

General Terms for Supply of Electricity

simply  energy

GENERAL TERMS FOR SUPPLY OF ELECTRICITY

1. Content and Application of Agreement

- 1.1 These General Terms set out the general terms and conditions on which Simply Energy will supply, and the Customer will purchase, electricity. They may be supplemented by Customer Specific Terms. In the event of a discrepancy between the General Terms and the Customer Specific Terms, the Customer Specific Terms take precedence. These General Terms and the Customer Specific Terms (if any), including any schedules and appendices, form the agreement between the parties (the Agreement) and bind the Customer and Simply Energy.
- 1.2 The Agreement is formed and will commence on the earliest of the following dates:
- (a) when the Customer executes a copy of the Agreement; or
 - (b) when Simply Energy has advised the Customer of the terms on which it will supply electricity and the Customer confirms to Simply Energy in writing that it wishes to take supply of electricity from Simply Energy; or
 - (c) when the Customer first uses electricity supplied by Simply Energy after being notified by Simply Energy that the terms in the Agreement are applicable.
- 1.3 This Agreement will continue until terminated in accordance with its terms by either party.

2. Interpretation

- 2.1 References to either Party or to any party to any document or agreement, shall be deemed to include their successors or permitted assigns.
- 2.2 Clause and other headings are for ease of reference only and shall be ignored in construing this Agreement.
- 2.3 Any reference to the singular includes the plural and vice versa.
- 2.4 Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

- 2.5 Reference to doing an act or thing includes allowing that act or thing to be done.
- 2.6 References to parties are references to the Customer and Simply Energy together with their successors and permitted assigns.
- 2.7 The schedules and appendices to this Agreement and the provisions contained in the schedules and appendices have the same effect as if set out in the body of this Agreement.

3. Definitions

- 3.1 **Billing Period** means, in relation to an invoice, the previous calendar month (except if clause 9.4 applies, in which case it means the period specified in the relevant invoice).
- 3.2 **Business Day** means any day except a weekend or a public holiday.
- 3.3 **Charges** means the Charges notified by Simply Energy to the Customer as applicable under this Agreement. If there are Customer Specific Terms, the Charges are set out in Appendix 1.
- 3.4 **Default Interest Rate** means the rate 5% above the 90 day bank bill mid rate as quoted on the Reuters BKBM screen on the day the debt becomes overdue, or as otherwise specified in the Customer Specific Terms.
- 3.5 **Due Date** means the date specified as such in the Customer Specific Terms or otherwise notified to the Customer.
- 3.6 **Electricity Registry** means the national database that contains information on every point of connection on a network from which electricity is supplied to a site (previously known as the MARIA registry).
- 3.7 **Equipment** means meters, switches, relays, fuses and wiring used to supply the Customer with electricity or to ensure the electricity is supplied to the Customer.
- 3.8 **Force Majeure Event** means an event or circumstance that is beyond Simply Energy's reasonable control, and which prevents the substantial performance of its obligations under this Agreement, and includes;
- (a) floods, earthquakes, lightning strikes, high winds, fires, war, civil commotion, malicious damage;
 - (b) compliance with any law or government order, rule, regulation or direction;

- (c) industrial action;
 - (d) motor vehicle and other accidents;
 - (e) significant grid or network or generator failure;
 - (f) acts or omissions of the Network Owner, Customer or Meter Owner if that is not Simply Energy);
 - (g) significant grid or network or generator failure;
 - (h) any defect or abnormal conditions in or about the Premises.
- 3.9 **Meter** means a meter, load and meter control devices (but not their control signals or means of generation), data loggers, test blocks, measuring transformers, error compensation processes, fittings, equipment, wiring and installations used for the measurement and storage of volume information.
- 3.10 **Meter Owner** means the person that owns the Meter situated on the Customer's Premises and that is responsible for installing, maintaining and repairing the Meter.
- 3.11 **Network Owner** means the owner of the local lines network to which the Customer's property is connected.
- 3.12 **Normal Business Hours** means between 8.30am and 5pm on a Business Day.
- 3.13 **Point of Connection** means the point or points at which the Customer's Premises connect to a circuit breaker, switch, fuse or other isolating device on the Network Owner's network.
- 3.14 **Premises** means the Customer's premises as set out in the Customer Specific Terms or (if not so specified) as agreed with the Customer .
- 3.15 **Rules** means the Electricity Governance Rules 2003, as amended from time to time.
- 3.16 **Simply Energy's Representatives (or its Representatives, in context)** means any of the following (when acting on Simply Energy's behalf or with authority from Simply Energy): its employees, contactors or agents, the Network Owner, the Meter Owner, the meter reader and any of their employees, contractors or agents.
- 3.17 **Supply End Date** means the date specified in the Customer Specific Terms (or otherwise agreed in writing by the parties) for supply of electricity to end for a specified ICP. If no Supply End Date is specified or agreed then it shall be the date of expiry of one month's notice from one party to the other indicating that the notifying party wishes to end supply in respect of that ICP.

- 3.18 **Supply Start Date** means the date specified in the Customer Specific Terms (or otherwise agreed by the parties in writing) for supply of electricity to start to a specified ICP. If no Supply Start Date is specified or agreed then for each ICP it shall be the event date of the ICP switch to Simply Energy as recorded in the Electricity Registry.
- 3.19 **Use of System Agreement** means the agreement between Simply Energy and the Network Owner for the conveyance of electricity across the Network Owner's network.

4. **Supply of Electricity by Simply Energy**

- 4.1 Simply Energy will use all reasonable endeavours to provide the Customer with a reliable and high quality electricity supply to the Premises and at the ICPs set out in the Customer Specific Terms or as otherwise agreed. The Customer will not purchase or take supply of electricity to the Premises from any other person. Supply to each ICP will start on the Supply Start Date and continue until the Supply End Date unless:
- (a) this Agreement is terminated early pursuant to its terms; or
 - (b) supply to that ICP is terminated by agreement in writing; or
 - (c) Simply Energy ceases supply to that ICP pursuant to the terms of this Agreement.
- 4.2 Simply Energy cannot guarantee that supply will be continuous or fault free.
- 4.3 Simply Energy will supply electricity in accordance with the Electricity Act 1992, prevailing technical regulations and codes of practice.
- 4.4 If the Customer experiences problems with electricity supply the Customer can telephone Simply Energy at any time. Simply Energy provides a 24-hour fault notification service.
- 4.5 Simply Energy does not own the network through which electricity is delivered to the Customer. Simply Energy has a Use of System Agreement with the Network Owner that allows it to use their network. The Customer agrees that it will comply with all terms imposed by the Network Owner to enable Simply Energy to deliver electricity to the Customer. These terms are set out in Schedule A, and form part of this Agreement.

- 4.6 If the Network Owner requires the Customer to have a contract directly with it to use the network, the Customer will enter into such a contract, in which case this Agreement will only cover the supply of electricity and Schedule A will not apply.
- 4.7 Simply Energy may sub-contract or delegate the performance of any of its obligations under this Agreement.

5. Customer Information

- 5.1 The Customer agrees to supply Simply Energy with the information Simply Energy needs to perform its obligations under this Agreement. The Customer authorises Simply Energy to disclose such information to the Network Owner and Meter Owner for any purpose associated with this Agreement. The Customer agrees to ensure that information is correct, complete and up-to-date, and will notify Simply Energy if any of the information provided changes.
- 5.2 Simply Energy will only use information provided by the Customer for the purpose for which it was collected unless it has the Customer's consent to use it for another purpose, or Simply Energy is required to use it by law or this Agreement otherwise allows it.
- 5.3 The Customer can request a copy of all information held by Simply Energy about the Customer or the Customer's account, and may request that it is corrected if it is wrong.
- 5.4 The Customer agrees that Simply Energy may collect information about it from other agencies for its business purposes. The Customer also agrees that information Simply Energy holds about it may be used to provide it with information and offers from Simply Energy and Our Representatives.

6. Bond

- 6.1 Simply Energy may require the Customer to pay a bond equal to two months' Charges (as estimated by Simply Energy) as security for payment of the Customer's account. Simply Energy may hold the bond for the term of this Agreement.
- 6.2 If the Customer has paid a bond and Simply Energy decides that the bond no longer represents two months' Charges (due to price increases or increased usage) Simply Energy may require the Customer to increase the bond to the amount of the revised estimate.

- 6.3 If the Customer does not pay the bond (or revised bond) within 10 Business Days of a request, Simply Energy may discontinue electricity supply.
- 6.4 Any bond paid under this clause will be held by Simply Energy in a trust account and may only be used to pay any monies owed by the Customer to Simply Energy. Simply Energy may use the bond to pay any overdue debt.
- 6.5 Interest earned on the bond trust account belongs to Simply Energy.
- 6.6 At the termination of this Agreement Simply Energy will refund the bond to the Customer, less any amount owing to Simply Energy under this Agreement.
- 6.7 For the avoidance of doubt the bond is separate to any Prudential Charge payable under this Agreement.

7. Interruptions to Supply

- 7.1 Simply Energy will endeavour to provide at least 3 Business Days notice of planned interruptions to supply. Notice may be given by public notice or advertisement in the local newspaper or radio. Planned outages may take place for a number of reasons, including maintenance or upgrades, testing installations, installing supply to another person or to avoid danger to persons or property.
- 7.2 If there is an unplanned outage (which may occur due to an Event of Force Majeure, the safety and security of the Network, load management reasons or to avoid danger to persons or property, among other reasons) Simply Energy will use reasonable endeavours to minimise inconvenience to the Customer.
- 7.3 If the Customer's pricing option as specified in the Customer Specific Terms or notified to the Customer by Simply Energy allows Simply Energy to control the supply of electricity to the Customer's Equipment, Simply Energy may temporarily suspend supply without notifying the Customer.

8. Metering

- 8.1 The Customer is the Meter Owner unless the Charges include a meter lease fee. If the Customer is the Meter Owner the Customer is responsible for maintaining and repairing the Meter. If the Customer is not the Meter Owner, then Simply Energy will maintain the Meter to recognised industry standards.

- 8.2 The Meter must comply with relevant industry standards. If Simply Energy supplies the Meter (or is responsible under this Agreement for compliance with standards as evidenced by the inclusion of a meter compliance fee or meter lease fee in the Charges), it will ensure it meets those standards. If the Customer is the Meter Owner and this Agreement does not provide for the Customer to be charged a meter compliance fee, then the Customer is responsible for ensuring that the Meter meets relevant industry standards.
- 8.3 If the Customer is responsible for ensuring that the Meter meets relevant industry standards it hereby indemnifies Simply Energy for all costs, losses, claims and damages and against all proceedings and demands arising from the Meter not meeting industry standards.
- 8.4 If there is no appropriate Meter at the Premises, then Simply Energy will arrange for the supply and installation of an appropriate Meter (which Simply Energy may require to be a time of use meter) and charge the Customer for this.
- 8.5 The Customer must not interfere with the Meter or the immediate connections to it. The Customer must keep the Meter safe. If the Customer becomes aware of any interference with the Meter the Customer must notify Simply Energy as soon as reasonably practicable, and in any case within 5 Business Days.
- 8.6 Simply Energy's metering practices comply with relevant electricity industry standards and codes of practice. Simply Energy intends to read the Meter at the Premises no less than 6 times per year, provided it has access.
- 8.7 Simply Energy may test the Meter if it considers that it might be faulty or inaccurate or if the Customer requests a test. Simply Energy will notify the Customer before it does this unless it suspects that fraud, meter tampering or theft has occurred. If:
- (a) Simply Energy is the Meter Owner and the Customer requests a test and the test shows that the Meter is accurate (to within accepted industry standards) then the Customer will have to pay the charge for the test. If the Meter is tested and found not to be accurate within accepted industry standards then Simply Energy will pay for the test (and for fixing it) and make an appropriate adjustment to previous Charges to the Customer (based on estimated usage where necessary);
 - (b) the Customer is the Meter Owner and Simply Energy decides to obtain a test and the test shows that the Meter is accurate (to within accepted industry standards) then Simply Energy will pay for the test. If the Meter is tested and found not to be accurate (within accepted industry standards) then the Customer will pay for the test (and for fixing the Meter) and

Simply Energy will make an appropriate adjustment to previous Charges to the Customer (based on estimated usage where necessary).

- 8.8 If the Customer adds to, modifies or replaces any Equipment on its Premises then Simply Energy may require that the Meter is upgraded. If the Customer is the Meter Owner the Customer is responsible for doing this. If the Customer is not the Meter Owner then Simply Energy will be responsible for such upgrade but may charge the Customer for it.

9. Charges & Payment

- 9.1 The Customer will pay the Charges under this Agreement as set out in the Customer Specific Terms or (if none) as notified to the Customer.
- 9.2 Charges will be calculated by Simply Energy based on an actual Meter reading or an estimate of the amount the Customer has consumed over the Billing Period. If an estimate is used it will be based on previous consumption if available or will be determined by following generally accepted industry practices.
- 9.3 Subject to clause 9.4, Simply Energy will send the Customer an invoice each month setting out the payment due (including GST). Invoices may be sent to the Account Email Address set out in the Customer Specific Terms or as otherwise agreed. The invoice will include any previous balance owed.
- 9.4 Simply Energy may invoice the Customer more frequently than once a month if it considers there are significant price changes in the electricity spot market that warrant this. If Simply Energy does this, then all references to "Billing Period" and all monthly calculations shall be adjusted accordingly.
- 9.5 The Customer will pay each invoice in full by a direct debit initiated by Simply Energy on the Due Date
- 9.6 The Customer may not deduct or set off any amounts from the amount shown on the invoice.
- 9.7 If the Customer disputes any invoice, then the Customer must advise Simply Energy within 5 Business Days of receiving the invoice, identifying the amount in dispute and giving full reasons for the dispute. The Customer must pay any undisputed amount in full on the Due Date. Any genuinely disputed unpaid amount shall not attract default interest until the dispute is resolved.

- 9.8 If the Customer does not pay the invoice by the Due Date, or notify Simply Energy of a dispute under clause 9.7, electricity supply may be disconnected. The Customer will not be disconnected for non-payment of genuinely disputed amounts until Simply Energy has considered the dispute, provided that the Customer has properly notified the dispute under clause 9.7.
- 9.9 If an invoice dispute is resolved in the Customer's favour, Simply Energy will credit the Customer's account or make a payment of any amount due. Where invoice disputes are resolved in Simply Energy's favour, the Customer must pay any amount owed within 5 Business Days. If the Customer fails to do so, that amount will be treated as overdue and default interest will be payable and the Customer's electricity supply may be disconnected.
- 9.10 Without prejudice to any other rights Simply Energy may have, if any monies owing by the Customer under this Agreement remain unpaid after their Due Date then the Customer must pay interest accruing on a daily basis and capitalised every 30 days on those monies, calculated from the Due Date to date of payment at the Default Interest Rate. Simply Energy may also use the Customer's bond to settle any amounts owing.
- 9.11 Simply Energy may take action to recover any overdue amount, and it will be entitled to discontinue supply. Any costs incurred in collecting money owed to Simply Energy by the Customer including bank fees, credit agency fees, legal expenses and court costs and default interest are payable by the Customer.
- 9.12 Unless otherwise stated, all Charges are exclusive of GST and any other taxes and levies (if any). The Customer must pay GST and any other taxes and levies payable on the Charges.

10. **Billing Adjustments**

- 10.1 If Simply Energy discovers that the Customer has been undercharged or overcharged, then:
- (a) If the Customer has been overcharged for electricity supplied, Simply Energy will refund the Customer (which may be by way of a credit against future invoices);
 - (b) If the Customer has been undercharged (which includes not being charged at all) for any reason including a faulty or inaccurate Meter, then Simply Energy may invoice the Customer for the amount undercharged. If Simply Energy does not know how much electricity was actually supplied to the Customer (for example

because of a faulty Meter) then it may estimate the amount of electricity supplied and invoice accordingly.

11. **Complaints**

- 11.1 The Customer may lodge a complaint about any matter connected with this Agreement by telephone, post, email or fax. Simply Energy will endeavour to respond to complaints with 5 Business Days.
- 11.2 If the Customer is not satisfied with Simply Energy's response to a complaint, it may contact Simply Energy's Retail Manager (at Simply Energy's address for communications, marked "Attention: Retail Manager"). The Retail Manager will contact the Customer within 2 Business Days to attempt to resolve the complaint. Simply Energy may refer the Customer's complaint to the Network Owner or Meter Owner if it believes that is appropriate.
- 11.3 Simply Energy is a member of the Electricity and Gas Complaints Commissioner Scheme and will deal with any complaints by the Customer in accordance with that scheme. In particular, if:
- (a) The Customer is not happy with the way Simply Energy proposes to resolve the complaint;
 - (b) Simply Energy has not resolved the complaint within 20 Business Days after receiving the complaint and it has not notified the Customer that it requires further time to resolve the complaint; or
 - (c) Simply Energy has not resolved the complaint within 40 Business Days of receiving the complaint

then the Customer may refer the complaint to the Electricity and Gas Complaints Commissioner to resolve (www.egcomplaints.co.nz or 0800 22 33 40). This does not affect the Customer's ability to take the complaint to the Disputes Tribunal or the Courts.

12. Equipment

12.1 The Customer must do the following in respect of Equipment:

- (a) provide and maintain (at its own cost) suitable space for the secure housing of any Equipment relating to its connection to the network which Simply Energy or its Representatives determine must be housed at the Premises;
- (b) repair and maintain the Equipment on its Premises from the Point of Connection onwards (including the Customer's lines but not including the Meter unless the Customer is the Meter Owner);
- (c) ensure that any Equipment not owned by Simply Energy or its Representatives complies with relevant technical standards and codes of practice;
- (d) protect Equipment on its property from damage and unauthorised interference or removal, to not encumber or use the Equipment as security in any way or to make the Equipment a fixture of Premises;
- (e) inform Simply Energy of any damage to or interference with the Equipment as soon as the Customer becomes aware of it. If Equipment on the Customer's property is damaged or interfered with, Simply Energy may charge the Customer of the estimated cost of any unmeasured supply, the cost of its investigation and the cost of repairing or replacing Equipment;
- (f) not use the Equipment or the supply of electricity in a manner which may cause damage to the Equipment or to Simply Energy or its property or any other person or property and not interfere with the supply of electricity to itself or any other person.

12.2 The metering and control equipment on the Customer's meter board may be owned by Simply Energy, the Network Owner or a third party. The Customer must keep this equipment safe and not interfere with this equipment or the immediate connection to it. Simply Energy will keep this equipment safe and in good repair and maintain it to recognised industry standards.

13. Access to Property

- 13.1 Subject to clause 13.2 below, the Customer agrees to provide Simply Energy (and its contractors and agents) with safe and unobstructed access to the Premises during Normal Business Hours for the following purposes:
- (a) reading the Meter;
 - (b) installing, inspecting, working on, replacing or removing Equipment;
 - (c) investigating, repairing, inspecting any actual or suspected damage to Equipment;
 - (d) connecting or discontinuing the electricity supply;
 - (e) to restore electricity supply to third parties in the case of an unplanned outage;
 - (f) to protect or prevent danger or damage to people or property.
- 13.2 The Customer may refuse access if Simply Energy's Representatives are not able to show proper identification on request.
- 13.3 If the Customer has an internal Meter, the Customer must make a meter access arrangement with Simply Energy to enable Simply Energy to read and maintain the Meter. Simply Energy agrees to keep the key for such access safe and secure at all times.
- 13.4 Simply Energy may disconnect or otherwise interrupt or suspect supply to the Customer if the Customer does not comply with this clause 13.

14. Safety and Security

- 14.1 The Customer is responsible for ensuring that any trees and vegetation on its property are kept trimmed away from all power lines and other electrical equipment (including meter boxes).
- 14.2 The Customer must not tamper with Meters (and may be criminally prosecuted for doing so).
- 14.3 The Customer acknowledges that there may be voltage fluctuations which could damage the Equipment or Customer's property. It is the Customer's responsibility to install protective devices and/or to arrange insurance covering damage from such fluctuations or make other arrangements to secure supply and protect equipment.

Simply Energy is not responsible for damage caused to Equipment or appliances, including loss of data, arising from such fluctuations.

15. Disconnection

- 15.1 If the Customer does not pay any sums owing under this Agreement on time, or if the Customer breaches any other obligation under this Agreement, then Simply Energy may disconnect the Customer's electricity supply, provided that:
- (a) Simply Energy has given the Customer notice that it will disconnect if the Customer does not remedy within 5 Business Days; and
 - (b) the Customer has not remedied such failure to pay or other breach within those 5 Business Days; and
 - (c) Simply Energy has given the Customer a final warning at least 24 hours prior to disconnection and the Customer has still not remedied;
- 15.2 Notwithstanding clause 15.1, Simply Energy does not have to give the Customer 5 Business Days' notice or a final warning in cases of emergency, safety or where it believes that the Customer may have tampered with or interfered with the metering equipment or other Equipment at its Premises.
- 15.3 Disconnection does not affect the Customer's obligation to pay outstanding debts or other sums as they become due (including collection or legal costs incurred in relation to the Customer's debts).
- 15.4 Simply Energy may agree to reconnect electricity supply to the Customer's Premises, but it may first require the Customer to:
- (a) Pay all outstanding debts;
 - (b) Pay a bond;
 - (c) Pay a reconnection fee; and/or
 - (d) Agree to adjusted charges.

16. Termination

- 16.1 This Agreement will terminate at the last Supply End Date or by either party exercising its rights of early termination pursuant to clause 16.2 or clause 16.3.
- 16.2 The Customer can terminate this Agreement by:
- (a) Switching to another retailer; or
 - (b) Giving Simply Energy at least one month's notice that it wishes to cease taking electricity at the Premises and for the ICPs to be disconnected.
- 16.3 Simply Energy may terminate this Agreement:
- (a) 24 hours after a final warning to the Customer if the Customer breaches this Agreement and has not remedied such breach within 5 Business Days' notice from Simply Energy;
 - (b) by giving the Customer one month's written notice. If Simply Energy exercises this right, the Customer will use all reasonable endeavours to find an alternative retailer and arrange to switch to that retailer before the expiry of the notice period.
- 16.4 Following termination Simply Energy will provide a final invoice to the Customer's address set out in the Customer Specific Terms or otherwise notified to Simply Energy in writing unless the Customer notifies Simply Energy of a new forwarding address.
- 16.5 The termination of this Agreement will not affect:
- (a) the obligations of the Customer to pay any monies accrued or due at the date of termination (or that would otherwise have become due under this Agreement for Services rendered prior to termination);
 - (b) the liability of either party for any breach of this Agreement;
 - (c) any other rights and remedies available to either party under this Agreement or at law.
- 16.6 Clauses of this Agreement that are intended to survive termination shall survive termination.

17. Confidentiality

- 17.1 Each party will at all times keep confidential the terms of this agreement and any information provided by the other party in connection with performance of this Agreement except:
- (a) where disclosure is necessary for the party to perform its obligations under this Agreement;
 - (b) where disclosure is required by law;
 - (c) where the other party gives its prior written approval to such disclosure; or
 - (d) where the information is already in the public domain otherwise than by any reason of any breach of this clause by the disclosing party.

This clause 17 survives termination of this Agreement.

18. Force Majeure

- 18.1 Simply Energy is not liable to the Customer for any failure to perform its obligations, to the extent that such failure is caused by a Force Majeure Event. Simply Energy will resume its obligations once the Force Majeure event no longer prevents it doing so.

19. Variation

- 19.1 If Simply Energy wishes to vary any term of this Agreement (other than the Charges) it will:
- (a) Notify the Customer of the proposed changes either directly or by advertising or placing a notice in the local newspaper;
 - (b) Provide the Customer with a draft of the proposed changes (if these are not set out in the notice or advertisement referred to above) on request; and
 - (c) Once it has decided to make any change, give the Customer 20 Business Days notice of such changes.
- 19.2 Simply Energy may amend its Charges at any time, provided that it gives the Customer at least 20 Business Days' notice of the change and provides reasons for the change.

20. Indemnity

- 20.1 The Customer indemnifies Simply Energy and its Representatives for all costs, losses, claims, damages and against all proceedings and demands made or brought against it or its Representatives the other party and/or its directors or shareholders by any third party in respect of or arising out of the indemnifying party's negligence, wilful neglect, default or misconduct in the performance of its obligations under this Agreement.

21. Limitation of Liability

- 21.1 Simply Energy will not be liable (in contract, tort or otherwise) for any loss or damage to the Customer's property or goods unless:

- (a) it is caused by Simply Energy's breach of this Agreement or negligence; and
- (b) the loss is reasonably foreseeable; and
- (c) not caused by Force Majeure.

Simply Energy's total liability under this Agreement is, to the extent permitted by law, limited to a maximum of \$10,000 for any single event or series of related events. Simply Energy may choose to repair or replace any damaged property up to the same maximum amount, instead of paying cash.

- 21.2 In any event Simply Energy will not be liable for any indirect or consequential losses, loss of profits or the like.
- 21.3 To the extent permitted by law, Simply Energy will not be liable for any other loss or damage of any nature, whether due to negligence, breach of contract or for any other reason.
- 21.4 The Customer acknowledges that it is acquiring electricity from Simply Energy for business purposes and any rights or remedies the Customer may otherwise have under the Consumer Guarantees Act 1993 are excluded to the maximum extent permitted by law.

22. Meter Owner's Limitation of Liability

- 22.1 If the Customer does not have a direct contract with the Meter Owner, then the Meter Owner has no liability (in contract, tort or otherwise), to the extent permitted by law or in respect of the supply of electricity to the Customer under this Agreement. This provision is for the benefit of and enforceable by the Meter Owner pursuant to the Contracts (Privity) Act 1982 or any subsequent legislation.

23. Assignment

- 23.1 The Customer cannot assign or transfer its rights and/or obligations under this Agreement to any person.
- 23.2 Simply Energy may at any time transfer or assign all or any of its rights and obligations under this Agreement, provided that it gives the Customer notice of such either before the transfer or assignment or as soon as reasonably practicable thereafter. On the giving of such notice Simply Energy will be released from the obligations assigned or transferred and the assignee or transferee will assume those obligations.

24. Further Clauses

- 24.1 This Agreement records the entire agreement and prevails over any earlier agreement concerning its subject.
- 24.2 No waiver by either party of any provision of this Agreement shall be binding unless such waiver is in writing and signed by the relevant party. Any such waiver will only apply to the relevant matter in respect of which it was given and shall not apply to any other matter.
- 24.3 This Agreement will be governed by and construed in accordance with the laws in force in New Zealand and the parties agree to submit to the jurisdiction of the Courts of New Zealand.
- 24.4 If any provision of this Agreement is held by a Court to be invalid, void, illegal or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect and be construed so as to best effect the intention of the parties.
- 24.5 The parties shall execute all notices, agreements and other documents and do all other acts and things as may be reasonably required to implement and carry out their respective obligations under this Agreement.

25. Notices & Communication

- 25.1 Notices required or given by the Customer under this Agreement must be in writing:
- (a) By post to Simply Energy
 - PO Box 8043
 - The Terrace
 - Wellington 6143
 - Fax: 04 473 9805; or
 - (b) By fax to 04 473 9805;
 - (c) By email: notices@simplyenergy.co.nz.
- 25.2 If the Customer wishes to contact Simply Energy (other than by notice required under this Agreement) is may use the above address or telephone 0508 4SIMPLY or 0508 474 6759.
- 25.3 Unless specified otherwise in this Agreement, all invoices and notices given by Simply Energy will be:
- (a) Delivered to the Customer's Premises;
 - (b) Emailed to the Customer's email address; or
 - (c) Mailed to the Customer's mailing address. (All notices mailed by Simply Energy to the Customer will be deemed to have been received 3 working Days after being posted.)

The addresses for the Customer are as set out in the Customer Specific Terms or as otherwise notified by the Customer in writing to Simply Energy.

Schedule A

Network Owner Requirements

1. The Network Owner owns and operates the local network which transports electricity to the Customer's Premises.
2. The Customer must comply with all relevant statutory and regulatory requirements, and with the reasonable provisions of any applicable connection standards. A copy of the Network Owner's connection standards may be requested from Simply Energy. The Customer must not:
 - (a) Interfere with the Network Owner's network or cause or permit any person, material or device to do so;
 - (b) connect or disconnect any of its Equipment to the Network Owner's network or otherwise interfere with any of the Network Owner's equipment;
 - (c) where there is more than one connection for its installations, make an interconnection between those connections;
 - (d) convey or receive or attempt to convey or receive any signal or other form of communication over the network, or any part of it, to or from any person other than the Network Owner, or cause or permit any other person to do so;
 - (e) connect or modify any equipment on its premises to enable electricity generated on its premises to be conveyed across the network without the Network Owner's prior written consent.
3. The Network Owner, its employees, contractors, agents and invitees have Rights of Access, defined as:
 - (a) safe and unobstructed access to and within the Customer's Premises; and
 - (b) reasonable use of facilities and amenities available to and ordinarily used in association with the Network Owner's equipment at the Customer's premisesfor the purposes of:
 - (i) installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing any of its equipment at the Customer's premises;

- (ii) ascertaining the cause of any interference to the quality of services being provided by it; inspecting the Customer's equipment or any metering equipment to assess compliance with the Use of System Agreement;
 - (iii) protecting or preventing danger or damage to persons or property;
 - (iv) connecting or disconnecting the supply of electricity; or
 - (v) for any other purpose related to such activities or to its rights or benefits under the Use of System Agreement.
4. The above Rights of Access supplement any rights of access the Network Owner has under statute and survive termination of this Agreement to enable the Network Owner to gain access to or to remove any of its equipment at the Customer's property.
5. The Network Owner may disconnect the Customer from the local network:
- (a) to avoid danger to persons or property;
 - (b) to preserve and protect the proper working of the network, the Transpower network or any other network through which electricity is supplied to the Network Owner's network;
 - (c) in response to an event beyond the control of the Network Owner;
 - (d) upon an event of default in relation to the Customer's point of connection;
 - (e) if the Customer has failed to comply with any payment obligations in respect of services provided to it (directly or indirectly) by the Network Owner;
 - (f) if the Customer fails to allow it to exercise its Rights of Access;
 - (g) upon termination of this Agreement;
 - (h) upon termination of the Use of System Agreement.
6. The Network Owner may interrupt or reduce the conveyance of electricity to the Customer's point of connection:
- (a) to enable it to inspect or effect alterations, maintenance, repairs or additions to any part of the network;
 - (b) to avoid danger to persons or property or to avoid interference with the regularity or efficiency of the conveyance of electricity to points of connection;

- (c) to preserve and protect the proper working of the network, the transmission network or any other network through which electricity is supplied to the Network Owner's network;
 - (d) if supply of electricity to any point of connection is or will be reduced, impaired or interrupted;
 - (e) upon instructions from the transmission system operator or as a result of an action by a transmission system operator under any agreement between the Network Owner and transmission system operator;
 - (f) in carrying out load management;
 - (g) for any other purpose which in the Network Operator's reasonable opinion and good industry practice requires the interruption or reduction of supply of electricity.
7. The Customer must provide and maintain, at no cost to the Network Owner, suitable space for the secure housing of any of the Network Owner's equipment relating to the Customer's connection to the network which the Network Owner determines must be housed at the Customer's premises.
8. The rights and benefits granted to the Network Owner, and the undertakings the Customer gives in this Schedule, and elsewhere in this Agreement where it refers to Simply Energy's Representatives (and so includes the Network Owner) are intended for the benefit of and enforceable by the Network Owner, its directors, officers, employees, authorised agents, contractors and professional advisors pursuant to the Contracts (Privity) Act 1982 and cannot be varied without their consent.
9. The Network Owner shall use reasonable endeavours to provide continuous delivery but does not guarantee that the distribution network will provide delivery which is free from defects or interruptions. Without limiting clause 10, the Network Owner will not be liable for:
- (a) Momentary fluctuations in voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels;
 - (b) Any failure to convey electricity arising from a failure by the Customer or any person to observe and comply with good industry practice;
 - (c) Any failure to convey electricity arising from a failure or reduction of injection or supply of electricity into the Network Owner's network;
 - (d) Any failure to convey electricity arising from any defect or abnormal conditions in the Customer's premises;

- (e) Any act or omission of any transmission system operator or generator.

10. The Network Owner's liability is limited in accordance with this clause:

- (a) If the Network Owner is not a member of the Electricity and Gas Complaints Commissioner Scheme, then the Network Owner has no liability to the Customer whether in contract, tort, equity or otherwise relating to the supply of electricity to the Customer's premises;
- (b) If the Network Owner is a member of the Electricity and Gas Complaints Commissioner Scheme, then the Network Owner will only be liable to the Customer for the direct loss or damage to physical property where the damage has been caused by the Network Owner's negligence and the loss or damage is reasonably foreseeable. The Network Owner's liability for such costs is, to the extent permitted by law, limited to a maximum of \$10,000 for any single event or series of related events and its aggregate liability to all customers connected to its network for an event or series of closely related events relating to the network shall not exceed \$10,000.

Nothing in this clause excludes or limits any rights the Customer may have under the Consumer Guarantees Act 1993. However, if the Customer is acquiring goods or services for business purposes then the provisions of the Consumer Guarantees Act 1993 do not apply to the maximum extent provided by law.