



# Victoria Government Gazette

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## DIAMOND ENERGY – VICTORIA FEED-IN AGREEMENT Terms and Conditions for Customers with Qualifying Generators [Version 5.0 – 20 May 2011]

Diamond Energy Pty Ltd, ABN 97 107 516 334, of Level 1, 695 Burke Road, Camberwell, Victoria 3124 ('Diamond') and the Customer specified in the Feed-In Agreement ('you'), enter into this Feed-In Agreement ('your Agreement') for the sale by you to Diamond of the Export Electricity produced by your Qualifying Solar Energy Generating Facility on the following Terms and Conditions.

### 1. Definitions

**Act** means the **Electricity Industry Act 2000**;

**Billing Period** has the same meaning as in the Retail Agreement.

**Code** means the Energy Retail Code;

**Distribution Network** means the electricity power lines and associated equipment and structures that are used to distribute electricity to the Supply Address;

**Distribution Network Service Provider** means a person who owns or controls a Distribution Network.

**Export Electricity** means the Qualifying Solar Energy Generation Electricity produced by your Qualifying Solar Energy Generating Facility and supplied to the Distribution Network;

**Feed-In Agreement** means the agreement signed by you, or, if you entered into the Feed-In Agreement through our website, the electronic form submitted by you, or if you enter into our Feed-In Agreement by telephone, means our voice recording;

**Premium Solar Feed-In Credit** means the amount per kilowatt-hour of Export Electricity specified in the Feed-In Agreement, which Diamond will credit you for the Export Electricity produced by your Qualifying Solar Energy Generating Facility and supplied to the Distribution Network;

**Premium Solar Feed-in Tariff Period** means the period during which the Premium Solar Feed-In Tariff Scheme is in operation under the Act;

**Qualifying Customer** has the meaning contained in the Act;

**Qualifying Solar Energy Generation Electricity** means the electricity produced by your Qualifying Solar Energy Generation Facility and supplied to the Distribution Network;

**Qualifying Solar Energy Generating Facility** means a solar photovoltaic generator as described in the Act, installed at the Supply Address and connected to the Distribution Network in a manner that provides for all the electricity produced by the Qualifying Solar Energy Generating Facility to be supplied to the Distribution Network and otherwise complies with the Act;

**Rates** has the same meaning as in the Retail Electricity Supply Agreement;

**Renewable Energy Certificates** has the meaning contained in the **Renewable Energy (Electricity) Act 2000**;

**Retail Agreement** means the Retail Electricity Supply Agreement between Diamond and you (as Diamond's Retail Customer) for the supply and sale of electricity by Diamond to you at the Supply Address;

**Retail Customer** means a customer who has entered into a Retail Agreement with Diamond for the supply and sale of electricity by Diamond to you at the Supply Address;

**Supply Address** means the premises in Victoria where you accept electricity supply from Diamond and where your Qualifying Solar Energy Generating Facility is installed.

**SPECIAL**

**2. Your Feed-In Agreement**

- 2.1 Your Agreement with Diamond consists of these Feed-In Agreement Terms and Conditions, the Feed-In Agreement and any schedule or product information forms provided to you by us which are stated to form part of the Feed-In Agreement.
- 2.2 You agree to supply and sell to Diamond (or to another party at Diamond's direction), and Diamond agrees to purchase, the Export Electricity produced by your Qualifying Solar Energy Generating Facility and supplied to the Distribution Network from the Supply Address in accordance with your Agreement.
- 2.3 You and Diamond agree that these Feed-In Terms and Conditions only apply in respect of Export Electricity produced by the Qualifying Solar Energy Generating Facility installed and connected at the Supply Address, which is supplied to the Distribution Network.
- 2.4 To the extent that they are applicable or relevant, all the terms of the Retail Agreement will apply to the sale of Export Electricity under your Agreement. If there is any discrepancy between these Feed-In Terms and Conditions and the Retail Agreement, these Terms and Conditions will take precedence. However, nothing in this Feed-In Agreement varies the Retail Agreement.
- 2.5 Diamond will credit you with the Premium Solar Feed-In Credit against the charges payable by you to Diamond under the Retail Agreement in the same Billing Period.
- 2.6 If your Premium Solar Feed-in Credit in a Billing Period exceeds the Rates payable under your Retail Agreement for that Billing Period, the excess Premium Solar Feed-in Credit will be carried forward to the next Billing Period and credited towards the Rates payable by you for that Billing Period and will be included in your bill for that Billing Period.
- 2.7 Any Premium Solar Feed-in Credit will be extinguished when the Retail Agreement ends or when the Premium Solar Feed-in Tariff Period ends, whichever occurs first.
- 2.8 Diamond will not extinguish a Premium Solar Feed-in Tariff Credit where it is not based on an actual meter reading and/or where the bill for the Billing Period that the credit is associated with has not been issued to you.

