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# Market Contract Terms and Privacy Policy

(Victoria and South Australia)



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## 1. Our Contract

### 1.1 The scope of our *contract*

These contract terms form part of a contract you have entered into with us for the sale of *energy* to your *premises*. The other part of the *contract* is the *contract sheet*.

### 1.2 Important obligations on us under the *contract*

As a retailer selling energy under our retail licences:

- a. we agree to arrange for your distributor to connect your *premises* to its network, if you ask us. We will arrange the connection as soon as practicable and will contact your distributor no later than the next *business day* after your request;
- b. we agree to arrange for your distributor to supply *energy* to your *premises*; and
- c. we agree to sell to you the *energy* supplied to your *premises*.

### 1.3 Application of these contract terms to electricity and gas

If you have agreed to purchase both electricity and gas from us, then we actually have two separate *contracts*, one for electricity and the other for gas. Any paragraph of these contract terms relating just to electricity or just to gas does not apply as a term of the *contract* for the other form of *energy*.

### 1.4 Understanding these contract terms

Words appearing in these contract terms *like this* have a special meaning and are defined in paragraph 14.6. Paragraph 14.7 includes some further rules for interpreting these contract terms.

## 2. How and When the *Contract* Starts and When it Expires

### 2.1 When the *contract* starts

The *contract* starts when you accept our offer to sell *energy* to you, whether you do this by signing and returning the *contract sheet* to us before the offer expiry date or by verbally accepting our offer or accepting online.

## 2.2 Cooling-off

You can cancel the *contract* without penalty for the first 10 *business days* after you accept our offer (for Victorian *premises*) or receive our disclosure statement (for South Australian *premises*). You would have to send us a notice clearly indicating an intention to cancel within that cooling-off period. Both of us then would have to comply with the *law* in respect of that cancellation.

## 2.3 When we start selling you energy

Although the *contract* may have started, we do not start selling you *energy*, and you have no obligation to pay us for *energy*, unless and until:

- a. your cooling-off period has expired;
- b. your *premises* are connected to the network; and
- c. if you are transferring to us from another retailer, the meter registered for your *premises* is effectively allocated by the *market and system operator* to us (or we are supplying gas to you at your South Australian *premises*).

## 2.4 Final decisions we may make before we start selling you energy

If at any time before we start selling you *energy* we decide we are not satisfied with information you have provided to us about your eligibility for our offer or about your creditworthiness, then we may immediately terminate the *contract* by giving notice to you. We will not have to provide any compensation to you nor will you to us.

## 2.5 When the *contract* expires

- a. Unless it is terminated earlier under paragraph 9 or 15.2, the *contract* will continue from when we start selling you *energy* for the term stated in the *contract sheet* (or, if no term is stated, indefinitely).
- b. In accordance with the *law*, we will send you a notice before the term expires advising you of your options. In that notice we may offer to extend the term of the *contract* together with *contract variations* (including new *charges*). If you do not enter into another contract for the *premises* before the term of energy the *contract* expires, you will be taken to have accepted the offer and the *contract* will be varied accordingly.

- c. If the term of the *contract* expires without any such extension, then the *contract* is instead to continue indefinitely on the same terms until it is varied or is terminated, except that our *rates* and *charges* will be the standard rates and charges we publish on our website. Either you or we could terminate the *contract* by giving at least 20 *business days* notice.

### 3. Charges

#### 3.1 *Energy charges*

You must pay us our *energy charges*.

#### 3.2 *Our rates*

The *contract sheet* states the initial rates we use to determine our *energy charges*. It may state that some *rates* (such as off peak *rates*) may or may not be available to you, depending on your meter, or may include a number of different *rates*. In those cases, we will decide as soon as practicable after the *contract* starts which *rates* initially apply. Your first bill will state the *rates* that apply.

#### 3.3 *Rate variations*

a. If after the *contract* starts there is:

1. a change in *law*;
2. for electricity only, a *loss factor change*; or
3. for gas only, an *unaccounted for gas change*,

the result of which is to increase the direct or indirect costs we incur in connection with the *energy* we sell you, then upon or at any time after the relevant change we may vary your *rates* (or impose an *additional charge*) to recover those increased costs.

b. If an event described below occurs the result of which is to increase the prices we pay under contracts we enter into to manage fluctuations in the cost to us of the *energy* we sell you, then upon or at any time after the relevant event we may vary your *rates* (or impose an *additional charge*) to recover those increased prices. The relevant events are:

1. a change in *law*;
  2. for electricity only, a *nodal event*, an electricity generator exercising either a force majeure right under its contract with us or a right to pass through to us additional costs it incurs as a result of a change in fees, *law*, taxes or subsidies; and
  3. for gas only, an *upstream event*.
- c. If we reasonably consider that the increase over any 12 month period in any *environmental charge*, *market charge*, *metering charge*, *network charge* or other cost imposed on us in connection with the *energy* we sell you will exceed the corresponding increase in *CPI*, or that the amount of any such cost so imposed on us otherwise is extraordinary, then upon or at any time after the imposition of the relevant charge we may vary your *rates* to recover the excess or extraordinary amount, but only if we give you 90 days prior notice of the *rates* variation.
- d. The amount of any *rate* variation under paragraphs 3.3(a), (b) or (c) will be calculated as follows:
1. by apportioning the total cost increase, the total price increase or the total excess or extraordinary amount, as the case may be, in relation to the relevant customer segment (which may be the whole of our customer base) by the volume of *energy* purchased in relation to that customer segment and varying your *rates* by no more than the resulting amount; or
  2. using any other method which fairly reflects the cost increase, the price increase or the excess or extraordinary amount across the relevant customer segment.
- e. If after the *contract* starts a new type of meter is installed at your *premises*, we may vary your *rates* to those generally applicable to that type of meter.

