



Victoria Government Gazette

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SPECIAL

Electricity Industry Act 2000

PUBLICATION OF TERMS AND CONDITIONS UNDER SECTIONS 35

Under Section 35(1)(b) of the **Electricity Industry Act 2000** (as amended or replaced), CitiPower Pty (ACN 064 651 056) has determined, and the Office of the Regulator-General has approved, the following terms and conditions for domestic and small business customers, on and from 1 January 2002 until such time as other terms and conditions are determined and gazetted in accordance with the **Electricity Industry Act 2000**.

CITIPOWER TERMS AND CONDITIONS OF SUPPLY & SALE

This Agreement is made between CitiPower Pty ACN 064 651 056 of Level 15, 624 Bourke Street, Melbourne, Victoria and you, the customer.

1. The Agreement

The terms and conditions contained in this document, the Gazetted Tariff and prior agreed payment arrangements together comprise the entire Agreement between you and us.

This Agreement will start on the Commencement Date and will continue until terminated pursuant to Clauses 6.5, 6.6 or 6.7.

The Commencement Date is the date:

- (a) we both agree that the Agreement starts; or
- (b) you give Explicit Informed Consent you are transferring to us from another Retailer.

Our obligation to sell electricity to you at the Supply Address and your obligation to pay for electricity consumed at the Supply Address do not become binding until we are responsible in the wholesale electricity market for electricity supplied at the Supply Address under the Codes.

If, on the date that this Agreement becomes effective, you have a Deemed Contract with us or an agreement with us resulting from acceptance of our Standing Offer, the terms and conditions contained in this document will vary the terms and conditions of your agreement with us on the date that these terms and conditions become effective.

2. Our Obligations and Rights

2.1 Sale and Supply

We will sell and Supply, or arrange for the Supply of, electricity to you at the Supply Address.

2.2 Connection

- (a) If you want to be Connected at the Supply Address, you must:
 - (i) make application (in person, by telephone or in writing);
 - (ii) pay any Connection charge or another relevant charge as specified in this Agreement; and
 - (iii) provide the information specified in Clause 4.1.
- (b) By no later than the next Business Day after you make application or this Agreement commences to be effective (whichever occurs last), we will make a request to the relevant Distributor to Connect your Supply Address to the Distribution System.
- (c) Unless you are already Connected to the Distribution System, and subject to the Distribution System and the Connection Point being in a condition to be safely and efficiently used for the required purpose, we will use our Best Endeavours to procure the Distributor to Connect and maintain the Connection of your Electrical Installation as soon as practicable after your application.

2.3 Disconnection

- (a) We may Disconnect your Supply if:
- (i) you request to be Disconnected;
 - (ii) we in our absolute discretion determine that Connection must be discontinued for health or safety reasons and during any emergency or maintenance;
 - (iii) we determine in our absolute discretion or are informed by the Distributor that you are in breach or have breached the Electricity Distribution Code;
 - (iv) directed to do so by the Distributor;
 - (v) directed to do so by NEMMCO;
 - (vi) you fail to pay an invoice by the Pay By Date specified in the invoice provided that:
 - the failure does not relate to an instalment under your first Instalment Plan with us; and
 - we have sent you a reminder notice not less than 14 Business Days from the date of dispatch of the invoice specifying a further due date which is not less than 20 Business Days from the date of dispatch of the invoice; and
 - we have sent you a Disconnection warning (if you are on a shortened collection cycle, not less than 14 Business Days from the date of dispatch of the invoice, or otherwise not less than 22 Business Days from the date of dispatch of the invoice), that we will Disconnect your Supply if you do not pay the invoice by a further due date, (if you are on a shortened collection cycle, not less than 20 Business Days from the date of dispatch of the invoice, or otherwise not less than 28 Business Days from the date of dispatch of the invoice). No reminder notice is required if you are on a shortened collection cycle; and
 - the Disconnection warning includes a statement that we may Disconnect you no sooner than seven Business Days after the date of receipt of the Disconnection warning, and a telephone number for payment assistance enquiries; and
 - if you have contacted us via the telephone number in the Disconnection warning, we have responded to your enquiry and we have provided advice on financial assistance; and
 - before Disconnection, you:
 - do not provide a reasonable assurance to us that you are willing to pay our bills; or
 - do so, but then:
 - do not pay us the amount payable by the further due date in the relevant Disconnection warning (except where a new payment arrangement is agreed);
 - do not agree to a new payment arrangement within 5 Business Days after the date of receipt of the Disconnection warning; or
 - do not make payments under such an agreed new payment arrangement.
 - (vii) you refuse to provide a refundable advance under Clause 4.6 after we have given you a Disconnection warning including a statement that we may Disconnect you on a day no sooner than seven Business Days after receipt of the Disconnection warning; and
 - (viii) you deny us access to your Supply Address for the purpose of reading the Meter for three consecutive bills in your billing cycle, provided that:
 - we have used Best Endeavours, including by way of contacting you personally, to give you an opportunity to offer reasonable alternative access arrangements;

