

Installation Terms & Conditions

1. Interpretation

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

"Building Works" the works and other services to be performed by the Supplier in order to install the charging stations at the Designated Parking Spaces as set out in the Installation Proposal

"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 2.2

"Conditions" these terms and conditions as amended from time to time in accordance with clause 16.8

"Contract" the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

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"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

"Customer" the person or firm who purchases the Goods and/or Installation Services from the Supplier.

"Designated Parking Spaces" means the parking spaces at the Installation Location at which charging stations are to be installed.

"Design Services" the provision of the designs or plans for any of the following: (a) installing conduit runs, running wiring, and other site work necessary to provide adequate power supply to the Designated Parking Spaces; and (b) construction of concrete pillars and other works required for the installation of charging stations at the Designated Parking Spaces.

"Force Majeure Event" has the meaning given to it in clause 14.

"Goods" the goods (or any part of them) set out in the Installation Proposal.

"Order" the Customer's written acceptance of the Installation Proposal.

"Installation Location" the location set out in the Installation Proposal at which the charging stations are to be installed.

"Installation Services" means: (a) the Design Services, and (b) the Building Works.

"Installation Proposal" the description or specification for the Goods and Building Works provided by the Supplier to the Customer.

"Supplier" EV Smart (UK) LTD registered in England and Wales with company number 12429086.
"Supplier Materials" has the meaning given in clause 8.1.8

1.1 Interpretation:

- 1.1.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.1.2. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.1.3. 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.
- 1.1.4. Any words following the terms including, include, in particular, for example or in 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.
- 1.1.5. A reference to writing or written includes email but excludes fax.

2. Basis of contract

- 2.1. The Order constitutes an offer by the Customer to purchase the Goods and Installation Services, in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Installation Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Installation Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4. 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.
- 2.5. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.
- 2.6. All of these Conditions shall apply to the supply of both Goods and Installation Services except where application to one or the other is specified.

3. Goods

- 3.1. The Goods are described in the Installation Specification.
- 3.2. The Supplier reserves the right to amend the Installation Specification:
- 3.2.1. if required by any applicable statutory or regulatory requirement;
- 3.2.2. if the manufacturer changes the specification of the Goods; and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1. The Supplier shall deliver the Goods to the Installation Location.
- 4.2. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions or information that are relevant to the supply of the Goods.

5. Manufacturer's Warranty

- 5.1. The Goods are manufactured by a third party. The Supplier shall, to the extent that it is able to do so, pass to the Customer the benefit of any warranty provided by the manufacturer or supplier of the Goods.
- 5.2. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6. Title and risk

- 6.1. The risk in, and title to, the Goods shall pass to the Customer on completion of the Installation Services.

7. Supply of Installation Services

- 7.1. The Supplier shall supply the Installation Services.
- 7.2. The Building Works shall be performed in accordance with the Installation Proposal in all material respects.
- 7.3. The Supplier shall use all reasonable endeavours to meet any performance dates for the Installation Services specified in Installation Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Installation Services. The Supplier shall not be liable for any delay in the performance of the Installation Services that is caused by a Force Majeure Event or the Customer's failure to comply with its obligations under the Contract.
- 7.4. The Supplier reserves the right to amend the Installation Specification if necessary:
- 7.4.1. to comply with any applicable law or regulatory requirement; or
- 7.4.2. if the amendment will not materially affect the nature or quality of the Installation Services, and the Supplier shall notify the Customer in any such event.
- 7.5. The Supplier warrants to the Customer that
- 7.5.1. the Design Services will be provided using the reasonable care and skill to be expected of a professional designer; and 7.5.2. the Building Works will be provided using in a good and workmanlike manner.

8. Customer's obligations

- 8.1. The Customer shall:
- 8.1.1. ensure that the terms of the Installation Proposal and any information it provides for the purposes of the creation of the Installation Proposal are complete and accurate;
- 8.1.2. co-operate with the Supplier in all matters relating to the Installation Services;
- 8.1.3. be responsible for procuring at its own expense any upgrade to the power supply that may be required to the Installation Location, which requirements will be set out in the Installation Proposal.

8.1.4. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Installation Services;

8.1.5. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Installation Services, and ensure that such information is complete and accurate in all material respects;

8.1.6. prepare the Installation Location for the performance of the Building Works, as set out in the Installation Proposal;

8.1.7. obtain and maintain all necessary licences, permissions and consents which may be required for the Building Works before the date on which the Building Works are to start;

8.1.8. keep all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Customer's premises in safe custody at its own risk, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; [and]

8.1.9. comply with any additional obligations as set out in the Installation Proposal.