- f. On each *annual review date* in respect of your *premises* we will vary your *rates* in line with variations in *CPI*, as follows:
1. we will multiply your initial *rates* (for the first *annual review date*) or the *rates* applying on the immediately preceding *annual review date* (for any subsequent *annual review date*) by the *CPI* for the *latest available quarter* in respect of the *annual review date* and divide the result by the *CPI* for the same quarter in the preceding year;
  2. if in any of the four quarters other than the last quarter immediately preceding the *annual review date* there has been a *rate* variation under any of paragraphs 3.3(a), (b), (c) or (e), then we will multiply the amount of that *rate* variation by the *CPI* for the *latest available quarter* in respect of the *annual review date* and divide the result by the *CPI* for the *latest available quarter* in respect of the *rate* variation; and
  3. your *rates* on and from the *annual review date* will be no more than the sum of the amounts calculated under paragraphs 3.3(f)(1) and (2).
- g. We will give you notice of *rate* variations (or *additional charges* imposed) which may be in a message on your bill. If the *rates* vary during a billing period, we will calculate your bill on a proportionate basis using the old *rates* before the variation and the new *rates* afterwards.

### 3.4 ***Additional charges***

- a. You must also pay us:
1. any *other distributor charges* we pay concerning the *energy* we sell you and related costs we incur;
  2. reasonable costs we incur if you do not give access to the *meter readers* or you request an unscheduled meter reading;
  3. any administration fee set out in the *contract sheet*;

4. for any additional services you request from us (including meter testing) unless the *law* requires us to provide that service free of charge;
  5. any merchant service fees we incur because of the payment method you use in paying your bill;
  6. to the extent the *law* allows, any late payment fee set out in the *contract sheet* and interest on any late payment as set by us from time to time;
  7. costs imposed on us if, due to fault on your part, payments you make to us are dishonoured or reversed;
  8. any other *additional charges* set out in these contract terms or in the *contract sheet*; and
  9. *GST* at the prevailing *GST* rate on any taxable supplies made by us.
- b. Any *additional charge* will be fair and reasonable having regard to related costs we incur.

## 4. Bills

### 4.1 When bills are sent

We will send you a bill as often as stated in the *contract sheet*.

### 4.2 Contents of a bill

The bill will comply with the *law*. It will include:

- a. the amount you must pay for the *energy* consumed at your *premises*;
- b. a graph to help you understand your *energy* consumption;
- c. the pay-by date; and
- d. payment methods.

### 4.3 Bills based on meter readings

- a. As a general rule we will base your bills on readings of your meters.
- b. However in some cases the *law* may allow us to provide you with a bill based on an estimate of the *energy* consumed at your *premises*. If we do this and we subsequently obtain a meter reading or more reliable data, we will adjust your next bill as appropriate.

- c. In any event we will use our best endeavours to ensure your meter is read at least once in any 12 month period.
- d. If you ask us to replace an estimated bill with one based on a meter reading, we will do so and may impose an *additional charge* on you accordingly.

#### 4.4 You can ask us to review bills

If you ask us to review a bill we will undertake the review in accordance with the *law*. We may require you to pay a proportion of the bill up to the amount the *law* allows. If the review shows the bill is correct, you must pay the unpaid amount or request a meter test which you must pay for if the test shows the meter is compliant. Should the review uncover an error, we will adjust the bill.

#### 4.5 Adjusting your bill

- a. If we have undercharged you (or not charged you at all), we may recover from you what has been undercharged up to the amount allowed by the *law*. If we are required to do so by *law*, we will offer you the opportunity to pay us over a period equivalent to the period over which the recoverable undercharging occurred.
- b. If we have overcharged you we will inform you within 10 *business days* of when we become aware of the overcharging and repay the overcharged amount according to your reasonable instructions (or otherwise as required by the *law*).

### 5. Paying Your Bill

#### 5.1 When you have to pay

You must pay us by the pay-by date stated on your bill. This will not be less than 12 *business days* from the date the bill is issued. Unless you use an automatic payment method, your bill is not paid until we actually receive the funds. Payments due on a non-*business day* may be paid on the next *business day*.

#### 5.2 Payment methods

You may pay your bills by any of the payment methods stated on your bill.

### 5.3 **Redirecting your bills**

If you are unable to arrange payment due to illness or long absence, we will on request redirect your bills.

### 5.4 **Applying your payments**

- a. If we sell you electricity and gas we will apply payments as you direct or, if you do not give us a direction, in proportion to the respective amounts billed for electricity and gas.
- b. If we include a charge in our bill for any other good or service we have sold to you then, unless you direct us otherwise, we will apply your payments first to the *energy*.

