



RETAIL CONTRACT FOR THE SALE OF ELECTRICITY TO LARGE QUEENSLAND CUSTOMERS

1 SALE AND PURCHASE, AND SUPPLY, OF ELECTRICITY

1.1 Nature of this Contract

In accordance with section 51 of the Act, this Retail Contract (Contract) sets out the terms on which TRUenergy agrees to sell electricity to the Customer at the Premises and the Customer agrees to purchase electricity from TRUenergy and to accept the supply of electricity at the Premises.

1.2 Application of this Contract

This Contract is deemed by the Act to apply in circumstances including where:

- (a) a Customer's premises are connected to a supply network without the Customer having made a retail services application for the Premises; and
- (b) there is no negotiated retail contract in force between a retail entity and the Customer in relation to the premises.

2 TERM

2.1 Commencement of this Contract

This Contract becomes effective on the Contract Start Date.

2.2 Term

The term of this Contract starts on the Contract Start Date and, unless terminated earlier, expires on the Contract End Date.

3 CHARGES

3.1 General

The Customer must pay TRUenergy in respect of electricity supplied at the Premises :

- (a) the Supply Charge; and
- (b) the Default Charge; and
- (c) the Pass Through Charges, and
- (d) the Other Charges.

3.2 Calculation of Charges

In calculating Charges, the Meter Volume is to be determined on readings of the Metering Installation. However, if TRUenergy is unable to determine the Meter Volume on a reading of the Metering Installation, TRUenergy may instead estimate the Meter Volume in accordance with the prevailing National Electricity Market metering data substitution, estimation and validation procedures and calculate Charges accordingly.

3.3 Updating Charges

Without limiting TRUenergy's right to adjust the Charges under clause 6.5, TRUenergy may vary the Charges in accordance with the process specified in clause 17.

4 CREDIT CHECK

At any time after this Contract commences, TRUenergy may carry out a credit check on the Customer. TRUenergy may carry out this check through a credit reporting agency. TRUenergy may share information about the Customer with the credit reporting agency. Following the credit check, TRUenergy may require the Customer to provide Security or additional Security to TRUenergy.

5 METERING AND ACCESS

- (a) If the Metering Installation is not in place at the Premises, TRUenergy must arrange for the provision, installation and maintenance of a Metering Installation at the Premises and for readings of the Metering Installation.
- (b)
- (c) The Customer must not tamper with, or permit tampering with, the Metering Installation at the Premises or allow electricity supplied to the Premises to bypass the Metering Installation.
- (d) The Customer must allow TRUenergy or its representatives safe, convenient and unhindered access to the Premises and the Metering Installation at the Premises for the purposes of installing, reading, maintaining and repairing the Metering Installation and for connection, disconnection and reconnection.

6 INVOICES AND PAYMENT

6.1 Invoices

- (a) TRUenergy must send the Customer an invoice for the Charges incurred by the Customer, and any other amounts due under this Contract.
- (b) Despite any other provision of this Contract, TRUenergy may calculate the amount of a Pass Through Charge before the Pass Through Charge is imposed on TRUenergy and include that amount in the invoice.

6.2 Payment

Unless otherwise agreed in writing between the parties, the Customer must pay the amount invoiced, or any part of the amount invoiced not the subject of a dispute, within 14 days of the date of the invoice.

6.3 Interest

TRUenergy may charge the Customer interest on any amounts due which remain outstanding after the due date until the amount is received by TRUenergy. Such interest will be compounded monthly at a rate of 2 per cent per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate.

6.4 Costs of Recovering Payment

The Customer indemnifies TRUenergy for any reasonable costs incurred by TRUenergy in collecting any amounts due which have not been paid to TRUenergy.

6.5 Adjustments and Under and Over Charging

- (a) If TRUenergy's invoice includes Charges calculated using estimates of Meter Volume and TRUenergy subsequently is able to determine the Meter Volume on a reading of the Metering Installation, TRUenergy must adjust the invoice.
- (b) If for any reason TRUenergy has overcharged the Customer, TRUenergy must repay the overcharged amount by crediting that amount on the next invoice or, if there is not to be any further invoice, according to the Customer's reasonable instructions.
- (c) If for any reason TRUenergy has undercharged (or not charged) the Customer, TRUenergy may recover from the Customer the full amount undercharged (or not charged) by debiting the amount on the next invoice or in a special invoice.

7 ELECTRICITY LAW

7.1 Compliance with Electricity Law

In exercising rights and performing obligations under this Contract, the parties must comply with the Electricity Law.

7.2 Change in Electricity Law

Without limiting clause 7.2, if there is any change in Electricity Law, TRUenergy may impose a charge on the Customer to recover any increase in the cost to TRUenergy of purchasing the electricity sold to the Customer under this Contract resulting from the change.

7.3 Change in Basis of Other Charges

If there is a change in the basis on which any statutory or other liability is imposed on TRUenergy in connection with an Other Charge, TRUenergy may impose a charge on the Customer to recover the related cost to TRUenergy of the change in respect of electricity supplied at the Premises.

8 SUPPLY OF ELECTRICITY

8.1 Electrical Capacity

The Customer must satisfy itself that the electrical capacity of the connection at the Premises is adequate for the Customer's purposes. TRUenergy has no responsibility or liability in this respect.

8.2 Quality, Continuity and Reliability of Supply

- (a) The Customer acknowledges and agrees that the quality, continuity and reliability of supply to the Premises is subject to factors which are outside TRUenergy's control. In particular, the supply of electricity to the Premises may be subject to variations in voltage and frequency and may contain voltage surges or sags which may cause damage to the Customer's equipment.
- (b) TRUenergy is unable to guarantee, and subject to clause 10.1(a) is not liable for, the quality, continuity and reliability of supply to the Premises.

8.3 Disconnections by Distributor

The Customer acknowledges and agrees that a Distributor may disconnect, interrupt or reduce, or require the Customer to disconnect, interrupt or reduce, the supply of electricity to the Premises so as to maintain the Distributor's distribution network or to protect the distribution network or the electrical installations of other persons, for health and safety reasons, during emergencies and in other circumstances allowed by law.

8.4 Disconnections by TRUenergy

TRUenergy may arrange for the relevant Distributor to disconnect the supply of electricity at the Premises if:

- (a) the Customer does not provide TRUenergy with Security within 20 Business Days of being required to do so by TRUenergy; or
- (b) if the Customer fails to pay any amount due under this Contract and not the subject of a genuine dispute under clause 12 within 20 Business Days after the date on which payment of that amount was due.

8.5 Disconnections by Customer

On request made by the Customer, TRUenergy must arrange for the Distributor to disconnect the supply of electricity at the Premises.

9 FORCE MAJEURE

9.1 Suspension of Obligations

A party's obligations under this Contract are suspended for the duration and to the extent of any Force Majeure Event. The party affected by the Force Majeure Event must immediately notify the other party of the nature of the Force Majeure Event and its likely duration. The affected party must use its reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure Event as soon as reasonably practicable.

9.2 Termination Due to Force Majeure Event

If a party's obligations are suspended because of a Force Majeure Event for more than 20 Business Days, the parties must confer in good faith to determine whether the Contract can continue notwithstanding, or should be amended to accommodate, the Force Majeure Event. If the parties are unable within a further 10 Business Days to agree that the Contract can continue, or to agree the necessary amendments, either party may terminate this Contract by giving 5 Business Days notice to the other party.

10 LIABILITY AND INDEMNITY

10.1 Limitation of TRUenergy's Liability

To the extent permitted by law and without limiting clause 8.2:

- (a) TRUenergy's liability to the Customer for breach of any condition or warranty implied by law to the supply of goods by TRUenergy to the Customer is limited (at TRUenergy's option) to the replacement of the goods, the supply of equivalent goods or the payment of the cost of acquiring equivalent goods. In the case of a service, TRUenergy's liability is limited to the re-supply of the service or the payment of the cost of having the service supplied again; and

- (b) neither party is liable to the other for any special, consequential or indirect loss or damage (including, without limitation, loss of revenue, loss of profits or loss of anticipated savings), whether arising out of a breach of this Contract, tort, statute or in any other manner whatsoever, except that the Customer may be liable under clause 10.2(b).

This Contract does not vary or exclude any immunity, limitation of liability or indemnity that TRUenergy may have under law.

10.2 Indemnity

The Customer indemnifies TRUenergy against all liability, loss and damage incurred or suffered by the Customer's officers, agents and employees to the extent that such liability, loss or damage is caused by the party's breach of this Contract or negligence.

11 TERMINATION OF THIS CONTRACT

11.1 Termination by TRUenergy

TRUenergy may terminate this Contract by giving 10 Business Days notice to the Customer if:

- (a) the Customer does not provide TRUenergy with Security within 20 Business Days of being required to do so by TRUenergy; or
- (b) if the Customer fails to pay any amount due under this Contract and not the subject of a genuine dispute under clause 12 within 20 Business Days after the date on which payment of that amount was due.

11.2 Termination by Either Party for Insolvency Event

- (a) A party may terminate this Contract with immediate effect by giving notice to the other party if an Insolvency Event occurs in relation to the other party.
- (b) If TRUenergy seeks to terminate this Contract under clause 11.2(a), but is precluded from, or delayed in, exercising its rights to terminate by virtue of any insolvency laws, the Customer (or any external administrator of the Customer) must continue to pay to TRUenergy all Charges until such date as TRUenergy is able to terminate this Contract.

11.3 Effects of Termination

Termination of this Contract does not affect any rights or obligations arising prior to termination.

