

TERMS AND CONDITIONS OF SALE AND SUPPLY OF GOODS

Evergreen Energy Ltd

1. **These terms**

1.1 What these terms cover. These are the terms and conditions on which we supply our goods and products to you, as available on our Website.

1.2 Why you should read them. Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.

2. **Information about us and how to contact us**

2.1 Who we are. We are Evergreen Energy Limited supplying our Homely product range, a company registered established in England and Wales. Our company registration number is 07588438 and our registered office is at Evergreen House The Edge, Clowes Street, Manchester, England, M3 5NA.. Our registered VAT number is 186006315.

2.2 How to contact us. You can contact us by telephoning our customer service team at 0161 818 9005, by writing to us at homely@evergreenenergy.co.uk, when available, by chat via our website (www.homelyenergy.com) or within the Homely Energy App (available on mobile devices via Google Play or AppStore, according to your device's model and brand).

2.3 How we may contact you. If we have to contact you we will do so by telephone, or by writing to you at the email address or postal address you provided to us in your order.

2.4 "Writing" includes emails. When we use the words "writing" or "written" in these terms, this includes emails.

3. **Our contract with you**

3.1 How we will accept your order. Our acceptance of your order will take place when we email you to accept it, at which point a contract will come into existence between you and us.

3.2 If we cannot accept your order. If we are unable to accept your order, we will inform you of this and will not charge you for the product. This might be because the product is out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the product or because we are unable to meet a delivery deadline you have specified.

3.3 Your order number. We will assign an order number to your order and tell you what it is when we accept your order. It will help us if you can tell us the order number whenever you contact us about your order.

3.4 We only sell to the UK. Our website is solely for the promotion of our products in the UK. Unfortunately, we do not deliver to addresses outside the UK.

4. Our products

4.1 Products may vary slightly from their pictures. The images of the products on our website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours accurately reflects the colour of the products. Your product may vary slightly from those images.

4.2 Product packaging may vary. The packaging of the product may vary from that shown in images on our website.

4.3 Products may require wifi. Most of our products require a constant wifi connection, therefore you will need to ensure the wifi connection is available and we accept no liability or responsibility for the performance of the products which arises due to intermittent or weak wifi signal. Please contact our customer services for details of our products which don't require wifi.

5. Providing the products

5.1 Delivery costs. The costs of delivery will be as displayed to you on our website.

5.2 When we will provide the products. During the order process we will give you an estimate date of delivery. We will aim to deliver them to you as soon as reasonably possible and in any event within 30 days after the day on which we accept your order.

5.3 We are not responsible for delays outside our control. If our supply of the products is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.

5.4 If you are not at home when the product is delivered. If no one is available at your address to take delivery and the products cannot be posted through your letterbox, we will leave you a note informing you of how to rearrange delivery or collect the products from a local depot.

5.5 If you do not re-arrange delivery. after a failed delivery to you, you do not re-arrange delivery or collect them from a delivery depot we will contact you for further instructions and may charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and clause 8.2 will apply.

5.6 Direct Home Delivery. Some of our products may be delivered directly to you by our third-party suppliers and manufacturers. **We take responsibility for their performance under the contract, however, please check the Returns address provided in our [Delivery, Return and Refund Policy](#) for details for where to send returns.**

5.7 When you become responsible for the goods. A product will be your responsibility from the time we deliver the product to the address you gave us.

5.8 When you own goods. You own a product once we have received payment in full. The risk in the goods shall pass to you on completion of delivery.

5.9 What will happen if you do not give required information to us. We may need certain information from you, for example, if you do not provide accurate delivery information. We will not be responsible for supplying the products late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it or by you not giving us access as required and mentioned above.

6. Your rights to end the contract

6.1 You can end your contract with us in some circumstances. Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing and when you decide to end the contract:

- (a) If what you have bought is faulty or misdescribed you may have a legal right to end the contract** (or to get the product repaired or replaced or a service re-performed or to get some or all of your money back), **see clause 6.4.**
- (b) If you want to end the contract because of something we have done or have told you we are going to do, see clause 6.2;** or
- (c) If you have just changed your mind about the product, see clause 6.3.** You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions and you will have to pay the costs of return of any goods.

