

Netatmo Thermostat Supply and Installation

Energia Terms and Conditions

These terms and conditions, as amended from time to time, constitute the agreement (the “**Agreement**”) between Viridian Energy Limited (“**Energia**”) and you, the Customer, for the supply and installation of a Netatmo Thermostat.

1. **Definitions**

In these conditions, the words below have the following meanings:

“**Additional Works**” means any products or services in addition to the supply and installation of the Netatmo Thermostat.

“**DPA**” means (i), all legislation and regulations relating to the processing and protection of Personal Data including the Data Protection Acts 1988 and 2003 and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011.

“**Energia**” means Viridian Energy Limited t/a Energia.

“**EURIBOR**” means the Euro Interbank Offered Rate being, in relation to any sum, the rate per annum for deposits in Euro for a specified period.

“**Force Majeure**” means any event outside Energia’s reasonable control, including but not limited to Acts of God, explosion, flood or other natural disaster, lightning, tempest, fire or other accident, war or threat of war, sabotage, insurrection, riot, invasion, terrorist attack or threat of terrorist attack, civil disturbance or disorder, industrial disputes, strikes and lockouts, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental authority, import or export regulations or embargoes, defaults of suppliers or sub-contractors, or any act or omission of any nature whatsoever on the part of the customer or its agents or any event or circumstance which would constitute force majeure under any applicable connection agreement, network or grid code.

“**Invoice**” has the meaning given in clause 3.2.

“**Laws**” means all applicable laws, legislation, statutory instruments, directives, regulations, requirements, instructions, orders, directions, rules or otherwise of the Regulator or any competent authority of a national or EU character, together with all applicable codes, industry agreements or licence conditions, and “**Law**” shall mean any one of them.

“**Party**” means Energia or the Customer, and “**Parties**” shall be construed accordingly.

“**Personal Data**” has the meaning set out in the DPA.

“**Premises**” means the property at which the Netatmo Thermostat will be installed.

“**Subcontractors**” means the party or parties to whom Energia may subcontract all or part of the Services.

“**Termination Date**” has the meaning given in Clause 7.1.

“**VAT**” means value added tax at the applicable rate from time to time.

“**you**” means the Customer named on the front cover of this Agreement.

Headings in this Agreement are inserted for convenience only and are to be ignored in the interpretation of this Agreement. References to persons or parties in this Agreement shall include successors and assigns. References to any Laws or documents shall be read as references to such Laws or documents as amended, repealed or replaced from time to time. “Including” and “include” or any similar expression shall be construed as illustrative and shall not limit the words preceding them.

2. **Supply of the Netatmo Thermostat**

- 2.1 Energia (or its agent(s) or Subcontractor(s)) shall supply the Netatmo Thermostat to you in accordance with this Agreement.
- 2.2 The Netatmo Thermostat shall be supplied to you and installed in a good and workmanlike manner using all reasonable care and skill.
- 2.3 If Energia considers that Additional Works are required or recommended, Energia shall advise you as soon as possible. If you request Additional Works and Energia is in a position to undertake such Additional Works, Energia will provide you with an estimate of the time required to complete such Additional Works and the associated costs.

3. **Fees and payment**

- 3.1 In consideration of Energia (or its agent(s) or Subcontractor(s)) supplying and installing the Netatmo Thermostat, Energia is entitled to any energy credits attributable to the installation of the Netatmo Thermostat at your Premises under SEAI’s Better Energy Scheme or any replacement or similar scheme pursuant to Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency.
- 3.2 Energia (or its agent(s) or Subcontractor(s)) will send you an invoice (the “**Invoice**”) within [30] days of completion of any Additional Works setting out any fee payable and any other amounts due to Energia pursuant to this Agreement, together with any applicable VAT thereon. You shall pay such amounts by cleared funds within 14 days of the date of the Invoice.
- 3.3 We will charge VAT at the appropriate rate. All prices quoted are exclusive of VAT except where VAT is expressly stated to be included.
- 3.4 This obligation to pay the Energia any sum due pursuant to the Invoice continues until this Agreement ends in accordance with clause 7 below, even if you leave the Premises beforehand.
- 3.5 If you do not pay Energia any sum due pursuant to the Invoice within 14 days of the date of the Invoice Energia may charge you (i) late payment interest at the rate of 2% above EURIBOR for the period from the due date to the date payment is received and (ii) reasonable costs of trying to recover overdue payments.
- 3.6 You shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against Energia in order to justify withholding payment of any such amount in whole or in part.

4. **Warranties and Obligations**

- 4.1 You warrant that:

- (a) that all information provided to Energia (or its agent(s) or Subcontractor(s)) is accurate;
- (b) you are the owner of the Premises or otherwise have legal authority to enter into this Agreement; and
- (c) you have obtained and maintained all necessary licences, permissions, including planning permissions, and consents which may be required before the date on which the Netatmo Thermostat is installed.

