

# Terms and conditions of electricity supply for small business customers within an embedded network

## 1. Your electricity supply agreement

- (a) These terms and conditions are about the supply of electricity by us to your premises, where those premises are located within an embedded network in which we operate and you are a Small Customer.
- (b) An embedded network is a private electricity network serving multiple premises. This is the wiring within the building or development within which your premises are located, which is in turn connected to the local electricity distributor's wiring. The configuration of the metering determines how it can be used as an embedded network.
- (c) Your electricity supply agreement is comprised of:
  - (1) these terms and conditions; and
  - (2) the Details and Disclosure Document.
- (d) The Details and Disclosure document is a document (or a number of documents to be read together) which consolidates the information which formed part of the process of signing up to this agreement (which may have been through an electronic, telephone or other process), or which is given to you at the time of entering into this agreement. This includes details about you and your premises, information about rates and charges, and other disclosure information.
- (e) Various Regulatory Instruments also govern the supply of electricity to you, in addition to this agreement.

## 2. Evergy's role

- (a) Evergy Pty Ltd ACN 623 005 836 acts as agent for Marina Square Retail Pty Ltd ACN 605 329 637 (**Marina Square**). Marina Square is the holder of a retail exemption under the National Energy Retail Law, under which Marina Square is permitted to sell electricity to you. A reference to "we" or "us" in this agreement is a reference to Marina Square (not Evergy), and it is Marina Square (rather than Evergy) who is the legal party to this agreement. However, you will generally deal with Evergy, on behalf of Marina Square, in matters relating to this agreement.
- (b) A reference to "you" is a reference to the customer that entered into this agreement, and whose name appears in the Details and Disclosure Document.
- (c) We buy the electricity that we sell to you from another authorised electricity retailer or exempt seller, or from the wholesale market, and we on-sell it to you under this agreement for use in your premises. We may also source the electricity that we sell to you from on-site electricity generation or storage.
- (d) A person selling electricity under a retail exemption is not subject to all of the obligations of an authorised retailer, and you do not receive the same regulatory protections as you would if you were purchasing from an authorised retailer. The conditions applicable to retail exemptions can be found in the Australian Energy Regulator's Exempt Selling Guideline on its website. Our exemption for small commercial/retail customers is Class R1.
- (e) You have the right to purchase electricity from another supplier who is an authorised electricity retailer should you wish. Your meter may need to be changed to accommodate this.

## 3. Commencement

- (a) This agreement becomes legally binding when, following your sign-up to it (which may be through an electronic, telephone or other process), we issue confirmation of the establishment of your account.
- (b) Subject to clause 3(f), supply of electricity under this agreement will commence:
  - (1) if you are a new occupant at new premises – on the later of when you move in to the premises and when the premises are energised;
  - (2) if you are a new occupant at existing premises, where the previous occupant received supply from us – as for paragraph (1) above;
  - (3) if you are a new occupant at existing premises, where the previous occupant received supply from another supplier who is an authorised electricity retailer – on the later of when you move in to the premises, when the metering becomes suitable for on-supply in an embedded network, and when the premises are energised; and
  - (4) if you are an existing occupant at existing premises where you were previously receiving supply from another supplier who is an authorised electricity retailer – on the later of when the metering becomes suitable for on-supply in an embedded network, and when the premises are energised.
- (c) For the purposes of clauses 3(3) and 3(4), the metering becoming suitable for on-supply in an embedded network may involve replacement of your meter, or satisfactory arrangements for the use of your existing meter, and the completion of any necessary market transactions in this regard.
- (d) We may also require that further matters be satisfied before supply commences, such as you providing further information or documents (such as identification), or you providing any security that we may request. We may terminate this agreement if these are not provided to our satisfaction.
- (e) You give us your permission to obtain a credit check of your credit history.

- (f) You have a 10 Business Day cooling off period during which you may cancel this agreement without any charge or penalty. That cooling off period commences on the later of the date this agreement becomes legally binding and the date that you receive the Disclosure Information about this agreement. Despite the paragraphs above, we may delay supply of electricity to your premises until the expiration of the cooling off period. If we do supply electricity during this period, you are not required to pay for it if you cancel this agreement during that period. If you wish to cancel this agreement during that period, you must notify us, orally or in writing, clearly indicating your intention to cancel this agreement.

