accordance with Part Four, Part Three shall not apply for those ICPs.
- c. You acknowledge that while your energy is “provided through EMP” the Energy Retailer will still be the entity with which EMP has engaged for the supply of energy to you. Our agreement with you allows us to engage the energy retailer directly signing the agreement between us and them for the supply of energy to you.
- d. You agree that even if energy is to be “provided through EMP” you will still be liable for all reasonable obligations in the agreement between EMP and the energy retailer as the consumer of energy.
- e. EMP will supply to you and you agree to purchase from us, all energy required from the Point of Supply during the term and to pay all charges, fees and prices in accordance with this agreement. You will purchase all its energy consumption in respect of its specified locations, through EMP, provided EMP is able to source this energy through an energy retailer.
- f. Prices for energy will be charged at the rates as supplied in the attached schedules or appendices. Unless otherwise expressly stated GST is not included in these figures. Prices are subject to any changes in the ETS scheme. Any changes in network or regulatory costs shall be passed through to you at cost.
- g. If EMP have made a mistake in the determination of your rates we are entitled to present new rates to you. If you do not accept these new rates, EMP reserve the right to terminate the agreement with you and the agreement with your energy retailer.
- h. You will purchase all your energy requirements for the Point of Supply from EMP during the Term.
- i. EMP shall allow you consumption of energy at the Point of Supply, subject to the terms of this Agreement.
- j. Title and risk in all energy EMP enables to reach the Point of Supply for your consumption, shall pass to you at the point when such energy reaches the Point of Supply.
- k. EMP will promptly supply to you copies of any notices which EMP may receive from the network service provider, the energy retailer or the operator of any other energy distribution network relating to the interruption of supply, disconnection or access affecting the supply of energy to the Point of Supply.
- l. You will provide to EMP such information as EMP reasonably requests in relation to your likely future requirements for the supply of energy.

Part Five – General energy supply terms

- a. Part Five of these terms and conditions apply whether supply occurs under part three or part four of these terms.

Metering

- b. EMP will obtain the metering data from the energy retailer as frequently as possible. If, for whatever reason, EMP is unable to gain access to the actual reading, EMP will be entitled to estimate your consumption (and, if applicable, demand) during the relevant period based on historical information and having regard to your consumption profile.
- c. In the event that it is not possible to obtain details of the quantities of energy consumed by you due to a failure or inaccuracy in the Metering Equipment, the quantity of energy purchased shall be deemed to be the quantity measured or determined in accordance with the relevant industry rules or, if

not so determinable, shall be EMP’s reasonable estimate of your consumption (and, if applicable, demand) during the relevant period based on historical information and having regard to your consumption profile.

- d. All Metering Equipment are required to comply with certain industry rules in place from time to time. You shall cooperate with EMP to test the meters and clocks of the Metering Equipment in the manner and timeframe prescribed by such rules.
- e. Any test performed shall be carried out as prescribed by the relevant industry rules. Any Metering Equipment found to be inaccurate shall be promptly adjusted, repaired or replaced as necessary.
- f. You acknowledge and agree that only persons authorised for such purpose by any Network Service Provider may connect, disconnect, unseal or undertake any activity in relation to any Metering Equipment or any Network.
- g. You have responsibility to repair and maintain your power lines or cable (including poles and fittings on its premises and those on adjoining private property over which you have the right to place them) from the Point of Supply to the point where such energy is consumed.

Access

- h. You will provide EMP, the energy retailer, or any entity that EMP reasonably nominates, safe and unobstructed access to Metering Equipment on its premises during normal working hours (8.00am to 5.00pm) on each Business Day and will provide immediate access to your premises at any time for safety or other emergency reasons.
- i. You will provide a safe, secure and accessible location for the Metering Equipment and any other equipment located at your premises, including reasonable protection against interference and damage. You will be responsible for any damage caused to this equipment by negligence or wilful act or omission or through failure to provide such protection.