**3. Commencement of Agreement**

- 3.1 Your Agreement will commence when you have given explicit informed consent to your Agreement, and when the Qualifying Solar Energy Generating Facility has been connected to the Distribution Network. Your Agreement is also conditional on you giving Diamond details of your principal place of residence.
- 3.2 Your Agreement will come into effect only if you are an existing Retail Customer of Diamond or you have entered into a Retail Agreement with Diamond, and it will remain in effect only if you remain Diamond's Retail Customer for the period of the Feed-In Agreement.
- 3.3 Your Agreement will come into effect only when Diamond is satisfied that the Qualifying Solar Energy Generating Facility, inverter and necessary metering equipment have been installed and connected to the Distribution Network in accordance with the Act and Regulations and are ready to export electricity to the Distribution Network, the necessary electrical certificates have been obtained and an appropriate connection agreement has been entered into with the Distribution Network Service Provider. The Qualifying Solar Energy Generating Facility must also have been installed by a person who, at the time of the installation, had a Grid-connect Design & Install accreditation from the Clean Energy Council.

**4. Connection to Network**

If requested by you, Diamond will make a request to the Distribution Network Service Provider to connect your Qualifying Solar Energy Generating Facility to the Distribution Network as soon as practicable after you satisfy the relevant requirements of clause 1 of the Energy Retail Code. Diamond will make the request no later than the next business day after receiving all relevant documentation, including details of any Distribution Network tariff reassignment.

**5. Renewable Energy Certificates**

5.1 Where Diamond and you agree, in the Feed-In Application, that your Feed-In Agreement will include the acquisition by Diamond of the Renewable Energy Certificates ('RECs') created by the Qualifying Generator, you agree to assign the RECs to Diamond. To enable Diamond to apply for the RECs, you must also sign a completed Renewable Energy Certificate Assignment Form and any other documents required by Diamond. Your Feed-In Agreement will not come into effect until these are signed.

5.2 If Diamond and you agree that your Feed-In Agreement will include the acquisition by Diamond of the RECs created by the Qualifying Generator, you warrant to Diamond that you have not already sold, transferred, assigned, licensed or otherwise created any interest in the RECs or the right to create RECs to any other person and have not agreed to do so.

**6. Metering**

6.1 Unless you give Diamond explicit informed consent, Diamond will base your Premium Solar Feed in Credit on a reading of the NEM-compliant meter that records the supply of Export Electricity to the Distribution Network, and in any event, Diamond will use its best endeavours to ensure that the meter is read at least once in any 12 month period. If Diamond is not able to reasonably or reliably base a Premium Solar Feed-In Credit on a reading of the meter, Diamond will not give a credit unless the Distribution Network Service Provider estimates the Export Electricity in accordance with applicable regulatory instruments;

6.2 You must allow Diamond (or its representative) safe, convenient and unhindered access to the Supply Address and to the meter that records the supply of Export Electricity to the Distribution Network for the purpose of reading the meter and for connection, disconnection, reconnection, maintenance and repair.

