

# Terms and conditions for the supply of centralised services (PHW Heating, AC Thermal Energy and Cooker Gas) to residential customers within an embedded network

## 1. What this agreement is about

- (a) This agreement is about the supply of the following centralised services to your premises:
  - (1) heating used in the delivery of potable hot water (**PHW Heating**);
  - (2) thermal energy used in the delivery of air conditioning (**AC Thermal Energy**); and
  - (3) gas, for use in cooktops at your premises (**Cooker Gas**).
- (b) You can choose to receive all, any or none of these services.
- (c) This agreement also covers various matters relating to the electricity embedded network within your building (but not the supply of electricity, which is covered by other arrangements).
- (d) This agreement is comprised of:
  - (1) these terms and conditions; and
  - (2) the charges document provided to you.

## 2. Evergy's role

- (a) Evergy Pty Ltd ACN 623 005 836 (**Evergy**):
  - (1) is the supplier of PHW Heating and AC Thermal Energy; but
  - (2) acts only as an agent for the supplier of Cooker Gas.
- (b) The supplier of Cooker Gas is the building management committee (**BMC**) for your development. The current members of the BMC are The Owners – Strata Plan 97389, Fairmead Business Pty Ltd and Marina Square Retail Pty Ltd. These members may change from time to time.
- (c) A reference to “we” or “us” in this agreement is a reference to:
  - (1) Evergy, in the case of PHW Heating and AC Thermal Energy;
  - (2) the BMC (not Evergy), in the case of Cooker Gas;
  - (3) either the BMC or Evergy, in the case of network charges for the embedded electricity network, depending on which of those is responsible for network charges at the upstream meter; and
  - (4) both the BMC and Evergy, in the case of any liability exclusions regarding the ownership or operation of equipment within the building.
- (d) However, you will generally deal with Evergy (whether on behalf of the BMC or on behalf of itself) in matters relating to this agreement.
- (e) A reference to “you” is a reference to the customer that entered into this agreement, by requesting and accepting the services on these terms and conditions.

## 3. PHW Heating

- (a) Potable hot water is supplied to your premises via internal piping within your building. This piping is owned by your building's owners corporation. This piping is in turn connected to Sydney Water's piping.
- (b) We (Evergy) own and operate a number of centralised potable hot water plants within your building (which include gas water heaters, storage tanks and primary circulating pumps). The building's owners corporation buys the water used in these plants, for supply to you. We buy the gas used to heat the water in these plants.
- (c) This agreement covers the service that we provide to you of heating that water, through the use of our gas-powered hot water plants.
- (d) This agreement does not cover the supply of the water itself, nor the use of the internal piping within the building. This is covered through charges from your owners corporation. Nor are we supplying to you the gas used in the hot water plants. This is only an input into the PHW Heating service that we supply to you.

## 4. AC Thermal Energy

- (a) Your building's owners corporation owns and operates a number of centralised, electrically-powered air conditioning condenser units within your building.
- (b) These condenser units in turn provide air conditioning refrigerant to the air conditioning indoor unit (fan-coil, high-wall or equivalent unit) in or servicing your premises, via internal ducting.

- (c) We (Evergy) buy the electricity used to operate these condenser units.
- (d) This agreement covers the service that we provide to you of cooling or heating thermal energy in the refrigerant used in your air conditioning system (**AC Thermal Energy**).
- (e) In order to bill you for AC Thermal Energy, we utilise the power apportionment hardware and software installed within the air conditioning system as supplied by the air conditioning system manufacturer.
- (f) Under this agreement we are not supplying you with refrigerant, as this is not something that is supplied, but rather, refrigerant is simply used as the medium to carry thermal energy within the air conditioning system. Nor are we supplying you with the electricity used in operating the air conditioning condenser units, even though the charges for the AC Thermal Energy are based upon a proportion of the electricity used to operate the units.

