



Victoria Government Gazette

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ERM BUSINESS ENERGY VICTORIAN STANDING OFFER TERMS AND CONDITIONS

BACKGROUND

These terms and conditions are about the sale of electricity to you at your premises in Victoria.

1. THE PARTIES

These terms and conditions are between:

ERM Power Retail Pty Ltd ABN 87 126 175 460 who sells electricity to you at your premises (referred to as 'we', 'our' or 'us'); and

You, the customer at the premises (referred to as 'you' or 'your').

2. CREDIT ASSESSMENT

You consent to us undertaking a credit assessment of you from time to time. This includes us obtaining credit reports and other information from a credit reporting agency containing personal credit information about you.

You also consent to us using information concerning your commercial activities or commercial creditworthiness and providing to a credit reporting agency your personal information relating to credit, including information relating to late or dishonoured payments and the fact that you are our customer.

3. WHAT IS THE TERM

3.1. When do these terms and conditions start?

These terms and conditions start when you first start using electricity at your premises.

3.2. Termination

- (a) You can withdraw from these terms and conditions without penalty at any time.
- (b) You can withdraw by informing us of your intention to withdraw, which you can do orally or in writing (either by email, fax or letter).

3.3. When do these terms and conditions end?

- (a) These terms and conditions continue indefinitely until:
 - (i) you start to buy electricity for the premises from us or a different retailer under another contract – on the date the other contract starts;
 - (ii) if a different customer starts to buy electricity for the premises – on the date that customer's contract starts; or
 - (iii) if the premises are disconnected and you have not met the requirements for reconnection – 10 business days from the date of disconnection.
- (b) If you do not give us safe and unhindered access to the premises to conduct a final meter reading (where relevant), these terms and conditions will not end under paragraph (a) until we have issued you a final bill and you have paid any outstanding amount for the sale of electricity.
- (c) You will continue to be responsible for charges for the premises until these terms and conditions end.

SPECIAL

3.4. Vacating your premises

- (a) If you are vacating your premises, you must give us notice of the date on which you intend to vacate, or did vacate and a forwarding address for your final bill.
- (b) When we receive the notice, we must use our best endeavours to arrange for the reading of the meter on the date specified in your notice (or as soon as possible after that date if you do not provide access to your meter on that date) and send a final bill to you at the forwarding address stated in your notice.
- (c) Subject to the following paragraph (d), you will continue to be responsible for charges for the premises until the later of 3 business days after the date you give us the notice and the date you vacate the premises.
- (d) You may cease to be liable to pay for electricity consumed at the premises from the date specified in the following paragraphs if that date is earlier than the date determined under paragraph (c):
 - (i) if you can demonstrate that you were evicted or otherwise forced to vacate the premises – the date on which you gave us the notice under paragraph (a);
 - (ii) if we enter into a new contract with another customer for the premises (which may be a deemed contract that applies under the electricity laws) – the date on which the obligation to pay for electricity under the new contract is effective;
 - (iii) if another retailer becomes responsible for the electricity consumed at the premises, the date on which the other retailer becomes so responsible; and
 - (iv) if the premises are disconnected, the date on which the premises are disconnected.

4. SCOPE OF THESE TERMS AND CONDITIONS**4.1. What is covered by these terms and conditions?**

- (a) Under these terms and conditions, we agree to sell you electricity at your premises. We also agree to meet other obligations set out in these terms and conditions and to comply with the electricity laws.
- (b) In return, you agree:
 - (i) to be responsible for charges for electricity supplied to the premises under these terms and conditions, even if you vacate the premises earlier; and
 - (ii) to pay the amounts billed by us under these terms and conditions; and
 - (iii) to meet your obligations under these terms and conditions and the electricity laws.

4.2. What is not covered by these terms and conditions?

These terms and conditions do not cover the physical connection of your premises to the distribution system, including metering equipment and the maintenance of that connection and the supply of electricity to your premises. This is the role of your distributor.

5. YOUR GENERAL OBLIGATIONS**5.1. Full information**

You must give us any information we reasonably require. The information must be correct, and you must not mislead or deceive us in relation to any information provided to us.

5.2. Updating information

You must tell us promptly if information you have provided to us changes, including if your billing address changes or if your use of electricity changes.

5.3. Life Support Equipment

- (a) If a person living at your premises requires life support equipment, you must register the premises with us or your distributor. To register, you will need to give written confirmation from a registered medical practitioner of the requirement for life support equipment at the premises.

- (b) You must tell us or your distributor if the life support equipment is no longer required at the premises.

5.4. Obligations if you are not an owner

If you cannot meet an obligation relating to the premises because you are not the owner, you will not be in breach of the obligation if you take all reasonable steps to ensure that the owner or other person responsible for the premises fulfills the obligation.

6. OUR LIABILITY

- (a) The quality and reliability of your electricity supply is subject to a variety of factors that are beyond our control as your retailer, including accidents, emergencies, weather conditions, vandalism, system demand, the technical limitations of the distribution system and the acts of other persons (such as your distributor), including at the direction of a relevant authority.
- (b) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of electricity, its quality, fitness for purpose or safety, other than those set out in these terms and conditions.
- (c) Unless we have acted in bad faith or negligently, we are not liable for any loss or damage you suffer as a result of the total or partial failure to supply electricity to your premises, which includes any loss or damage you suffer as a result of the defective supply of electricity.

7. PRICE FOR ELECTRICITY AND OTHER SERVICES

7.1. What are our tariffs and charges?

Our tariffs and charges for the sale of electricity to you are our standing tariffs as published in the Government Gazette. A copy of the tariffs are also available on our website.

7.2. GST

- (a) Amounts payable by you may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount is stated to include GST.
- (b) Where an amount paid by you is payment for a 'taxable supply' as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

7.3. Changes in tariffs

We can change our tariffs at intervals of not less than 6 months. Any changes will be published in the Government Gazette at least one month before they take effect.

8. BILLING

8.1. General

- (a) We will send a bill to you as soon as possible after the end of each billing cycle.
- (b) If you have a remotely read meter, your billing cycle will be monthly. Otherwise, it will be quarterly.
- (c) Your bill will include, among other things:
 - (i) Your name, account number, supply address and mailing address;
 - (ii) The period covered by the bill;
 - (iii) The relevant standard tariffs;
 - (iv) The total amount of electricity consumed in the relevant period, along with an indication of whether the bill is based on an actual reading from your meter, or is wholly an estimate or based on any substituted data;
 - (v) The amount payable by you for that electricity and the due date for payment;

- (vi) Any separate amount payable in respect of network charges, service to property charges, or Additional Service Charges;
 - (vii) A telephone number for billing and payment enquiries and a 24 hour faults and emergencies number and, if the bill is a reminder notice, contact details for our complaints department;
 - (viii) The amount of arrears or credit;
 - (ix) Consumption and greenhouse gas emissions graphs in accordance with any applicable guideline;
 - (x) Details of charges derived from a proportion of your usual billing period; and
 - (xi) The National Meter Identifier (NMI) assigned to your supply address.
- (d) If you request, we must review a bill in accordance with our Standard Complaints Handling and Dispute Resolution Procedures.

8.2. Calculating the bill

- (a) Bills will be calculated on:
- (i) the amount of electricity consumed at your premises during the billing cycle (using information obtained from reading your meter or otherwise in accordance with relevant metering rules);
 - (ii) the amount of fees and charges for any other services provided during the billing cycle; and
 - (iii) the charges payable for services provided by your distributor, including connection charges if you have asked for a new connection or connection alteration and have not made alternative arrangements with your distributor.
- (b) Bills may also include previously unbilled charges and adjustments in respect of previous billing cycles as permitted by the Energy Retail Code.

8.3. Estimating the electricity usage

- (a) We may estimate the amount of electricity consumed at your premises if your meter cannot be read or if your metering data is not obtained (for example, if access to the meter is not given or the meter breaks down or is faulty).
- (b) If we estimate the amount of electricity consumed at your premises to calculate a bill, we must:
- (i) clearly state on the bill that it is based on an estimation; and
 - (ii) when your meter is later read, adjust your bill for the difference between the estimate and the energy actually used.
- (c) If the meter has not been read due to your actions, and you request us to replace the estimated bill with a bill based on an actual reading of the meter, we will comply with your request but may charge you an Additional Service Charge for doing so.

8.4. Your historical billing information

Upon request, we must give you information about your billing history for the previous 2 years free of charge. However, we may charge you if we have already given you this information in the previous 12 months, or if you require information going back more than 2 years.

9. PAYING YOUR BILL

9.1. What you have to pay

You must pay to us the amount shown on each bill by the date for payment (the pay-by date) on the bill, without set-off or counterclaim. The pay-by date will be 13 business days from the date on which we issue your bill.

9.2. How to pay

- (a) The payment methods for your bill will be set out on your bill.

- (b) You can pay by:
 - (i) Telephone (credit card);
 - (ii) Direct Debit – before you can pay by this method, you must complete a direct debit request which will include details of the amount, date and frequency of your payments and how the arrangement may be cancelled;
 - (iii) BPay;
 - (iv) By mail (cheque or money order only);
 - (v) in person at any Australia Post outlet; or
 - (vi) Post BillPay
- (c) If we cease to be your retailer, we will cancel any direct debit arrangements with you.

9.3. Issue of reminder notices

If you have not paid your bill by the pay-by date, we will send you a reminder notice that payment is required. The reminder notice will be sent not less than 14 business days from the date of dispatch of the bill and will give you a further due date for payment which will be not less than 6 business days after we issue the notice.

9.4. Difficulties in paying

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options.

10. METERS

- (a) You must allow safe and unhindered access to your premises for the purposes of reading and maintaining the meters (where relevant). Our representatives will carry or wear official identification and produce that identification upon request. You must keep your meter clear of hazards and interference
- (b) You must not tamper with, or permit tampering with, any meters or associated equipment.
- (c) We will use our best endeavours to ensure that a meter reading is carried out as frequently as is needed to prepare your bills, consistently with the metering rules and in any event at least once every 12 months.

