

# General Terms and Conditions for the Supply of Electricity by Panda Power Ltd. to Commercial Premises

## 1. Definitions and Interpretation

### 1.1 In this Agreement:

**“Agreement”** means the Contract, together with these standard terms and conditions, and any special conditions;

**“Arrears”** means an overdue payment that has not been paid;

**“Commencement Date”** means the date that you start using Energy at a Supply Point and we are registered as the Supplier for that Supply Point;

**“Contract”** means the document titled Customer Agreement Form and the contract sent to You upon confirmation of your account;

**“Electricity Distributor”** means the licensed operator of the electricity distribution system through which the electricity is distributed to the supply points;

**“Energy”** means electricity;

**“Energy Charges”** means the amount(s) payable for the supply of Energy comprising the Prices multiplied by the number of Units consumed plus Pass Through Charges;

**“Equipment”** means meters, pipes, conduit, electrical plant, electric lines, and all other apparatus at the supply address(es) to deliver measure and control Energy (including Metering Equipment);

**“First Termination Date”** where the Agreement is for a fixed term, means the date of expiry of the fixed term contract period specified on the Contract;

**“Force Majeure”** means any event or circumstance which is beyond the reasonable control of a Party and which results in or causes the failure of that Party to perform any of its obligations under the Agreement, provided that lack of funds shall not constitute Force Majeure;

**“Maximum Import Capacity”** means the capacity in kVA normally kept available as may be specified by the Electricity Distributor dependent on the meter installed at the premises;

**“Metering Equipment”** means the meters and ancillary equipment (including communication lines where appropriate) used to measure the flow of Energy through each relevant Supply Point;

**“MRSO”** means the Meter Registration System Operator who manages the register of all electricity Supply Points;

**“Our/Us/We”** means the party names as Panda Power in the Contract, its employees, sub-contractors and agents and its successors and permitted assigns;

**“Party”** means either You or Us, and **“Parties”** means you and us;

**“Pass Through Charges”** means any applicable third party costs, charges, tax, duty, levy, tariff or any government or Regulator approved imposed charge relating to the supply and distribution of Energy to the Supply Points including, without limitation, transportation and distribution use of the system charges by the Electricity Distributor and VAT;

**“Registration”** means the recording by the MRSO of a person as being responsible for the provision of a supply of electricity to the Supply Point(s) with effect from a particular date and the term **“Registered”** shall be interpreted accordingly;

**“Regulator”** means the Commission for Energy Regulation (CER);

**“SCA”** means the Electricity Distributor’s standard connection agreement titled **“Conditions for Connection to the Distribution System”**, as updated and approved by the Regulator from time to time;

**“Supplier”** refers to the company you have appointed to supply you with Energy for a Supply Point

**“Supply Point”** means the point(s) at which the flow of Energy is metered at the premises, as listed in the Contract unless otherwise agreed in accordance with clause 5.1;

“Unit” means a kilowatt hour;

“You/Your” means the Party names as the Customer in the Contract.

1.2 The headings in these Terms and Conditions are for your guidance only and shall not affect the interpretation or construction of these Terms and Conditions

## **2. Supply & Term**

- 2.1 These terms and conditions shall come into effect, and We shall supply Energy to each Supply Point up to the relevant Maximum Import Capacity and/or Nominated Annual Consumption (as applicable), from the Commencement Date until terminated by either Party in accordance with the terms of this Agreement.
- 2.2 If you exceed the Maximum Import Capacity or Nominated Annual Consumption at any Supply Point then You shall pay to us any costs, losses or expenses incurred by us for, and resulting from, the provision of the excess.
- 2.3 In respect of any Supply Point where We are taking over the supply of Energy from another Supplier, we may ask You to provide Us with meter readings obtained on the Commencement Date, or You must allow Us, the Electricity Distributor or other authorised personnel, safe access for the purpose of obtaining such meter readings for which We may pass through to You the charge for this.
- 2.4 Title and risk in the Energy supplied under this Agreement shall pass to You at the Supply Point.