Quality of Supply

- j. The energy retailer is obliged under its agreement with EMP or you, to use all reasonable efforts to provide a reliable and high quality of service. Notwithstanding the foregoing, you acknowledge that the conveyance of energy to the Point of Supply may be interrupted or reduced:
 - i. in accordance with the terms and conditions of any Network Contract;
 - ii. in accordance with the terms and conditions of any agreement between EMP and the Provider;
 - iii. in accordance with the terms and conditions of any agreement between EMP and the Network Service Provider;

Force Majeure

- k. If either party is unable to carry out any of its obligations under this agreement because of Force Majeure, this agreement will remain in effect but except as otherwise provided, that party’s obligations will be suspended without liability for a period equal to the period of the Force Majeure, and
 - i. the non-performing party will give the other party prompt notice describing the event or circumstance claimed to be Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continue to furnish regular reports with respect thereto during the period of Force Majeure;
 - ii. the suspension of obligations will be of no greater scope and of no longer duration than is required by the Force Majeure;
 - iii. no obligations of either party which accrued before the notice referred to in (i) is given will be suspended as a result of the non-performing party will use all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
- l. If notwithstanding its efforts under this clause, the non-performing party is unable to carry out all its obligations under this agreement within one month of the notice given under clause (i) (suspension of obligations) the other party may, by not less than 10 Business Days’ prior written notice to that non-performing party, terminate this Agreement.

Notices

- m. Any notice, demand, consent, agreement, certificate or other communication required or permitted to be given or sent under this agreement will unless expressly provided otherwise be in writing and will be delivered personally or by pre-paid post, by courier delivery, or by facsimile.

- n. The required address and facsimile number for a party for the purposes of this section are set out in this Agreement provided that either party may alter its address and/or facsimile number for the purposes of this section by notice in writing to the other party.
- o. Subject to this section a notice or other form of communication will be deemed to have been served as follows:
 - i. if given or delivered personally or by courier delivery, at the time when given or delivered;
 - ii. if sent by pre-paid post, at the expiration of 48 hours after the document was delivered into the custody of the postal if sent by facsimile, immediately (subject to this section, if the sending machine confirms transmission is successful).
- p. A notice or other form of communication which, but for the provisions of this clause, would be deemed to be received after 5pm on a Business Day or on a day which is not a Business Day, will be deemed to be received at 8.30am on the following Business Day.

Supply generally

- q. You agree that you are liable for all the terms set out by the energy retailer in regard to the supply of energy to you, however you may wish to request to review the terms of the energy retailer before EMP commit or agree to them on your behalf.
- r. You are bound by all the terms and conditions of the agreement with the energy retailer whether, of your own accord, if EMP is your agent or if EMP is named as the client in pursuance to this agreement.
- s. If you do not pay us for your invoice(s) for energy supplied to you, EMP and/or the energy retailer are entitled to discontinue supply of energy to you until the debt is paid up-to-date. If your supply is discontinued this does not prevent EMP or the energy retailer from continuing through ordinary debt collections processes as well.
- t. You are liable for all costs associated with your energy agreement.
- u. EMP accept no responsibility for any costs of your energy supply unless it can be shown that EMP have acted negligently.
- v. EMP will pass through any energy costs from your energy retailer to you. You agree that EMP, may alter your energy rate where:
 - i. Charges from the main energy network of your region change
 - ii. Charges from your energy retailer change
 - iii. The cost of supplying you with energy changes.
- w. Any offer that we provide you for fixing or securing rates is applicable at the time offered with the information and calculations at the time offered. Any changes to any information or details relied on for the offer of services that is either outside the control of EMP or not within the scope of the intended agreement will not be the liability of EMP. You will be required to pay for the services as at the time of the agreement.
- x. EMP do not warrant the quality of your energy supply.

- postal address
- email address
- fax number

- 6. You must write to us at least 14 days before the change happens. If you don't write to us, you are liable for any loss we have to pay.

Term of agreement and termination

- 7. The term of the agreement shall be detailed on the agreement.
- 8. Unless you provide EMP with notice to the contrary prior to the conclusion of this agreement, at the conclusion of this agreement the term shall be extended with the equivalent conditions, services and price as in the original agreement for 3 calendar months and shall continue to extend at 3-month intervals until notice is provided by either you or us for termination or renewal.
- 9. Either party may terminate the agreement if the other party has consistently not fulfilled their obligations under the agreement. This applies only if the other party has advised the non-compliant party of the issue and that the issue has continued for three months consistently.
- 10. Unless otherwise expressly stated in the agreement, where you terminate the agreement before the end date of the agreement you will be liable to pay up to 75% of the remaining EMP fees, as well as any costs associated with early termination from your energy retailer.
- 11. For the purposes of Part 6 clause 10 the determination of the remaining EMP fees shall be the specified price multiplied by the reasonably expected number of units remaining in the agreement (for example months or kWh).

