

# Standard terms & conditions for the supply of gas by Business Energy Solutions Limited or the supply of electricity by BES Commercial Electricity Limited

## A. Introduction

- Business Energy Solutions Limited is licensed to supply gas to non-domestic premises and BES Commercial Electricity Limited is licensed to supply electricity to non-domestic premises.
- These terms and conditions refer to BES but in relation to gas this means Business Energy Solutions Limited and in relation to electricity this means BES Commercial Electricity Limited.
- References to "we", "us" or "our" means the relevant BES entity and "you" or "your" means the person or business being supplied or intending to be supplied by us.
- You agree and understand that this contract is legally binding and you must carry out your obligations. In advance of the contract you have confirmed that:
  - you are the owner or occupier of the site or you have the authority to enter into a contract to purchase energy for the site;
    - the site is connected;
  - and that you will provide:
    - suitable credit references and security cover, if requested by us;
    - a best estimate of the EAC and/or AQ for each site.

## B. Contract Forms

- The contract is between us and you and these terms and conditions apply to all new contracts sold from 1<sup>st</sup> February 2010 for the supply of gas or electricity to business, or predominantly business, premises. The terms and conditions cover:
  - Fixed price contracts billed monthly:
    - based upon your gas or electricity usage;
    - in equal amounts based upon your estimated consumption of gas or electricity over the contract period;
  - Contracts with fixed prices initially but where, subject to certain conditions, prices may vary in the future, billed monthly:
    - based upon your gas or electricity usage;
    - in equal amounts based upon your estimated consumption of gas or electricity over the contract period or, when prices change, over the remaining contract period;
  - Tracker contracts, that track wholesale energy and other cost movements, billed monthly:
    - based upon your gas or electricity usage;
    - in equal amounts based upon your estimated consumption of gas or electricity over the contract period or, when prices change, over the remaining contract period;

*Price tracker contracts will be reviewed every April and October over the course of the contract. The first review will be between 6 months (for contracts starting in April or October) and up to 11 months (for contracts starting in May or November). Thereafter reviews will be every 6 months.*

  - Default rates, where the payment terms agreed for contract forms 1-3 are not maintained by the customer, we will set a default rate that will apply until such time as you return to the payment terms required by the contract.
  - Out-of-contract terms, where an existing contract has expired and a new contract has yet to be agreed by you. Actual usage, or deemed usage in the absence of monthly data, will be billed monthly;
  - Deemed contracts, where there is no current or recent contract between you and us for the supply of gas or electricity to the premises. Actual usage, or deemed usage in the absence of monthly data, will be billed monthly.
- Contracts in 1.b may see price changes for gas and electricity in the event of significant changes in wholesale market energy and other costs of gas and electricity respectively, or in the event of significant increases in charges for transmission, distribution or metering services.
- Contracts in 1.d are triggered by your failure to maintain payment by Direct Debit as agreed and therefore the prices applied incentivize a prompt return to this required payment method.
- Out-of-contract prices in 1.e and 1.f reflect the short-term nature of the contractual relationship and the inherent and increased commercial risks borne by us. Therefore prices will normally be in excess of standard contract forms in 1-3 above.
- The specific details of your contract, details about your site or sites, the contract term, prices and the contract renewal process, including the

renewal date, will accompany these terms and conditions.

## C. Registration

- We will seek to supply energy to you under this contract provided that we can confirm the address of each site supply point, MPAN and/or MPRN and that there is nothing to prevent us being registered as your supplier.
- When necessary, you will help us become registered as your supplier including arranging for any transfer objections to be lifted, if we request you to do so.
- You will not seek to extend your existing contract with your current supplier or enter into a new contract with another supplier whilst you are seeking to have us registered as your supplier. *If we are unable to complete registration because of your failure to fulfill any aspect of conditions C.1 – C.3 we may seek, and you will be liable for a termination fee.*
- In the event that we are delayed in registering as your supplier we will not be liable for any loss you suffer as a result.

## D. Contract start and operation

- We shall provide the supply to the supply point at each site with effect from the supply start date on and subject to the terms of this contract and in accordance with regulations from time to time made under the Acts.
- The contract shall be on these terms and conditions only (together with the terms detailed in the document titled *Additional Information to accompany BES's standard Terms & Conditions*). This contract shall, subject to termination in accordance with the provisions of this contract, remain in force for the contract term as a minimum.
- Thereafter it shall continue for successive extension periods of not more than twelve months unless either party gives to the other not less than 60 days (but not more than 90 days if you are not a micro business) written notice to terminate this contract, such notice to expire only on an anniversary of the supply start date.
- If you are a micro business, we will send you a written renewal reminder at least 90 days before the end of the initial contract or any subsequent extension to it. This notice will constitute the statement of renewal terms and will confirm the termination process and the relevant address to which you can send a termination notice.
- If we supply you with electricity under this contract, you are also entering into a standard connection agreement for your electricity with your local electricity network operator as described below, where your supplier means us (there is no similar agreement for gas). Your supplier is acting on behalf of your network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties relating to the connection at which your network operator delivers electricity to, or accepts electricity from your home or business. If you want a copy of the NTC or have any questions about it, please write to:

*Energy Networks Association  
6th floor  
Dean Bradley House  
52 Horseferry Road  
London  
SW1P 2AF  
Phone: 0207 706 5137*

Website: [www.connectionterms.co.uk](http://www.connectionterms.co.uk)
- We shall have the right to object to you transferring to another supplier if:
  - changing supplier would put you in breach of any part of this contract and its legitimate extension;
  - you have not paid all the charges due under this contract;
  - the new supplier agrees with us that the transfer was started in error.

- Where you serve notice of termination but you do not procure the transfer of the site to a new supplier within 24 hours of the end of the contract term, so that the new supplier is your actual supplier of gas or electricity in place of us no later than 24 hours after the end of the contract term, we may set prices at the prevailing out-of-contract terms until the customer's transfer has occurred. We shall be entitled to disconnect the supply at any time after the date of termination.

## E. Payment Terms

- All payments due to be made by you to us under this contract shall be made by direct debit. No other transfer of funds will be permissible unless agreed by us in advance and in writing.
- Charges under this contract are exclusive of VAT, climate change levy and any other tax, levy, duty or charge. You shall pay to us on production of the appropriate tax invoice or other certificate the amount of any United Kingdom tax, duty or impost on gas or electricity on the processing, sale or supply of gas or electricity which is payable by us in respect of the gas or electricity.
- If you dispute any bill or invoice this will not entitle you to withhold payment of any or all of the bill.
- Should the direct debit instruction not be in force, at any time we reserve the right to increase the contract price to the then default rate. The prevailing default rate will be provided by us with the specific contract details (which accompany these terms and conditions) and we reserve the right to charge you at that rate, as amended, until the end of the month during which the direct debit is reinstated.
- In certain circumstances we may decide to place you on a budget plan whereby you shall make equal monthly payments based on anticipated energy usage for the following 12 month period. We shall notify you of our decision in writing and the budget plan shall come into force either at the commencement of the supply by us or on the first day of the calendar month after notification.
- For each site the following provisions shall apply:
  - Where contracts provide for monthly bills to be based upon actual monthly usage, we will invoice each month those sums to be charged to you as follows:-
    - for any daily-read or monthly-read meter the quantity of gas or electricity actually consumed by you in that month shall be charged at the contract price. If no meter readings are available at the end of any month, we may substitute for the quantity actually consumed our best estimate of such quantity.
    - for any meter which is read daily or monthly, the quantity of gas or electricity shall be estimated using industry profile data for the appropriate month or period, and be charged at the contract price. In the event that the meter is read, the gas or electricity actually consumed by you at the site may be reconciled by us and included in the invoice. We reserve the right to vary the estimate of consumption from time to time to take into account the actual quantity of gas or electricity supplied. We shall give prior notice of such variations to you.
    - if we consider that the amount of gas or electricity supplied or likely to be supplied in any month is disproportionately less than the anticipated quantity, you may be charged the unrecovered agency charge.
  - Where contracts provide for monthly bills to be based on a proportion of usage of the contract period, or the remaining contract period, we will invoice each month those sums to be charged in line with the specific contract details that accompany these terms and conditions or as amended, in writing, over the course of the contract.

c. You shall pay the amount due in respect of each invoice within ten days of date of invoice ("the due date"). Failure to pay the amounts due by the due date shall entitle us to charge a "late fee" at its then applicable rate, such charge to be added to the subsequent invoice issued by us. In the event that you fail to pay the subsequent invoice or you have paid later than the due date, we shall be entitled to instigate a site visit for the purpose of:

- establishing your current trading position; and
  - obtaining an independent meter reading to allow reconciliation of your account. We are entitled to charge a "referral fee" at our then applicable rate and any such referral fee shall be included on the invoice issued by us subsequent to such site visit.
- d. Where an invoice has been subject to an estimate and your actual consumption of gas or electricity for the relevant period at the applicable rate plus any other amounts payable by you for that period either exceed or is less than the amount estimated for that period, a reconciliation amount shall be calculated by us from time to time (but not less than once in every 12 months). The reconciliation amount is calculated by reference to the amount by which your actual consumption of gas or electricity for the relevant period at the applicable rate (plus any such other amounts payable by you for that period) exceeds or is less than the amount estimated for that period, on a pro-rata basis, of the minimum payment as calculated by us from time to time. Unless the reconciliation amount is within 20% of the amount estimated for that period, as soon as possible after completing the reconciliation calculation we will send you a reconciliation invoice or credit note and we may vary any monthly instalments payable by direct debit accordingly. If we have consented to payment terms other than by direct debit, any additional amount due may be paid by you to us by bank transfer within 10 days of the reconciliation invoice or a credit amount may be made to your account by us.
- If payment is not received by us by the due date, then without prejudice to any other rights or remedies that we may have, we shall from the due date until payment be entitled to object to you transferring to another supplier and charge interest at the rate of 8% above RBS bank base rate from time to time on overdue amounts from the due date until payment (both before and after judgment).

## F. Security Cover

- We shall be entitled to demand security cover of such amount as we deem appropriate over the contract term.
- If you provide cash as security cover we will return any balance after deducting any cash due to us once you have transferred to a new supplier and following receipt of a written request from you for the return of the security cover.
- In the event that we believe you have suffered a material and adverse change in your financial standing we may require you to provide, or increase any existing, security cover. This requirement will be notified to you in writing and shall specify the form acceptable to us. The notice will also specify the timing of the requirement and failure to comply shall be treated by us as a material breach of this contract.
- We will not pay you interest on any cash provided as security cover.

## G. Contract termination

- You may not terminate this contract before the end of the contract period or any extension of this except when:
  - you are about to stop trading at the site and you have notified us in writing that you wish to have the site isolated or de-energised, whereupon the appropriate isolation or de-energisation fee will be payable by you to us;
  - you are to vacate the site and you have provided us with legitimate details of the new

owner or occupier in writing, including, where required, the provision of supporting documentation. Without this information we may continue to invoice you for all gas or electricity supplied to the site until the termination of the contract even if you cease to be the owner, tenant or occupier of the site.

2. For the avoidance of any doubt you should, whenever possible, give us no less than fourteen days notice of your ceasing to be the owner, tenant or occupier of the site. Failure to notify us of your vacating the site may lead to additional charges to recover our increased administrative costs and any early termination fees that may apply.
3. The contract will end if we no longer are licensed to supply energy or we no longer fulfill those industry agreements that are necessary for us to be able to supply energy or because a supplier of last resort direction in respect of the site or sites supplied under this contract is awarded to another supplier.
4. In the event of a material breach of the contract by either party the other may end the contract by giving written notice. Such notice comes into effect immediately if the party in breach has failed to remedy the breach within a reasonable period of being asked to do so, where the reasonable period is likely to be between seven and twenty one days depending upon the nature of the breach.
5. Any insolvency, voluntary arrangement for the benefit of creditors, receiver, administrator, administrative receiver or bankruptcy order will lead to immediate termination of the contract. However, at our discretion and in certain circumstances we may continue to supply the site under the terms of the contract.
6. After termination you will be liable for any charges for energy consumed before termination at the charges under the contract and any energy used after termination at the out-of-contract level. We will be able to recover those sums owed to us for energy or costs incurred while the contract was in place or until the site is registered with another supplier.
7. We may charge you a termination fee if this contract ends prematurely because you have failed to fulfill your obligations set out in these conditions. This termination fee may include the costs of any disconnection and any other costs we incur, including losses on the energy we would have supplied to you and the wholesale market price we could obtain for that energy.

#### H. Measurement

1. The gas or electricity supplied by us shall be measured by a meter and the reading shown on the meter shall be prima facie evidence of the volume of gas or electricity consumed under this contract, unless the meter is found to be registering erroneously to a degree exceeding that permitted by relevant regulation.
2. The amount of gas consumed in energy terms shall be calculated using standard industry methods referred to in the Gas Supplier's Licence, as issued by The Gas and Electricity Markets Authority. In accordance with Paragraph 2 of Schedule 7 of the Electricity Act it is agreed that the meter for electricity need not be certified.
3. We shall use reasonable endeavours to obtain at least one actual reading from the meter in any two-year period. The remaining periodic readings may be estimated by us for the purposes of calculating charges payable by you. You undertake to ensure (at your sole expense) that access is made available to the metering point(s) during normal business hours, at times to be agreed, when required by us or our agents.
4. From time to time we may ask you to read the meter and submit the reading to us. If you fail to submit a reading we may have to arrange for one to be undertaken on our behalf and we may charge you any additional costs we incur.
5. You shall remain responsible for your equipment and shall ensure that it is maintained in good working order and condition at all times, and you shall also be responsible for any physical damage or damage due to overloading to your equipment and our equipment (unless such physical damage or damage due to overloading is caused directly by us).

#### I. Access

1. You shall permit access to the meter as is reasonably required for the purpose of reading, inspecting, testing, repairing, renewing or verifying its accuracy. If access is denied by you then we will be entitled to charge you any costs arising from the visit.
2. We do not guarantee the accuracy of any data provided to you and we are not liable for inaccuracy of this data.
3. We or you may, at our/your own option and expense, install and operate measuring devices to check the meter provided that such devices do not interfere with the operation of the meter.
4. You may at any time, by giving reasonable notice in writing, request us to arrange that the meter be verified for accuracy. If a verification check shows that the meter is within plus or minus two per cent of accuracy, the costs of such verification check shall be borne by you. If the meter is outside these limits we will bear the cost of verification check.
5. You shall provide a meter reading immediately to us on entry to and on vacating the site. If readings are not provided we will impose suitable readings and these will be the basis for our calculations.

#### J. Safety

1. We will take reasonable steps to keep supplying you but we cannot guarantee an uninterrupted, unreduced or unimpaired supply of gas or electricity on a continuous basis and we give no warranty or undertaking nor should any such be implied in this regard.
2. In this context such supply will be in accordance with regulations made under Section 16 (1) of the Gas Act 1986 with regard to pressure, purity and uniformity and the Electricity Supply Regulations 1988 with regard to permitted supply variations.
3. Our supply to you does not mean or imply that your installation and equipment is adequate and we accept no responsibility for ensuring their adequacy, safety and suitability.
4. You will immediately notify any gas leak to the appropriate emergency contacts as identified or amended by us. The appropriate telephone number is 0800 111 999 unless otherwise notified.

#### K. Deemed contracts

1. In the event that you are being supplied by us under a deemed contract you can terminate this contract by providing us with not less than 28 days prior written notice, such notice to be sent to BES by post.
2. Charges will be calculated and applied from either the date of the last meter reading as available or as reasonably estimated by us (unless otherwise agreed between you and us) and shall be as notified to you from time to time or as amended by us.

#### L. Confidentiality

1. Neither party shall disclose to any third party or make use of any confidential information that has come into its possession in the course of this contract without the prior written consent of the other party nor shall it disclose to any third party anything contained in this contract.
2. This restriction shall continue to apply unless and until such information comes properly into the public domain through no fault of either party.
3. The obligations of this condition continue notwithstanding any termination of this agreement.

#### M. General

1. These terms and conditions are subject to changes to the Acts, any other primary legislation, secondary legislation, or any law, regulation and industry agreements, standards, codes or licence conditions. We will notify you of the necessary changes and their effective date. All communication that you send to us under this contract must be delivered in person, by first class mail to the addresses provided in our statement of renewal terms or,

in the case of deemed contracts, to the addresses in K.1. We will not accept any communication from third party intermediaries on your behalf.

2. You will not assign, novate or transfer your rights or obligations under this contract without our prior written consent. We may sub-contract, assign, transfer or novate any (or all) of our rights or obligations under this contract at any time without notice to you.
3. A waiver of any breach will only be valid if it is in writing and any waiver is without prejudice to any other or future breach.

#### N. Definitions

In these terms and conditions:

**"Acts"** means the Gas Act 1986 and/or the Electricity Act 1989 (as appropriate) as amended by the Utilities Act 2000 and as amended or supplemented from time to time.

**"AQ"** means the estimated annual consumption of gas for each site per year.

**"climate change levy (CCL)"** is the tax payable by industrial and commercial companies for using gas or electricity as set out in Schedule 6 of the Finance Act 2000.

**"contract"** shall mean the supply contract between you and us incorporating the terms and conditions. The contract applies even when existing contracts have lapsed if no new contract has been agreed between you and another energy supplier, although prices may change at the end of the initial contract period. In the case of deemed contracts this contract will apply even where a supply contract has not been agreed between you and us.

**"contract price"** means the price of gas or electricity agreed with you at the point of sale and as confirmed by us in writing, or as subsequently amended in line with the contract provisions, when these apply, or as specified by us in the case of out-of-contract terms and deemed contracts.

**"contract term"** shall mean any period beginning on the contract date and ending at 0600 hours on the next anniversary of the supply start date.

**"EAC"** means the estimated annual consumption of electricity for each site per year.

**"electricity"** shall mean all electricity supplied to the customer by us in accordance with this contract.

**"gas"** shall mean all natural gas supplied to the customer by us in accordance with this contract.

**"late fee"** means a charge applied when the amounts due are not paid by you by the due date.

**"meter"** shall mean the measuring equipment installed at or near the supply point at each site.

**"micro business"** is defined as one that meets at least one of the following conditions:

- An electricity consumption of less than 55,000 kWh per year
- A gas consumption of less than 200,000 kWh per year
- Fewer than 10 employees (or their full time equivalent) and an annual turnover or yearly balance sheet total of less than Eur2 million

**"month"** shall mean a period beginning at 0600 hours on the first day of any calendar month and ending at 0600 hours on the first day of the next calendar month.

**"MPAN"** means the meter point administration number given to each electricity meter.

**"MPRN"** means the meter point reference number given to each gas meter.

**"network operator"** means the company licensed to operate the electricity distribution network in your area.

**"parties"** shall mean us and you and "party" shall be construed accordingly.

**"referral fee"** is the additional charge levied to recover the costs incurred by us or our agents when requesting and making a site visit.

**"renewal date"** is the day on which the initial contract term or an extension to this contract ends.

**"renewal reminder"** means a notice sent to customers in advance of the renewal date incorporating the charges that will apply during any extension period.

**"site"** shall mean the location at which you carry on your business and which is identified in the recordings and within the contract. The site may be amended from time to time by agreement in writing between us.

**"statement of renewal terms"** means a written statement explaining the process for contract renewal and termination. We will send you the statement when you enter into a contract, when your contract is extended and, if you have not indicated your intention to terminate the contract, when we send you a renewal reminder.

**"supply"** shall mean the provision of gas or electricity in accordance with this contract.

**"supply start date"** shall mean the date agreed by the parties in the recording and or within the contract. If no date is specified we will subsequently notify the customer of the effective supply start date.

**"supply point"** shall mean the point of connection between the licensed network and your apparatus or equipment.

**"termination fee"** shall be the charge levied by us, if any, and payable by you in the event of

termination of the contract before the renewal date.

**"terms and conditions"** shall mean the standard terms and conditions of supply set out in this document together with any special terms accompanying this document.

**"unrecovered agency charge"** shall mean the charge that we may levy in respect of the site as notified to the customer from time to time. The charge recovers those fees incurred by us, and associated expenses, that are unrecovered when your gas or electricity usage falls significantly below those levels anticipated when the contract was agreed.

**"VAT"** means value added tax, described in the Value Added Tax Act 1994.