6.2 Ending the contract because of something we have done or are going to do. If you are ending a contract for a reason set out at (a) to (e) below the contract will end immediately and we will refund you in full for any products which have not been provided and you may also be entitled to compensation. The reasons are:

- (a) we have told you about an error in the price or description of the product you have ordered and you do not wish to proceed;
- (b) there is a risk that supply of the products may be significantly delayed because of events outside our control;
- (c) we have suspended supply of the products for technical reasons (or notified you we are going to suspend them for technical reasons) which means there will be a delay in delivery of 4 weeks or more from the originally estimated delivery date; or
- (d) you have a legal right to end the contract because of something we have done wrong.

6.3 Exercising your right to change your mind. Within 14 days from the date of delivery, you have the right to change your mind about buying the products and you will receive a full refund of the amount paid for the products. Do note that if the installation process has been started at the time you notify us of changing your mind you may be responsible for any deduction in value caused by your use/installation.

6.4 Warranty for faulty product. In addition to any Statutory rights you may have, if the product we supply is faulty and the fault is not resulting from your use or installation, then we will repair or replace the product, at our discretion, on the following basis:

- (a) if you have engaged a third party, who is registered with and approved by us, to install the product on your heating system we will repair or replace such faulty products for 2 years from the date of delivery; or
- (b) if you have engaged a third party to install the product on your heating system who is not approved by us, we will repair or replace such faulty products for 1 year from the date of delivery (provided such installer is suitably qualified and experienced).

6.5 If you install the product personally. Please note, that if you install the product yourself the additional warranty in clause 6.4 will not be available to you. In addition, if the fault in the product is found to be caused by your installation or use, then your statutory right to refund, repair or replacement are unlikely to be available and we reserve the right to charge you for these remedies.

6.6 When you don't have the right to change your mind. You do not have a right to change your mind in respect of:

- (a) products sealed for health protection or hygiene purposes, once these have been unsealed after you receive them;
- (b) products which at any time after delivery have suffered accidental damage, including but not limited to installation by you, use not in accordance with instructions or purpose, or having been exposed to liquids or chemical substances; or
- (c) any products which become mixed inseparably with other items after their delivery.

7. How to end the contract with us (including if you have changed your mind)

7.1 Tell us you want to end the contract. To end the contract with us, please notify us by contacting our customer service over phone, email or online chat, if available at the time. Please note you may be required to fill out a form or send us information in order for us to process the cancellation (please see Model Cancellation Form in Schedule 1). We will be deemed notified for the purposes of this clause 7.1 once you have completed such requirements. This means that you informing us that you want to cancel the agreement may not be enough, if we need further information to do so and this is not provided by you, including sending us a form via email if necessary.

7.2 Returning products after ending the contract. If you end the contract for any reason after products have been dispatched to you or you have received them, you must return them to us, or the cancellation process will not be completed. You must either post them back to our manufacturer at the returns address below or as informed by our customer service team when you notify us of your intention to cancel the contract or, if this is available at the time, allow us to collect them from you. If you are exercising your right to change your mind you must send off the goods within 14 days of telling us you wish to end the contract.

Returns address: Evergreen Energy Returns, Dantom Production Solutions, 18 Cameron Ct, Warrington WA2 8RE

7.3 When we will pay the costs of return. We will pay the costs of return:

- (a) if the products are faulty or misdescribed;
- (b) if you are ending the contract because we have told you of an upcoming change to the product or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong.

In all other circumstances (including where you are exercising your right to change your mind) you must pay the costs of return.

We reserve the right to charge for collection of products should we have given this an option to you at cancellation. We will only charge for collection when you have been informed of such charges at the time of cancellation and you have agreed to paying for them.

When, as set out in this clause 7.3, we will cover the costs of return, we will send you a return label at the time of cancellation. You may be required to print out the return label and order details in order to process the return. We will not provide packaging for the return, so it is your responsibility to ensure that the goods are packed in good conditions to go in the mail and arrive to us.