#### **4. Your right to terminate this agreement**

- (a) You can give us notice at any time that you wish to terminate this agreement. No penalty or early termination fee will apply if you wish to do this.
- (b) Clause 14 contains detailed provisions regarding termination of this agreement.

#### **5. Charges**

- (a) You must pay us the following charges:
  - (1) Energy Charges, which are made up of:
    - (A) Usage Charges; and
    - (B) Daily Supply Charges; and
  - (2) any of the following charges which may be applicable to you:
    - (A) Demand Charges, if you are on a time of use demand tariff;
    - (B) any other charges specified in the Details and Disclosure Document, or of which we subsequently advise on at least 10 Business Days' notice;
    - (C) any late payment fees under clause 8(h);
    - (D) any merchant service fees or fees for dishonoured payments under clause 8(i);
    - (E) any applicable connection, disconnection or reconnection fees (which may include a disconnection fee after you move out of your premises);
    - (F) any additional costs related to your meter that are incurred at your request or due to your act or omission, such as fees for a special meter read, or meter repairs where you damaged it;
    - (G) any other fees or charges imposed by your distributor due to something specific to your needs (not including ordinary charges for use of the networks);
    - (H) any other amounts permitted by this agreement.
- (b) A full list of charges that may apply, depending on your circumstances, can be found on our website or Evergy's website. These charges and their amounts may change from time to time, on at least 10 Business Days' notice.
- (c) The Usage Charges (being a component of the Energy Charges) will apply to your consumption. If the Usage Charges are based on a time of use tariff, they will apply to your consumption during peak, shoulder (where applicable) and off-peak periods. The applicable times for those periods are set out on our website or Evergy's website.
- (d) You may request to change from a flat tariff to a time of use tariff or time of use demand tariff, or vice versa. We may also move you between such tariffs, by at least 10 Business Days' notice to you, if we think this is appropriate having regard to your usage.
- (e) The applicable Energy Charges as at the date you entered into this agreement are set out in the Details and Disclosure Document.
- (f) We will review our Energy Charges at least twice per year, with a view to keeping them competitive with comparable pricing offered by the largest retailers. We will publish our revised Energy Charges on our website or Evergy's website, and we will also give you at least 10 Business Days' notice of the change.
- (g) Daily Supply Charges may apply even during periods where the electricity supply is not connected or is interrupted.
- (h) Amounts specified in the Details and Disclosure Document and on the relevant website may be stated to be exclusive or inclusive of GST. Unless an amount is stated to include GST, a payment for a "taxable supply" as defined for GST purposes will, to the extent permitted by law, be increased to cover the cost of the GST payable on that taxable supply.
- (i) We reserve the rights to engage a third-party collection agency to recover any amounts outstanding after the due date of your final invoice. Any additional fees and charges associated with the collection of debt after the due date of the final bill will be charged against you as additional debt due and owing.

#### **6. Physical delivery of electricity**

- (a) In the electricity industry, the sale of electricity and its physical delivery are two separate functions.
- (b) The electricity we buy for sale to you is physically supplied to the building or development by the local electricity distributor. Neither we nor Evergy have any responsibility for or control over the delivery of that electricity over the local electricity distributor's wiring. That electricity is in turn physically supplied to your premises via the internal wiring within the building or development.

- (c) We are unable to and do not guarantee the quality and continuity of the supply of electricity. In addition to interruptions, the supply of electricity may be subject to matters such as variations in voltage and frequency and may contain voltage surges, some of which may damage equipment.
- (d) This agreement covers our sale of electricity to you, not its physical delivery (subject to the paragraphs below). Where we use the term “supply” in this context, we mean sale only, not delivery.

## 7. Network charges

- (a) Our charges for the sale of electricity include a component for the physical delivery of electricity to your premises (that is, network charges). The charges that we in turn pay when we buy electricity that we supply to you include a component for network charges. In addition, we may incur further costs or pay further charges in relation to the electricity metering used at your premises.
- (b) If you later decide to buy your electricity from a different supplier who is an authorised electricity retailer, you will still need to pay us network charges for as long as you occupy the premises, as we in turn will still continue to incur such costs in respect of your premises. You should make arrangements with your new authorised electricity retailer to ensure that the charges you pay it do not include a component for this, unless it is part of an arrangement under which the new retailer agrees to pass those charges on to us (so that you can pay the new retailer instead of us).
- (c) These network charges will be calculated on a “shadow pricing” basis, meaning that the charge will be equivalent to the charge you would have paid your local electricity distributor had your premises been connected directly to their wiring. For this purpose, the charge will be taken to be calculated on a time of use basis.
- (d) The network charges that we charge to you may include demand charges.
- (e) The building owner and Energy operate the embedded network under a network exemption. The conditions applicable to network exemptions can be found in the Australian Energy Regulator’s Electricity Network Service Provider Registration Exemption Guideline on its website.