### 5.5 **Late payments**

If we do not receive your payment by the pay-by date, we may take legal proceedings or other steps against you to recover the overdue amount and our recovery costs. However, before taking any steps we will comply with all requirements under the *law* in relation to payment difficulties you may be having.

### 5.6 **Payment difficulties**

- a. You must contact us if you anticipate it may not be possible for you to pay a bill by the pay-by date.
- b. If you are experiencing difficulties paying your bills, we can offer you assistance: information about your right to have your bills redirected to someone else, advice about independent financial counselling, information about *energy* efficiency and about various government assistance and concessions schemes and, in some cases, the option of an instalment plan.
- c. We may choose not to offer you this assistance if you have been convicted of an offence involving fraud or theft of *energy*.
- d. If you are a residential customer eligible under the *law* for an instalment plan, we will offer a plan conforming with the requirements of the *law* under which you will have the ability to either pay your bills by regular instalments in advance or to pay any overdue amounts and future bills by regular instalments. In either case you will be obliged to pay each instalment

amount by the agreed pay-by date. We are not obliged to provide small business customers with an instalment plan. However, we will consider doing this if you ask. We may impose an *additional charge* if we accept your request.

- e. If you are consistently late paying your bills and we have complied with the requirements of the *law*, we may place you on a shortened collection cycle and will give you notice we have done so in accordance with the *law*.

## 5.7 **Advance payments**

You may pay us in advance. However, we do not pay interest on advance payments and will not refund them before the *contract* terminates.

## 5.8 **Security deposits**

We may require you to provide us with a *security deposit* if the *law* allows us to. This may be the case, for example, if you have an unsatisfactory credit rating and do not accept an instalment plan we offer you. We would determine the amount of the *security deposit* in accordance with the *law* and you would have to provide it within 10 *business days* after our request. We would pay you interest on the *security deposit* at a 90 day bank bill rate (or otherwise as required by the *law*). We could apply the *security deposit* and accrued interest against, or draw on it for, any amount you owed us under the *contract* in accordance with the *law* and would provide you with an account of how we used it. If having provided us with a *security deposit* you then paid all your bills by their pay-by date for the period required under the *law*, or you stopped taking a supply of *energy* at your *premises*, we would return the *security deposit*, together with accrued interest, in accordance with your reasonable instructions (or otherwise as required by the *law*).

# 6. **Other Obligations on You**

## 6.1 **How you use *energy***

In using *energy* at your *premises*, you must comply with the *law*. You must:

- a. not use *energy* in a way which interferes with the distribution network or supply from that network;

- b. not allow *energy* supplied to you to be used other than at your *premises* nor use *energy* at your *premises* supplied from another address;
- c. not use *energy* supplied to you for a purpose inconsistent with any category of supply stated in the *contract sheet*;
- d. if we sell gas to you and you are a residential customer, not use gas for non domestic purposes other than as a home office;
- e. if you are a business customer, give us, within a reasonable time after we ask, an annual forecast of your *energy* demand and, if you anticipate a material change in your *energy* demand, give us at least 20 *business days* advance notice; and
- f. if you are a business customer, take reasonable steps to prevent loss on your side of the *supply point* which may be caused by difficulties with the quality or reliability of *energy* supply.

## 6.2 **Meters and *supply points***

To facilitate the supply of *energy* to your *premises*, you must:

- a. make available sufficient land at the *premises* for the meter, the *supply point* and associated equipment;
- b. protect and not disconnect, by-pass, interfere with or damage the meter or *supply point* and promptly notify us of any problems with them;
- c. give the *meter readers*, our personnel and your distributor, any of whom will be carrying official identification and will show it to you if you ask, safe, convenient and unhindered access at all reasonable times to the meter, the *supply point* and associated equipment for any reasonable purpose required;
- d. comply with directions from us or your distributor about the meter or the *supply point*;
- e. pay for additional or replacement meters if your needs change.

## 6.3 **Safety and emergencies**

You must at all times:

- a. maintain *energy* installations and appliances at your *premises* in a safe condition;

- b. allow only accredited electricians and registered plumbers or gas fitters to perform any work on the *energy* installations and appliances;
- c. keep all vegetation, structures and vehicles at your *premises* clear of the *energy* installations;
- d. advise us or your distributor of any matter that may threaten any person's health or safety or the integrity of the network; and
- e. comply with directions from us or your distributor in an emergency in accordance with the *law*.

## 7. Supply Interruptions

### 7.1 Supply interruptions may occur

You agree that the supply of *energy* to your *premises* may be interrupted in certain circumstances and that, in those circumstances, you will immediately cease or reduce consuming *energy* at your *premises* and will comply with directions from us or your distributor. The relevant circumstances are when a supply interruption:

- a. is allowed or required under the *law*;
- b. occurs for reasons beyond our control;
- c. occurs because of steps taken by your distributor or the *market and system operator*;
- d. occurs because there is insufficient *energy* or system capacity to meet the needs of all consumers;
- e. is required to allow repairs, testing, maintenance or other works; or
- f. is necessary due to an emergency or for reasons of public health or safety or the protection of any person or property.