7.4 How we will refund you. We will refund you the price you paid for the products including delivery costs, by the method you used for payment.

7.5 Deductions to refund. If the value of the products returned by you is diminished by any amount as a result of the handling of those products by you beyond what is necessary to establish the nature, characteristics and functioning of the products, we may recover that amount from you up to the contract price. To determine the deduction amount we usually refer to the price we will be able to achieve when re-selling the product, by reference to equivalent products and trading history, so that we have a consistent and transparent method of accounting to you. We may recover that amount by deducting it from any refund due to you or require you to pay that amount direct to us. Handling which goes beyond the sort of handling that might reasonably be allowed in a shop will be "beyond what is necessary to establish the nature, characteristics and functioning of the products" for these purposes

7.6 When your refund will be made. We will make any refunds due to you as soon as possible. If you are exercising your right to change your mind then:

- (a) If the products have been delivered and we have not offered to collect them, your refund will be made within 14 days from the day on which we receive the product back from you or, if earlier, the day on which you provide us with evidence that you have sent the product back to us.
- (b) In all other cases, your refund will be made within 14 days of your telling us you have changed your mind.

8. Our rights to end the contract

8.1 We may end the contract if you break it. We may end the contract for a product at any time by writing to you if:

- (a) you do not make any payment to us when it is due and you still do not make payment within 5 days of us reminding you that payment is due;

- (b) you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the products as set out in this agreement;
- (c) you do not, within a reasonable time, allow us to deliver the products to you or collect them from us.

8.2 What happens when we end the contract. If we end the contract in the situations set out in clause 8.1 we will refund any money you have paid in advance for products we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

9. Nothing in these terms will affect your legal rights. The rights provided under this agreement are in addition to and not in replacement of your legal rights. Some of the rights within this agreement are the same as your statutory rights. When this is the case, they will not add to your statutory rights but instead coexist in relation to them.

10. Price and payment

10.1 Where to find the price for the product. The price of the product (which includes VAT) will be the price indicated on order pages which you will receive via email when you place your order. We use our best efforts to ensure that the price of the product advised to you is correct. However please see clause 10.3 for what happens if we discover an error in the price of the product you order.

10.2 We will pass on changes in the rate of VAT. If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.

10.3 What happens if we got the price wrong. It is always possible that, despite our best efforts, some of the products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the product's correct price at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your order.

10.4 When you must pay and how you must pay. Payments will be made online as instructed on our website. We may use third party software (such as *Shopify* or an equivalent provider as chosen by us from time to time) for payment processing and in doing so the relevant third party's terms and conditions and privacy policy will apply. It is your responsibility to read through them. Should you proceed with payment, we will deem as you having accepted those terms in full.

10.5 What to do if you think an invoice is wrong. If you think an invoice is wrong please contact us promptly to let us know.

11. Our responsibility for loss or damage suffered by you

11.1 We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

- 11.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the products, including the right to receive products which are: as described and match information we provided to you and any sample or model seen or examined by you; of satisfactory quality; fit for any particular purpose made known to us; supplied with reasonable skill and care and, where installed by us, correctly installed; and for defective products under the Consumer Rights Act 2015.
- 11.3 When we are liable for damage to your property.** If we have entered or otherwise provided services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the services.
- 11.4 We will not be liable for any damages related to the installation of the products, when installation was not directly performed by us, our employees, agents or subcontractors.** For the avoidance of doubt, we will not be liable for any issues originating from the installation of the products performed by you or by a third party contracted by you to provide the installation, even if in any of these situations we have provided you with installation instructions or the installer is previously approved by us.
- 11.5 We are not liable for business losses.** We only supply the products under these Terms for domestic and private use. If you use the products for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity. **Please contact our customer service team and ask about our business focused products and offers.**
- 11.6 We do not guarantee that the use of any products provided under this agreement will reduce or bring any beneficial changes to your heating system costs.** For the avoidance of doubt, in no circumstances will we be liable for any change in costs associated with your electricity supply and/or heating system, including but not limited to energy supply bills.
- 12. How we may use your personal information**
- 12.1 How we may use your personal information.** We will only use your personal information as set out in our Privacy Policy, as updated from time to time and available on our website. Please note that we do share personal data with our third-party suppliers and manufacturers when they deliver direct to you, but we ensure this is secure and responsibility in accordance with the Privacy Policy.
- 13. Other important terms**
- 13.1 Assignment and subcontracting.** We may transfer our rights and obligations under these terms to another organisation. You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- 13.2 No third-party rights.** This contract is between you and us. No other person shall have any rights to enforce any of its terms, unless otherwise agreed between you and us.