- each time access is denied, we have given you a notice requesting access to the Meter;
 - we have given you a Disconnection warning including a statement that we may Disconnect you on a day no sooner than seven Business Days after the date of receipt of the notice; and
 - you have continued not to provide access.
- (b) We will not Disconnect you:
- (i) for non-payment relating to an instalment under your first Instalment Plan with us;
 - (ii) for non-payment where the amount owed to us is less than the amount approved by the Office of the Regulator-General;
 - (iii) for non-payment where the unpaid portion of the invoice relates to a disputed amount;
 - (iv) for non-payment where you have applied for an Utility Relief Grant;
 - (v) for non-payment where the unpaid amount is not the Electricity Charge;
 - (vi) for non-payment where you do not pay because of a lack of sufficient income until:
 - we have complied with Clause 4.5;
 - we have used our Best Endeavours to contact you personally; and
 - you have not accepted an Instalment Plan within five Business Days of our offer;
 - (vii) if your address is registered by a Distributor as a life support machine Supply Address;
 - (viii) after 2pm on a weekday for a Domestic Customer or 3pm on a weekday for a Business Customer, unless expressly requested by you; or
 - (ix) on a Friday, weekend, public holiday or on a day before a public holiday, unless expressly requested by you.

2.4 Reconnection

Where we have Disconnected your Supply, we will reconnect your Supply for a reconnection charge if you were Disconnected for:

- (a) non-payment, and within 10 Business Days of Disconnection you pay or agree to pay the invoice;
- (b) denying us access to your Meter, and within 10 Business Days of Disconnection you provide us with access or make available reasonable access arrangements;
- (c) obtaining Supply otherwise than in accordance with the Codes and the law, and within 10 Business Days you have ceased taking such Supply; or
- (d) refusing to provide a refundable advance, and within 10 Business Days of Disconnection you provide it.

Unless both of us otherwise agree, we will reconnect you on the:

- (a) same day of your request for reconnection if we receive the request before 3pm on a Business Day, or if we receive your request before 9pm if you pay an additional after hours reconnection charge; or
- (b) the next Business Day, where we receive the request after 3pm on a Business Day and you do not pay the additional after hours reconnection charge.

2.5 Information to you

We will provide you with:

- (a) if we have not already provided it, at the time we connect the Supply Address to the Distribution System, our charter summarising all rights, entitlements and obligations in relation to the Supply of electricity, our relationship generally and other applicable law;

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- (b) within 2 Business Days of your request, a copy of our charter in large print or another language where we have a significant number of customers from the same non-English speaking background as you;
- (c) on your request, a copy of the Electricity Retail Code issued by the Office of the Regulator-General and any material amendments to the Code. We may require the payment of an Additional Retail Charge for a copy of this Code. We will also inform you of any amendment to the Code that materially affects your rights, entitlements and obligations as soon as reasonably practicable after the Code is amended;
- (d) on your request, advice on available tariffs, concessions and energy efficiency within 10 Business Days of your request;
- (e) notice of variation to your tariffs;
- (f) on your request, reasonable information on network charges, retail charges and any other charges relating to the sale or Supply of electricity comprised in the amount payable under your invoice;
- (g) on your request, and at an Additional Retail Charge, your historical billing data held by us; and
- (h) information about the Energy and Water Ombudsman Victoria on any Disconnection warning.

3. Information provided to the Distributor

We will, as soon as practicable, advise the relevant Distributor if you:

- (a) provide us with confirmation from a registered medical practitioner or a hospital that a person residing at your Supply Address requires a life support machine; and
- (b) advise us that your Supply Address is affected by a Fault.

4. Your Obligations

4.1 Information

Prior to the Commencement Date, you must provide us with the following information if you have not already provided it to us:

- (a) for Domestic Customers, acceptable identification showing your full name, residential address and date of birth, and for Business Customers your company name, business address, ACN, and the name of a contact person at your business;
- (b) for Domestic Customers, your home and work contact details and for Business Customers, names of business owners and company officers, your ACN or ABN, contact details, nature of the business, three trading referees, bank details and your consent to us performing a credit check;
- (c) the Supply Address;
- (d) if the Supply Address is a rental property, the contact details for the property owner or the owner's agent; and
- (e) any other information which we reasonably require to Supply you under this Agreement.

If any of the above information changes after the Commencement Date, you must inform us immediately.

4.2 Supply

You agree to purchase and take Supply of electricity from us at the Supply Address for the term of this Agreement.

4.3 Terms of Supply

- (a) The maximum amount of Supply that you can take at the Connection Point at the Supply Address is the Agreed Capability.
- (b) In taking Supply you must comply with the Electricity Law.