## **3. Security Deposit**

- 3.1 We may at our sole discretion request a security deposit, guarantee or bond from you in advance of the provision of the supply of Energy. We shall periodically throughout this Agreement carry out credit checks and during the term of this Agreement. We may make enquiries about principal directors with a credit reference agency. We may also monitor and record information relating to your trade performance and as such, records will be made available to credit reference agencies who may share that information with other businesses in assessing applications for credit and fraud prevention. We may increase an existing security deposit or request a new security deposit from You if:
  - a) You don't meet our credit criteria;
  - b) You fail to pay or are late in paying any amount due to us; or
  - c) Because of your conduct.

## **4. Access and Equipment**

- 4.1 The Electricity Distributor is responsible for reading the meter at the Supply Point on our behalf. You will allow Us, the Electricity Distributor or any other authorised personnel, agents or contractors free of charge, safe and unobstructed access to each Supply Point covered by the Agreement at all reasonable times for the purposes of reading, inspecting, disconnecting, locking or removing the Metering Equipment and all for all other purposes connected with this Agreement provided that in an emergency access shall be afforded at any time without notice.
- 4.2 You shall not damage or interfere with or permit any interference with any Equipment used in connection with the supply of Energy to any Supply Point and You shall notify the Electricity Distributor or Us immediately where you have reason to believe that there has been any such damage or interference.
- 4.3 The supply shall be measured by Metering Equipment, installed, read and maintained by the Electricity Distributor or their staff, agents or contractors (as applicable) in line with the relevant connection Agreement or such other person authorised by the Regulator or current legislation.
- 4.4 Unless the accuracy of the Metering Equipment is disputed by notice given by either Party to the other, the Metering Equipment shall be deemed to be accurate.
- 4.5 All Equipment and installations (other than your electrical appliances) belong to the Electricity Distributor and must be kept at the supply premises and used in line with our or their instructions.
- 4.6 We accept no responsibility for maintaining your electrical appliances.
- 4.7 The Metering Equipment shall remain the property of the Electricity Distributor and may be removed or disconnected by them in the following circumstances:

- a) Under Our instruction;
- b) For safety;
- c) Suspected interference reasons; or
- d) Where there is no active supplier at the Supply Points.

## 5. Price and Payment

- 5.1 We will send you regular invoices and/or statements which will set out the amount payable by you and the balance on your account. You will pay the amount due in accordance with the method of payment agreed between us. If anyone else uses the Energy supplied to the Supply Point, You shall be responsible for paying the Energy Charges incurred.
- 5.2 You shall pay the amount due to us by the payment date(s) shown on the invoice or by the payment date that may otherwise have been agreed by us. If any amount remains unpaid 14 days after the due date for payment, We may (in addition to any other remedies We may have) charge interest on a daily basis at the rate of three per cent (3%) above the then current European Interbank Overnight Rate; and if any amount remains unpaid after 21 days from the due date for payment We may also invoke clause 7.3 and/or clause 7.6
- 5.3 Payments received from you and any interest charges shall be applied to accounts in the order in which they were issued or made. If you pay us any amounts under the Agreement, We will apply the sum received from you against the Charges in the order that they became due. We will credit or debit your account with any balance (if any) in your next bill or statement.
- 5.4 You shall make all payments without deduction or set off.
- 5.5 If you pay by direct debit and your direct bank transfer arrangement is cancelled by you without our prior agreement, we shall be entitled to change the Prices to Our non-direct debit price until such a time as your direct bank transfer is re-instated. We may also apply an admin fee to your account which we will advise you of in writing.  
The Energy Charges may be varied (in accordance with clause 11):
  - a) To reflect any variation in any element of the costs to Us of providing the supply of Energy that are not within Our reasonable control, including but not limited to:
    - i. Any variation in the use of system charges or transportation charges made by the Electricity Distributor
    - ii. Where there are abnormal or excessive costs incurred in the meter reading; and or
    - iii. Pass Through Charges.
  - b) If any of the registration details of any Supply Point materially differs from that specified in the Contract;
  - c) At any time during the term of this Agreement (subject to any provisions to the contrary specified in the Contract);
  - d) If You add or remove Supply Points in accordance with clause 6.1;
  - e) Where clause 2.5(c) applies.
- 5.6 If You have terminated this Agreement in accordance with clause 7.1 but Your Subsequent Supplier does not have a confirmed Registration for each Supply Point on the date of termination We shall be entitled by notice in writing to You to vary all or any of the Prices for any Energy supplied to You during the period from the date of termination to the date that the new Supplier is Registered for the Supply Point.
- 5.7 If the information for charging purposes under this Agreement is not available at any time for whatever reason (including the inability to obtain a meter reading) then We may estimate the amount due and that amount shall be paid by You, subject to any subsequent adjustments which may be necessary once We have obtained an up to date meter read.
- 5.8 If any payments made by You by direct debit are returned unpaid You agree and acknowledge that We will be permitted to make representation to your bank for all amounts unpaid within 7 days of notification of return by Your bank.
- 5.9 If it is discovered and verified that a meter reading has been inaccurate or omitted or the translation of readings into amounts payable has been incorrect then Your account shall be amended accordingly.

