

## **PREAMBLE**

This Retail Electricity Supply Agreement is between Diamond Energy Pty Ltd ABN 97 107 516 334 of Level 1, 695 Burke Road, Camberwell, Victoria 3124 and its Small Customers in South Australia. It contains the Terms and Conditions of our agreement with you covering the sale and supply of electricity to you at the Supply Address.

More information about this contract and other matters is on our website [www.diamondenergy.com.au](http://www.diamondenergy.com.au)

### **1. Definitions used in these Terms & Conditions**

1.1 In the Agreement, the following terms in Italics have the following meanings:

**Agreement** means your Retail Electricity Supply Agreement with us;

**Cooling Off Period**, means the period of ten business days commencing on the day you receive the Disclosure Statement from us;

**Customer Agreement** means the Agreement form signed by you, or, if you apply to become our customer through our website, the electronic form submitted by you, or if you become our customer by telephone, means our voice recording of the agreement;

**Disclosure Statement** means the written disclosure statement that we provide to you in accordance with our obligations under the Energy Marketing Code of South Australia;

**Early Termination Charge** means the amount specified in the Customer Agreement;

**Environmental Requirement** means any mandatory renewable energy target, emissions target, energy efficiency scheme, greenhouse gas abatement program, carbon dioxide trading scheme or carbon tax) introduced by any government or authority, including any change in any such requirement or change in the application or calculation of any such requirement,

**SA Power Networks** means SA Power Networks, the distributor of electricity in South Australia;

**Force Majeure Event** means an event outside our control or your control;

**Last Resort Event** means an event which triggers the operation of the retailer of last resort scheme approved by the Essential Services Commission of South Australia;

**Minimum Supply Period** means the minimum period of supply under the Agreement, as specified in the Customer Agreement;

**Rates** means the charges payable by you under the Agreement, comprising both the energy component and the Non-Energy Charges;

**Rules** means the National Energy Retail Rules made under the National Energy Retail Law

**Small Customer** means a customer who consumes less than 160MWh of electricity per annum at a Supply Address;

**Supply Address** means a site where you accept electricity supply from us under the Agreement;

### **2. Your Agreement with Us**

2.1 Your Agreement with us is a Market Contract within the meaning of the Rules and consists of these Terms and Conditions, the Customer Agreement, the Disclosure Statement and any product material which is stated to be incorporated in the Agreement.

2.2 Under the Agreement, we agree to sell electricity to you and you agree to purchase electricity from us and accept the supply of electricity at the Supply Address for the entire Minimum Supply Period.

### **3. Commencement of Agreement**

3.1 The Commencement Date of the Agreement is the date that we send you confirmation that the Agreement has been accepted by us.

3.2 The Minimum Supply Period will commence when we begin to supply electricity to the Supply Address under the Agreement. This will be when the Supply Address is transferred to us as your electricity retailer and will normally be on the next scheduled meter read after the Commencement Date.

3.3 We may reject the Agreement at any time before the Commencement Date.

### **4. Termination during Cooling-Off Period**

4.1 You have a right to rescind the Agreement in accordance with this clause 4 within the Cooling Off Period.

4.2 You may exercise the right of rescission even if you have affirmed the Agreement.

4.3 You must provide us with the notice of rescission in a form which clearly indicates your intention to rescind the Agreement.

4.4 A notice of rescission provided in writing by you will be deemed to be received by us on the date it is sent to our postal address, to our fax number or to our email address, which are all stated in the Disclosure Statement in respect of the Agreement.

4.5 We will retain records of a notice of rescission given by you under this clause 4 in a format which permits us to answer any enquiries relating to that notice by you, the Essential Services Commission, the Industry Ombudsman or any other entity permitted by an applicable regulatory instrument to access that information.

4.6 Nothing in this clause 4 affects any other rights in law or in equity which you may have in relation to the Agreement or in relation to our conduct.

## 5. Termination after Cooling Off Period

- 5.1 Where you wish to terminate the Agreement after the Cooling Off Period, and you are remaining at the Supply Address, you must provide us with at least twenty business days notice. Where you wish to terminate the Agreement after the Cooling Off Period, and you are leaving the Supply Address, you must give us at least three business days notice.
- 5.2 If you cancel the Agreement after the Cooling Off Period but before the end of the Minimum Supply Period, we may charge you the Early Termination Charge.

## 6. Term and Extension of Your Agreement

- 6.1 At the end of the Minimum Supply Period, the Agreement will be extended for a further period on the same Terms and Conditions and for the same Minimum Supply Period as the previous Minimum Supply Period. The Rates will be the same as the charges then payable unless they are varied by written notice by us. We may only vary your Rates for the reasons set out in clauses 8.2 and 8.3.
- 6.2 If you terminate the Agreement during the new Minimum Supply Period, you will not be charged an Early Termination Charge.
- 6.3 We will continue to be the retailer for the Supply Address until the Supply Address is either disconnected or transferred to another electricity retailer. After the Minimum Supply Period, if you wish to terminate the Agreement, you must either transfer the Supply Address to another retailer or have the Supply Address disconnected. You will remain liable to us for all electricity supplied to the Supply Address until you do so.

## 7. Liability

- 7.1 So far as the law allows, we are not liable for any loss or damage you suffer (whether due to negligence or otherwise), because of the electricity we sell to you under the Agreement. In particular, we are not liable for any loss or damage you may suffer because there is a failure of electricity supply or there is a defect in the electricity supplied (however caused) or some characteristic of the electricity makes it unsuitable for some purpose.
- 7.2 SA Power Networks is responsible for the physical supply of electricity to the Supply Address. The supply of electricity may be subject to variations in voltage and frequency and may contain voltage surges, which may cause damage to your appliances or equipment.
- 7.3 SA Power Networks may disconnect, interrupt or reduce the supply of electricity to the Supply Address. To the extent permitted by law, you agree to release us from any liability for any such disconnection, interruption or reduction in the supply of electricity or any variation in the voltage and frequency of the

supply. To the extent permitted by the Competition and Consumer Act 2010, all warranties are excluded.

- 7.4 Any liability we have to you under any law that cannot be excluded but that can be limited is (at our option) limited to re-supplying equivalent goods or services provided under the Agreement to the Supply Address or paying you the cost of replacing the goods or services provided under the Agreement to the Supply Address. This clause does not vary or exclude, the operation of section 78 of the National Electricity Law. Nothing in the Agreement varies or excludes the operation of section 120 of the National Electricity Law.

## 8. Rates

- 8.1 Your Rates for the supply of electricity are set out in the Customer Agreement and will be based on the measured or estimated consumption electricity during a billing period.
- 8.2 We may, by giving you prior notice, vary your Rates for any of the following reasons:
- (a) To reflect the actual cost to us (whether direct or indirect) of any changes to regulated charges or tariffs, regulatory compliance requirements, metering charges, meter data charges, service charges, loss factors, Environmental Requirements or charges resulting from the operation of the National Electricity Market;
  - (b) To reflect changes in Distribution Network Charges, (the fees charged by SA Power Networks relating to the physical supply of electricity at the Supply Address), including the introduction of any "time of use" Distribution Network Charges or tariffs;
  - (c) Any change in the wholesale electricity hedge arrangements that we have in place, that increases the cost to us of purchasing the electricity we sell to you, or the cost of hedging its wholesale price;
  - (d) To reflect any changes in feed-in tariff charges, regulated charges, Market Charges, metering charges, the price of Renewable Energy Certificates and any Environmental Requirement and any costs arising out of any other regulatory requirements or changes in any other regulatory requirements;
  - (e) To reflect any increase in our costs as a result of a new tax being imposed or the basis for imposing or calculating any existing tax altering;
  - (f) To reflect average changes in the market or standing contract prices for retail rates published by to South Australian electricity retailers from time to time, or any scheme that replaces market or standing contract prices.
- 8.3 If the Minimum Supply Period is longer than one year, then as from the first bill after each anniversary of the

Commencement Date the energy component of the Rates will be increased to reflect the increase in the Consumer Price Index (All Groups Weighted Average of Eight Capital Cities) published by the Australian Bureau of Statistics in respect of the year ending immediately prior to the anniversary of the Commencement Date.

## **9. Payment and Billing**

- 9.1 We will issue a bill to you at the Supply Address, unless you nominate another address.
- 9.2 You must pay each bill by the pay by date specified on the bill, using one of the payment methods provided in our bills.
- 9.3 Unless we agree in writing to bill you quarterly, we will bill you monthly. If you are a residential customer, you give your explicit informed consent to monthly billing.
- 9.4 Where we bill you quarterly, we can change your billing period to monthly by giving you a month's notice.
- 9.5 Where we bill you monthly and your meter is read quarterly, if the meter is faulty, if the meter is not read for any reason or if an accurate meter read cannot be obtained, we may send you an estimated bill in accordance with the relevant provisions of the Rules.
- 9.6 Where you are a business customer, we may charge you a late payment fee on terms approved by the Essential Services Commission of South Australia.

## **10. Access to meters**

- 10.1 You must allow us safe, convenient and unhindered access to the electricity meter at the Supply Address for the purpose of reading the meter and for connection, disconnection and reconnection.

## **11. Last Resort Event**

- 11.1 The Agreement will terminate in the event that we are no longer entitled to sell electricity due to a Last Resort Event occurring in respect of us, and we must within one business day provide your name billing address and assigned metering identifier to the entity appointed as the retailer of last resort.
- 11.2 If a Last Resort Event occurs in respect of us, we immediately cancel any direct debit authority and will notify you and your bank or financial institution of the cancellation.

## **12. Force Majeure Event**

- 12.1 If a Force Majeure Event occurs to you or us, our obligations and your obligations under the Agreement (other than an obligation to pay money) are suspended to the extent to which they are affected by the Force Majeure Event for so long as the Force Majeure Event continues.
- 12.2 We and you must use best endeavors to give the other prompt notice of that fact including full particulars of

the Force Majeure Event, an estimate of its likely duration, the obligations affected by it and the extent of its effects on those obligations and the steps taken to remove, overcome or minimise those effects.

- 12.3 If the effects of a Force Majeure Event are widespread, we will be deemed to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the Force Majeure Event or otherwise as soon as practicable.
- 12.4 A party claiming a Force Majeure Event must use best endeavors to remove, overcome or minimise the effects of the Force Majeure Event as quickly as practicable.
- 12.5 Nothing in clause 12 requires you or us to settle an industrial dispute which constitutes a Force Majeure Event in any manner other than the manner preferred by you or us.

## **13. Assignment or Transfer of the Agreement**

- 13.1 You may only transfer the Agreement to another person with our written consent. You may also request that the Agreement be transferred to another Supply Address and we will do our best to accommodate that request. We may assign, novate or transfer the Agreement without your consent.

## **14. Applicable Laws**

- 14.1 The Agreement is governed by the laws of South Australia. You and we both agree to comply with all relevant requirements imposed by the applicable regulatory instruments and laws of that State.
- 14.2 As required by the Rules, the Agreement complies with, and is consistent with, the relevant provisions of the Rules which are not permitted to be varied.

## **FURTHER INFORMATION**

For further information please contact:

### **Diamond Energy Pty Ltd**

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