- (c) You must not allow electricity supplied under a residential tariff to be used for non-residential purposes.
- (d) You must not allow electricity supplied under a specific purpose tariff (e.g. an off-peak storage water tariff) to be used for another purpose.
- (e) You acknowledge that:
 - (i) the Distributor may Disconnect you or Interrupt Supply in accordance with the Electricity Law;
 - (ii) the Distributor may Disconnect your Connection Point upon our request;
 - (iii) if you request the Distributor to Disconnect you, the Distributor will not Disconnect you until we have given the Distributor a Disconnection Request relating to you;
 - (iv) the Distributor may refuse to Disconnect your Connection Point if it would be detrimental to the health or safety of any person or the security of the Distribution System;
 - (v) the Distributor will reconnect you to the Distribution System and restore Supply where it considers the circumstances resulting in Disconnection or Interruption under Clause 4.3(e)(i) to have ceased to apply; and
 - (vi) subject to the Electricity Law, the Distributor may refuse to reconnect you to the Distribution System or restore Supply where it reasonably considers that to do so would be detrimental to the health or safety of any person or the security of the Distribution System.
- (f) You must co-operate with the Distributor where we (on our own right or on behalf of the Distributor) enforce your obligations under Clauses 4.3(a) to 4.3(c) inclusive.

4.4 Payment

You must pay the Electricity Charge and other charges specified in our invoices by the Pay By Date, which will not be less than 12 Business Days from the date of the invoice. You acknowledge that part of the Electricity Charge may be collected by us on behalf of the Distributor and then paid by us to them.

If through your own fault your payment is dishonoured or reversed, and we incur a fee as a result, we may recover from you an Additional Retail Charge.

We will offer you facilities to pay the Electricity Charge and other charges in advance upon your request.

4.5 Payment Difficulties and Instalment Payments

You must contact us if you anticipate that payment of an invoice by the Pay By Date may not be possible.

For Domestic Customers, where we do not agree on an alternative payment arrangement and are satisfied of your difficulty in paying, we will:

- assess the information you provide us and the information we have to determine your capacity to pay, taking into account advice from an independent financial counsellor if we are unable to adequately make the assessment;
- provide you with documentary evidence of our assessment upon your request;
- offer you an Instalment Plan, unless you have failed to comply with 2 Instalment Plans in the previous 12 months and do not provide a reasonable assurance that you will meet payment obligations under a further Instalment Plan; and
- provide you with details of concessions including the Utility Relief Grant Scheme, energy efficiency and advice on the availability of an independent financial counsellor.

For Domestic Customers, we may not commence legal proceedings for recovery of a debt unless we have complied with this Clause 4.5.

For Domestic Customers, if you are experiencing payment difficulties, we will consider conducting an energy efficiency field audit to address those difficulties. We will only conduct an audit where we agree, and we may charge you for any audit that we conduct.

For Business Customers, we will consider any reasonable request from you to enter into an Instalment Plan and we may charge you an Additional Retail Charge where you enter into an Instalment Plan with us.

We:

- may not commence legal proceedings for recovery of a debt while you continue to make payments according to an agreed payment arrangement; and
- will comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the **Trade Practices Act 1974** (Cth).

If you are a Domestic Customer and where we offer you an Instalment Plan, we will offer an Instalment Plan under which you may:

- make payments in advance; and
- pay amounts in arrears.

In offering you an Instalment Plan, we will:

- provide details of the instalments;
- make provision for re-calculation of the instalments where actual consumption differs from estimated consumption;
- undertake to monitor your consumption and adopt procedures to address your payment difficulties; and
- provide you with energy efficiency advice and advise on the availability of an independent financial counsellor.

4.6 Refundable Advance

If you are a Domestic Customer, we may require you to provide a refundable advance of the Electricity Charge and other charges to offset any amount you may owe us if you fail to pay an invoice or vacate the Supply Address and if:

- you owe a former Retailer more than an amount the Office of the Regulator-General nominates in any relevant Electricity Guideline;
- within the previous two years you have used electricity otherwise than in accordance with applicable laws and Codes;
- you are a new customer and have refused to provide us with acceptable identification; and
- we decide you have an unsatisfactory credit rating and we have offered you an Instalment Plan and you have not accepted the offer.

For Domestic Customers, the refundable advance will be no more than 37.5% of the amount we billed you over the last four quarters, or if we do not have that information, no more than 37.5% of the average amount we billed Domestic Customers over the last four quarters.

If you are a Business Customer we may require you to provide a refundable advance if you do not have a satisfactory electricity account payment record or, having regard to any relevant Electricity Guideline, we consider you to have an unsatisfactory credit rating.

For Domestic Customers and Business Customers, interest will accrue at the Bank Bill Rate calculated daily on any refundable advance provided by you and capitalised every 90 days. We will repay any refundable advance provided by you on your instructions within 10 Business Days after you have completed one year's payment in a timely manner in accordance with the Pay By Date or ceased taking Supply at the Supply Address. Where you do not provide us with reasonable instructions, we will credit the amount of the refundable advance, together with accrued interest, on your next invoice.

We will only use your refundable advance and accrued interest to offset any amount owed by you to us if you:

- have been Disconnected for failing to pay an invoice;
- vacate the Supply Address;
- request Disconnection; or
- transfer to another Retailer.

Where we use your refundable advance, we will provide you with an account of its use and pay any balance of the refundable advance within 10 Business Days.

We will comply with any relevant Electricity Guidelines when making decisions about your credit rating and when dealing with credit management issues.

4.7 Shortened Collection Cycle

We may shorten the collection cycle:

- (a) for Domestic Customers, where we have complied with Clause 4.5; and
- (b) for Domestic Customers and Business Customers, where we have given you:
 - (i) reminder notices for three consecutive invoices or Disconnection warnings for two consecutive invoices; and
 - (ii) prior to the third reminder notice or second Disconnection warning, a notice informing you that:
 - (A) warned you that receipt of the third reminder notice or second Disconnection warning may result in us shortening the period in which we issue invoices;
 - (B) informed you that shortening the period in which we issue invoices means you will not receive a reminder notice until you have paid three consecutive invoices in your billing cycle by the Pay By Date; and
 - (C) alternative payment arrangements and further information can be provided to you.

Where we do shorten the collection cycle, we will inform you within 10 Business Days.

4.8 Maintenance

You must maintain your Electrical Installation in accordance with the Codes.

4.9 Metering

You grant us the right to use and access your Metering Data. Where we are not the Distributor you grant us the right to provide your Metering Data to the Distributor.

4.10 Access to Supply Address

You must allow us, our representative and the Distributor, safe, convenient and unhindered access to your Supply Address and Meter for the purpose of reading the Meter and for Connection, Disconnection, reconnection, to Interrupt Supply, for Fault minimisation and maintenance pursuant to this Agreement. We, or our representative, must carry or wear official identification and, on request, show the identification to you.

4.11 Electricity Charge

The Electricity Charge is the sum of the charges specified in the Gazetted Tariff and does not include the charge for other goods and services.

4.12 Variations to Electricity Charge

The Electricity Charge may be varied in accordance with the Gazetted Tariff provided that the revised Electricity Charge will not apply until at least two months after the relevant tariff is published by us in the Government Gazette.

4.13 Illegal Consumption

You must not consume electricity other than as permitted by this Agreement, the Codes and the law. Where we have undercharged you or not charged you for your consumption as a result of your fraud or breach of the Codes and the law (and you have not been convicted of an offence involving fraud or theft), we will estimate your consumption and recover the unpaid amount.

4.14 Vacating Address

- (a) You must give notice of the date on which you intend to vacate, or did vacate, the Supply Address, and a forwarding address to which a final bill may be sent.
- (b) Unless you demonstrate that you were evicted or otherwise forced to vacate the Supply Address, you will remain responsible for electricity consumed at the Supply Address until the earlier of:
 - (i) 3 days after you give notice as contemplated by Clause 4.14(a);
 - (ii) the date that we enter into a new Agreement with another customer for the Supply Address;
 - (iii) the date that another Retailer becomes responsible for the Supply Address;
 - (iv) the date that the Supply Address is Disconnected.

5. Billing**5.1 Basis of Invoices**

We will base your invoice on a reading of your Meter, unless you give us Explicit Informed Consent.

5.2 Issue of Invoices

We will issue you with an invoice at least every 3 months unless you provide us with Explicit Informed Consent about a different billing cycle.

If you are on a 3 month billing cycle we may charge you an Additional Retail Charge where we make a different billing cycle available to you.

If you were a Franchise Customer on 31 December 2000 and on a monthly billing cycle, you will continue on a monthly billing cycle until the Deemed Contract, which commenced on 1 January 2001, terminates.

5.3 Content of the Invoice

The invoice will be in a form so that you can easily verify that the invoice conforms with this Agreement and will include:

- (a) your name, account number, Supply Address and any relevant mailing address;
- (b) the NMI and the NMI checksum or if there is no assigned NMI, your Meter Number or other unique identifying mark assigned to the Meter at your Supply Address;
- (c) the period covered by the invoice;
- (d) a graph of your consumption for each billing period over the past 12 months and a comparison of your consumption for the same period in the previous 12 months;
- (e) the relevant tariff or tariffs applicable to you;
- (f) the charges for that consumption to enable you to verify that the invoice conforms to this Agreement;
- (g) a separate amount for the network charge where we directly pass through network charges to you;
- (h) the total amount of electricity, in kWh, consumed on an interval basis and where you have an electromechanical or disc Meter installed at the Supply Address, the dates and total amounts of the immediately previous and current Meter readings or estimated consumption, in kWh;
- (i) the amount payable and the Pay By Date;

- (j) the amount of arrears or credit and the amount of any refundable advance provided by you;
- (k) the availability of concessions to Domestic Customers;
- (l) the methods of payment available to you;
- (m) a telephone number for billing and payment enquiries and a 24 hour contact telephone number for Faults and emergencies;
- (n) details of interpreter services in relevant languages;
- (o) a summary of payment methods and payment arrangement options; and
- (p) periodically, a statement that you are entitled to a copy of our retail charter on request.