- 13.3 If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 13.4 Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the products, we can still require you to make the payment at a later date.
- 13.5 Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English and Welsh laws and you can bring legal proceedings in respect of the products exclusively in the English and Welsh courts. If you live in Scotland you can bring legal proceedings in respect of the products in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of the products in either the Northern Irish or the English courts.

**THE SCHEDULE
MODEL CANCELLATION FORM**

(Complete and return this form only if you wish to withdraw from the contract)

To [TRADER'S NAME, ADDRESS, TELEPHONE NUMBER AND, WHERE AVAILABLE, FAX NUMBER AND E-MAIL ADDRESS TO BE INSERTED BY THE TRADER]

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/for the supply of the following service [*],

Ordered on [*/received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate

TARIFF OPTIMISATION SERVICE TERMS AND CONDITIONS

Evergreen Energy Ltd

These Terms, together with any and all other documents referred to herein, set out the terms on which we provide the Services to registered account holders through our Website (information on the Services will also be available to you via the App). Please read these Terms carefully before you submit your order to us, and ensure that you understand them before purchasing our Services. You will be required to accept these Terms when ordering our Services.

By purchasing the Services, you acknowledge and agree with the Terms. The use of our Website is subject to our [Website Terms of Use](#) and the use of our App is subject to the [Homely App End User Licence Agreement](#). Please ensure that you have read them carefully and that you understand them.

The Website and the App are owned and operated by Evergreen Energy Ltd, Company Number: 07588438, and registered office at The Edge Business Centre, Clowes Street, Salford, Greater Manchester, M3 5NA.

The Customer's attention is particularly drawn to clause 6, Liability.

Chapter 1 Customer Support

Our customer support is available to you for the duration of your Subscription. Customers can get in touch with the Supplier's customer service at any time by email (homely@evergreenenergy.co.uk), phone (0161-818-9005) or through the Website's chat plugin. All guidance and information required for you to use the Services will be available to you the Website.

In order to activate the Service you will need an account with us, which needs to be created via the [Homely App](#). Your use of the App and account will be subject to the [Homely App End User Licence Agreement](#). You will also receive information on the Service via the App.

Within 14 days from date of purchase should you change your mind about purchasing the Services you may contact us to request a cancellation and refund (**Cancellation Period**).

Please note the information above is intended as a summary of your consumer rights and is not intended to replace the terms of these Terms, as outlined below.

Chapter 2 AGREED TERMS

1 Interpretation

1.1. Definitions. In these Terms, the following definitions apply:

- 1.1.1. **Account:** means the account created by the Customer with the Supplier, via the App, and through which the Customer may purchase and access the Services through the Website.
- 1.1.2. **App:** the Homely App which is developed and owned by the Supplier and which can be made available to the Customer and used to access some functionality and output of the Services.
- 1.1.3. **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.4. **Cancellation Period:** means 14 days from the Service Commencement Date.
- 1.1.5. **Charges:** the charges payable by the Customer to the Supplier for the supply of the Services as set out in the relevant Order.
- 1.1.6. **Confirmation Email:** email sent to the Customer following purchase of the Services attaching the Order.
- 1.1.7. **Contract:** the contractual relationship between the Supplier and the Customer for the supply of the Services in accordance with these Terms and the relevant Order.
- 1.1.8. **Customer:** the person or firm who purchases the Services from the Supplier.
- 1.1.9. **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.1.10. **Hardware:** an internet connected device wired to the Customer's heating system at their premises, which is supplied by the Supplier or is otherwise is compatible with the Services, and allows the Supplier to monitor and collect data in relation to the Customer's heating system.
- 1.1.11. **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.1.12. **Model Cancellation Form:** the form a Customer may, but is not required to, use to cancel the Services within the Cancellation Period, as attached as Appendix A to these Terms.