### 7.2 Keeping one another informed about supply interruptions

- a. Where reasonably possible and in accordance with the *law*, we or your distributor will give you prior notice of supply interruptions (though not necessarily in writing).
- b. If you inform us that supply to your *premises* has been interrupted and you want us to notify your distributor, we will do so as soon as practicable.

## 8. Disconnection

### 8.1 When and how disconnection is arranged

- a. You may request disconnection. Once you ask us, we will arrange disconnection of your *premises* through your distributor in accordance with your request.
- b. In accordance with the *law*, and only if we comply with all of the requirements under the *law*, we may request your distributor to disconnect your *premises*:
  1. if you fail to pay us an amount we have billed by the pay-by date;
  2. if you deny access to your meter;
  3. if you refuse to pay a *security deposit*;
  4. if you are using *energy* illegally; or
  5. on other grounds the *law* allows.
- c. We will give you notice of our intention to disconnect your *premises* in accordance with the *law*, unless disconnection is due to an emergency, for health and safety reasons or for illegal use of *energy*.
- d. You must co-operate with and assist your distributor and our personnel in respect of any disconnection.

### 8.2 Restrictions on us disconnecting your *premises*

We must comply with restrictions under the *law* on disconnecting your *premises* including:

- a. where you have not paid our bill, restrictions that apply:
  1. if the amount unpaid is less than any minimum set under the *law*;
  2. if there is an unresolved complaint about our bill;
  3. if you have an outstanding application for a concession; or
  4. if the unpaid amount is not for the supply or sale of *energy*;
- b. restrictions as to disconnecting electricity supply to premises registered by a distributor as having a life support machine or disconnecting gas supply to premises registered by us as having a medical exemption; and

- c. restrictions as to the times and days on which disconnection may take place.

### 8.3 Reconnection

If your *premises* has been disconnected for non-payment by you of a bill or a *security deposit* or because your meter is not accessible or you obtained supply illegally, and you rectify this within the time specified and in accordance with the *law*, you comply with all other *laws* and you pay any relevant *charges*, then, on request, we will arrange for your *premises* to be reconnected.

## 9. Early Termination of the *Contract*

### 9.1 By us

We may terminate the *contract* early by giving you notice if:

- a. we exercise our right to arrange disconnection of your *premises* and you are no longer entitled to be reconnected; or
- b. you enter into a new contract with us for your *premises* or transfer to another retailer.

### 9.2 By you moving out of your *premises*

- a. Paragraphs 9.2 (b) to (e) apply if your *premises* are in Victoria and paragraphs 9.2 (f) to (h) apply if your *premises* are in South Australia.

#### **Victorian *premises***

- b. You must give us notice of the date on which you intend to move out, or moved out, of your Victorian *premises*, including a forwarding address to which a final bill for your *premises* may be sent.
- c. Your obligation to pay for *energy* supplied to your Victorian *premises* continues until three *business days* after when you give us your notice or when you move out, whichever is later, unless you show us you have been evicted in which case your obligation to pay continues only until when you give us your notice.
- d. In accordance with the *law*, your obligation to pay for *energy* supplied to your Victorian *premises* may end earlier if we enter into a new contract with another customer for the *premises*, if another retailer becomes

responsible for the *premises* or if the *premises* are disconnected.

- e. Unless we agree to transfer the *contract* to your new premises, you terminate the *contract* early by moving out of your Victorian *premises*.

#### **South Australian *premises***

- f. If you are moving out of your South Australian *premises* you may terminate the *contract* by giving us 3 *business days* notice.
- g. You must include in your notice details of the date you intend to move out and a forwarding address to which a final bill for the *premises* may be sent. We will then use best endeavours to read the meter on a date and at a time agreed with you.
- h. If you fail to give us the details of when you intend to move out, or fail to provide access to your meter, then we may continue to charge you for *energy* used at the *premises* until the meter is read, or until the *premises* is transferred to another retailer, or until we enter into a contract for the *premises* with a new customer.

#### **9.3 By you giving us notice**

- a. You may terminate the *contract* early by giving us 20 *business days* notice.
- b. After early termination of the *contract* by you under paragraph 9.3(a) and for so long as we continue to sell you *energy*, our *rates* and *charges* will be the standard rates and charges we publish on our website.

#### **9.4 By virtue of the last resort arrangements**

The *contract* will terminate if we are no longer entitled to sell *energy* due to a last resort event affecting us. For this purpose, within 1 *business day* we will provide your personal information (including name, billing address and metering and other information associated with your *premises*) to the entity appointed as the retailer of last resort. The *contract* will automatically terminate when the transfer to that entity becomes effective.

- 9.5 When we stop selling you energy**  
Despite anything else in these contract terms, early termination of the *contract* will not be effective until:
- a. if the *contract* is terminated because you have entered into a new contract with us, when the cooling-off period for the new contract expires;
  - b. if the *contract* is terminated because you are transferring to another retailer, when transfer to the other retailer becomes effective;
  - c. if the *contract* is terminated because the *premises* have been disconnected, when you have no right to be reconnected.