Price and Payment

- 12. We will determine both the EMP fee and the energy rates. These are:
 - i. indicated on the invoices you receive from us
 - ii. The price we quoted, and you accepted in writing (subject to clause 4(b))
 - iii. identifiable on the agreement for service
- 13. We reserve the right to change the price if there is a variation to the quote.
- 14. You may need to pay a deposit. In that instance, you will be notified prior to the acceptance of the agreement. We consider that we have delivered invoices and other communications once we have sent them to your nominated address, whether physical, postal, or electronic.
- 15. You can pay by cash, cheque, bank cheque, direct credit, or by any other method we agree with you. For credit card payments, we charge an additional 3% of the total amount of the payment you are making. Other than cash, we consider payment to be received when your payment has been honoured, cleared or recognised. We retain ownership of or rights for the goods and services until you pay us.
- 16. Unless otherwise mentioned in the agreement all invoices will be payable within 7 days of being issued.
- 17. If you pay your invoice before the due date stated on the invoice you are eligible to pay the amount less the Prompt Payment Discount. If you pay after the due date you are liable to pay the full amount without the application of the prompt payment discount.
- 18. Unless expressly stated in the agreement or document all figures assume that you have achieved and taken into account any Prompt Payment Discounts or benefits.
- 19. Unless expressly stated on the agreement or document all figures exclude GST.
- 20. You, the undersigned, agree to personally guarantee your obligations under this agreement both jointly and severally with the entity and any other parties to this agreement.

Personal Property Securities Act 1999

- 21. You agree to sign documents and provide information that we need to register a financing statement or financing change statement on the Personal Property Securities Register. The information you provide must be complete, accurate, and up to date.
- 22. You waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Personal Property Securities Act 1999.

What happens if you miss a payment?

- 23. You agree to pay whatever it costs us to chase you up if you don't pay our invoice when it's due, such as collection costs and legal costs. In addition,

Part Six – General terms to this agreement

- 1. Any agreement for the provision of services shall commence and be binding at the earlier time of either signing an agreement for the service or giving sufficient indication that could otherwise be construed as the acceptance of agreement for the services.
- 2. You accept the terms and conditions in this document if you tell us to supply you with goods and services or if you accept our goods and services, or if you do both.
- 3. If you have entered into an agreement with us together with one or more other clients, you are liable, both as a group and as individuals, for paying us the full price.
- 4. An invoice price includes only the goods or services written on the invoice. That is the case even if we implied other goods or services would be included too.

Your details

- 5. You must write to tell us if you plan to sell your business, change business name or change what your business does. You must write to tell us if you change details like your:
 - physical address

any discounts we offered you based on payment being received by a certain date on the invoice will become invalid.

24. Any invoices charged to you by EMP will begin incurring a 5% penalty fee for each month or part month that payment is in arrears beginning the day after the due date of the invoice.
25. You agree that we can charge you \$20 for every phone call and letter sent to you in order to chase you up for payment.
26. We can cancel any of your orders that we haven't yet fulfilled, and any money you owe us will become due immediately if:
 - i. your invoice becomes more than 90 days overdue
 - ii. you become insolvent, organise a meeting with your creditors, propose or enter into an arrangement with your creditors, or make an assignment for the benefit of your creditors
 - iii. a receiver, manager, liquidator, or similar person is appointed to you or any asset of yours
27. If your energy remains unpaid for a period of time and you have received notice from us we can cancel your energy supply agreement and/or request a discontinuation of energy supply to you.

Goods and Services

28. You accept responsibility for selecting and buying the goods and services we offer. Your contract with us is binding. You may not sue for damages or claim compensation because of any misrepresentation we made to you.