## 5. Cooker gas

- (a) Cooker gas is supplied to your premises via an internal gas network within your building. This gas network is owned by your building's owners corporation. This network is in turn connected to the local gas distributor's network.
- (b) We (the BMC, not Evergy) buy the gas that we provide to you from an authorised gas retailer, and we provide it to you under this agreement for use in your premises. (Evergy acts as the BMC's agent for this purpose.)
- (c) We (the BMC) are the holder of a retail exemption under the National Energy Retail Law, under which we are permitted to sell Cooker Gas to you. The conditions applicable to retail exemptions can be found in the Australian Energy Regulator's Exempt Selling Guideline on its website. The relevant exemption is Class D5.
- (d) The Cooker Gas that we sell to you will be unmetered.
- (e) You may only use the gas that we sell to you for cooking, and not for any other purpose.

## 6. One or more services

- (a) You can choose to receive all, any or none of the PHW Heating, AC Thermal Energy and Cooker Gas services.
- (b) If you wish to cease receiving one or more of the services, you must give us at least 2 weeks' notice. You will be required to pay for the service provided until the earlier of the date of disconnection of that service and the end of the notice period. A disconnection fee may apply.

## 7. 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) Supply of the services under this agreement will commence on the later of when you move in to the premises and when the relevant service first become available at the premises.
- (c) 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.
- (d) You give us your permission to obtain a credit check of your credit history.

## 8. Charges

- (a) You must pay us the charges for the relevant services as specified in this clause.
- (b) For PHW Heating, we will charge:
  - (1) usage charges, in cents per litre of hot water supplied to the premises (even though we are not selling the water); and
  - (2) daily supply charges, in dollars per day (regardless of usage).
- (c) For AC Thermal Energy, we will charge:
  - (1) a usage charge in cents per kilowatt hour of electricity (even though we are not selling electricity); and
  - (2) daily supply charges, in dollars per day (regardless of usage).

The usage charges may vary according to peak, shoulder and off-peak times (the times of which we will notify on our website, which may change seasonally).
- (d) For Cooker Gas, no charges will apply.
- (e) Electricity network charges (in the event that you choose to buy your electricity from a different supplier who is an authorised electricity retailer, rather than from us) apply as set out in clause 10.
- (f) Daily supply charges may apply even during periods where the electricity or gas supply is not connected or is interrupted.
- (g) We may also charge any of the following charges which may be applicable to you:
  - (1) any other charges of which we subsequently advise on at least 10 Business Days' notice;
  - (2) any late payment fees under clause 11(h);
  - (3) any merchant service fees or fees for dishonoured payments under clause 11(i);
  - (4) any applicable connection, disconnection or reconnection fees (which may include a disconnection fee after you move out of your premises);

- (5) any additional costs related to your meters 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;
- (6) any other fees or charges due to something specific to your needs;
- (7) any other amounts permitted by this agreement.
- (h) The applicable charges as at the date you entered into this agreement can be found on the charges document provided to you. These charges and their amounts may change from time to time. This may include making a charge for Cooker Gas, on the basis of a daily supply charge in dollars per day (regardless of usage). We will publish our revised charges on our website, and we will also give you at least 10 Business Days' notice of the change.
- (i) Where you purchase your electricity from Evergy (under a separate agreement), and you also purchase both PHW Heating and AC Thermal Energy under this agreement, we will give you a 20% discount off your PHW Heating daily supply charges.
- (j) Amounts specified on the 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.
- (k) 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.

## 9. Quality and continuity of services

- (a) We are unable to and do not guarantee the quality and continuity of the services at all times. Interruptions to those services may occur from time to time, and services such as the supply of gas may be subject to issues such as variations in quality and pressure, some of which may damage equipment.
- (b) We are not responsible for the repair, maintenance or replacement of the air conditioning system. That is the responsibility of your building's owners corporation.

## 10. Embedded electricity network

- (a) We have communicated or will communicate with you separately regarding arrangements for electricity supply to your premises, via the embedded network in your building.
- (b) In the event that you choose to buy your electricity from a different supplier who is an authorised electricity retailer, rather than from us, 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) We 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.

## 11. Billing and payment

- (a) We will bill you monthly for the charges.
- (b) We may estimate your bill where we are not able to reasonably or reliably base a bill on actual data. If, having provided you with an estimated bill, we later obtain more reliable data, we will adjust your next bill appropriately.
- (c) We will send bills to the 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 charge you a late payment fee. The amount of such fee, as applicable from time to time, will be as published on our website. Charging you a late payment fee does not prevent us from taking other action for non-payment, such as disconnection.
- (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.
- (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.

## 12. Security deposits

- (a) 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 relevant laws.

## 13. 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 any meters.
- (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 supply of services at your premises may be interrupted, disconnected and reconnected as necessary while these activities are undertaken.

## 14. Disconnection and reconnection

- (a) Provided that we comply with all applicable requirements under relevant laws, we may arrange for your premises to be disconnected from any particular service:
  - (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 any meters;
  - (4) if you are using energy or services 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 receive the service at the premises if the false information had not been provided;
  - (8) if required to do so at the direction of a relevant authority; or
  - (9) on other grounds that relevant laws may allow,(each a **Disconnection Event**).
- (b) 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.
- (c) Your premises may also be disconnected in an emergency or for health or safety reasons. This is in addition to interruptions in the services that may occur, as described in clause 9, or disconnection for metering purposes, as described in clause 13(c).

## 15. 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 for electricity where those premises are registered by us or the relevant distributor as requiring life support equipment.

## 16. Termination

- (a) You may give notice that you wish to cease receiving one or more of the services at any time, in accordance with clause (b). This agreement will end with respect to that service at the time specified in this clause.
- (b) Supply of the relevant service under this agreement will end:
  - (1) 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 the relevant service;
    - (B) the date that the premises are disconnected from the relevant service; and
    - (C) where applicable, the date of the final meter read for the relevant service (unless you continue to receive the service at the premises after that date).
  - (2) where you notify us that you are remaining at the premises but wish the service to be disconnected or discontinued – when the disconnected or discontinuance is effected (which we will arrange as soon as reasonably practicable);
  - (3) where, following disconnection for a Disconnection Event under clause 14(a) (other than a Disconnection Event under clause 14(a)(8) or (9) 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;
  - (4) if we are no longer authorised to supply the service to you (including where we no longer have relevant authorisations or exemptions, or agreements in place to purchase commodities which we use or sell in the relevant service) – 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 16(b).
- (d) Upon supply of all services 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 10 and 11) and other general provisions insofar as they relate to network operations (including clauses 13 to 26); and
  - (2) rights and obligations arising before or on termination, such as obligations you have to pay your bills.

## 17. 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.

## 18. Liability

- (a) Neither we, any person from whom we buy a commodity used in the provision of the services, or any of our or their officers or employees, are liable for:
  - (1) any partial or total failure to supply a service 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 a service due to an act or omission done by the relevant person in bad faith or through negligence.
- (b) Our total liability, and that of any person from whom we buy a commodity used in the provision of the services 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 a service under the agreement (other than a loss for which liability is excluded by this clause or relevant laws) 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.

## 19. 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.

## 20. Electronic communications

- (a) Where this agreement or any applicable law 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 law requires you to provide us with a notice (including, for example, notices regarding changes to your details, change in energy 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 law requires us to obtain your consent, you may provide us with your consent electronically.

## 21. 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) any changes occur which will materially affect the provision of metering services to you, such as changes to access to your meter;
- (c) 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 the services to the premises or the premises of any other person; or
- (d) there is any permanent material change to the pattern of usage of the services at the premises.

## 22. Transfer of this agreement

- (a) If another person, instead of us, becomes entitled to provide the relevant service under this agreement to your premises, we may transfer our rights and obligations under this agreement to that person, and notify you of that transfer.
- (b) 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.
- (c) You also consent to a change in the parties to this agreement constituting the BMC, as those parties change from time to time, without the need for any further documentation or agreement, and you agree to comply with this agreement in favour of the BMC as it exists from time to time.

## 23. 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 provided to you on request. We will inform you of the outcome of our review of your complaint.
- (c) If the complaint relates to the sale of Cooker Gas and 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.

## 24. 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.

## 25. Contact details

- (a) Evergy's contact details:  
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  
Mailing address: Locked Bag 1400, Meadowbank, NSW 2114
- (b) In the event of a gas fault or emergency, please contact:  
Evergy 1300 383 749  
Jemena (24 hours) 13 19 09

## 26. Definitions

In this agreement:

**AC Thermal Energy** is defined in clause 1(a)(2);

**BMC** (building management committee) is defined in clause 2(b).

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

**Cooker Gas** is defined in clause 1(a)(3).

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

**PHW Heating** is defined in clause 1(a)(1).