**7. Additional Costs**

7.1 You may have to pay Distribution Network connection costs, metering costs, costs relating to the Qualifying Solar Energy Generating Facility, and other costs specified in the Feed-In Agreement. Diamond will advise you of the amount of these costs on request.

7.2 If any new or increased charges or taxes relating to the sale or supply of electricity or the purchase of Export Electricity by Diamond are imposed by any government, government agency, the Distribution Network Service Provider or other electricity industry participants, we may pass the liability for these charges or taxes onto you by providing you notice of any changes as soon as practicable.

**8. Billing**

8.1 Diamond will credit your account for the Export Electricity supplied by you under the Feed-In Agreement when Diamond bills you for the electricity sold and supplied to you under your Retail Agreement

8.2 The information to be included in bills issued by Diamond under your Retail Agreement will include details of the amount of Export Electricity supplied to the Distribution Network from your Qualifying Solar Energy Generating Facility during the billing period, and the amount to be credited to you for that Export Electricity.

**9. Review of Bills**

- 9.1 Diamond will review a Premium Solar Feed-in Credit at your request, to be conducted on the basis specified in clause 6.1 of the Code.
- 9.2 If Diamond seeks to bill you to make up for overcrediting you for Export Electricity supplied by you, Diamond must proceed on the basis specified in clause 6.2 of the Code.
- 9.3 If Diamond has underpaid or under-credited you for Export Electricity, Diamond will credit the amount on your next bill.

**10. Termination by You**

- 10.1 You may terminate your Agreement at any time, without terminating your Retail Agreement with us. You may terminate your Agreement without notice and if your Agreement is a fixed term contract or an evergreen contract, Diamond may impose an early termination fee in the manner specified in clause 24.1(d) of the Code.
- 10.2 Termination by you does not become effective until:
  - (a) if you enter into a new feed-in agreement with Diamond, the expiry of any cooling-off period in respect of the new feed-in agreement; or
  - (b) if your Agreement is terminated because you enter into a feed-in agreement with another retailer, the date when that new retailer becomes responsible for the feed-in agreement; or
  - (c) if your Retail Agreement is terminated due to the Supply Address having been disconnected, the date when you no longer has a right under the Code to be reconnected.

**11. Termination by Diamond**

- 11.1 Diamond may not terminate your Agreement unless Diamond and you enter into a new feed-in contract, or unless you have transferred to another retailer in respect of the Supply Address, except in the circumstances specified under clauses
- 11.2 If your Agreement is a fixed term contract, Diamond will notify you, between one and two months before the end date, of the date your Agreement ends, the options available to you, and the terms and conditions that will apply after that date if you do not exercise any option.
- 11.3 Your Agreement will continue after the end date on the terms and conditions notified, without further need for written agreement, provided the terms and conditions have taken effect as Published Feed-In Offers in accordance with section 40H of the Act.
- 11.4 If your Feed-In Agreement provides for an amount to be payable by you for a breach of your Agreement, it will either state the amount or include a simple basis for determining that amount. Your Agreement will include provisions consistent with clause 31(b) and (c) of the Code.
- 11.5 Where you are small business customer or a community organisation, Diamond may terminate your Agreement once your annual consumption of electricity under the Retail Agreement exceeds 100 megawatt hours.
- 11.6 Diamond may terminate your Agreement once the Premium Solar Feed-In Tariff Scheme has been in place for 15 years.

**12. Goods and Services Tax**

Goods and Services Tax ('GST') will be added to the gross amount of the electricity supplied and sold to you under your Retail Agreement, without any netting off for the Export Electricity. If you have quoted your Australian Business Number on the Feed-in Agreement and you demonstrate to Diamond that you are registered for GST, we will credit you for GST on any taxable supply (as defined in **A New Tax System (Goods and Services Tax) Act 1999**) to us under the Feed-In Agreement.

**13. Assignment**

Diamond may only assign your Agreement with your consent, unless the assignment forms part of the transfer to the same third party of all or substantially all of the retailer's retail business. By entering into your Agreement, you give your consent to an assignment by Diamond. You may not assign or transfer your Agreement to another person without Diamond's written consent.

**14. Qualifying Solar Energy Generating Facility**

14.1 You must notify Diamond within 14 business days if the generating capacity of your Qualifying Solar Energy Generating Facility exceeds 5 kilowatts, for example, if your Qualifying Solar Energy Generating Facility has, or is changed to, an installed or name-plate generating capacity exceeding 5 kilowatts.

14.2 Where you are a residential householder, the Qualifying Solar Energy Generating Facility must be located at your principal place of residence.

14.3 Residential customers, small business customers and community organisation customers are only eligible to receive the Premium Solar Feed-In Credit for one Qualifying Solar Energy Generating Facility per premises under the Premium Solar Feed-In Tariff Scheme.

**15. Diamond's Obligations**

15.1 Diamond will give you notice of any variation to Diamond's rates that affects the Feed-In Agreement. The notice will be given as soon as practicable and in any event no later than the next billing and payment cycle.

15.2 The Premium Solar Feed-In Credit rate will be set at not less than \$0.60 per kilowatt hour for the duration of your Agreement. This rate is not indexed. Your Agreement is only relevant where a Retail Agreement is in place for the Supply Address.

15.3 On request, Diamond will provide you with reasonable information on any feed-in tariffs that Diamond may offer to you. The information must be given within 10 business days of your request, and if you request it, in writing.

15.4 Diamond must retain your historical Premium Solar Feed-in Credit data for at least two years, even if your Feed-In Agreement and your Retail Agreement may have terminated;

15.5 Diamond must process your request for historical data relating to your Agreement in the same manner as a request for historical data relating to the supply of electricity to you, under your Retail Agreement, pursuant to clause 27.2 of the Code.

15.6 Any complaint by you in relation to your Agreement will be handled by Diamond in accordance with the relevant Australian Standard on Complaints Handling. Diamond will also comply with the requirements of clause 28.2 of the Code.

**16. Change in Contact Details**

You must Inform Diamond if any relevant change in your contact details as soon as possible after the change occurs.

**17. Events outside the control of Parties**

If an event occurs which is outside the reasonable control of Diamond or you and Diamond or you breaches the Feed-In Agreement due to this event only, the breach is to be dealt with on the basis specified in clause 18 of the Code;

**18. Variations to Your Agreement**

The credit and terms and conditions of your Agreement may only be varied by agreement in writing between Diamond and you and with your explicit informed consent. If the amount of the credit changes in accordance with a term or condition of a Feed-In Agreement previously agreed between Diamond and you, no further agreement is required.

**19. Notices**

A notice, consent, document or other communication given by Diamond under your Agreement must be in writing and given by hand, by fax, by mail or by email.

**20. Change in Laws**

Your Agreement and these Terms and Conditions comply with the Act, as amended by the **Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009**. Diamond may terminate your Agreement if there is a change in legislation, regulations or codes which materially and adversely affects Diamond. Alternatively, Diamond may vary your Agreement to the extent deemed by Diamond to be appropriate if there is any such change.

**21. General Provisions**

21.1 You authorise Diamond and its employees and agents to enter the Supply Address at reasonable agreed times and on giving reasonable notice to carry out our obligations under your Agreement.

21.2 Your Agreement represents the entire agreement between Diamond and you and supersedes all prior arrangements or understandings between Diamond and you.

21.3 If any term or clause of your Agreement is or becomes invalid or unenforceable, then the other terms remain valid and unaffected and will continue for the duration of your Agreement.

21.4 If Diamond does not exercise or enforce any right or power under your Agreement, that failure will not amount to a waiver of that right or power. Any delay in doing so, will also not amount to a waiver of that right or power.

**Contact Details:** Diamond Energy Pty Ltd, Level 1, 695 Burke Road, Camberwell, Victoria 3124, Telephone: 1300 838 009, Facsimile: 03 9006 9031, Email: [customerservice@diamond-energy.com](mailto:customerservice@diamond-energy.com)

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