- 1.1.13. **Order:** means the electronic document issued by the Supplier at the purchase of the Services by the Customer, containing information specific to the Contract, including but not limited to Service details, Subscription Period, Customer name and address, Charges, payment method and date of purchase.
- 1.1.14. **Service Commencement Date:** means the agreed start date for the Services, under a Contract and as specified in the Order.
- 1.1.15. **Services:** also referred to as Homely Optimisation Service, is the Service selected by the Customer and then supplied by the Supplier to the Customer as specified in the Order, and detailed in the Account and Website, which will include the provision of heating analytics and optimisation via an online platform (accessed via the Website) that sends information to the Hardware to control the heating, and which also updates the Customer via the App. It includes storing data of the internal temperature of the Customer and algorithms that will derive the heating schedule of the Customer's home.
- 1.1.16. **Subscription Period:** being 12 calendar months from the Service Commencement Date or as otherwise set out in an Order.
- 1.1.17. **Terms:** the terms and conditions set out herein and amended from time to time.
- 1.1.18. **Website:** means the Supplier's website www.homelyenergy.com.
- 1.2. In these Terms, the following rules apply:
- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors and permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted;
- 1.2.4. any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.5. any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.6. a reference to writing or written includes faxes and emails.

2 Basis of Contract

- 2.1. Customers must be 18 or older to purchase the Services. Purchase is made online via the Account on the Website.
- 2.2. The Website contains all guidance to the Customer through the process of ordering our Services. Once the purchase has been accepted, the Supplier will confirm an Order by means of a Confirmation Email, at which point a Contract will form between the parties for the duration determined in accordance with clause 2.3.
- 2.3. The Subscription Period will commence on the date of the Order. On completion of a Subscription Period, the Contract will automatically continue for further Subscription Periods of the same duration unless either the Customer or Supplier provides at least 30 days' written notice to terminate prior to the end date of the then current Subscription Period. If notice is provided the Contract will expire at the end of the current Subscription Period and the Customer's access to the Services will then cease.

3 Charges and Payment Terms

- 3.1. The Charges shall be as set out on the Website at the time of purchase and then as confirmed for each specific Customer in the relevant Order. If there are any discrepancies between amounts published on our Website and amounts

appearing in an Order, the amounts in the Order shall apply. If the Customer disagree with part of or all the Charges, the Customer may contact our customer support team for clarifications or changes, if applicable (See [Contact us](#) clause 10 below). The Customer may terminate the Contract within the Cancellation Period at their choice and at no cost (and the Supplier provides the Model Cancellation Form which can be used by the Customer). If the Customer commences receipt of the Services during the Cancellation Period then the Supplier shall be entitled to retain, from any refund amount, a proportion of the Charges related to any Services provided.

- 3.2. The Charges shall be payable in full in cleared funds annually in advance of the Subscription Period by direct debit. The Customer will be requested to complete the Direct Debit Mandate upon placement of an Order. The Supplier, at its choice, may accept payment through alternative methods, nominated from time to time by the Supplier. The Customer shall pay all Charges in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 3.3. Unless otherwise stated, the price of the Services will be inclusive of amounts in respect of value added tax ("VAT"). Where exclusive of VAT, the Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 3.4. The Supplier reserves the right to amend Charges at any time and to add, alter, or remove special offers from time to time. Changes in Charges will not affect any Order which has been previously been confirmed prior to the date of change, but will apply to any future Subscription Periods in case of renewal under clause 2.3.