4.2 You acknowledge the following:

- (a) The Netatmo Thermostat is designed to (i) control the heating temperature and (ii) control the times at which the boiler is active. The Netatmo Thermostat is not suitable for “multi zone” homes or where there are separate controls for heating the hot water and rooms in your home. In those instances, you should continue to use your existing controls.
- (b) A computer, tablet or smart phone with internet access and an up-to-date web browser are necessary to operate the Netatmo Thermostat, along with a live wireless internet connection and a router with a power supply.
- (c) The Netatmo Thermostat is not compatible with electric storage heating, electrical under-floor heating or biomass boilers. Energia is not responsible for the compatibility or functionality of the Netatmo Thermostat at your Premises.

4.3 You are obliged to:

- (a) provide Energia, our employees, agents, consultants (including quality assurance consultants) and Subcontractors with access to the Premises for the purposes of installing the Netatmo Thermostat at all reasonable times and at any time in an emergency;
- (b) provide Energia with such information as we may reasonably require in order to supply and install the Netatmo Thermostat, and ensure that such information is complete and accurate in all material respects;
- (c) prepare the Premises for the installation of the Netatmo Thermostat; and
- (d) abide by all instructions and advice issued by Energia (or the Subcontractors) regarding the installation of the Netatmo Thermostat including but not limited to equipment and health and safety.

4.4 If Energia’s performance of any of Energia’s obligations under this Agreement is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (the “**Customer Default**”):

- (a) Energia shall without limiting our other rights or remedies have the right to suspend supply of the Netatmo Thermostat until you remedy the Customer Default, and to rely on the Customer Default to relieve Energia from the performance of any of Energia’s obligations to the extent that the Customer Default prevents or delays Energia’s performance of any of our obligations; and

- (b) Energia shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 4.4 caused by the Customer Default.

5. **Indemnity**

The Customer shall indemnify and hold harmless Energia against all and any loss, damage, costs, expenses, charges, fees, claims or liability incurred by Energia arising out of a breach of any of the warranties contained in clause 4.1.

6. **Liability and Force Majeure**

- 6.1 Neither Party shall be liable to the other for any failure to perform its obligations under this Agreement to the extent that such failure is due to the occurrence of an event of Force Majeure, save that the occurrence of an event of Force Majeure shall not excuse the Parties from any obligation to make payments of money under this Agreement.
- 6.2 Energia will repair or replace any Netatmo Thermostat that was defective when installed and/or remedy any defective installation free of charge if you notify Energia within six (6) months of installation. There will be no call-out charge applied in such circumstances.
- 6.3 Energia's sole liability, and your sole remedy, in contract, tort, or otherwise, shall be limited to the repair or replacement of defective Netatmo Thermostat and to the remedy of defective installation of the Thermostat provided that Energia's liability shall be limited to the value of this Agreement.
- 6.4 Without prejudice to clause 6.3:
 - (a) Energia will not be liable to you under this Agreement in contract, tort (including negligence) or otherwise for any indirect damages or economic loss, including but not limited to loss of revenue, business, contracts, predicted savings or profits; but nothing in this Agreement shall limit or exclude Energia's liability for death or personal injury caused by our negligence, or the negligence of our employees, agents or Subcontractors.
 - (b) Energia will not be liable for any failure of the Netatmo Thermostat to function due to the quality of, non-availability of, or any interruptions to the wireless internet connection at your Premises.
 - (c) Energia are not responsible for:
 - (i) the Netatmo Thermostat being incompatible with your boiler or domestic heating system.
 - (ii) any costs, loss or damage as a result of not using the Netatmo Thermostat in accordance with its guidelines or caused by issues with your phone, browser, computer or internet connection;
 - (iii) any costs incurred for maintaining mobile data and/or a wireless internet connection;
 - (iv) any loss or damage caused as a result of downloading or upgrading any software or firmware related to the Netatmo Thermostat;
 - (v) replacing the batteries in the Netatmo Thermostat;

- (vi) providing a mobile phone, computer, tablet or other connected device that is compatible with the Netatmo Thermostat;
- (vii) any breach by the manufacturer of the terms and conditions entered into between you and the manufacturer of the Netatmo Thermostat; and/or
- (viii) any services provided by the manufacturer of the Netatmo Thermostat to you directly, or any costs, loss or damage arising out of the provision of such services.