## 8. Billing and payment

- (a) We will bill you monthly for the charges.
- (b) We may estimate your consumption where we are not able to reasonably or reliably base a bill on an actual meter reading. If, having provided you with an estimated bill, we later obtain a meter reading or more reliable data, we will adjust your next bill appropriately.
- (c) We will send bills to the email or postal address set out in the Details and Disclosure Document, or any updated email or postal address that you nominate from time to time for this purpose. In the absence of this information, we will send bills to the address of the premises.
- (d) You must pay each bill by the due date stated on the bill.
- (e) You may pay your bills by any of the methods that are set out on the bill, or by any other methods agreed with us.
- (f) If you request us to do so, we will review a bill, and inform you of the outcome, in accordance with our standard complaints and dispute resolution procedures.
- (g) During the bill review you must pay that portion of the bill (if any) that is not in dispute. Where the bill is found to be correct, you must pay the unpaid amount. Where the bill is found to be incorrect, we will adjust the bill.
- (h) If you do not pay a bill on time, we may (subject to the Regulatory Instruments) charge you a late payment fee. The amount of such fee, as applicable from time to time, will be as published on our website or Energy’s website. The applicable late payment fee (if any) as at the date you entered into this agreement is set out in the Details and Disclosure Document. Charging you a late payment fee does not prevent us from taking other action for non-payment, such as disconnection, which may be permitted by the Regulatory Instruments.
- (i) We may require you to pay us any merchant service fees we incur because of the payment method you use and for costs imposed on us if, due to fault on your part, payments you make to us are dishonoured or reversed.
- (j) If you are consistently late paying your bills, we may place you on a shortened collection cycle provided that we have complied with the relevant Regulatory Instruments.
- (k) If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options. Additional protections under the Regulatory Instruments may apply to you.

## 9. Security deposits

- (a) Where permitted by the Regulatory Instruments, we may require you to provide a security deposit.
- (b) We may apply the security deposit to offset amounts that you owe us, subject to the Regulatory Instruments.

## 10. Carbon neutrality

- (a) We intend to purchase carbon offsets to gain carbon neutral power certification under the National Carbon Offset Standard, at no extra cost to you.
- (b) We will let you know if there is any reason why we may not be able to continue doing this in the future.

## 11. Metering

- (a) You must allow us and our representatives safe, convenient and unhindered access to your premises and any metering equipment there for the purposes of installing, maintaining, repairing, replacing, reading, testing, inspecting, altering, connecting, disconnecting or reconnecting your meter.
- (b) The metering equipment does not belong to you, and you will not interfere with that equipment in any way.
- (c) You acknowledge that the electricity supply at your premises may be interrupted, disconnected and reconnected as necessary while these activities are undertaken.

## 12. Disconnection and reconnection

- (a) You may request disconnection at any time. We will arrange disconnection of your premises in accordance with your request. We will use our best endeavours to arrange for a meter reading and, if applicable, the preparation and issue of a final bill for your premises.
- (b) Provided that we comply with all applicable requirements under the Regulatory Instruments, we may arrange for your premises to be disconnected:
  - (1) if you fail to pay us an amount we have billed by the due date;
  - (2) if you refuse or fail to pay a security deposit;
  - (3) if you have failed to allow access, or safe and unhindered access, to your meter;
  - (4) if you are using electricity illegally;
  - (5) if you are on a payment plan and have not adhered to the terms of the plan;
  - (6) if you refuse to provide acceptable identification when required by us;
  - (7) if you have provided false information to us, in circumstances where you would not have been entitled to have the premises energised if the false information had not been provided;
  - (8) if required to do so at the direction of a relevant authority;
  - (9) if you cease to be a Small Customer, and we have not agreed upon alternative supply arrangements; or
  - (10) on other grounds the Regulatory Instruments allow, if the Regulatory Instruments apply to you,  
(each a **Disconnection Event**).
- (c) If your premises are disconnected as a result of a Disconnection Event, but within 10 Business Days of the date of disconnection you:
  - (1) rectify the situation that led to disconnection; and
  - (2) pay any relevant charges, including any connection or reconnection fees,  
then, on request, we will arrange for your premises to be reconnected.
- (d) Your premises may also be disconnected in an emergency or for health or safety reasons. This is in addition to interruptions in supply that may occur, as described in clause 6(c), or disconnection for metering purposes, as described in clause 11(c).
- (e) The Regulatory Instruments contain a number of restrictions on when and how we may disconnect customers' premises, including requirements for notices.

## 13. Life support

- (a) If a person at your premises requires a life support machine or otherwise has a medical condition that requires continuous supply of electricity then you must notify us of that fact and provide confirmation from a registered medical practitioner.
- (b) Despite anything else in this agreement, we will not arrange to disconnect your premises where those premises are registered by us or the relevant distributor as requiring life support equipment.

## 14. Termination

- (a) You may give notice that you wish to terminate this agreement at any time. This agreement will end at the time specified in this clause.
- (b) Supply of electricity under this agreement will end:
  - (1) where you want to receive supply from another supplier who is an authorised electricity retailer – when the new retailer becomes responsible for your premises in the wholesale market;
  - (2) where you move out of the premises – on the earlier of:
    - (A) the date that a person moving into the premises becomes liable to us for electricity consumed at the premise;
    - (B) the date that the premises are disconnected; and
    - (C) the date of the final meter read (unless you continue to consume electricity at the premises after that date).
  - (3) where you notify us that you are remaining at the premises but wish the electricity to be disconnected – when the disconnected is effected;

- (4) where, following disconnection for a Disconnection Event under clause 12(b) (other than a Disconnection Event under clause 12(b)(8) or (10) in circumstances that were not your fault), you do not have a right to be reconnected, and we notify you that we are choosing to terminate this agreement – on the date specified in the notice to you;
- (5) if we are no longer authorised to supply electricity to you (including where we no longer have relevant authorisations or exemptions, or agreements in place to purchase electricity which we onsell to you) – upon a date specified in a notice to you.
- (c) We may arrange for your premises to be disconnected in the circumstances described in clause 14(b)(2) to (5).
- (d) If you want to terminate this agreement because you propose to purchase electricity for use in the premises from an authorised electricity retailer, you agree that you will, before doing so, contact us with details of the offer from that electricity retailer (insofar as confidentiality permits), and give us a reasonable opportunity to match that offer. If, within a reasonable time, we make you an offer that is competitive with the offer from the electricity retailer, you agree to fairly consider that offer before deciding whether to purchase electricity from that electricity retailer or from us.
- (e) Upon supply of electricity ceasing, this agreement will end, other than:
  - (1) provisions of this agreement relating to network operations, which continue for so long as you occupy the premises; these include ongoing network charges (see clauses 7 and 8) and other general provisions insofar as they relate to network operations (including clauses 11 to 23); and
  - (2) rights and obligations arising before or on termination, such as obligations you have to pay your bills.

## 15. Variation of these terms

- (a) We may from time to time vary this agreement going forward.
- (b) We will give you at least 10 Business Days' notice of any such change.
- (c) If you do not terminate this agreement effective from before the change comes into effect, you agree to comply with the agreement as varied.

## 16. Liability

- (a) Neither we, Evergy itself, any person from whom we buy or Evergy buys electricity, or any of our or their officers or employees, are liable for:
  - (1) any partial or total failure to supply electricity unless the failure is due to an act or omission done by the relevant person in bad faith or through negligence; or
  - (2) any indirect, economic, special or consequential losses that you suffer as a result of any partial or total failure to supply electricity due to an act or omission done by the relevant person in bad faith or through negligence.
- (b) Our total liability, and that of Evergy itself and any person from whom we buy or Evergy buys electricity, and that of any of our or their officers or employees, for losses suffered as a result of any partial or total failure to supply electricity under the agreement (other than a loss for which liability is excluded by this clause or Regulatory Instruments) is limited, in respect of all failures during a calendar year, to the lesser of the following:
  - (1) the cost of repair or replacement of any damaged property; and
  - (2) \$5,000.
- (c) If there is more than one of you, each of you is jointly and severally liable under this agreement.

## 17. Privacy

We will comply with the relevant privacy legislation in relation to your personal information. Detailed information on our privacy policy is available on our website or Evergy's website.

## 18. Electronic communications

- (a) (a)Where this agreement or any applicable Regulatory Instrument requires us to provide you with a notice (including, for example, notices regarding changes to billing and payment arrangements, tariffs, disconnection, reminders or warning notices, variations to the terms and conditions of the agreement and those relating to termination of the agreement), and you have provided us with an email address for receiving notices electronically, we may provide you with any such notice electronically by sending it to that email address. We will not be required to send you physical copies to a postal or street address, unless you asked for that at the time of sign-up or contact us asking for that to change going forward.
- (b) Where this agreement or any applicable Regulatory Instrument requires you to provide us with a notice (including, for example, notices regarding changes to your details, change in electricity use and termination of the agreement), you may provide us with any such notice electronically. We are entitled to assume that an electronic communication to us from an email address provided by you is from you.
- (c) Where this agreement or any applicable Regulatory Instrument requires us to obtain your consent, you may provide us with your consent electronically.

## 19. Information provision

You must notify us as soon as possible if:

- (a) any of your details which are known to us change (including, if you move out of the premises, a forwarding address);

- (b) your premises are affected by a fault;
- (c) any changes occur which will materially affect the provision of metering services to you, such as changes to access to your meter;
- (d) there is any change or proposed change in plant or equipment, including metering equipment, or any change to the capacity or operation of connected plant or equipment that may affect the quality, reliability, safety or metering of the supply of electricity to the premises or the premises of any other person;
- (e) there is any permanent material change to the electricity load or pattern of usage at the premises; or
- (f) you cease to be, or anticipate that you will cease to be, a Small Customer at your premises.

## 20. Transfer of this agreement

- (a) If another person, instead of us, becomes entitled to onsell electricity to your premises within the embedded network, we may transfer our rights and obligations under this agreement to that person, and notify you of that transfer.
- (b) A transfer under clause 20(a) may include a transfer from Marina Square (for which Evergy acts as agent) to Evergy, upon Evergy becoming an authorised electricity retailer and becoming permitted to sell electricity under that authorisation, or to another authorised electricity retailer. In that case, Evergy (or the other authorised retailer) will be selling under a retailer authorisation, not under a retail exemption, and this agreement will become a retail contract under the National Energy Retail Law and National Energy Retail Rules.
- (c) You consent to any such transfer, without the need for any further documentation or agreement, and you agree to comply with this agreement in favour of that person.

## 21. Complaints and dispute resolution

- (a) If you have a query, complaint or dispute, you can contact us on:  
By Post: Locked Bag 1400, Meadowbank, NSW 2114  
Phone: 1300 383 749  
Interpreter: 131 450 – For help using an interpreter visit TIS NRS: 133 677 – For help using this service visit NRS  
Email: support@evergy.com.au
- (b) We will handle a complaint in accordance with our standard complaints and dispute resolution procedures, which can be found on our website or Evergy's website, or provided to you on request. We will inform you of the outcome of our review of your complaint.
- (c) If you are not satisfied with our response to the complaint, you may refer the complaint or dispute to the energy ombudsman (including for free independent information and advice), where the ombudsman has jurisdiction.

## 22. Governing law and jurisdiction

- (a) The agreement is governed by the laws in force in the New South Wales.
- (b) You agree to submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia in relation to all matters arising under this agreement.

## 23. Definitions

In this agreement:

**Business Day** means a day other than a Saturday, Sunday or a gazetted public holiday at your premises.

**Daily Supply Charge** means a charge that is charged per day of this agreement (regardless of consumption), from the date that supply commences.

**Demand Charges** means charges that are based on the maximum demand (in kW or kVA) recorded by your meter in a given period.

**Energy Charges** is defined in clause 5(a)(1).

**Evergy** is defined in clause 2(a).

**Regulatory Instruments** means all laws or regulatory or administrative instruments relating to or affecting the supply or sale of electricity to your premises, which may include (as applicable) the National Energy Retail Law, the National Energy Retail Rules and the Australian Energy Regulator's conditions of retail and network exemptions.

**Small Customer** means a person who is:

- (a) a customer who purchases electricity principally for personal, household or domestic use at premises; or
- (b) a business customer who purchases less than 100 MWh of electricity at premises annually.

**Usage Charge** means a charge applied to your electricity consumption in accordance with clause 5(b).