4 Supply of Services and Service Levels

- 4.1. To make full use of the Services, the Customer will need to download the App as available for Android or iOS users and as updated from time to time by the Supplier, and create an Account. For more details about the App, please refer to the [Homely App End User Licence Agreement](#).
- 4.2. The Services are made available to the Customer by using the App on its 'tariff optimization' mode, which the customer should manually set up once the Order is issued.
- 4.3. Full enjoyment of the Services features will require the Customer:
 - 4.3.1. to have purchased and installed the Supplier's, or compatible third-party, smart thermostat;
 - 4.3.2. obtain their energy through a third party energy supplier who supports tariff optimization and the Services, whether at the date of the Order or after a tariff swap; and
 - 4.3.3. notify the Supplier about the date on which the energy tariff swap will occur, or if not known in advance, then as soon as possible after the swap.
- 4.4. The Supplier will provide information on its Website or via email from time to time of the brands and/or models of smart thermostat, and third-party energy providers, which are compatible to the Services. Nevertheless, the Customer will be solely responsible for checking and confirming such compatibility. For the avoidance of doubt, the Supplier is not directly affiliated with third-party energy suppliers and any contract the Customer has with those third-parties is governed solely by their terms and conditions.
- 4.5. The Services require an active internet connection. Both the Hardware and the App will need to be connected to the internet so as to enable control of the relevant heating system. The App will provide information about the strength of the internet signal where the Hardware is located. The Supplier does not provide internet services nor will be responsible for any issues or incorrect functioning of the Services caused by lack of, low signal or any other issues related to malfunction of such internet connection. For the avoidance of doubt, the Supplier is not directly affiliated with third-party internet suppliers and any contract the Customer has with those third parties is governed solely by their terms and conditions.
- 4.6. The Supplier warrants to provide the Service with reasonable care and skill and in accordance with applicable law. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of essence, save where otherwise agreed between the Parties.
- 4.7. From time to time the Supplier may let the Customers try, for no additional fees or charges, further services or features which are not detailed as part of the Services, for example as part of a trial or for promotional purposes. These will not, unless otherwise expressly stated elsewhere, form part of the Services under these Terms and the Supplier may at its own discretion withdraw them at any time and with immediate effect, unless and until confirmed in an Order.

- 4.8. The Supplier reserves the right to make applicable changes to the Services, as required from time to time to comply with applicable laws or regulations or for quality improvement purposes. If these changes are expected to materially affect the nature or quality of the Services, the Supplier will notify the Customer accordingly.
- 4.9. Subject to the Terms, the Order and any of our other policies and procedures, the Supplier will use commercially reasonable efforts to provide the Services on a twenty-four (24) hours a day, seven (7) days a week basis. The Customer acknowledges and agrees that from time to time the Services may be inaccessible or inoperable for any reason including, but not limited to, equipment malfunctions; periodic maintenance, repairs or replacements that the Supplier undertakes from time to time; or causes beyond the Supplier's reasonable control or that are not reasonably foreseeable including, but not limited to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. The Customer acknowledges and agrees that the Supplier does not guarantee the availability of the Service on a continuous or uninterrupted basis, and the Supplier accepts no liability for any failure in this regard. Notwithstanding the above, the Supplier will procure to notify the Customer when the Website is expected to undergo scheduled maintenance which will make the Services unavailable for a period over three consecutive hours.
- 4.10. The Supplier reserves the right to withdraw or cease providing all or part of the Services, or modify or change the Services, in which case the Customer will be notified and, in the latter situation, the Customer shall have 30 days in which to terminate the Contract by providing written notice. If the Customer does not provide such notice, the changes shall be deemed accepted and the Contract shall continue in accordance with these Terms. Should the Services come to an end for the reasons under this clause 4.10, the Customer will be entitled to a refund proportional to the Services which were had not yet been provided, and such refund shall be the Customer's sole remedy for termination under this clause 4.10.
- 4.11. The Supplier does not warrant or guarantee that the Services will result in more beneficial heating/energy bills for the Customer. Save for where the Supplier has been negligent, the Supplier shall not be liable for any changes in the Customer's energy supply bill regardless of whether the changes is directly or indirectly related to the Services.
- 4.12. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's promotional materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 4.13. We may collect and proceed your personal data in connection to the provision of the Services. All personal data collected will be used and held in accordance with our [Privacy Policy](#) and your rights under Data Protection Legislation.