- 9.6 Early termination fee**  
If the *contract* is terminated early by us under paragraph 9.1 or by you under paragraph 9.2 or 9.3, then, unless the *law* disallows this, you must pay us the early termination fee set out in the *contract sheet*. This fee would be payable on the pay-by date on your final bill.

- 9.7 Effect of early termination**  
Early termination of the *contract* does not affect any rights we have arising before or on termination.

## **10. Information, Privacy and Confidentiality**

- 10.1 Information we need**  
You must notify us as soon as possible if your contact details change or if there is any change in information relating to the supply of *energy* to your *premises*.

- 10.2 Information we will give you**
- a. We will provide you with a copy of our customer charter in accordance with the *law*.
  - b. On request and in accordance with the *law*, we will provide you with:
    1. reasonable information on our *energy charges* including those we have billed;
    2. general advice about *energy* efficiency;
    3. advice about how, from whom and at what estimated cost, you as a residential customer may arrange for an *energy* audit of your *premises*;

4. advice on the typical running costs of major domestic appliances;
  5. information about various government assistance and concessions schemes;
  6. historical billing information we have retained in accordance with the *law*;
  7. copies of our customer charter, our privacy statement, these contract terms and the *contract sheet*; and
  8. a copy of other documents as required by the *law* in large print if required.
- c. Where the *law* allows, we may impose an *additional charge* on you for providing this information.

### 10.3 Medical information

You must let us know if there is a life support machine in use at your *premises*. If you provide us with a supporting medical certificate, or a medical certificate to the effect that a person residing at your *premises* has a medical condition which requires a continued supply of gas, we will register your *premises* as having a medical exemption. In either case we will pass this information on to your distributor as soon as practicable and give you your distributor's emergency telephone contact number.

### 10.4 Confidentiality

Details of the *contract* are strictly confidential. Neither you nor we may disclose those details to another person, including after the *contract* ends, unless:

- a. the other consents;
- b. the disclosure is required by the *law*;
- c. the details have become public; or
- d. in our case, we are allowed to by our privacy policy.

## 11. Complaints

### 11.1 How you can raise complaints

You may raise a complaint with us in writing or orally. In doing so you must give us the reasons why you are complaining.

## 11.2 **Our response**

We will respond to your complaint in accordance with the *law* and best practice generally.

## 11.3 **Escalation of a complaint**

If you are not satisfied with our response, you can ask for your complaint to be raised to a higher level in our organisation.

## 11.4 **Referring a complaint to the *Ombudsman***

You may also refer any complaint to the *Ombudsman* whose services are available to you without cost. However, you can only use the *Ombudsman* if you have first made your complaint to us and, having escalated the complaint, remain unsatisfied. You must also have raised the complaint with us within 1 year of becoming aware of the event giving rise to the complaint. You may accept or not accept the *Ombudsman's* decision, but if you accept it, the *Ombudsman's* decision will be final and binding.

## 12. **Liability**

### 12.1 **We will comply with the law**

- a. In selling you *energy*, we will comply with the *law*. However, if we are excused from complying with any *law* by a regulatory authority, we are not obliged to comply with that *law* to the relevant extent.
- b. For the purposes of the *contract*, we will not have breached any *law* if we have, or your distributor has, acted under the direction of a regulatory authority.
- c. In certain circumstances we may be allowed to depart from a requirement of the *law*. If we do so, these departures will be included as special terms in the *contract sheet* and we will obtain your consent in accordance with the *law*.

### 12.2 **The distributor is your supplier**

You agree and acknowledge that:

- a. it is your distributor, not us, who connects or connected your *premises* to the network and who will maintain that connection;

- b. subject to and without limiting paragraph 13.2, your distributor is responsible for supplying *energy* to your *premises* and for the quality and reliability of the *energy* supplied;
- c. the *energy* supplied to your *premises* may be subject to voltage, wave or frequency fluctuations (for electricity) or quality or pressure variations or deficiencies (for gas);
- d. as already stated in paragraph 7, the supply of *energy* to your *premises* may be interrupted; and
- e. except in respect of the supply of gas to South Australian *premises*, we are not liable to you (under contract, tort (including negligence) or on any other basis) in respect of any of these matters.

### 12.3 You are responsible on your side of the *supply point*

We are not responsible for, and you accept all risks in respect of, the control and use of electricity on your side of the *supply point* and of gas on your *premises*.

### 12.4 Uncontrollable events

Obligations under the *contract* will be suspended if they cannot be met due to an event outside your or our control, as the case may be (excluding any obligation to pay money). If we are affected by such an event we will give prompt notice to you in accordance with the *law* and use best endeavours to remove, overcome or minimise the effects of the event (though we need not settle any industrial dispute unfavourably to us), as you must do if you are affected.

### 12.5 No implied conditions or warranties

- a. Nothing in these contract terms excludes, restricts or modifies any condition or warranty that the *law* does not allow us to exclude, restrict or modify. However, all other conditions and warranties, whether or not implied by the *law*, are excluded.
- b. The Trade Practices Act 1974 (Cth) and other *laws* imply conditions and warranties into certain types of contracts for the supply or sale of goods and services. If any condition or warranty is implied into the *contract* under

those *laws*, then our liability (if any) for breach of that condition or warranty in connection with any goods or services we supply under the *contract* is limited, as far as the *law* allows and at our option, to resupplying the goods or services (or paying for their resupply).