8.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

8.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Installation 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 the Supplier's performance of any of its obligations;

8.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1. The price for Goods and the Installation Services shall be the price set out in the Installation Proposal ("the Price").

9.2. The Supplier reserves the right to:

9.2.1. increase the price of the Goods and/or Installation Services, by giving notice to the Customer at any time before commencement of the Installation Services, to reflect any increase in the cost to the Supplier of the Goods or performance of the Installation Services that is due to:

9.2.1.1. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, increase in prices by any supplier or sub-contractor, and increases in labour, materials and other costs);

9.2.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Installation Proposal; or

9.2.1.3. any delay or failure on the part of the Customer to give the Supplier timely, adequate or accurate information.

9.3. The Supplier may invoice the Customer for the whole of the Price or on at any time after acceptance of the Order.

9.4. The Customer shall pay each invoice submitted by the Supplier immediately following presentation, and the Supplier shall not be obliged to commence the performance of any part of the Installation Services (including the Design Services), or deliver any of the Goods, until the Price has been paid in full.

9.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Installation Services or Goods at the same time as payment is due for the supply of the Installation Services or Goods.

9.6. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12 ("Termination"), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.6 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax, required by law).

10. Confidentiality

10.1. Each party undertakes that it shall not at any time during this agreement; and for a period of five years after termination of this agreement, disclose to any other party any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.

10.2. Each party may disclose the other party's confidential information:

10.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

10.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11. Limitation of liability

11.1. The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

11.2.1. death or personal injury caused by negligence;

11.2.2. fraud or fraudulent misrepresentation;

11.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

11.2.4. defective products under the Consumer Protection Act 1987.

11.3. Subject to clause 11.2, the Supplier's total liability to the Customer shall not exceed the Price.

11.4. This clause 11.4 sets out specific heads of excluded loss:

11.4.1. subject to clause 11.2, the types of loss listed in clause 11.4.2 are wholly excluded by the parties;

11.4.2. the following types of loss are wholly excluded:

11.4.2.1. loss of profits;

11.4.2.2. loss of sales or business;

11.4.2.3. loss of agreements or contracts;

11.4.2.4. loss of anticipated savings;

11.4.2.5. loss of use or corruption of software, data or information;

11.4.2.6. loss of or damage to goodwill; and

11.4.2.7. indirect or consequential loss.

11.5. For the avoidance of doubt, nothing in this clause 11 shall be construed as limiting the liability of the Customer, or excluding any head of loss that the Supplier may claim from the Customer, arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.6. This clause 11 shall survive termination of the Contract.

12. Termination

12.1. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

12.1.1. the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five (5) Business Days after receipt of notice in writing to do so;

12.1.2. if any invoice issued by the Supplier in respect of the Goods and/or Installation Services has not been paid within ten (10) Business Days of its presentation to the Customer, and subsequently payment is not received in full by the Supplier within five (5) Business Days of notice being served on the Customer requiring payment to be made;

12.1.3. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

12.1.4. the Customer party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.5. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy;

12.1.6. the Customer fails to pay any amount due under the Contract on the due date for payment; or

12.1.7. there is a change of Control of the Customer.

12.1.8. the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five (5) Business Days after receipt of notice in writing to do so;

14. if any invoice issued by the Supplier in respect of the Goods and/or Installation Services has not been paid within ten (10) Business Days of its presentation to the Customer, and subsequently payment is not received in full by the Supplier within five (5) Business Days of notice being served on the Customer requiring payment to be made;

15. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

16. the Customer party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

17. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy;

18. the Customer fails to pay any amount due under the Contract on the due date for payment; or

19. there is a change of Control of the Customer.

13. Consequences of termination

20.1. On termination of the Contract:

20.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;

20.1.2. the Customer shall return all of the Supplier Materials and Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

20.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

20.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

21. Construction (Design and Management) Regulations 2015

21.1. The Supplier and the Customer shall each comply with their respective obligations under the Construction (Design and Management) Regulations 2015. The principal contractor and the principal designer for the Installation Services will be as set out in the Installation Proposal.

22. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for eight (8) weeks, the party not affected may terminate this agreement by giving seven (7) days' written notice to the affected party.

23. General

23.1. Assignment and other dealings

23.1.1. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

23.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

23.2. Notices

23.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

23.2.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

23.2.1.2. sent by email to the address specified in [the Order].

23.2.2. Any notice or communication shall be deemed to have been received:

23.2.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

23.2.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

23.2.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

23.2.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23.3. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

23.4. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23.5. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

23.6. Entire agreement.

23.6.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.6.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

23.6.3. Nothing in this clause shall limit or exclude any liability for fraud.

23.7. Third party rights.

23.7.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

23.7.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

23.8. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

23.9. Governing Law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

23.10. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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