- 5.10 If any Pass through Charges are made to Us by Your Electricity Distributor or a third party in connection with the supply of Energy to any Supply Point, We shall be entitled to invoice the amount to You and You will reimburse Us for any such amount.
- 5.11 If you experience any difficulty in paying the amounts due to us under this Agreement, please contact us immediately so that we can provide advice and, where appropriate, agree a payment plan or other arrangements with you.
- 5.12 From time to time, we may, in our sole discretion, offer certain specified categories of commercial customers (which may or may not include you) special tariffs for a certain period of time to be determined by Us.
- 5.13 We are not required to notify You of any special tariffs introduced by Us from time to time. We shall have no liability to You and will not be held accountable in the event that you do not avail of any such special tariff or you have chosen the incorrect tariff. If Your Energy consumption is in excess of what we deem (acting reasonably) to be appropriate for a commercial customer, we will notify you of this and we may change you to an alternative tariff that would be more appropriate for your consumption.
- 5.14 If You pay an equal amount by direct debit each month We may, by giving You notice, change the monthly amount following, for example, a review of your consumption levels or any variation to the Energy Charges.
- 5.15 If you are due for disconnection and do not make an arrangement for payment following this disconnection, your remaining electricity supply will then be disconnected.

## **6. Variations in Supply Points**

- 6.1 The Parties may agree to add or remove a Supply Point to this Agreement. However, this may affect the Energy Charges.
- 6.2 You shall remain liable for all Energy Charges associated with the supply of Energy to a Supply Point whilst it is being supplied by Us under this Agreement.
- 6.3 In the event that any information You provide is incorrect the potential consequences are as follows:
  - a) We may revise the Prices and You shall be liable to pay the revised Energy Charges; and/or
  - b) You shall be liable to pay all Energy Charges associated with the difference between the correct and incorrect information; and/or
  - c) You shall pay our administrative charges for the handling and rectification associated with the incorrect information; and/or
  - d) We may terminate this Agreement in accordance with clause 7.3(f).

## **7. Termination and De-Energisation**

- 7.1 You can terminate this Agreement by giving us not less than 14 days written notice (which shall not expire before the First Termination Date or anniversary thereof if this Agreement is for a fixed term)
- 7.2 If, on the date you want to terminate this Agreement, Your subsequent Supplier has not completed Registration for each Supply Point, the provisions of this Agreement will, subject to clause 4.6, remain in force for any Supply Point for which we are still the registered Supplier.
- 7.3 We may terminate this Agreement (in whole or in part) and/or arrange for the de-energisation of Your electricity supply to any Supply Point immediately upon given, written notice to You if:
  - a) You fail to pay any amount properly due and payable to Us under this Agreement; or
  - b) Without prejudice to clause 7.3(a) above, You are in breach of any term or condition of this Agreement and the Connection Agreement and (if it is capable of remedy) You fail to remedy such breach within 14 days; or
  - c) You, in Our reasonable belief, have made unauthorised use of Energy or committed theft of Energy; or
  - d) An interim order or bankruptcy order or any event analogous to the foregoing is or is about to be made in respect of Yourself; or an interim trustee or trustee in bankruptcy is appointed over Your estate or You are apparently insolvent or a resolution is passed or an order is made for Your winding up; or a receiver, examiner or administrative receiver is appointed over the whole or any part of Your assets or You are unable to pay Your debts or You cease or You cease or threaten not