## 12.6 Indemnity

To the extent the *law* allows, you indemnify us against (and therefore must pay us for) loss or damage arising in connection with any failure by you to comply with any of your obligations under the *contract*, the control and use of any electricity on your side of the *supply point*, any damage to the *supply equipment* and the control and use of any gas on your *premises*, whether or not the *contract* has ended. You will not have to do this where the loss or damage is the result of the negligence of us, your distributor or a *meter reader*.

## 12.7 Non-exclusion

Nothing in the *contract* varies or excludes any limitation of liability or immunity we have under the *law*.

# 13. South Australian Supply Obligations

## 13.1 South Australian gas only

Paragraphs 13.2, 13.3 and 13.4 only apply to the extent your *premises* are in South Australia and our *contract* with you concerns gas.

## 13.2 Our obligations

We will use best endeavours:

- a. to supply gas to you in accordance with the *law*. This is a limited obligation which does not apply, for example, to the extent your action or gas appliances adversely affect the distribution system or other gas consumers;
- b. to ensure our actions do not interfere with the safe operation of your distributor's distribution system;
- c. to provide you with a reliable supply of gas in accordance with the *law*.

We will do these things by, among other things, arranging for your distributor to supply gas to your *premises*.

### 13.3 Information you are entitled to receive

Within 10 *business days* of your request we will explain any change in the quality of the supply of gas outside the limits specified by the *law* or any unplanned maintenance or other interruption to supply (in writing if you request). On request we will also provide you with advice on facilities that can protect gas appliances and other equipment and how you can use gas without interfering with the distribution system or other gas consumers.

### 13.4 Gas supply interruptions and other matters

Without limiting paragraph 7:

- a. we may interrupt your gas supply for maintenance or repair, to install a new supply to another gas consumer, in an emergency or for health and safety reasons;
- b. we will provide a 24 hour telephone service to enable you to ascertain details of unplanned interruptions;
- c. we will provide you with 4 *business days* notice of interruptions required for planned maintenance or distribution system augmentation; and
- d. we will provide you with at least 24 hours notice of our intention to enter your *premises* to connect or disconnect supply or to inspect, repair or test the gas installation.

### 13.5 South Australian electricity only

Because of the law in South Australia, paragraphs 1.2 (a) and (b) do not apply to the extent your premises are in South Australia and our contract with you concerns electricity.

## 14. Legal Matters

### 14.1 Notices

Unless otherwise stated, all notices must be in writing. Notices can be given personally, by fax, by post or by e-mail, to an address or number set out in the *contract sheet*. If a notice is sent by post, it will be considered to have been received 3 *business days* after posting, unless in fact it is received earlier. Any changes to notice details must themselves be notified in writing.

#### 14.2 **Governing law**

The *laws* of the State in which your *premises* are located govern the *contract*.

#### 14.3 **Incorporation of the law by reference**

To the extent it is necessary to incorporate a provision of the *law* for any of these contract terms or for the *contract* generally to be *lawful*, that provision of the *law* is incorporated (subject to any necessary adaptation).

#### 14.4 **Varying the contract**

Subject to paragraph 15.4, we must agree any variation to the *contract* with you in writing.

#### 14.5 **Transferring the contract**

You cannot transfer the *contract* to another person without our prior written consent. We will need your prior written consent to any transfer too, except that we may transfer the *contract* to another person together with any transfer of all or substantially all of our residential or small business customer retail sales business in the State in which your premises are located (in which case you appoint us to be your attorney to sign any document or do anything necessary to effect the transfer of the *contract*).

#### 14.6 **Definitions**

In these contract terms:

***additional charge*** means any *charge* other than an *energy charge*;

***annual review date*** means 1 January for Victorian *premises* and 1 July for South Australian *premises*;

***business day*** for Victoria means a day other than a Saturday, a Sunday or a gazetted public holiday in Victoria and for South Australia a day on which banks are open for general business banking in Adelaide other than a Saturday or a Sunday;

***charges*** means *energy charges* and other charges payable by you under the *contract*;

***contract*** means the contract you have entered into with us for the sale of *energy* to your *premises* as first mentioned in these contract terms in paragraph 1.1;

**contract sheet** means either our offer to sell you *energy* signed by you or, if you verbally accepted our offer or accepted online, the confirmation of acceptance we subsequently provide to you;

**CPI** means the Consumer Price Index (All Groups) for Melbourne or for Adelaide, for Victorian and South Australian *premises* respectively, each as published from time to time by the Australian Bureau of Statistics or, if that index is not available, another similar index determined by us;

**energy** means either electricity or gas;

**energy charges** means the *charges* for the *energy* we sell you;

**environmental charges** means the lesser of:

- a. the amount we reasonably estimate as the cost to us of meeting our *environmental obligations* in connection with *energy* consumed at your *premises*; and
- b. any charge imposed on us if we do not, or are not able to, meet those *environmental obligations*;