Insurance is your responsibility

29. Insurance for goods or data is your responsibility. Our contracts do not include insurance cover for your goods or data. Unless insurance is specifically quoted as a separate service and stated in your account, then we are not responsible for any loss, theft, burglary or damage of goods. We are not liable for loss or damage because of any defect in materials or labour in any goods or services we supply.

Equipment

30. In some cases, we may provide you with equipment as part of the services provided. Unless expressly stated in the agreement the equipment is the property of EMP.
31. Unless expressly stated in the agreement any equipment we provide you is for analytical or administrative purposes only. They are not replacements for your current equipment and we do not guarantee the accuracy of the equipment.
32. Ensuring the safe keeping of any equipment that you have, that is owned by EMP, is your responsibility. You are liable for any loss or damage caused to any equipment while it is in your possession or control. If the equipment is lost or damaged, you will be required to have it repaired or replaced.
33. EMP can assist with the setup, installation and connection of equipment provided to you by EMP. Unless expressly stated on your agreement EMP may reserve the right to charge \$200 per hour for this assistance.

Dispute Resolution

34. Where any question, dispute or difference arises concerning the administration or interpretation of any provision of this agreement (not including a dispute concerning the charges, the calculation of sums payable by you or EMP's pricing methodology), the party initiating the question, dispute or difference will provide notice of the same to the other party.
35. On receipt of a notice under clause GG, both parties will discuss and consult with each other in good faith with a view to resolving the matter in dispute.
36. If the parties are unable to resolve the question, dispute or difference by discussion within 20 Business Days of a notice under clause (u), either party may, by written notice to the other party, require the matter to be determined by the arbitration of a single arbitrator, including the Electricity and Gas Complaints Commission.
37. Pending resolution of any question, dispute or difference, the parties will continue to perform their respective obligations pursuant to the provisions of this agreement.

Warranty

38. If you buy goods that are not manufactured by us, the only valid warranty is the one provided by the manufacturer of the goods.

When the Consumer Guarantees Act 1993 does not apply

39. The Consumer Guarantees Act 1993 does not apply to anything we supply to you if you are acquiring our goods and services for your trade or business.

Privacy Act 1993

40. The Privacy Act 1993 requires you to give us the authority to:
 - i. collect and use information about you so we can assess how creditworthy you are and market to you
 - ii. pass on information about you to credit agencies so we can get a credit reference, get your debt collected, or be notified of any time you have defaulted on a payment
41. You have the right to ask us for the information we have about you, and to ask us to correct any wrong information we hold about you.

Other terms

42. If any provision of these terms and conditions are deemed invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
43. If these terms and conditions conflict with any other terms or conditions, these terms and conditions will take precedence.
44. If we breach this contract, your claim to damages must not exceed the price of the goods and services we provide.
45. You may not set off against or deduct from our invoice any amount we owe to you or you claim we owe to you.
46. We may license or sub-contract all or a part of our rights and obligations without your consent.
47. We may review the terms and conditions of this contract at any time. Following a review, if we decide to change these terms and conditions, then that change will take effect from the date we tell you about the change.
48. Neither of us is liable if we can't fulfil our obligations to each other due to an act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event that is beyond the reasonable control of either of us.
49. If we do not enforce a provision in these terms and conditions, do not assume that we have waived the provision. We retain the right to enforce provisions later on.
50. Both parties shall hold as strictly confidential and shall not disclose in any way to any third party (other than an associated company) all knowledge, information and data now or in the future possessed by either party in relation to the supply of energy and other services under this Agreement without the prior written consent of the other party. Despite the foregoing provision, EMP may disclose to any other EMP supplier, information in relation to you for the sole purpose of enabling the supply of such services to you, through EMP.
51. Notwithstanding Part Six(50), either party may disclose any information referred to in that clause:
 - i. in the case of EMP or you, if required to under the relevant industry rules;
 - ii. if such information was already in the public domain otherwise than due to a breach by that party of this Agreement;
 - iii. to a consultant, agent or sub-contractor of that party provided that consultant, agent or sub-contractor is under a similar duty of confidentiality;
 - iv. in any mediation, arbitration, litigation or other legal proceedings of any kind arising out of or in connection with this Agreement.