6.5 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

7. Termination

- 7.1 If you wish to uninstall and return the Netatmo Thermostat at any stage, Energia will be entitled to charge an additional call-out charge and administration fee to uninstall the Netatmo Thermostat from your Premises. Any such call-out will be treated as "Additional Works".
- 7.2 Energia may terminate this Agreement at any time by giving you notice in writing if Energia cannot supply and install a Netatmo Thermostat at your Premises.
- 7.3 All rights and liabilities, which accrued prior to termination and clauses 3, 4.1, 5, 6, 8, 9 and 11.9 shall survive the termination of this Agreement.

8. Customer information and Data Protection

- 8.1 To the extent that Energia collects Personal Data from you in the course of performing its obligations under this Agreement, Energia will process such Personal Data in accordance with the DPA, to administer your account, to provide our services and products and to comply with our duties under applicable law.
- 8.2 The purposes for which Energia may process Personal Data include for the purposes of setting up, monitoring and managing your account, obtaining credit references, reporting to statutory authorities and regulators, billing, call data management and, depending on your preferences, direct marketing purposes, or for any other purpose deemed necessary in the reasonable opinion of Energia.
- 8.3 We may pass Personal Data to our agents, service providers, and any company which forms part of the Viridian group from time to time, when relevant for these purposes. You may request a copy of, or notify us of any changes to, your Personal Data by writing to us at the address set out in Clause 10.1 below and in accordance with our obligations under the DPA, we will update or delete your Personal Data accordingly. Any such data subject requests may be subject to a prescribed fee.
- 8.4 Occasionally you may speak to Energia's employees (or agents acting on Energia's behalf) by telephone. To ensure that Energia provide a quality service your telephone conversations may be recorded. Energia will treat the recorded information as confidential and it will only be used for training and/or quality control, account management and customer satisfaction purposes or any other purposes mentioned in this Agreement.

9. Complaints

9.1 You may make a complaint in relation to any issue arising under this Agreement by contacting the Customer Service Department of Energia:

(a) By post, to the following address:

Energia
PO Box 12380
Dublin 2

(b) By telephone on 1850 405 405; or

(c) By online query at www.energia.ie

10. Notices

10.1 All notices and communications concerning this Agreement will be in writing, in the English language and addressed as follows:

Energia,
PO Box 12380
Dublin 2
Attention: Customer Service Team,

Telephone: +353(0)18692000,

Facsimile: +353 (1)8692050.

Email: notice@energia.ie

10.2 Energia may change its address at any time by notice in writing. Notices will be deemed served or delivered to the addressee or its office:

(a) If delivered by hand, upon the date of delivery;

(b) If delivered by pre-paid ordinary post within the jurisdiction in which you resides or is registered, [2] days after sending or if delivered by pre-paid ordinary post outside the jurisdiction in which you reside [5] days after sending;

(c) If delivered by facsimile, at the time that a transmission report is produced by the sender's facsimile machine confirming that the transmission has been satisfactorily completed; or

(d) If delivered by electronic mail, at the time that the sender's computer generates a message stating that the e-mail has been received.

11. General

11.1 This Agreement constitutes the entire agreement between you and Energia in relation to the Netatmo Thermostat, and will be effective from the date that you accept and sign this Agreement where indicated.

11.2 This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements between the Parties in relation to the subject matter of this Agreement. Each Party acknowledges that it has not entered into this Agreement on the basis of any representation or warranty other than those set out herein. For the avoidance of doubt, any samples, drawings, descriptive matter or advertising issued by Energia, and any descriptions or illustrations contained in our catalogues or

brochures, are issued or published for the sole purpose of giving approximate details of the Netatmo Thermostat. They shall not form part of this Agreement or any other contract between Energia and you for the supply of the Netatmo Thermostat.

- 11.3 This Agreement applies to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 11.4 Any special conditions or extra time that we allow are limited to the specific circumstances in which they are given and do not affect our rights under this Agreement in any other way.
- 11.5 Energia may assign the benefit of this Agreement or any part of it. You may assign this Agreement only with written consent of Energia.
- 11.6 Any waiver under this Agreement must be in writing. No waiver of any power or right shall be construed as a waiver of any other power or right. A waiver of a breach will not operate or be construed as a waiver of any other or further breach.
- 11.7 If any court of competent jurisdiction declares any provision of this Agreement void, that provision will be severed and the remainder of this Agreement will remain in full force and effect. If any provision of this Agreement becomes invalid or unenforceable or requires variation as a result of any change in any Law or trading arrangements, this Agreement will be amended by agreement between the Parties, or failing such agreement, as determined by Energia acting in good faith, in such a way as to give effect to the commercial intent of the Parties as set out in this Agreement.
- 11.8 The laws of Ireland will govern this Agreement and the Parties accept the non-exclusive jurisdiction of the courts of Ireland
- 11.9 Nothing in this Agreement excludes or affects your statutory rights.