5 Customer's obligations

- 5.1. The Customer shall at all time during the Subscription Term:
- 5.1.1. ensure that the terms of the Order and any information it provided upon purchase of the Services are complete and accurate;
 - 5.1.2. cooperate with the Supplier in all matters relating to the Services;
 - 5.1.3. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate and kept up-to-date in all material respects;
 - 5.1.4. prepare the Customer's premises for the supply of the Services, as the Supplier may reasonably require in order to supply the Services;
 - 5.1.5. pay the Charges in time and as agreed and detailed under the Order and in these Terms; and
 - 5.1.6. comply with the Homely App End User Licence Agreement in relation to its creation and operation of the Account.
- 5.2. The Customer is solely responsible for choosing, setting and controlling the heating at the premises, when using the Services and Hardware. However, the Hardware is programmed to maintain the heating system between 12 and 25 degrees centigrade, and the Customer accepts these limits will apply to the Services.
- 5.3. Where applicable, the Customer shall obtain and maintain in place all necessary licences, permissions and consents which may be required from time to time during the Subscription Period.

- 5.4. The Customer is responsible for the way the Services are used. The Customer must not do any of the following acts or allow anyone else to do the following acts in relation to the Services and/or Account:
- 5.4.1. break, or circumvent (or attempt to do so), the security of the Supplier's network, equipment, content or software;
 - 5.4.2. copy, distribute, make available, attempt to disassemble, decompile, create derivative works of, reverse-engineer, modify, sub-license, or use for any other purposes any software or equipment;
 - 5.4.3. use any data mining, robots, scraping or similar data gathering methods;
 - 5.4.4. use the Services in a way that affects or risks degradation of services to other Customers; puts the Supplier's network at risk; is not in keeping with reasonable expectations of a Customer; and/or breaks the law or infringes the rights of any other person;
 - 5.4.5. take any action that imposes an unreasonable load on the Services' infrastructure or system; and
 - 5.4.6. use any device, software or routine to interfere or attempt to interfere with the proper working of the Services or any activity being conducted on the Services.
- 5.5. If the Customer does any of the actions included in clauses 5.1 to 5.4, then the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Services and/or access to the Account, until the Customer remedies the Customer Default, and rely on the Customer Default to relieve it from the performance of any of its obligations to the extent it is prevented or delayed by the Customer Default.

6 Limitation of liability and indemnity

- 6.1. The Supplier is responsible to the Customer for foreseeable loss and damage caused by the Supplier. If the Supplier fails to comply with these Terms, it is responsible for loss or damage the Customer suffers that is a foreseeable result of the Supplier breaking this contract or failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable and excludes liability for these. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both parties knew it might happen, for example, if discussed during the sales process.
- 6.2. Nothing in these Terms shall limit or exclude the Supplier's (or its employees', agents' or subcontractors') liability for:
- 6.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 6.2.2. fraud or fraudulent misrepresentation; and
 - 6.2.3. any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 6.3. This clause shall survive termination of the Contract.

7 Termination

- 7.1. The Customer may end the Contract at any time in accordance with clauses 2.3, 3.4, or 4.10. The Customer may also be entitled to end the Contract at any time if the Supplier is in breach of its obligations under these Terms, unable to materially perform the Services or is otherwise in breach of its obligations to the Customer under applicable consumer protection laws. The Customer may also be entitled to a full or partial refund in relation to Services paid for but not provided, as well as to compensation. For more details of the Customer's legal rights, please refer to the local Citizens Advice Bureau or Trading Standards Office (see [Contact us and Notices](#)).
- 7.2. Even if the Supplier is not at fault and the Customer does not have a right to change its mind, the Customer can still end the contract before it is completed during the Subscription Period. The Contract for Services is completed when the Supplier has finished providing the Services for the current Subscription Period and the Services have been paid for. If the Customer wishes to end the Contract in these circumstances, they should contact the Supplier and inform of the Supplier of the intention. The Contract will not end until 1 calendar month after the day on which the Customer contacts the Supplier. The Supplier will refund any advance payment made for Services which will not be provided after the date the Contract ends.