- to pay Your debts as they fall due or seek to make any composition or arrangement with Your creditors or any event analogous to the foregoing; or
- e) You do not make any security deposit to Us under clause 3.1 within 14 days of being so requested; or
  - f) Any information You provided Us is incorrect; or
  - g) If the Regulator directs another Supplier to take over Your Energy supply; or
  - h) If we are unable to supply Energy to the Supply Points
- 7.4 Upon termination of this Agreement or de-energisation of Your electricity supply for whatever reason You shall pay to Us all sums then due and payable or accrued due under this Agreement and any costs reasonably incurred by Us (including Pass Through Charges) as a result of such termination or de-energisation (or re-energisation if applicable).
- 7.5 If You are on a fixed term contract and during the period up to the First Termination Date (or any anniversary thereof) a Supply Point is being Registered or has been Registered by another Supplier for the Energy supply that is the subject of this Agreement, for any reason other than as a result of any default by Us or proper termination of this Agreement, then either
- a) You authorise Us and shall provide Us with all reasonable assistance required to either, at Our discretion, (i) to the extent that We are allowed, raise an objection to such registration or (ii) re-register the Supply Point, or
  - b) Pay Us a sum calculated as the average monthly amount (as determined by Us) times the number of months left in the Agreement (subject to a maximum of six months). This termination fee will be applicable unless otherwise stated in your Agreement contract confirmation.
- 7.6 In the event that any amount due remains unpaid after the due date for payment then, to the extent that we are allowed, we shall be entitled to object to the registration by another Supplier of any Supply Point We supply under this Agreement.

## **8. Failure or Temporary Discontinuance of Supply**

- 8.1 The supply of Energy at any Supply Point may be suspended or interrupted:
- a) In the event of Force Majeure; or
  - b) In respect of an electricity Supply Point, at any time and for so long as the Electricity Distributor disconnects or de-energises that Supply Point pursuant to the SCA or otherwise; or
  - c) To avoid danger or for safety reasons or;
  - d) As a result of a legal or regulatory requirement.
- 8.2 If the supply of Energy to any Supply Point or any part thereof is temporarily discontinued at your request, you shall pay us on demand and any costs incurred by us as a result of such discontinuance and the subsequent resumption of the supply of Energy (including any payments which we are required to make to any Electricity Distributor).

## **9. Liability**

- 9.1 Neither party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.
- 9.2 Subject to clause 9.3 neither Party shall be liable to the other Party for loss or damage arising in connection with this Agreement (whether resulting from breach of this Agreement, negligence or otherwise) except for loss or damage arising in connection with this Agreement which was reasonably foreseeable as likely to result from such breach and which resulted from physical damage to the property of the other Party or to the property of any third party for which the other Party is adjudged liable provided that:
- a) Our liability under this clause 9.2 shall be limited to €120,000 for each incident or series of related incidents; and
  - b) Neither Party shall in any circumstances be liable to the other Party for any loss of profit, revenue, business, savings (anticipated or otherwise) or any other form of economic or indirect or consequential loss. For the purposes of this clause 9.2, property shall include work in progress valued at cost.

9.3 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or Your liability for any sums properly due to us under this Agreement.

9.4 Where We provide You with data electronically, We shall use reasonable endeavours to ensure that such data shall be free from any errors, defects or viruses but no representations or warranties are made or given as to such matters or as to the compatibility of the data with any of Your equipment and, subject to clause 9.3, We shall have no liability to You in respect of such matters.

## **10. Disclosure and Debt Flagging**

10.1 With respect to Your Agreement, You consent: -

- a) To the disclosure to any person of information relating to the supply of Energy to enable Us to properly perform our respective obligations under or in relation to this Agreement or the supply of Energy to any Supply Point;
- b) To the disclosure of Your information to the Electricity Distributor for purposes relating to your SCA agreement;
- c) To keep Us informed if a person with special needs resides or ceases to reside at the supply address(es)

10.2 Subject to clause 10.1 both Parties shall take all reasonable steps (except where otherwise required by law) to keep confidential any commercially confidential information in this Agreement that is not in the public domain and any information concerning the other Party's business which that Party may (by written notice) reasonably designate as confidential.

10.3 If You are a Non Daily Metered Customer when Your request to switch to Us is processed, Your current supplier will notify Us if You are in Arrears for more than the levels set for all customers by the Regulator. If We decide not to carry out the switch because of Arrears, We will tell you in writing. (Arrears meaning an overdue payment that has not been paid).

10.4 If You choose to switch to another Energy Supplier and You are found to be in breach of the Regulator approved debt thresholds, a debt flag will generate on your account. This debt flag will inform the acquiring Supplier that you are in breach of these thresholds. For details of the approved debt thresholds, please see [www.cer.ie](http://www.cer.ie)

## **11. Waiver**

No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it. Nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

## **12. Variation**

We can vary these terms and conditions (including Price). If the variation is to your significant disadvantage, we will publish the variation in accordance with our electricity license as applicable.

## **13. Notice**

Written notice under this Agreement shall be given or sent by hand, a recorded delivery, facsimile transmission, email or post to Your address or to Us at our Customer Service Department, Panda Power, Ballymount Road Upper, Ballymount, Dublin 24 (and may include a note on your invoice or statement, an email or notice on Our website). Any notice given by post shall be deemed to have been received 5 days after it was sent and a notice delivered by hand, facsimile transmission, email or published on Our website, shall be deemed to be served upon actual delivery, successful transmission or publishing provided that in the case of facsimile or email it was sent to the correct number or address and that facsimile confirmation shall have been kept and/or no email transmission error was received.

## **14. Assignment and Sub-Contracting**

This Agreement is personal to you and may not be assigned or transferred by you without our prior written consent. We may assign or transfer all or part of our rights under this Agreement and subcontract any of our obligations without your consent.

## 15. Entire Agreement

This Agreement and any document referred to herein represent the entire understanding, and constitutes the whole agreement, in relation to the subject matter and supersedes any previous agreement between the Parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.

## 16. Law and Jurisdiction

If each of the Supply Points is situated in the same country, this Agreement shall be interpreted in accordance with the laws of, and the Parties submit to the exclusive jurisdiction of the courts of the country in which the Supply Points are situated. If all of the Supply Points are not situated in the same country, this Agreement shall be interpreted in accordance with the laws of, and the Parties submit to the exclusive jurisdiction of the courts of the country in which the majority of the Supply Points are situated. Reference to any statute or statutory provision includes a reference to:

- a) That statute or statutory provision as from time to time amended, extended, re-enacted or consolidated from time to time whether before or after the date of this Agreement; and
- b) All statutory instruments made pursuant to it.

## 17. Connection Agreements

- 17.1 This clause 17 shall apply where there is no pre-existing connection agreement between you and Your Electricity Distributor in relation to a specific Supply Point.
- 17.2 It is a condition precedent to a supply from Us to You under this Agreement that You have a SCA Connection Agreement and keep to its conditions
- 17.3 The Electricity Distributor may deem that SCA in the name of a previous occupant of the premises shall apply to you. In that case, you do not need to enter into a new SCA, but you must keep to the conditions of the existing SCA.
- 17.4 You may obtain a copy of the SCA conditions from the Electricity Distributor.

## 18. Emergencies and Safety

- 18.1 Electricity
  - a) You must tell your Electricity Distributor immediately if You are aware of any incident that either:
    - i. Causes danger or requires urgent attention regarding the supply or distribution of electricity; or
    - ii. Affects or is likely to affect the maintenance, availability and quality of service of the electricity distribution network.
  - b) The emergency contact number is 1850 372 999. Contact details are also printed on all statements and bills.

## 19. Codes of Practice

- 19.1 Our Codes of Practice, which are approved by the Regulator, set out our commitments to you regarding the service levels that you, as a customer, can expect from us.
- 19.2 There are 3 Codes of Practice:
  - a) Marketing and Sign Up;
  - b) Billing and Disconnections; and
  - c) Complaint Handling

Our Codes of Practice are available on our website [www.pandapower.ie](http://www.pandapower.ie) or you may request a copy by contacting our Customer Service Department