5.4 Payment Methods

You may pay us by using any of the following payment methods:

- (a) in person at any of the network agencies or payment outlets specified in the invoice;
- (b) by mail; and
- (c) by direct debit, where both of us have agreed in writing:
 - (i) to the amount, preferred date and frequency of the direct debits;
 - (ii) that you may cancel the arrangement by notifying us or your relevant financial institution;
 - (iii) that, if you cancel the arrangement by notifying your financial institution, you must use Best Endeavours to also notify us as soon as practicable after the cancellation;
 - (iv) that, if you cancel the arrangement by notifying us, we will use Best Endeavours to notify your financial institution as soon as practicable after the cancellation; and
 - (v) that, if we are the subject of a Last Resort Event, we will immediately cancel the direct debit arrangement and notify you and your financial institution of the cancellation.

5.5 Meter Readings

We will use our Best Endeavours to read the Meter at least once in any 12 month period.

5.6 Estimations

Where we are unable to reasonably or reliably base a bill on a reading of your Meter we may provide you with an invoice containing an estimated Electricity Charge based on:

- (a) any reading of the Meter by you; or
- (b) your prior billing history, or where we do not have that data, average consumption at the relevant tariff calculated over the period covered by the estimated invoice.

Where you are transferring to or from another Retailer, and the Electricity Law permits an estimate of consumption rather than a reading of your Meter, we will provide you with an estimated bill calculated on the same basis used to determine our responsibility in the wholesale electricity market for electricity supply under the Electricity Law.

5.7 Adjustments

Where Clause 5.6 applies and within 12 months of the date of an estimated Electricity Charge the actual meter reading data becomes available to us, we will recalculate the invoice.

Any amount undercharged or overcharged will be credited or debited, as the case may be, to your invoice.

Where we have undercharged or not charged you, we may recover the amount undercharged provided that:

- (a) the amount to be recovered was undercharged in the 12 months prior to your last invoice or otherwise in the 12 months prior to the date on which we notified you that undercharging has occurred;

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- (b) we list the amounts to be recovered as a separate item in a special invoice or in your next invoice together with an explanation of the amount;
- (c) we do not charge you interest on the amount undercharged; and
- (d) at your request, we allow you the same time to pay the amount undercharged as the time which the recoverable undercharging occurred.

Where we have overcharged you, we will inform you within 10 Business Days of us becoming aware of the overcharging, and repay the amount on your instructions, or if no reasonable instructions are given, credit the amount to your next invoice.

5.8 Review of invoice

You may request us to review your invoice. During the review, you must pay the portion of the invoice that is not in dispute or the average amount of your invoices for the past 12 months (whichever is the lower). If the invoice is correct, you must pay the invoice and any cost of testing the Meter. If the invoice is incorrect, we will amend the invoice.

5.9 Unsuccessful attempt to read

Where we have been unable to read the Meter because you have done something or omitted to do something, and you subsequently request an invoice based on reading the Meter, we will use our Best Endeavours to read the Meter and we will charge you an Additional Retail Charge for reading the Meter.

5.10 Unmetered supplies

If you do not have a Meter we will base your invoice on data calculated in accordance with the Codes.

5.11 Proportionate billing

If your invoice covers a period other than your usual billing cycle or where your tariff has changed, we will charge you in proportion to the relevant periods and show the relevant details on the invoice.

5.12 Historical Billing Information

We will retain your historical billing data for at least 2 years. We will use our Best Endeavours to provide you with your billing data within 10 Business Days of your request, or other period as agreed between us.

If the request is not your first in the past year or the data requested extends beyond the previous two years, an Additional Retail Charge is payable by you for the provision of historical billing information.

Where you transfer to another Retailer, on your request we will provide you with your historical billing data relating to the two years prior to the request for an Additional Retail Charge.

Where you require the historical billing data for the purposes of a genuine complaint, we will not charge you an Additional Retail Charge.

5.13 Other Goods or Services

If we Supply you goods or services other than electricity, we will issue you with separate invoices for those other goods or services.

6. General Obligations

6.1 Code Compliance

Both parties must comply with the Electricity Retail Code, the Electricity Distribution Code and the Codes which apply to this Agreement, including the metering provisions of the National Electricity Code. If there is an inconsistency between a Code, other than the Electricity Retail Code, and this Agreement, this Agreement prevails. A term or condition of this Agreement is void to the extent that it is inconsistent with the Electricity Retail Code.

6.2 Governing Law

The law of this Agreement is the law of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

6.3 Notices

Notices may be in writing and given by hand, fax, mail or email.

Your notices to us must be addressed to: Company Secretary, CitiPower, Locked Bag 14031, Melbourne City Mail Centre 8001; Facsimile: (03) 9297 8956; Email: notices@citipower.com.au

Our notices to you will be sent to your address provided to us under Clause 4.1(a), unless you tell us in writing otherwise.

6.4 Complaints and Dispute Resolution

You may contact us to submit a complaint. We will inform you in writing of an appropriate management level that you can submit your complaint to and of your right to refer the complaint to the Energy Industry Ombudsman, or other relevant external dispute resolution body.

We will handle your complaint in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Science and Tourism.