**environmental obligation** means any obligation imposed on us under any law or regulatory or administrative scheme, or which we embrace voluntarily, for the direct or indirect purpose of reducing greenhouse gas emissions, increasing the generation of electricity from renewable sources or encouraging the efficient use of *energy* including any Commonwealth or State emissions trading, renewable energy or energy efficiency scheme;

**GST** means a goods and services or similar tax;

**latest available quarter** in respect of an *annual review date* means the last quarter preceding the *annual review date* in respect of which *CPI* data has been published as at the *annual review date* and, in respect of a *rate* variation, means the quarter preceding the quarter in which the event giving rise to the *rate* variation occurred by the same number of quarters as the *latest available quarter* in respect of the *annual review date* precedes the *annual review date*;

**law** means any law or regulatory or administrative document relating to the sale or supply of *energy*;

**loss factor change** means a change in the applicable loss factors provided by the *market and system operator* in respect of electricity that is lost through the transmission and distribution systems on its way to your *supply point*;

**market and system operator** means a body that administers the market for wholesale trading in *energy* in Victoria or South Australia;

**market charges** means the amount we reasonably estimate as the cost to us of all participant charges, ancillary service charges, system security charges and other charges payable by us in connection with *energy* consumed at your *premises* as determined by the *market and system operator*;

**meter reader** means a person authorised to read your meter;

**metering charges** means the charges we incur in connection with metering the consumption of *energy* at your *premises* including the provision, installation and maintenance of metering equipment and the collection and processing of metering data in accordance with the *law* and our own requirements;

**network charges** means charges charged by your distributor in connection with the supply of *energy* consumed at your *premises*;

**nodal event** means a change in the location of regional reference nodes or in the boundaries or number of nodes in a region;

**Ombudsman** means a relevant body responsible for handling our customers' complaints in Victoria or South Australia;

**other distributor charges** means any amounts charged by your distributor in connection with your *premises* including connection, disconnection and reconnection charges but excluding *network charges*;

***premises*** means the premises stated in the *contract sheet* and any additional *premises* incorporated into the *contract* under paragraph 14.9 and, if there is more than one such *premises*, all of them together and each of them separately (as the context requires);

***rate*** means a rate we use to determine our *energy charges*;

***security deposit*** means cash or a guarantee, letter of credit or other form of credit support;

***small customer*** means:

- a. for Victoria, an electricity customer that consumes or is expected to consume electricity at the customer's Victorian premises at the rate of less than or equal to 160MWh per year and a gas customer that consumes or is expected to consume gas at the customer's Victorian premises at the rate of less than or equal to 5000GJ per year;
- b. for South Australia, an electricity customer whose annual electricity consumption level at relevant South Australian premises is less than 160MWh and a gas customer whose annual gas consumption level at relevant South Australian premises is less than 1TJ;

***supply equipment*** means facilities installed at or near the *supply point* to deliver gas from the network, to regulate that delivery or to measure the gas withdrawn at the *supply point*;

***supply point*** means the point at which your distributor's network connects to the *energy* installation at your *premises* and includes your meter;

***unaccounted for gas change*** means a change in the amount of the unaccounted for gas for which we are required to accept the risk of loss under applicable *law*; and

***upstream event*** means:

- a. the occurrence of any force majeure event under any of our wholesale gas purchase or transport arrangements;
- b. the exercise of rights by the other party to any of our wholesale gas purchase or transport arrangements to reduce the quantity of gas sold or delivered;
- c. any change in any of our gas purchase or transport arrangements which is not in our control; or
- d. the other party to any of our wholesale gas purchase or transport arrangements exercising its rights to pass through to us additional costs it incurs.

#### 14.7 Interpretation

In these contract terms:

- a. ***we, us*** or ***our*** refers to Simply Energy ABN 67 269 241 237 or it refers to Simply Energy and you (as the context requires);
- b. ***you*** or ***your*** refers to the person or persons named in the *contract sheet* as customer and, if more than one person is named, refers to each of you separately and all of you jointly;
- c. a reference to:
  1. the singular includes the plural and vice versa;
  2. a document includes any variation or replacement of it;
  3. costs we incur include our internal costs;
- d. the words including, includes, such as or for example are not words of limitation; and
- e. headings are for convenience only and do not affect interpretation.

#### 14.8 Inconsistencies

If these contract terms are different to or inconsistent with the *contract sheet*, the latter prevails.

#### 14.9 Multiple *premises* and portability

If you ask us to extend the *contract* to additional premises or to transfer the *contract* to your new premises because you are moving, and the additional or new premises are also in the same

State as your original *premises*, then we may offer to incorporate those premises into the *contract*.

## 15. You Must be a Small Customer

### 15.1 Notice

You must immediately notify us if you are not, or you cease to be, a *small customer*.

### 15.2 Possible consequences if you are not a *small customer*

If you are not, or you cease to be, a *small customer* then we may terminate the *contract* early by giving you notice and, unless the *law* disallows this, request your distributor to disconnect your premises.

### 15.3 Early termination fee

If we terminate the *contract* under paragraph 15.2 then, unless the *law* disallows this, you must pay us the early termination fee set out in the *contract sheet*.

### 15.4 Basis on which the *contract* continues

Until such time as we may terminate the contract under paragraph 15.2, the *contract* will continue, for the term stated in the *contract sheet* (or, if no term is stated, indefinitely), not on these contract terms (except that paragraphs 15.2 and 15.3 will continue to apply) but on the standard contract terms we apply to larger customers (subject to any necessary adaptation), and not on the *rates* and *charges* stated in the *contract sheet* or otherwise applicable to you while you were a *small customer* but on the standard rates and charges we apply to larger customers. We will give you notice of the new contract terms and *rates* and *charges* as soon as practicable after we become aware that you are not, or have ceased to be, a *small customer*.

## Privacy Policy

At Simply Energy, we respect your privacy.

This privacy policy explains how Simply Energy deals with your personal information. Personal information is information about you, and includes your name and address, financial circumstances, credit history and account details.

We are committed to complying with the National Privacy Principles contained in the Privacy Act 1988, which are designed to protect the privacy of individuals. We are also committed to complying with the Spam Act 2003 (which deals with restrictions on sending emails) and the Do Not Call Register Act 2006 (which deals with restrictions on making telephone calls).

### **What personal information does Simply Energy collect?**

Simply Energy is an energy retailer. We supply energy and related services to households and businesses, and collect information for this purpose.

We collect personal information about you, our customer, including your name, address, date of birth and other relevant identification information. We also collect information about your past energy consumption or likely future energy consumption, as well as financial information about you (including your credit history).

For our business customers, we collect personal information about the contact person for that customer.

We also collect information about our suppliers, employees (and prospective employees) and prospective customers or business contacts.

We collect personal information in a variety of ways, including directly from you, from public sources (such as telephone directories) and from private sources (such as from credit reporting agencies, data providers, other market participants or a market operator). We may record your telephone calls with us, including for training, service quality and compliance purposes.

### **Personal information collected on our website**

We generally only collect your personal information on our website where you provide it knowingly and voluntarily (for example, by entering into a contract

online, filling out a form or emailing an inquiry).

We may also collect other information about your use of the website that cannot be used to identify you, including:

- Your server address
- Your top level domain name
- The date and time of the visit
- Pages accessed and documents downloaded
- The address of any website that linked you directly to our site

### **How does Simply Energy use and disclose personal information?**

We may use or disclose your personal information to supply energy or provide other products and services to you, and in the administration of our business.

For example, we may disclose personal information to our agents, advisors, contractors, service providers and entities related to us (including to entities located overseas), but only for the purposes of our business. This will include disclosing personal information for the purposes of any energy market process or system (including to distributors or a market operator) and to credit reporting agencies.

We may also use or disclose information where required or permitted by law (for example to a law enforcement agency, a regulatory body or an industry ombudsman), to any organisation involved in a corporate reorganisation with us or considering acquiring an interest in our assets or business, or to any person or organisation for which you have given your consent (whether express or implied).

Where we provide your personal information to other parties, we take steps to ensure the other party maintains the privacy of your personal information.

We may analyse customer information so that we can manage and improve our services. We may also use your personal information to provide you information about other products and services you might be interested in, although you may opt out of receiving this information.

## **Sensitive information**

Generally, we do not collect sensitive information about you (such as details of your race, political beliefs, religion or health). However, you may wish to provide us with health information, such as if you have special energy requirements or if you may be entitled to health-related rebates. We will obtain your consent before collecting, using or disclosing your sensitive information, unless required by law.

## **Use of cookies**

We may use 'cookie' technology on our website. A 'cookie' is a small message given to your web browser by our web server. The browser stores the message in a text file, and the message is then sent back to the server each time the browser requests a page from the server. A cookie does not give us any personal information about you.

We make limited use of cookies on our website. We use cookies to measure usage sessions accurately, and to gain a clear picture of which areas of the sites attract traffic. We also use cookies to improve the functionality of our website.

## **Employee records**

Employee records are not covered by this privacy policy.

## **How does Simply Energy manage personal information?**

We do not sell or trade your personal information. Simply Energy also takes reasonable steps to ensure the security of personal information held by it from loss or unauthorised access, destruction, use, modification or disclosure. Access to personal information is restricted to authorised personnel.

## **How can you access your personal information?**

You have a right to access your personal information. However, we may limit your access if access would disclose personal information about another person, or where it would disclose commercially sensitive information.

We will seek to ensure that your personal information is accurate and complete. However, if you would like to update your details, please contact us at [privacy@simplyenergy.com.au](mailto:privacy@simplyenergy.com.au).

## **Complaints about privacy**

If you have a complaint about how Simply Energy has handled your personal information, you can contact us at [privacy@simplyenergy.com.au](mailto:privacy@simplyenergy.com.au) or at the address below. We will do our best to resolve your complaint promptly.

## **How to contact Simply Energy**

If you have any questions about how Simply Energy handles personal information, please contact us:

Email: [privacy@simplyenergy.com.au](mailto:privacy@simplyenergy.com.au)

Phone: 13 88 08

Address: PO Box 210, Balwyn VIC 3103

## **Changes to this privacy policy**

We may update our privacy policy from time to time. This privacy policy was last updated on 1 August 2007.