11.4 Customer's Obligations

If the Customer vacates the Premises, then, whatever liability the Customer may continue to have to pay Charges under clause 3 or otherwise, the Customer must also use reasonable endeavours to notify TRUenergy of the identity of any incoming occupant.

11.5 Disconnection Following Termination

On or at any time after the expiry or other termination of this Contract, TRUenergy may arrange for the Distributor to disconnect the supply of electricity at the Premises without further notice to the Customer. The Customer remains liable for all Charges up to the date of disconnection and, unless this Contract terminates as a result of an Insolvency Event in relation to TRUenergy, any Customer Connection Charge arising in respect of the disconnection.

11.6 Continuing Obligations

Clauses 3, 5, 6, 7, 8.1, 8.2, 10, 11.4, 11.5, 12, 13, 15 and 18 remain in force despite the expiry or other termination of this Contract.

12 DISPUTE RESOLUTION

12.1 Good Faith Discussions and Negotiation

TRUenergy and the Customer must attempt to resolve any dispute arising in connection with this Contract by discussion and negotiation in good faith including, if necessary, by involving each party's chief executive officer (or the chief executive officer's nominee) if the dispute is not resolved within 15 Business Days of first being notified by one party to the other.

12.2 Arbitration

If a dispute is not resolved within 45 Business Days of first being notified by one party to the other, either party may then refer the dispute to arbitration by an arbitrator to be nominated by an appropriate representative of the Institute of Arbitrators and Mediators Australia.

12.3 Continuing Obligations

Notwithstanding any dispute arising in connection with this Contract, the parties must continue to perform and comply with their obligations under this Contract to the extent that such obligations are not the subject of the dispute.

13 CONFIDENTIALITY

The Confidential Information is confidential and neither party must not disclose or permit the disclosure of any of the Confidential Information to any person except:

- (a) with the prior consent of the other party;
- (b) where such disclosure is required by law, by any court of competent jurisdiction or by any other competent authority;
- (c) to a relevant Distributor;
- (d) to any employee, advisor, auditor or other consultant of a party or its related entities; or
- (e) to an arbitrator appointed under clause 12.2.

14 ASSIGNMENT AND NOVATION

The Customer may not, without the prior consent of TRUenergy, which TRUenergy must not unreasonably withhold, assign any of its rights or obligations under this Contract. TRUenergy may assign any of its rights and obligations under this Contract without the consent of the Customer.

15 GOODS AND SERVICES TAX

- (a) Where a Taxable Supply is made by TRUenergy to the Customer under this Contract, TRUenergy may, in addition to the amount otherwise specified as payable for that Taxable Supply under this Contract, recover from the Customer an amount on account of GST (but only if the Customer has received a Tax Invoice for that Taxable Supply), such amount to be calculated by multiplying the GST exclusive consideration for that Taxable Supply by the prevailing rate of GST.
- (b) TRUenergy must promptly give an adjustment note for, and refund to the Customer, any overpayment by the Customer for GST, but TRUenergy need not refund to the Customer any amount for GST unless TRUenergy is entitled to a refund or credit of that amount.
- (c) If a party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this Contract (for example, for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the recipient against, the amount of that GST.
- (d) If a party has a claim under or in connection with this Contract in respect of a cost, the claim is for the face value of the cost less the amount of any input tax credit to which that party is entitled in respect of the cost.
- (e) If a party has a claim under or in connection with this Contract calculated by reference to actual or estimated revenue or which is in respect of a loss of revenue, that revenue must be calculated without including any amount received or receivable on account of GST.

16 NOTICES

Any notice, consent or approval given to TRUenergy under this Contract must be in writing addressed to the Manager, National I & C Sales, Level 33, 385 Bourke Street, Melbourne, Victoria 3000 (as varied by notice from time to time).

17 AMENDMENT

TRUenergy may at its sole discretion, at any time and without notice to the Customer, amend this Contract by posting an updated version of this Contract on TRUenergy's website.

18 GOVERNING LAW

This Contract will be construed in accordance with and governed by the laws of Victoria.

19 DEFINITIONS

In this Contract, the following terms have the following meanings:

Act means the *Electricity and Other Legislation Amendment Act 2006* (Qld).

Contract means this contract.

Contract End Date means the date on which the Customer ceases to become liable to pay the Charges in respect of the Premises to TRUenergy as the Financially Responsible Market Participant for the Premises.

Contract Start Date means the date on which the Customer first becomes liable to pay TRUenergy the Charges in respect of the Premises as a Financially Responsible Market Participant.

Ancillary Service Charge for means such fees for ancillary services under Chapter 3 of the National Electricity Rules paid or payable by TRUenergy which TRUenergy reasonably allocates to the electricity sold under this Contract.

Business Day means a day on which banks are open for general banking business in Queensland, excluding a Saturday or Sunday.

Calendar Year for the Premises means a calendar year or, as the context may require, part of a calendar year.

Charges means the charges payable by the Customer under clause 3.1 and otherwise under this Contract.

Commonwealth Bank of Australia Corporate Overdraft Reference Rate means the rate published by the Commonwealth Bank of Australia and known as the "Corporate Overdraft Reference Rate" for a monthly charging cycle as published on that Bank's website (www.commbank.com.au) as applicable on the day on which the interest is calculated by TRUenergy.

Confidential Information means all information given by or on behalf of a party to the other party pursuant to this Contract or during any negotiations in relation to this Contract.

Customer a Person to whom this Contract is deemed to apply under the Act.

Customer Connection Charges means all charges paid or required to be paid from time to time to a Distributor for the connection, disconnection or reconnection of the Premises to the Distributor's distribution system or for a service provided by the Distributor other than the service for which the Distributor imposes a Network Tariff.

Default Charge means the amount calculated as follows:

$$\text{Default Rate} \times \text{DLF} \times \text{MLF} \times \text{Meter Volume}$$

Default Rate means 125% of the spot price at the Queensland regional reference node for each relevant trading interval as published by NEMMCO under the National Electricity Rules.

Distributor means a distribution network service provider, including a Distribution Network Service Provider as referred to in the National Electricity Rules.

DLF for the Premises means the distribution loss factor in respect of those Premises as varied from time to time and published by NEMMCO.

Electricity Law means all legislation regulating, governing or relating to the sale and purchase of electricity, and the Customer's acceptance of the supply of electricity, pursuant to this Contract, as enacted, amended or replaced from time to time.

Financially Responsible Market Participant has the meaning given to it in the National Electricity Rules.

Force Majeure Event means an event or circumstance beyond a party's reasonable control which prevents or delays the party from carrying out an obligation under this Contract.

GST, Taxable Supply, Tax Invoice and **GST law** have the meanings given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Insolvency Event in relation to a party means the happening of any of the following events:

- (a) an order being made for the bankruptcy, winding up or dissolution of the party;
- (b) a receiver, receiver and manager, trustee, administrator, liquidator or similar official being appointed to all or part of the assets or undertaking of the party;
- (c) the party entering into, or resolving to enter into, any arrangement or composition or compromise with, or assignment for the benefit of, its members or creditors; or
- (d) the party becoming insolvent within the meaning of section 95A of the Corporations Act.

Market Participant has the meaning given to it in the National Electricity Rules.

Meter Charge means any charges payable by TRUenergy for the provision of the Metering Installation at the Customer Premises and any charges associated with collecting and processing data from the Metering Installation at the Customer Premises.

Meter Volume means the volume of electricity supplied to the Premises, measured as at the Customer Premises by the Metering Installation.

Metering Installation for the Premises means a metering installation complying with the National Electricity Rules.

MLF for the Premises means the intra-regional loss factor in respect of those Premises as varied from time to time and published by NEMMCO.

National Electricity Market means:

- (a) the wholesale exchange operated and administered by NEMMCO under the National Electricity Law and the National Electricity Rules; and
- (b) the national electricity system as defined by the National Electricity Law.

National Electricity Rules means the initial National Electricity Rules and the National Electricity Rules made by the Australian Energy Market Commission under the National Electricity Law as amended from time to time.

National Electricity Law means the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA) and applied in each of the participating jurisdictions.

NEMMCO means National Electricity Market Management Company Limited ABN 94 072 010 327 or any successor body responsible for managing the National Electricity Market.

Network Tariffs means any tariff charged by a Distributor for distributing electricity.

Other Charges for a day or a year as the case may be, means the Ancillary Service Charge, the Meter Charge, and any other charge imposed by TRUenergy under clause 7.3, in each case for that day or that year.

Participant Fees means participant fees under Chapter 2 of the National Electricity Rules.

Pass Through Charges means all charges imposed or to be imposed by any person on the Customer or TRUenergy for the use of any distribution networks in respect of, and all other charges, fees or levies imposed or to be imposed by any person on the Customer or TRUenergy directly or indirectly in connection with, the sale and purchase of electricity under this Contract and the supply of electricity to the Customer including, without limitation, Network Tariffs, Customer Connection Charges and Participant Fees but excluding fees for ancillary services under Chapter 3 of the National Electricity Rules.

Person includes:

- (a) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
- (b) the person's successors, permitted assigns, substitutes, executors and administrators;

Region means a region under the National Electricity Rules.

Security means a bank guarantee, security deposit or other form of credit support acceptable to TRUenergy.

Premises means premises for which TRUenergy is the Financially Responsible Market Participant and which is connected to the local distribution network.

Supply Charge means a charge of AU\$35 (excluding GST) for each month payable by the Customer to TRUenergy as amended from time to time.