

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

ASH Energy	ASH Heat & Power Limited t/a ASH Energy which is a company registered in England and Wales under company number 10380706 and which has its registered office at The Mill Morton, Oswestry, Shropshire, United Kingdom, SY10 8BH
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date	has the meaning given in clause Error! Reference source not found..
Conditions	these terms and conditions as amended from time to time
Contract	the contract between ASH Energy and the Customer for the supply of Services in accordance with these Conditions.
Customer	The non-domestic commercial customer who uses the Services
Data Protection Legislation	Any legislation in force in or adopted by the UK relating to personal data
Price Comparison Service	a service whereby ASH Energy provides to the Customer impartial pricing information from various energy suppliers to enable the Customer to see if it can save money by switching energy supplier
Quotation	a quote provided to the Customer by ASH Energy on behalf a Supplier which sets out the prices upon which a Supplier may be prepared to supply the energy services to the Customer.
Services	Means one or more of (i) the Price Comparison Service that ASH Energy provides to the Customer whereby the Customer is provided with impartial information on energy suppliers' prices and/or (ii) the Switching Service. Any reference to Services shall include one or more of the Services as the circumstances dictate.
Supplier	An energy supplier
Switching Service	a service whereby ASH Energy assists the Customer in the transition away from its

incumbent energy supplier and subsequent move to the Customer's chosen Supplier

Website www.ashenergy.co.uk

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

2.1 ASH Energy shall not be obliged to provide the Services but if it chooses to do so, these Conditions shall apply.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Customer acknowledges and understands that ASH Energy shall not be and is not responsible for supplying the Customer with any energy services other than the Services. The Customer will have to enter into a contract directly with a Supplier for the provisions of gas and/or electricity.

3.2 In order to be able to use the Services the Customer must a) be a business that is resident in the UK; and b) be aged eighteen years or over (if a sole trader); and c) be able to provide ASH Energy with all such relevant information as ASH Energy may require.

3.3 ASH Energy shall try and make the Website available but shall be under no obligation to do so.

3.4 If ASH Energy provides the Price Comparison Service, ASH Energy shall use reasonable endeavours to ensure the accuracy of the Supplier pricing information.

3.5 In relation to the Switching Service:

3.5.1 ASH Energy shall use reasonable endeavours to assist the Customer in moving to a new Supplier but ASH Energy gives no warranty or guarantee that it shall be able to bring about the proposed switch.

3.5.2 The Customer appoints ASH Energy to be its exclusive agent in respect of the termination of the Customer's incumbent energy supply contract when, and only when, it is lawful to do so.

3.6 ASH Energy reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ASH Energy shall notify the Customer in any such event.

- 3.7 The provision of any Quotation by a Supplier via ASH Energy does not constitute an offer to the Customer and the terms of a Quotation and duration for which any Quotation will be valid will vary depending on the Supplier. The Customer's acceptance of a Quotation constitutes a non-revocable offer by the Customer to engage the Supplier to provide the Supplier Services and once such an offer has been made by the Customer, the Customer shall be committed to such offer and shall not be entitled to revoke the offer.
- 3.8 All offers made by the Customer shall be subject at all times to the Supplier's acceptance and the Supplier shall be entitled at any time to refuse to accept a Customer's offer for any reason at the Supplier's sole discretion. No offer placed by the Customer shall be accepted by the Supplier until the Supplier confirms acceptance in writing to the Customer.
- 3.9 The Customer shall:
- 3.9.1 ensure that, to the best of the Customer's knowledge, the information provided to ASH Energy (whether via the Website or otherwise) is complete and accurate;
 - 3.9.2 co-operate with ASH Energy in all matters relating to the Services;
 - 3.9.3 provide ASH Energy with such information and documents as reasonably required by ASH Energy to enable it to provide the Services and keep such information accurate and up to date.
- 3.10 If ASH Energy's performance of any of its obligations under these Conditions is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 3.10.1 without limiting or affecting any other right or remedy available to it, ASH Energy shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ASH Energy's performance of any of its obligations;
 - 3.10.2 ASH Energy shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ASH Energy's failure or delay to perform any of its obligations as set out in this clause; and
 - 3.10.3 the Customer shall reimburse ASH Energy on written demand for any costs or losses sustained or incurred by ASH Energy arising directly or indirectly from the Customer Default.

4. CHARGES

- 4.1 ASH Energy is paid commission from the Supplier as a result of the Customer and the Supplier entering into a supply contract. This commission is included in the rates ASH Energy arranges for the Customer. Because of this payment arrangement, there is no fee due from the Customer for the Services.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All intellectual property rights in or arising out of or in connection with the Services (other than Intellectual Property Rights already belonging to the Customer) shall be owned by ASH Energy.
- 5.2 The Customer grants ASH Energy a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials (including but not limited to confidential information and brand name) provided by the Customer to ASH Energy for the purpose of providing the Services to the Customer.