6.5 Termination and Cancellation

- (a) If you are a Deemed Customer or a customer who has accepted our Standing Offer, you may terminate this Agreement without any notice.
- (b) On or after 1 January 2004, and notwithstanding the Electricity Retail Code, we may terminate this Agreement without cause by giving you notice.

6.6 Termination if you breach this Agreement

If you breach this Agreement we may terminate it:

- (a) when your breach gives us a right to Disconnect you under Clause 2.3 and we have Disconnected you and you no longer have a right under Clause 2.4 to be reconnected; or
 - (b) when we both enter into a new Agreement, or when you have transferred to another Retailer in respect of all relevant Supply Addresses,
- (whichever comes first).

6.7 Creation of a new Market Contract

If:

- (a) both of us agree to a new term or condition in addition to the terms and conditions of the Agreement instead of one of those terms and conditions; and
- (b) the new term or condition is inconsistent with a term or condition set out in the Retail Code marked with an asterisk (*) and you have given Explicit Informed Consent,

the Agreement terminates and both of us enter into a new Market Contract on new terms and conditions including the inconsistent term or condition.

6.8 Effective Termination

This Agreement is not terminated until the last to occur of the following:

- (i) if this Agreement is terminated because both of us enter into a new agreement for the Supply Address, when any cooling-off period expires in respect of the new agreement;
- (ii) if this Agreement is terminated because you want to transfer to another Retailer in respect of the Supply Address, when the other Retailer is responsible for electricity supplied at the Supply Address; or
- (iii) if this Agreement is terminated because the Supply Address is disconnected, you no longer have a right to be reconnected under Clause 2.4.

6.9 Privacy and Confidentiality

We will not disclose any of your personal information where we are not permitted to under our licence or the law.

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6.10 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is ineffective unless it is in writing and executed by the waiving party.

6.11 Severance

Any provision of this Agreement which is invalid or unenforceable will be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement are self-sustaining and capable of separate enforcements without regard to the read down or severed provision and continue to be valid and enforceable.

6.12 Assignment

We may only assign this Agreement with your consent. This Clause does not apply if the assignment forms part of a transfer to the same third party of all or substantially all of our retail sales business.

7. Force Majeure

- (a) If either of us commit a Force Majeure Breach of this Agreement:
 - each of our obligations under this Agreement are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues; and
 - both of us must give each 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 effect on those obligations and the steps taken to remove, overcome or minimise its effects.
- (b) If the effects of the Force Majeure Event are widespread we will be deemed to have given you prompt notice by making 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.
- (c) You may agree with us that we do not have the benefit of Clause 7(a) in respect of any Force Majeure Event.
- (d) If either of us claim a Force Majeure Event, the party claiming the Force Majeure Event must use its Best Endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. However, this does not require that party to settle any industrial dispute in any way it does not want to.
- (e) Nothing in this Agreement varies or excludes the operation of section 117 of the Act or section 28 of the National Electricity Law.

8. Cooling Off**8.1 Contact sales agreements under the Fair Trading Act 1999**

- (a) You may have a right to cancel this Agreement if it is a Contact Sales Agreement.
- (b) If Division 2 of Part 4 of the **Fair Trading Act 1999** applies to this Agreement as a Contact Sales agreement, the period within which you may cancel this Agreement is:
 - if this Agreement is an Energisation agreement, 5 clear Business Days after the Relevant Date;
 - otherwise, 10 clear Business Days after the Relevant Date.

9. Variations to this Agreement**9.1 By Agreement**

- (a) The tariff and any terms and conditions of this Agreement may only be varied by agreement in writing.
- (b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of this Agreement previously agreed by both of us, no further Agreement is required.

9.2 Explicit Informed Consent

- (a) Notwithstanding Clauses 9.1(a) and (b), you must give your Explicit Informed Consent if both of us wish to vary a Clause in this Agreement that is inconsistent with one of the following Clauses in the Retail Code:
- (i) Clause 3.2;
 - (ii) Clause 4.2(j);
 - (iii) Clause 4.4(a);
 - (iv) Clause 7.1(b);
 - (v) Clause 7.2(a); or
 - (vi) Clause 24.1(b).

9.3 Gazetted tariffs and gazetted terms and conditions

- (a) This Clause 9.3 applies despite Clause 9.1 in respect of any Agreement where you accepted our Standing Offer.
- (b) If this Clause 9.3 applies to this Agreement, this Agreement may provide for variation of a tariff applicable to you but the tariff may not at any time exceed the corresponding Gazetted Tariff at that time.
- (c) If this Clause 9.3 applies to this Agreement, this Agreement may provide that, if a Gazetted Term or Condition is varied then, with effect from when that variation takes effect, the terms and conditions of this Agreement are varied as follows:
- if the variation effectively amends an existing Gazetted Term or Condition, by amending in the same way the corresponding term or condition of this Agreement; or
 - if the variation effectively includes an additional Gazetted Term or Condition, by including in the same way a corresponding term or condition in this Agreement.

9.4 Deemed Contracts

Clause 9.1(a) does not apply to a Deemed Contract between us to the extent that the tariff and terms and conditions of that Deemed Contract may be varied as contemplated by section 38 of the Act.

10. Limitation of Liability

- (a) If you are a Business Customer, you must take reasonable precautions to minimise the risk of loss and damage to any of your equipment, premises or business which may result from poor quality or reliability of electricity supply.
- (b) Nothing in this Agreement varies or excludes the operation of section 117 of the Act or section 78 of the National Electricity Law.
- (c) To the extent permitted by law, our liability to you is limited, at our option, to:
- (i) in the case of goods, any one or more of the following:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - the payment of the cost of having the goods repaired; or
 - (ii) in the case of the services:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.

11. Interpretation

In this Agreement, unless the context otherwise requires, a reference to:

- (a) us:
- (i) having a right or not having a right to Disconnect you is to be construed as a reference to us having a right or not having a right (as the case may be) to procure the Distributor to Disconnect; or

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- (ii) being obliged to Connect, Disconnect or Reconnect you is to be construed as a reference to us being obliged to use our Best Endeavours to procure the Distributor to Connect, Disconnect or Reconnect (as the case may be), the electrical system at your Supply Address to the Distributor's Distribution System (as the case may be),
- (b) us, we and our is a reference to CitiPower Pty;
- (c) the singular includes the plural and vice versa;
- (d) the wording including or includes means including, but not limited to, or includes without limitation; and
- (e) any act, regulation or code is a reference to the act, regulation or code as amended, consolidated, supplemented or replaced from time to time.

12. Definitions

The following terms have these meanings:

“Act” means the **Electricity Industry Act 2000**.

“Additional Retail Charge” means a charge expressly provided for in the Electricity Retail Code and specified in the Schedule or a reasonable charge determined by us having regard to costs incurred by us, as varied by us at our discretion from time to time.

“Agreed Capability” means in relation to a Connection Point, the capability to receive or send out power for that Connection Point of 80 amps via a single phase Connection unless otherwise advised from time to time by us or the Distributor.

“Agreement” means the terms and conditions contained in this document, the Gazetted Tariff and prior agreed payment arrangements.

“Bank Bill Rate” means for a period:

- (a) the rate, expressed as a yield per cent per annum, (rounded up, if necessary, to two decimal places) that is quoted as the average bid rate on the Reuters monitor system page “BBSY” (or any page that replaces that page) at about 10.30am on the first day of that period, for bank bills that have a tenor equal to 90 days; or
- (b) if no average rate is so quoted, the bid rate available to us about 10.00am on that day for bank bills that have such a tenor.

“Best Endeavours” means we must act in good faith and do what is reasonably necessary in the circumstances.

“Business Customer” means a customer who is not a Domestic Customer.

“Business Day” means a day other than a Saturday or Sunday or a Public Holiday.

“Codes” means the electricity industry codes applicable to the parties including the National Electricity Code.

“Commencement Date” means the commencement date specified in clause 1 of this Agreement.

“Connect” or “Connection” means to form a physical link to or through a transmission network or distribution network.

“Connection Point” means the agreed point of Supply at a Supply Address.

“Contact Sales Agreement” means a contact sales Agreement under Division 2 of Part 4 of the Fair Trading Act.

“Cooling Off Period” in respect of an Agreement means any period within which you are entitled to cancel that Agreement.

“Deemed Contract” means a contract deemed to apply between both of us under the Act.

“Deemed Customer” means a person who is deemed to have an Agreement.

“Disconnect” or “Disconnection” means the operation of switching equipment or other deliberate action so as to prevent the flow of electricity at a single Connection Point.

“Disconnection Request” means a request in the form specified in the Use of System Agreement between us and the Distributor and given by us to the Distributor requesting the Disconnection of a Connection Point.

“Distribution System” means a distribution network, together with the Connection assets associated with the distribution network, which is connected to another transmission or Distribution System.

“Distributor” means a person who holds, or is exempt from holding, a distribution licence under the **Electricity Industry Act 2000**.

“Domestic Customer” means a customer who purchases electricity principally for personal, household or domestic use at the relevant Supply Address.

“Electrical Installation” means the electrical equipment at the Supply Address that is electrically connected to the Distribution System but is not part of the Distribution System.

“Electricity Charge” means the charge applying to you for each billing period calculated in accordance with the Gazetted Tariff.

“Electricity Distribution Code” means the code of that name published by the Office of the Regulator-General.

“Electricity Guideline” means a guideline published by the Office of the Regulator-General under section 12 of the **Office of the Regulator-General Act 1994**.

“Electricity Law” means the Codes, the **Electricity Industry Act 2000** (Vic) and regulations under that Act, the **Electricity Safety Act 1998** (Vic) and regulations under that Act, the Victorian Electricity Supply Industry Tariff Order, the Office of the Regulator-General Act 1994 (Vic) and regulations and determinations under that Act, the **National Electricity (Victoria) Act 1997** and the National Electricity (Victoria) Law under section 6 of the **National Electricity (Victoria) Act 1997**, our retail licence, the Distributor's distribution licence, the Service and Installation Rules and any other law, statute, regulation, proclamation, order in council, directions, tariffs, guideline or standard which can be enforced by law or by a Regulatory Authority against a participant in the Victorian region of the National Electricity Market.

“Electricity Retail Code” means the code of that name published by the Office of the Regulator-General.

“Energisation Agreement” means an agreement under which, or in connection with, your Supply Address must be connected and all that is required to effect the Connection is the insertion of a fuse or the operation of switching equipment which results in there being a non-zero voltage beyond the point of supply.

“Explicit Informed Consent” has the same meaning as in the Office of the Regulator-General's decision entitled “Informed Consent to Arrangements in Full Retail Competition”.

“Fault” means any problem in the Supply to the Connection Point or any damage to a breakdown of the Distributor's Distribution System.

“Force Majeure Event ” means an event outside the reasonable control of a Retailer or you (as the case may be).

“Franchise Customer” in relation to the period ending on 31 December 2000, means a franchise customer within the meaning of the **Electricity Industry Act 1993** immediately before 1 January 2001.

“Gazetted Tariff” means the tariff determined by us or the local retailer and published in the Government Gazette which applies to you.

“Gazetted Term or Condition” means a term and condition determined by us and published in the Government Gazette which applies to you.

“Instalment Plan” means:

- (a) an Instalment Plan under which you may make payments in advance towards your next bill;
- or

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- (b) an Instalment Plan under which you may pay an amount in arrears and continue consumption.

“Interrupt” or “Interruption” means the planned or unplanned temporary Interruption of the Supply of electricity to one or more Connection Point, but does not include Disconnection.

“Last Resort Event” in respect of us means:

- (a) our retail licence being suspended or revoked; or
(b) our right to acquire electricity from the wholesale electricity market being suspended or terminated,

whichever occurs first.

“Market Contract” means an agreement between us which is not a Deemed Contract nor an Agreement arising from the acceptance of a Standing Offer.

“Meter” means the device which measures and records the consumption of electrical energy consumed at your Supply Address.

“Metering Data” means the device which measures and records the consumption of electrical energy consumed at your Supply Address.

“National Electricity Code” means the code called the National Electricity Code and being approved in accordance with section 6(1) of the National Electricity Law.

“NEMMCO” means the National Electricity Market Management Company Limited ACN 072 010 327.

“NMI” means National Meter Identifier.

“Non-Contact Sales Agreement” means a non-contract sales Agreement under Division 3 of Part 4 of the Fair Trading Act.

“Office of the Regulator-General” means the Office of the Regulator-General under the **Office of the Regulator-General Act 1994**, or any body which assumes its functions.

“Pay By Date” means the date specified in the invoice but will not be less than 12 Business Days from the date of dispatch of the invoice.

“Public Holiday” means a public holiday appointed under the **Public Holidays Act 1993**.

“Regulatory Authority” means any government or regulatory department (including the Office of the Regulator-General, NEMMCO and VENCORP), body, instrumentality, minister, agency or other authority.

“Relevant Date” means in respect of this Agreement:

- (a) if you are transferring to us, the date on which you give Explicit Informed Consent in respect of this Agreement; and
(b) otherwise, the date on which this Agreement was made.

“Retail Code” means the Electricity Retail Code determined by the Office of the Regulator-General.

“Retailer” means a person who holds a retail licence under the **Electricity Industry Act 2000**.

“Standing Offer” means an offer made by us as contemplated by section 35 of the Act.

“Supply” means the delivery of electricity.

“Supply Address” means your residential or business address to which we will Supply electricity.

“VENCORP” means the Victorian Energy Networks Corporation, established under Part 2A of the **Gas Industry Act 1994** (Vic), and includes any successor body and any body who assumes the rights of VENCORP pursuant to any privatisation and any successor of that body.

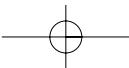
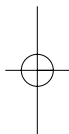
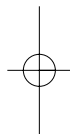
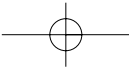
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Additional Retail Charges

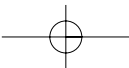
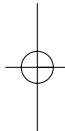
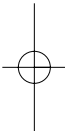
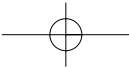
Additional Retail Charges:

Description	Charge*	
	GST Exclusive	GST Inclusive
Additional meter read after access is denied by the customer	\$35.00	\$38.50
Dishonoured or reversed payment (per event)		
Direct debit	\$5.00	\$5.50
Cheques	\$10.00	\$11.00
Different billing cycle at customer request	Price on application	Price on application
Instalment plan for business customers	Price on application	Price on application
Copy of Electricity Retail Code (one copy)	Free	Free
Historical billing data: 2nd or further request in any year	\$20.00 per request	\$22.00 per request
Historical billing data: more than two years data	\$20.00 per request	\$22.00 per request

* Charges may be varied by us at our discretion from time to time.

Dated 31 October 2001
JOHN MARSHALL
Chief Executive Officer
Citipower Pty





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Victoria Government Gazette

Gazette Services

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