- 7.3. Any refunds under these Terms will be through the same means of payment as the Customer used for the initial transaction, unless expressly agreed otherwise.
- 7.4. The Supplier may end the Contract at any time by writing to the Customer if:
- 7.4.1. the Customer does not make any payment when it is due and still does not make payment within 30 days of being reminded that payment is due; or
 - 7.4.2. the Customer does not, within a reasonable time of being asked for it, provide the Supplier with information that is necessary to provide the products, for example, address details, energy provider and tariff, and heating system specifications;
- 7.5. If the Supplier ends the Contract in the situations set out in clause 7.4, the Supplier will refund the Customer any Charges paid in advance for Services which the Supplier has not provided, but may deduct or charge the Customer reasonable compensation for the net costs the Supplier will incur as a result of the Customer breaking the contract.

8 Force majeure

- 8.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, epidemic/pandemic/notifiable disease, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 8.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event, provided the Supplier takes reasonable steps to prevent or minimise the delay.
- 8.3. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 30 days or is likely to result in substantial delay in provision of the Services, then Supplier and Customer shall, without limiting their other rights or remedies, have the right to terminate this Contract immediately and without liability by giving written notice to the other party.

9 Assignment and other dealings

- 9.1. The Supplier may at any time assign or transfer its rights under the Contract to another organisation and may subcontract performance of the Contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Supplier will let the Customer know about any transfer in advance.
- 9.2. The Customer shall not assign or transfer its rights under this Contract without the Supplier's consent.

10 Contact us and Notices

- 10.1. If the Customer wishes to cancel the Contract or otherwise has any questions or complaints about the Service, please contact the Supplier's customer service team at homely@evergreenenergy.co.uk, phone 0161 818 9005, or use the 'Contact us' tab in the App or Account.
- 10.2. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall sent to that party's email address. A notice sent on a Business Day by 5pm shall be deemed received on that same day.
- 10.3. The Supplier's email address for notices shall be homely@evergreenenergy.co.uk and the Customer's email address for notices will be the email address chosen at the purchase of the Service and as reflected in the Order, unless agreed otherwise.

10.4. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.5. For more information on your statutory rights you may contact Citizens Advice by visiting www.citizensadvice.org.uk or calling 03454 04 05 06.

11 Severance

If any provision or part-provision of this agreement 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 this agreement.

12 Waiver

If the Supplier does not insist immediately that the Supplier does anything it is required to do under these Terms, or if the Supplier delays in taking steps against the Customer in respect of it breaking the Contract, that delay will not mean that the Customer does not have to take such actions in future and it will not prevent the Supplier taking steps against the Customer at a later date. For example, if the Customer misses a payment and the Supplier continues to provide the Services, the Supplier can still require the Customer to make the payment at a later date.

13 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

14 Variation

The Supplier may revise these Terms from time to time in response to changes in relevant laws and other regulatory requirements. If the Supplier changes these Terms as they relate to and materially affect the Customer's Services, it will give the Customer reasonable advance notice of the changes and provide details of how to cancel if the Customer is not happy with them.

15 Governing law

These terms are governed by English law and you can bring legal proceedings in respect of the products in the English courts. If the Customer lives in Scotland, they can bring legal proceedings in either the Scottish or the English courts. If the Customer lives in Northern Ireland, they can bring legal proceedings in either the Northern Irish or the English courts.

16 Entire Agreement

These terms Contract constitutes the entire agreement between the parties in relation to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

**THE SCHEDULE
MODEL CANCELLATION FORM**

(Complete and return this form only if you wish to withdraw from the contract)

To [TRADER'S NAME, ADDRESS, TELEPHONE NUMBER AND, WHERE AVAILABLE, FAX NUMBER AND E-MAIL ADDRESS TO BE INSERTED BY THE TRADER]

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/for the supply of the following service [*],

Ordered on [*/received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate