

1 INTERPRETATION:

The definitions and rules of interpretation in this clause apply in these terms and conditions.

Assessor:	a registered commercial Premises energy assessor who is a member of a government approved certification scheme and who is competent to inspect and report upon the Premises which is the subject of these Terms.
Pre-inspection documentation:	reports plans and other associated documents which are required to enable the Supplier to calculate its fee to carry out the EPC inspection.
Business day:	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
Communal facilities:	parts of the Premises which are shared by the Client and other parties.
Contract:	the Customer's purchase order and the Supplier's acceptance of it under condition 3.
Client:	the person, firm or company who purchases Services from the Supplier.
Energy Performance Certificate (EPC):	a standardised document which rates the energy efficiency and carbon dioxide emissions of a Premises and Recommendation Report. The Assessor will prepare the EPC using specialised Simplified Building Energy Model software.
Fee:	the price to be paid by the Client for the provision of the EPC.
Premises:	the building to be assessed for the EPC.
Recommendation Report:	a standardised document which provides non-legally binding recommendations to improve the energy rating of the building.
Required Information:	documents, plans and other associated documentation to allow the Supplier to calculate the fee.
Services:	the preparation of an EPC for the client.
Supplier:	Eco Efficiency whose registered office is: 10 St John's Court, West Lane, Forest Hall, Newcastle upon Tyne, NE12 7AF
VAT:	value added tax chargeable under English law for the time being and any similar additional tax.

- 1.1. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7. A reference to writing or written includes faxes and e-mail.
- 1.8. References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9. 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 trade, custom, practice or course of dealing.
2. **FEES QUOTATION:**To enable the Supplier to provide an accurate fee quotation, the Client at his expense will provide the following information to the Supplier:
 - 2.1.1. the type, size and age of the Premises to be inspected; and
 - 2.1.2. any pre-inspection documentation that the Supplier reasonably believes to be necessary such as, but not limited to, building drawings, HVAC and hot water services, lighting, air pressure tests under Part L building regulation approvals, an electric or hard copy of the Asbestos Register. The Assessor will produce a sketch plan on site if the Client is unable to provide site plans.
- 2.2. In the absence of part or all required information or if the Supplier considers that the information supplied by the Client is materially incorrect, the Supplier reserves the right to charge additional fees to the client, such fees to be confirmed with the Client in writing.
3. **SUPPLIER'S ROLE:**
 - 3.1. The supplier's role is limited solely to prepare an EPC for the client.
 - 3.2. The client acknowledges that the supplier has not made any representations as to whether an EPC is required for the premises (either for the entire premises or for any part of it) and the decision to commission an EPC from the supplier is the client's alone.
 - 3.3. The supplier cannot comment on the accuracy or validity of any EPC which has not been prepared by the supplier. In such circumstances, the customer is recommended to contact the original authors of the report for further advice.
4. **SCOPE OF THE EPC:**
 - 4.1. The EPC is an advisory report only and its scope is limited strictly to providing information on energy efficiency and excludes all other issues, such as, but not limited to, building condition, structural defects or health and safety risks. The client must arrange separately and at their own expense, a suitably qualified independent professional to advise on issues which are not covered by an EPC or its recommendation report, such as, but not limited to, methods to improve the energy efficiency of the premises;
 - 4.2. The EPC must follow an industry prescribed standardised format and that neither the Supplier, Client or Assessor have the authority to amend the format;
 - 4.3. In exceptional circumstances, the Supplier may arrange a subcontractor to inspect the Premises and prepare the EPC and Recommendation Report for the Client.
 - 4.4. Measurements and sketches relating to floor plans and dimensions are not warranted as to their accuracy.
5. **CLIENT'S OBLIGATIONS PRIOR TO THE INSPECTION:**

- 5.1. If any part of the premises to be inspected contains communal or shared facilities, then the Client will provide the Supplier with written consent from the building owners or landlords to allow the Assessor to inspect the communal facilities, such consent to be provided no later than three working days ('the time period') before the inspection date.
- 5.2. If the Client is unable to obtain consent within this time period, then the Supplier reserves the right to cancel the appointment and charge the Client a cancellation fee, such payment to be made by the Client under the terms of clause 6.

6. THE INSPECTION:

- 6.1. The Assessor will inspect the inside and outside of the building, its services (HVAC and hot water) and lighting within the building.
- 6.2. The Client agrees that the inspection will be limited to a 'non-invasive' examination; for example the Assessor will not take up any floor coverings, inspect spaces above suspended ceilings, remove secured panels or undo electrical fittings, move equipment or enter any service cupboards or plant rooms if in the sole opinion of the Assessor there may be a risk of personal injury or death.
- 6.3. The Assessor will not proceed with the inspection if, after arriving at the Premises, the Assessor concludes:
 - 6.3.1. the Premises is of a type of construction or has HVAC/Lighting installations of which the Assessor has insufficient specialist knowledge to be able to provide the Service satisfactorily. In such cases the Supplier's liability to the Client will be strictly limited to the arrangement of a further appointment with a new Assessor at a mutually convenient date; or
 - 6.3.2. that in the opinion of the Assessor, the Premises is significantly different in construction type, conditioned space and size to the description given by the Client. In such cases the Client will remain liable to pay the Supplier's fee.
 - 6.3.3. there are health and safety concerns that warrant would put the assessor at risk.
- 6.4. In the case of cancellation by the Assessor, the reason will be explained to the Client.

7. TERMS OF PAYMENT:

- 7.1. The Client agrees to pay the Supplier's fee:
 - 7.1.1. within five working days of the date of the EPC inspection unless agreed otherwise in writing by the Supplier's financial controller or managing director; and
 - 7.1.2. in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 7.2. The Supplier will lodge the EPC with Landmark as soon as reasonably practical after the fee has been paid unless otherwise agreed in writing with the Client.
- 7.3. If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 8% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.4. The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

8. CANCELLATION:

8.1. The Client may cancel or re-arrange the appointment by notifying the Supplier, providing such notice is submitted in writing and received by the Supplier no later than one clear working day before the appointment, otherwise the Supplier reserves the right to charge a cancellation fee £150 plus vat, such payment to be made under the terms of clause 6.

9. DISCLOSURE OF EPC:

9.1. The Report provided is for the client's use in providing information regarding the energy performance of the building for sale or let. The information may be made available to other interested parties at the discretion of the Client. All other uses are expressly excluded.

10. LIMITATION OF LIABILITY:

10.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

10.1.2. fraud or fraudulent misrepresentation;

10.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

10.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

10.1.5. defective products under the Consumer Protection Act 1987.

10.2. Subject to clause 10.1:

10.2.1. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract whether prepared by the Supplier or its subcontractors; and

10.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the fee for the preparation of the EPC.

10.2.3. the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.2.4. the Supplier shall use all reasonable endeavours to meet any performance dates specified by the Client, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

10.3. This clause 10 shall survive termination of the Contract.