6. DATA PROTECTION

- 6.1 It is noted and acknowledged that these conditions relate to a business to business contract, and that as such ASH Energy should come into minimal contact with personal data relating to the Customer. However, insofar as ASH Energy is a processor of personal data relating to carrying out the Services, this clause 6 shall apply.
- 6.2 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 6.3 Without prejudice to the generality of clause 6.2, ASH Energy shall, in relation to any personal data processed in connection with the performance by ASH Energy of its obligations under this agreement:
 - 6.3.1 process that personal data only on the documented written instructions of the Customer unless ASH Energy is required by Applicable Laws to otherwise process that Personal Data;
 - 6.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer if requested, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 6.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 6.3.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 6.3.4.1 the Customer or ASH Energy has provided appropriate safeguards in relation to the transfer;
 - 6.3.4.2 the data subject has enforceable rights and effective legal remedies;
 - 6.3.4.3 ASH Energy complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 6.3.4.4 ASH Energy complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- 6.3.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 6.3.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 6.3.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by applicable law to store the personal data; and
- 6.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 6;

7. LIMITATION OF LIABILITY

- 7.1 The Customer acknowledges that the accuracy of the Supplier pricing information provided by ASH Energy is entirely dependent on (i) information provided by the Customer and (ii) pricing information provided by the Supplier. As such, ASH Energy gives no warranty as to the accuracy, fitness for purpose or viability of the pricing information.
- 7.2 ASH Energy shall not be responsible for any delay or failure caused by any Supplier or existing supplier in relation to effecting any transfer.
- 7.3 It is the Customer's sole responsibility to ensure that all the Customer information is true, accurate, complete, reliable and current in all respects and to inform ASH Energy and/or the Supplier promptly if there are any errors and/or if any amendments are required
- 7.4 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.5 Nothing in these Conditions limits any liability which cannot legally be limited, including but not limited to liability for:
 - 7.5.1 death or personal injury caused by negligence;
 - 7.5.2 fraud or fraudulent misrepresentation.
- 7.6 Subject to clause 7.5 this clause 7.6 sets out the types of loss that are wholly excluded:
 - 7.6.1 loss of profits.
 - 7.6.2 loss of sales or business.
 - 7.6.3 loss of agreements or contracts.
 - 7.6.4 loss of use or corruption of software, data or information.
 - 7.6.5 loss of or damage to goodwill; and
 - 7.6.6 indirect or consequential loss.
- 7.7 Subject to clause 7.5 ASH Energy's total liability to the Customer shall not exceed the greater of £1,000 or the value of the commission earned by ASH Energy from the Supplier in relation to the Customer's new supply contract.
- 7.8 Any terms implied by legislation including but not limited to sections 13, 14 and 15 of the Supply of Goods and Services Act 1982 are, to the fullest

extent permitted by law, excluded; but those which cannot lawfully be limited or excluded are not.

- 7.9 Unless the Customer notifies ASH Energy that it intends to make a claim in respect of an event within the notice period, ASH Energy shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.10 This clause 7 shall survive termination of the Contract.
- 7.11 The Customer hereby agrees to indemnify, keep indemnified, defend and hold ASH Energy and its parent companies, subsidiaries, affiliates and each of their respective officers, directors, employees, owners, agents, suppliers, contractors, partners, information providers and licensors harmless from and against any and all claims, damages, liability, demands, losses, costs and expenses (including legal fees) (whether or not foreseeable or avoidable) incurred or suffered by any of such parties and any claims or legal proceedings which are brought or threatened arising out of or in connection with any use by or conduct of the Customer in relation to any of the Services, any transactions, dealings or arrangements made with any third party as a result of using the Services or any breach of any of the provisions of these Terms or of any law or the rights of any third party.

8. TERMINATION

- 8.1 Without affecting any other right or remedy available to it, ASH Energy may withdraw, suspend or terminate the provision of any Services at any time.

9. GENERAL

- 9.1 This agreement is personal to the parties and neither party may, without the prior written consent of the other assign, subcontract, novate, transfer or deal in any other manner with all or any of its rights or obligations under this agreement.
- 9.2 Each right or remedy of the parties under this agreement is without prejudice to any other right or remedy of that party whether under this agreement or not.
- 9.3 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 9.4 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 9.5 Both parties acknowledge that, in entering into this agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this agreement or not) other than as expressly set out in this agreement
- 9.6 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties
- 9.7 If any provision of this agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to

the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of this agreement and the remainder of such provision shall continue in full force and effect.

- 9.8 Failure or delay by a party in enforcing or partially enforcing any provision of this agreement shall not be construed as a waiver of any of its rights under this agreement.
- 9.9 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.10 The parties to this agreement do not intend that any term of this agreement shall be enforceable by virtue of this agreement (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 9.11 The formation, existence, construction, performance, validity and all aspects of this agreement and any and all matters relating to it shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts