

# General Terms and Conditions for Business Customers

## 1. Supply of Electricity by Simply Energy Ltd

- 1.1 Your Agreement starts with us either on the date we start supplying electricity to your Premises, or the date you sign any Customer Special Terms with us, whichever comes first. The Agreement consists of these General Terms and Conditions for Business Customers and any Customer Special Terms. If there is no pricing schedule provided as part of the Customer Special Terms, or we haven't already notified you of pricing, then our standard pricing for your customer type will apply.
- 1.2 You will not purchase or take supply of electricity to the Premises from any other person for the term of this Agreement.
- 1.3 You may contact us to appoint an authorised person to make decisions for you in relation to your account with us. An authorised person can do most things with your account. However, they cannot do some things, (for example, opening or closing an account in your name) unless you have specifically instructed us otherwise.

## 2. Metering

- 2.1 We measure how much electricity we supply you through a Meter. If there's no appropriate Meter at your Premises, then we may supply one, arrange for it to be installed and charge you for this.
- 2.2 We may arrange for a different Meter to be installed at your Premises, if required by this Agreement or regulation. We may charge you for this installation.
- 2.3 If you choose to install your own Meter, you are responsible for ensuring that it meets relevant industry standards and you indemnify us for all costs, losses, claims, damages, proceedings and demands arising from the Meter not meeting industry standards.
- 2.4 You must keep the Meter safe. The Meter (and its immediate connections) must not be interfered or tampered with. Doing so is a criminal offence and could result in criminal prosecution. If you become aware of any interference with the Meter you must notify us as soon as reasonably practicable.
- 2.5 We intend to read the Meter at your Premises at least 6 times per year, provided we have access.
- 2.6 If you think that the Meter is faulty, please notify us. If we test a Meter that we haven't supplied, and find it to be inaccurate, we may charge you for this. If you ask us to test one of our own Meters, and we find it's accurate, we may charge you a fee.
- 2.7 If we find that a Meter is producing inaccurate readings, then we'll issue a correcting notice. Any adjustment to our record of your electricity usage will be reflected in subsequent invoices. If the adjustment results in us owing you money, we will credit it to your account. If the adjustment results in you owing us money, you will be responsible for paying the corrected amount owing to us within 10 Business Days of us advising you of the amount payable (which may be by way of the next invoice).

- 2.8 If you have a time of use or smart Meter at your Premises, we will endeavour to establish remote communication to obtain data from the Meter. If we have a problem communicating remotely, we may install an aerial at your Premises. We will discuss other options with you if an aerial does not overcome the communication issues. This may include the need to access your Premises on a regular basis to download data from the Meter manually. We may charge you for the additional costs. If we have problems with obtaining validated data for any month or part month, we may need access to read the Meter manually or estimate the amount of energy supplied to you. If an estimate is required, we will comply with the standard industry practice for estimating missing or inaccurate metering data.
- 2.9 We will also access your Premises for the reasons outlined in the 'Access to Property' section, even if you have a smart Meter installed. If we need to install a smart Meter because of an access issue, we may charge you for the installation. We will let you know of any charges before we start the work, along with any ongoing changes to your pricing plan(s). We may charge you if you ask for a manual reading to be taken from a smart Meter.
- 2.10 You agree that we own all metering data and any other data collected by the Meter. We may:
  - (a) receive, collect and store metering data relating to you and your Premises; and
  - (b) use metering data for the purposes outlined in the 'Customer Information' section.
- 2.11 If you add to, modify or replace any Equipment on your Premises then we may need to upgrade the Meter. It's your responsibility to upgrade a Meter that you have installed yourself. We are responsible for upgrading a Meter that we've installed and may charge you for this.
- 2.12 The Meter Owner (if it is neither you nor us) has no liability (in respect of the supply of electricity) to you under this Agreement. This provision is for the benefit of and enforceable by the Meter Owner pursuant to Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

## 3. Customer Information

- 3.1 We will collect, hold, use and disclose certain information about you as the person who has entered into this Agreement with us. The Privacy Act 2020 applies to this personal information. As part of this Agreement, you authorise us to disclose this information to the Lines Company and Meter Owner for any purpose associated with this Agreement. It's your responsibility to keep this information correct, complete and up to date.
- 3.2 We will only collect, use and disclose personal information provided by you for the purposes of this Agreement unless we have your consent to, or the law (including the Rules) requires us to, disclose additional information. The information we may collect, use or disclose for the purposes of this includes any information we require:

- (a) for any purpose authorised by you, including communicating with authorised persons and alternate contacts;
  - (b) to confirm your identity;
  - (c) to supply electricity and any other products and services you have asked for;
  - (d) to administer your account (including invoicing you, sending notices or communicating with you);
  - (e) to help improve our customer service, including monitoring and following up questions and complaints to help develop and/or improve products and services;
  - (f) to inform or contact you about our products, brands, special offers, publications and other promotions we think you may be interested in (including via email or other electronic communications);
  - (g) to conduct market research, including to disclose to a market research organisation for the purpose of contacting you or conducting market research on our behalf;
  - (h) to meet the requirements of the Agreement, the law, industry rules and codes of practice;
  - (i) to meet the requirements of the Lines Company;
  - (j) to disclose to our related companies, as defined in the Companies Act 1993;
  - (k) for credit checking, credit reporting or debt collection, which may involve disclosure to a credit reporting agency. This information may be used by the credit reporting agency to update and maintain credit information files and may, in turn, be accessed by its customers;
  - (l) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution and punishment of offences;
  - (m) to verify your credit and payment history with your previous energy supplier;
  - (n) to disclose to the Lines Company or Meter Owner for the purpose of installing, maintaining or operating the network or metering equipment or communicating with you;
  - (o) to disclose to the Lines Company and/or entity that owns the network to allow them to pass on rebates or discounts to you, or otherwise to communicate with you; or
  - (p) to disclose to the Electricity Authority, the Commerce Commission, Utilities Disputes, or any other government agency or regulatory body, industry body or complaints scheme.
- 3.3 In addition, there may be occasions where we disclose your information in other ways that are in accordance with the Privacy Act 2020.
- 3.4 We may check the information or collect other information about you (and, if applicable, your directors, shareholders, etc.) from other organisations or people, such as credit agencies, reporting agencies, government agencies, the Lines Company and any other relevant agencies, for business purposes.
- 3.5 We may record our telephone conversations with you to assist us in performing this Agreement. If we do so, the recordings will be kept secure and may be retained for at least one year; after which they will be destroyed. While we hold them, you may request access to them, and we will grant you reasonable access.
- 3.6 You can request a copy of all information held by us about you or your account and may request that it is corrected if it is wrong. We will correct (after investigation if necessary) any information we find to be incorrect.
- 3.7 More information about how we comply with the Privacy Act 2020, including any applicable policies, may be published on our website.
- 3.8 You are responsible for keeping safe any

passwords you have for accessing your account. You should ensure that you only share your password with authorised people on your account.

- 3.9 *Medically dependent consumer.* If you are or believe you are a medically dependent consumer, you will need to either:
- (a) provide us with a completed Notice of Potential Medically Dependent Consumer Status Form, which your health practitioner can give you;
  - (b) complete our medical dependency form located on our website; or
  - (c) consent to your registered medical practitioner speaking to us about your medical dependency.
- If you are confirmed as a medically dependent consumer, we will comply with the requirements of the Electricity Authority's guidelines relating to medically dependent consumers (ea.govt.nz/consumer). If you are a medically dependent consumer, you must maintain a back-up power supply or any other emergency arrangements that will ensure your health and safety in the case of interruption to your energy supply. Energy supply may be interrupted at any time without warning.
- 3.10 *Vulnerable consumer.* We will also comply with the requirements of the Electricity Authority's guidelines relating to vulnerable consumers where we have confirmed that you are a vulnerable consumer (ea.govt.nz/consumer).

#### 4. Interruptions to Supply (Faults)

- 4.1 If you experience problems with electricity supply, you can telephone us at any time. We provide a 24-hour fault notification service. For faults, contact your local network company or Simply Energy on 0800 100 249, 24 hours per day, 7 days per week.
- 4.2 Due to circumstances outside our control, we cannot guarantee that electricity supply will be continuous or fault free. If there is a planned interruption to supply (for example for maintenance by the Lines Company) we will try to provide you with at least three Business Days' notice. We may do this by way of notice on our website, public notice or advertisement.
- 4.3 If there is an unplanned outage (for example for a dangerous situation) we will use reasonable endeavours to minimise any inconvenience to you.
- 4.4 If your pricing option, or the Lines Company, allow us to control the supply of energy to your Equipment, we may temporarily suspend supply without notifying you.
- 4.5 We are not liable to you for any failure to perform our obligations to the extent such failure is due to a Force Majeure Event. We will resume our obligations once the Force Majeure Event no longer prevents us doing so.

#### 5. Charges & Payments

- 5.1 You are responsible for paying all Charges in relation to the electricity we supply to your Premises, including any third-party charges (which we pass through to you and may change without advance notice) and for any other services we provide which may include a service fee. For information on our service fees, please refer to our website. We will advise you of any changes to the Charges as soon as reasonably practicable (which may be by way of an explanation on your invoice). This obligation continues after you have ceased to be supplied by us or otherwise are no longer our customer.
- 5.2 We will calculate the Charges based on an actual Meter reading or an estimate (based on previous consumption if known) of the amount you have consumed over the Billing Period. If we can't calculate how much electricity was actually supplied to you (for example because of a faulty Meter) then we may estimate the amount of electricity supplied and invoice you accordingly.
- 5.3 If we have agreed to provide you with an unmetered supply (for example, for builders' temporary supplies or street lighting), we will estimate your electricity use

based on either:

- (a) a daily average consumption amount that reflects typical usage for similar unmetered sites; or
- (b) the wattage of installed fittings multiplied by the estimated or actual hours of usage.

You must tell us if your load or circumstances change. We may withdraw our unmetered supply if your installation exceeds industry guidelines for the duration or consumption of unmetered supply. In this case, you will need to move to a metered supply.

- 5.4 If your energy supply is for a seasonal load and it becomes apparent to us or the Lines Company that you arranged for a disconnection of your energy supply or terminated your Agreement with us to avoid off-season fixed daily charges, you will be required to pay us for:
  - (a) any fixed charges or disconnection costs that we have incurred in relation to your energy supply during the off season period; and
  - (b) any reconnection fee (if relevant).
- 5.5 Generally, we will invoice you each month setting out the payment due (including GST).
- 5.6 We may invoice you more frequently than once a month if we consider there are significant price changes in the electricity spot market that warrant this. If we do this, then all references to 'Billing Period' and all monthly calculations will be adjusted accordingly.
- 5.7 You are responsible for paying each invoice in full by direct debit, automatic payment, or credit card to us on the Due Date. You may not deduct or offset any amounts from the amount shown on the invoice.
- 5.8 If you want to dispute any invoice, then you must let us know before the Due Date and explain your reasons. You must pay any undisputed amount in full on the Due Date. We will not charge you default interest, or suspend your supply, while there is a genuinely disputed amount. Interest may be payable at the Default Interest Rate for overdue amounts once the dispute is resolved.
- 5.9 If an invoice dispute is resolved in your favour, we'll credit your account. If it's resolved in our favour, we'll add the amount to your next invoice, or we may ask you to pay it within 5 Business Days. If we don't receive payment, we'll treat the amount as overdue and charge you interest on it at the Default Interest Rate.
- 5.10 If we don't receive payment by the Due Date, we may take further action. This includes using your bond to settle any amounts owing, taking steps to recover any overdue amount and suspending or disconnecting your supply.
- 5.11 If we take action to recover any amounts owing, you'll be responsible for paying any costs we incur including bank fees, credit agency fees, legal expenses, court costs and default interest.
- 5.12 Charges are exclusive of GST and any other taxes and levies (if any). You'll need to pay GST and any other taxes and levies payable on the Charges, as shown on your invoice.
- 5.13 We may require you to pay a bond to cover any money you may owe us. A bond may be in the form of a cash payment, a guarantee, or any other type of security we decide is necessary. We may pay the balance of the bond (as a credit on your account) or release the guarantee if you have paid all invoices on time, and in full, for twelve continuous months. Otherwise, we'll pay the balance of the bond back when we stop supplying electricity to you (after any money owing is deducted or paid to us).
- 5.14 If you've been overcharged, we'll refund this to you (which may be by way of credit against future invoices). If you've been undercharged, then we may invoice you for the amount undercharged (or add it to your next invoice).
- 5.15 If we have agreed a payment arrangement with you, you must keep to the terms and conditions of that arrangement. If you don't honour that arrangement, we may, in addition to our other

rights under this Agreement, disconnect your supply.

## 6. Complaints

- 6.1 If you're dissatisfied with our service, you can lodge a complaint. We'll work with you to resolve any problem as soon as we reasonably can. If appropriate we may refer your complaint to the Lines Company or Meter Owner (if that is not us).
- 6.2 We are a member of the energy complaints scheme operated by Utilities Disputes, this is a free and independent industry complaints body. We are committed to maintaining the standards contained in the General and Scheme rules for the Energy Complaints Scheme. If the complaint falls within its jurisdiction and it has reached deadlock, you can refer your complaint with us to Utilities Disputes. The contact details for Utilities Disputes are as follows:
  - Web: [www.utilitiesdisputes.co.nz](http://www.utilitiesdisputes.co.nz)
  - Email: [info@utilitiesdisputes.co.nz](mailto:info@utilitiesdisputes.co.nz)
  - Phone: 0800 22 33 40
  - Fax: 0800 22 33 47
  - Post: PO Box 5875, Wellington 6140 Freepost 192682

## 7. Equipment & Safety

- 7.1 You're responsible for looking after any Equipment we decide is needed at the Premises for your supply including:
  - (a) providing suitable space for the secure housing of the Equipment;
  - (b) repairing and maintaining the Equipment if it is not owned or supplied by us;
  - (c) ensuring that any of the Equipment not owned by us complies with relevant technical standards and codes of practice;
  - (d) protecting the Equipment from damage and unauthorised interference or removal, and not encumbering or using it as security in any way or to make the Equipment a fixture of your Premises;
  - (e) letting us know about any damage to, or interference with, the Equipment as soon as you become aware of it. If it is damaged or interfered with, we may charge you the estimated cost of any unmeasured supply, the cost of our investigation and the cost of repairing or replacing the Equipment; and
  - (f) not allowing anyone to interfere with the supply of electricity to you or anyone else or connect any generation assets to the network, without our prior written approval. You must ensure that only qualified persons carry out any work on or affecting Equipment or electricity supply.
- 7.2 You must ensure that any trees and vegetation on your Premises are kept trimmed away from all power lines and other Equipment (including Meter boxes).
- 7.3 There may be voltage fluctuations which could damage the Equipment or your Premises or lead to loss of data. It is your responsibility to install protective devices, arrange insurance cover or make other arrangements to secure supply and protect Equipment from potential damage arising from any voltage fluctuations.
- 7.4 For your safety and the safety of those around you:
  - (a) dial 111 in an emergency;
  - (b) call us immediately on 0800 100 249 if you think there is a possibility that our energy supply could endanger people or property;
  - (c) do not interfere with wires that supply energy to your Premises;
  - (d) contact us before demolishing or removing any buildings connected to or containing equipment; and
  - (e) contact us if you become aware of a hazardous situation relating to your energy supply or Equipment.

## 8. Access to Property

- 8.1 You will need to provide safe and unobstructed access to the Premises so that we can:
- (a) read the Meter;
  - (b) install, inspect, work on, replace or remove Equipment;
  - (c) investigate any actual or suspected damage to Equipment;
  - (d) connect, reconnect or discontinue the electricity supply to you or third parties;
  - (e) investigate the cause of any interference to electricity supply;
  - (f) protect or prevent danger or damage to people or property; and
  - (g) as required for the purposes of this Agreement, including compliance with any Lines Company request for access.
- 8.2 You must let us know about any health and safety requirements or issues and provide us with any equipment that is necessary to ensure the health and safety of our representative on your Premises. You will be liable for all costs, loss or damage incurred by us arising out of your unsafe Premises or any threats or attacks made by you, anyone on your Premises, or your dog or other animals.
- 8.3 We will generally access the Premises during Normal Business Hours, but you agree to allow access outside of Normal Business Hours if the matter is urgent. You may refuse access if, when requested, we are unable to show proper identification. Where we are reasonably able to, we will provide notice when we need to access your Premises.
- 8.4 If we are unable to get safe and unobstructed access to your Premises or the Meters or Equipment or if we cannot reasonably access your Premises and/or read the Meter, we may charge you for any additional costs (including any callout fees) and your supply of electricity may be disconnected, interrupted or suspended.
- 8.5 If you have an internal Meter, you will need to make a Meter access arrangement with us to enable us to read and maintain the Meter. We agree to keep the key, or information required for access, safe and secure at all times.
- (k) we consider your electricity installation to be unsafe;
- (l) you do not meet your obligations in relation to Equipment;
- (m) an event occurs affecting energy supply or transmission where we need to reduce supply and you don't stop taking energy from the network when we ask you to; or
- (n) you fail to meet any other obligations set out in this Agreement.
- 8.7 The Lines Company may disconnect or restrict your energy supply if:
- (a) it is asked to do so by us;
  - (b) you fail to meet your responsibilities relating to the Lines Company's requirements as set out in this Agreement;
  - (c) you breach any terms and conditions in this Agreement that require you to give the Lines Company or Meter Owner access to your Premises and the breach is material or persistent (in these situations, the Lines Company may also reclaim any energy supply equipment it owns on your Premises);
  - (d) the Lines Company considers your electricity installation to be unsafe or disconnection is necessary to avoid endangering any person or Premises;
  - (e) you have a separate agreement with the Lines Company and you breach that agreement;
  - (f) you take energy directly from the network while having no agreement with the network;
  - (g) circumstances exist or events occur that may adversely affect the proper working of the network or transmission system;
  - (h) our agreement with the Lines Company is affected by default or insolvency or is terminated for any reason; or
  - (i) an event occurs affecting energy supply or transmission where we need to reduce supply and you don't stop taking energy from the network when we ask you to.
- 8.8 Where you have an agreement with the Lines Company and they disconnect you for any reason, you will still need to pay our fixed daily charges. The Lines Company will only disconnect your electricity supply permanently if it is entitled to do so in accordance with the Electricity Industry Act 2010.

## 9. Disconnection

- 8.6 We may disconnect the electricity supply to your Premises if:
- (a) we need to protect health and safety or prevent damage to property;
  - (b) you do not pay any money owing under this Agreement on time, or if you breach any other obligation under this Agreement. Before disconnecting you for breach, we will give you at least one week to remedy it, and if it's not remedied then we'll send you a final warning at least 24 hours before we disconnect you;
  - (c) we reasonably believe that the Meter, lines or fittings on your Premises have been tampered with;
  - (d) we're unable to get access to your Premises and property for the purposes of this Agreement for more than three months;
  - (e) you request for it to be disconnected;
  - (f) this Agreement ends and is not replaced by any subsequent agreement;
  - (g) the Lines Company requires the supply to be disconnected under its agreement with you or with us;
  - (h) there is clear evidence of energy theft or other related illegal activity;
  - (i) any Equipment on your Premises does not comply with legal requirements or the Lines Company's network connection standards;
  - (j) you threaten, assault or harass any of our staff, agents or contractors;
- 8.9 If we disconnect your electricity supply, you are still responsible for paying any outstanding debts or other sums as they become due (including costs incurred after disconnection).
- 8.10 If we have disconnected your electricity supply and you want it to be reconnected, we may require you to:
- (a) pay all outstanding debts;
  - (b) pay a bond;
  - (c) pay a reconnection fee; and/or
  - (d) agree to adjusted charges and terms.
- Once you've done this, we'll reconnect you promptly.

## 10. Termination

- 10.1 If you're not on a fixed term (refer to Customer Special Terms), you can terminate this Agreement by:
- (a) switching to another retailer. You'll need to arrange supply with that retailer, and we'll switch you according to industry protocols. This Agreement remains in force until the switch is completed;
  - (b) asking us to disconnect electricity supply to your Premises. We require at least 5 Business Days' notice for this; or
  - (c) closing an account. You must give us at least 5 Business Days' notice and let us know your forwarding address.
- 10.2 We may terminate this Agreement:
- (a) immediately, if our Agreement with the Lines



Company is terminated (or, if you have a direct Agreement, then your Agreement with the Lines Company);

- (b) 24 hours after a final warning to you if you breach this Agreement; or
  - (c) by giving you one month's written notice. If we exercise this right, you will use all reasonable endeavours to find an alternative retailer and arrange to switch to that retailer before the expiry of the notice period.
- 10.3 Following termination, we will provide a final invoice to your address (unless you notify us of a new forwarding address). At our discretion, for calculating your final invoice, we may require a final meter reading, estimate the final meter reading or rely on a reading provided by you. If we have not been able to read your meter, you will stop incurring our charges on the business day after we have been able to obtain a reading or after we decide to use an estimated reading for your final invoice or rely on a reading provided by you.
- 10.4 We may send you an amended final invoice later if the meter reading we relied on to calculate the final invoice was incorrect. You will be responsible for paying for any energy used and other charges incurred while the Premises remain connected to the network. This applies even if you no longer occupy the Premises. You remain liable until:
- (a) a new customer has notified us that they have taken over responsibility for energy supply at the Premises; or
  - (b) the date when the Premises are disconnected.
- 10.5 You remain liable as long as you remain the account holder at the Premises under the terms of this agreement. Upon closing an account, you agree that we may add any of your unpaid invoices with us from that account to an account for other premises that we supply or the account for your new premises. Any termination of this agreement will be without prejudice to any rights you or we accrued prior to or in connection with such termination.
- 10.6 Clauses of this Agreement that are intended to survive termination shall survive termination, including clause 5 (charges & payments), this clause 10 (termination), clause 12 (confidentiality) and clause 14 (liability).

## 11. Lines Company Requirements

- 11.1 The Lines Company owns and is responsible for the network through which we supply electricity to you.
- 11.2 You may have an agreement directly with the Lines Company for network services, in which case you must comply with that Agreement. In most instances, however, we have an agreement with the Lines Company to provide network services to you. In that case, you:
- (a) must comply with the Lines Company's network connection standards (available from your Lines Company);
  - (b) must provide suitable, safe and secure space for any Equipment the Lines Company requires;
  - (c) acknowledge that the Lines Company has no liability to you in relation to the supply of electricity;
  - (d) must not connect, disconnect or modify any Equipment to or from the network;
  - (e) grant the Lines Company safe and unobstructed access to the Premises and facilities as reasonably required by the Lines Company;
  - (f) must not inject energy into or attempt to convey or receive signals or other communications through the network or connect or reconnect your energy supply equipment directly to the network;
  - (g) must obtain our prior consent and that of the Lines Company if you wish to generate electricity at your Premises and export it into the network (additional

terms and conditions will apply in this situation);

- (h) must let us know if you experience any issues with the quality of your energy supply (for example, low voltage);
  - (i) must make sure the way you use energy at your Premises does not interfere with the quality of energy supplied to others or interfere with the network or metering equipment – if it does, you must stop the interference as soon as you become aware of it;
  - (j) must let us know if any energy supply equipment on your Premises is faulty, damaged, leaking or (in the case of metering equipment) operating inaccurately, so we can suspend your supply if necessary and carry out or arrange repair or maintenance work (or recommend contractors to do so) at your cost;
  - (k) must contact us or the Lines Company if you become aware of a hazardous situation or that any fittings or equipment relating to your electricity are defective, damaged or causing a hazard; and,
  - (l) must comply with any other terms imposed by the Lines Company to enable us to supply electricity to you.
- 11.3 You acknowledge that the Lines Company may interrupt supply or reduce the conveyance of electricity to you:
- (a) to enable it to inspect, maintain or make alterations to the network;
  - (b) to avoid danger to persons or property or avoid interference with the conveyance of electricity;
  - (c) to preserve and protect the proper working of the network or the transmission network;
  - (d) in carrying out load management; and
  - (e) for any other purpose which, in the Lines Company's reasonably held opinion, is required by good industry practice.
- 11.4 If you do not have your own agreement directly with the Lines Company (or if they have appointed us as their agent for collection), we will charge you for the network services provided by the Lines Company. This amount is set by the Lines Company.
- 11.5 Except as expressly set out in this Agreement, the liability of the Lines Company, including any liability in tort (including negligence), contract, breach of statutory duty, equity or otherwise, is excluded to the maximum extent permitted by law. This provision and the terms and conditions included in this Agreement in relation to the Lines Company and/or the network are for the benefit of and enforceable by the Lines Company, its directors, employees, and authorised agents pursuant to Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

## 12 Confidentiality

- 12.1 Each party will at all times keep confidential any Customer Special Terms (including pricing as notified to you) except where disclosure is required for the performance of this Agreement, or by law, or with the other party's consent or the information is in the public domain (not through breach of this Agreement). This clause survives termination of this Agreement.

## 13 Variation

- 13.1 We can change any term of this Agreement. If we want to change any term (except the Charges) we will notify you of the proposed changes, with reasons, either directly or by advertising (for example, our website). We will give you 30 calendar days' notice of such changes.
- 13.2 We may amend our Charges or service fees at any time, provided that we give you at least 30 calendar days' notice of the change and provide reasons for the change.

## 14 Indemnity & Limitation of Liability

- 14.1 You indemnify us for all costs, losses, claims, damages and against all proceedings and demands incurred:

- (a) in recovering amounts owed by you under this Agreement; and,
  - (b) as a direct or indirect result of your negligence or breach of this Agreement.
- 14.2 If we cause physical damage to your Premises by breaching this Agreement or through our negligence, and the loss or damage was reasonably foreseeable, we will either pay for the loss or damage, or repair or replace the property (at our discretion), up to a maximum of \$10,000 for any single event or series of related events. To the extent permitted by law, we will not be liable to you for any other loss or damage (whether due to negligence, breach or otherwise). In particular we will not be liable for any indirect or consequential losses, loss of profits or the like.
- 14.3 Except as expressly set out in this Agreement, all warranties, guarantees or obligations imposed on us or the Lines Company, in relation to goods or services provided by us, or the Lines Company by law, are excluded to the maximum extent permitted by law.
- 14.4 To the maximum extent permitted by the Consumer Guarantees Act 1993 (CGA), and notwithstanding any other term of this Agreement, it is agreed that the provisions of the CGA will not apply, and we and you each agree to contract out of the provisions of the CGA, where the following conditions apply:
- (a) the goods and/or services (as applicable) covered by this Agreement are, or (in connection only with the guarantee of acceptable quality in section 7A of the CGA, the electricity) is, both supplied and acquired in trade, and
  - (b) each of us is in trade.
- 14.5 You and we acknowledge that we each consider it is fair and reasonable for us to be bound by this provision.

## 15 Assignment & Transfer

- 15.1 You cannot assign or transfer your rights and/or obligations under this Agreement to any person without our prior written consent, which we cannot unreasonably withhold.
- 15.2 We may at any time transfer or assign all or any of our rights and obligations under this Agreement. We will notify you if we do this as soon as reasonably practicable.
- 15.3 We may sub-contract or delegate the performance of any of our obligations under this Agreement.

## 16 Further Clauses

- 16.1 No waiver of any breach or failure to enforce any rights by either party will prevent or limit that party's right to enforce this Agreement.
- 16.2 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.
- 16.3 If you on-sell energy to another person, you need to let us know, and special terms and conditions will apply. In these circumstances, our and the Lines Company's warranties, guarantees or obligations relating to goods or services provided by us or the Lines Company are excluded to the maximum extent permitted by law.
- 16.4 Where your Premises are connected to a network owned or operated by a person other than the local Lines Company (i.e. connected to an 'embedded network'), you acknowledge and agree that the embedded Lines Company (and not the local Lines Company) is responsible for delivery of energy on the embedded network

and, to the fullest extent permitted by law, the local Lines Company shall have no liability to you of any kind, whether in contract, tort (including negligence) or otherwise, in relation to the embedded network.

- 16.5 Distributed Unmetered Load (DUML), for example, streetlights, is subject to specific obligations under the Electricity Industry Participation Code. Accordingly, if this Agreement is for any DUML you must:
- (a) ensure a DUML database is established, maintained and operated in accordance with the requirements of the Electricity Industry Participation Code;
  - (b) by the end of the first Business Day of each month, provide (or have a third party provide) us with:
    - (i) daily value information from the DUML database by ICP (number of fittings, total wattage adjusted for ballast);
    - (ii) in the format we request; and,
    - (iii) (if requested) the on/off times of the DUML for the month;
  - (c) reimburse us for the reasonable cost of installing a data logger where required to record accurate on/off times for the DUML;
  - (d) no less than 3-monthly, provide (or have a third party provide) us with a full extract from the DUML database in the format we request;
  - (e) upon request, provide us with direct access to the DUML database for the purposes of conducting an on-site and desktop DUML database audit, and reimburse us for the reasonable cost of conducting that audit; and
  - (f) if an audit identifies any material non-compliance or inaccuracy in the DUML database, follow our reasonable instructions as to the remedial action to be taken and timeline to address the non-compliance or inaccuracy, and if appropriate update the process documentation relevant to management of the DUML database.
- 16.6 If you are on Wholesale Market Pricing, we are required to make you aware of the Authority's regime.

In 2011 the Electricity Authority (Authority) introduced a stress testing regime (regime). The purpose of the regime is to make participants who purchase some or all of their electricity at spot market prices more aware of the risks of assuming exposure to the spot market (for example, having insufficient hedge cover to cope with occasional periods of high prices).

If you are charged spot market prices, we are required to make you aware of the Authority's regime. Stress testing puts information disclosure mechanisms in place to make it clear that parties buying electricity on the spot market do so knowing the risks they are taking, and that they are solely accountable for the consequences of their risk management decisions. The regime does not impose any mandatory obligations on you, as a spot market purchaser through Simply Energy, or constrain your choices in the electricity or hedge markets; rather it aims to make you aware of the risks that exist. You retain full responsibility for managing your risk exposures.

For further information and a set of simplified stress tests that you can use as a guide to help assess your exposure to spot market prices and risk please visit the Authority's website:

<https://www.ea.govt.nz/operations/wholesale/spot-pricing/stress-tests/large-scale-consumer-stress-tests/>

The Authority also publish a guide 'Managing electricity price risk – a guide for consumers', which can be downloaded from their website:

<https://www.ea.govt.nz/assets/dms-assets/13/13830Managing-electricity-spot-price-risk-guide.pdf>

If you require further information, or an explanation about stress testing, please email [info@ea.govt.nz](mailto:info@ea.govt.nz) or contact your account manager.

## 17 Notices & Communication

- 17.1 If you need to give notice to us under this Agreement, you must do so in writing by:
- (a) Post to: Simply Energy 92 Abel Smith Street, Wellington 6011;
  - or
  - (b) By email: [solutions@simplyenergy.co.nz](mailto:solutions@simplyenergy.co.nz)
- 17.2 If you want to contact us (other than by notice required under this Agreement) you may write, email or telephone 0800 100 249.
- 17.3 We may send any notice or invoice to you by:
- (a) delivering to your address;
  - (b) mailing to the latest postal address you have given us;
  - (c) emailing to the latest email address you have supplied to us; or,
  - (d) delivering via any other electronic means.
- A notice or invoice will be deemed to have been received by you:
- (a) on the day of delivery, if delivered by courier to your address;
  - (b) 5 working days after being posted to you; or,
  - (c) at the time an email was transmitted by us to your email address.

You need to let us know if any of your contact details change.

## 18 Rights of Electricity Authority

- 18.1 If we commit an event of default (as defined in the Code) then, notwithstanding anything else in this Agreement, it is agreed that the Electricity Authority (Authority) shall have the right to:
- (a) assign our rights and obligations under this Agreement to another retailer;
  - (b) amend the terms of the assigned Agreement to:
    - (i) the new retailer's standard terms (as would normally have been offered to you immediately before the event of default occurred) or such other terms as the new retailer and the Authority agree, provided that such amended terms are more advantageous to you than the retailer's standard terms; and,
    - (ii) include a minimum term in respect of which you must pay an amount for cancelling the assigned Agreement before its expiry.
- 18.2 You acknowledge that we may provide information about you to the Authority and the Authority may provide that information to another retailer if required under the Code.
- 18.3 You acknowledge that we may assign our rights and obligations to another retailer.
- 18.4 This clause 18 is for the benefit of the Authority for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 and may not be amended without the consent of the Authority.

## 19 Definitions & Interpretation

- 19.1 Words in this Agreement have the meaning set out below, unless specified otherwise:
- Billing Period** means, in relation to an invoice, the previous calendar month.
- Business Day** means any day except a weekend or a public holiday.
- Charges** means the Charges set out in the Pricing Schedule (plus any third-party charges that are not specified in the Pricing Schedule but are passed through). If there is no Pricing Schedule or if it has expired, then our standard charges will apply.
- Code** means the Electricity Industry Participation Code 2010.

**Customer Special Terms** means each pricing schedule and customer special terms and any other terms that are stated to apply to the supply of electricity by us to you.

**Default Interest Rate** means the rate of 5% above the 90-day bank bill mid-rate as quoted on the Reuters BKBM screen on the Due Date.

**Due Date** the due date for payment as shown in the invoice. If applicable special due date conditions will be specified in your contract.

**Equipment** means the service mains, poles, wires, fittings, metering equipment, meter box, meter board, switchboard, sub or fuse board or other wiring or piping and any other assets relating to the supply or use of energy.

**Force Majeure Event** means an event or circumstance that is beyond our reasonable control, and which prevents the substantial performance of our obligations under this Agreement. It includes floods, earthquakes or other Acts of God, civil commotion, malicious damage, industrial action, significant grid or network or generator failure, motor vehicle and other accidents and acts or omissions of you, the Lines Company or Meter Owner (if that is not us) and any defect or abnormal condition in the Premises.

**Lines Company** means the owner of the local lines network to which your Premises is connected.

**Meter** means a meter and associated equipment used for the measurement, storage and/or communication of electricity usage information, and may include load and meter control devices.

**Meter Owner** means the person that owns the Meter situated on your Premises.

**Normal Business Hours** means between 8.30am and 5pm on a Business Day.

**Point of Connection or ICP** means the point or points at which your Premises connect to a circuit breaker, switch, fuse or other isolating device on the Lines Company's network.

**Premises** means your premises to which electricity is supplied (or intended to be supplied). This may be specified in the Customer Special Terms.

**We, us or our** means Simply Energy Limited and includes its officers, employees and (when acting on our behalf or with authority from us) its, contractors or agents, the Lines Company, the Meter Owner, the meter reader and any of their employees, contractors or agents.

**You** means you, the Customer.

- 19.2 References to parties are references to the Customer and Simply Energy together with their successors and permitted assigns. References to a statute or regulation means reference to that statute or regulation as amended or replaced. The singular includes the plural and vice versa.