11. UNDERCHARGING AND OVERCHARGING

11.1. Undercharging

- (a) If we have undercharged you, we may recover the undercharged amount from you. If we recover an undercharged amount from you:
 - (i) we will not charge interest on the undercharged amount; and
 - (ii) we will offer you time to pay the undercharged amount in instalments over the same period of time during which you were undercharged (if less than 12 months), or otherwise over 12 months.
- (b) The maximum amount we can recover from you is limited to the amount that has been undercharged in the 9 months immediately before we notify you, unless the undercharge is your fault, or results from your unlawful act or omission.

11.2. Overcharging

- (a) Where you have been overcharged by less than \$50, and you have already paid the overcharged amount, we must credit that amount to your next bill.
- (b) Where you have been overcharged by \$50 or more, we must inform you within 10 business days of our becoming aware of the overcharge and, if you have already paid that amount, we must credit that amount to your next bill. However, if you request otherwise, we will comply with that request.

- (c) If you have stopped buying electricity from us, we will use our best endeavours to pay the overcharged amount to you within 10 business days.
- (d) If you have been overcharged as a result of your own fault or unlawful act or omission, we may limit the amount we credit or pay you to the amount you were overcharged in the last 12 months.

11.3. Reviewing your bill

- (a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.
- (b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill. You will be liable for the cost of the check or test and we may request payment in advance. However, if the meter or metering data proves to be faulty or incorrect, we must reimburse you for the amount paid.
- (c) If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:
 - (i) the portion of the bill that you do not dispute; or
 - (ii) an amount equal to the average of your bills in the last 12 months.

12. DISCONNECTION OF SUPPLY

12.1. When can we arrange for disconnection?

- (a) Subject to all relevant regulatory requirements, we may arrange for the supply of electricity to your premises to be disconnected if:
 - (i) you do not pay your bill by the pay-by date;
 - (ii) you do not give access to your premises to read a meter (where relevant) for 3 consecutive meter reads;
 - (iii) You refuse, when required, to provide Acceptable Identification, provided we have given you a disconnection warning which states that we may disconnect you no sooner than 10 business days after the date of receipt of the notice and you have continued not to comply with that requirement; or
 - (iv) we are otherwise entitled or required to do so by law.
- (b) There are also other restrictions on us that prevent us from exercising our right to disconnect, including where:
 - (i) any non-payment by you is of an amount less than the relevant amount approved in an applicable guideline;
 - (ii) any formal complaint you have made to the Energy and Water Ombudsman Victoria, directly related to the non-payment, remains unresolved;
 - (iii) any non-payment by you relates only to a charge not for energy; or
 - (iv) your supply address is registered by the distributor as a life support machine supply address.

12.2. Notice and warning of disconnection

Before arranging for your premises to be disconnected, we must comply with relevant warning notice requirements and other provisions in any relevant laws that govern these terms and conditions.

12.3. When we must not arrange disconnection

- (a) Unless you have requested to be disconnected during these times, we must not arrange for your premises to be disconnected during the following times:
 - (i) on a business day before 8.00 am or after 3.00 pm;
 - (ii) on a Friday or the day before a public holiday;

- (iii) on a weekend or a public holiday;
 - (iv) on the days between 20 December and 31 December (both inclusive) in any year.
- (b) Your premises may also be disconnected by the distributor at any time for other reasons, including:
 - (i) for reasons of health and safety;
 - (ii) in an emergency;
 - (iii) as directed by a relevant authority; or
 - (iv) where you interfere or allow interference with any energy equipment that is at your premises except as may be permitted by law;
 - (v) if there has been illegal or fraudulent use of electricity at your premises; or
 - (vi) where you use the energy supplied to your premises or any energy equipment in a manner that unreasonably interferes with the connection or supply of energy to another customer or causes damage or interference to any third party.

13. RECONNECTION AFTER DISCONNECTION

- (a) We must request your distributor to reconnect your premises if, within 10 business days of your premises being disconnected:
 - (i) you ask us to arrange for reconnection of your premises; and
 - (ii) you rectify the matter that led to the disconnection; and
 - (iii) you pay any reconnection charge (if requested).
- (b) If your request is made before 3 pm on a business day, we will ask the distributor to reconnect you on that day, but for a request made after that time we will ask the distributor to reconnect you on the next business day. After 3 pm and before 9 pm you can still be reconnected on the same business day if you pay the after hours connection fee.

14. NOTICES AND BILLS

- (a) Notices and bills may be sent by email.
- (b) Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.
- (c) A notice or bill is taken to have been received by you or by us (as relevant):
 - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
 - (ii) on the date 2 business days after it is posted; or
 - (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically.

15. PRIVACY ACT NOTICE

We will comply with all relevant privacy legislation in relation to your personal information. You can find a summary of our privacy policy on our website. If you have any questions, you can contact our privacy officer.

16. COMPLAINTS AND DISPUTE RESOLUTION

16.1. Complaints

- (a) If you have a query, complaint or dispute relating to the sale of electricity by us to you, or these terms and conditions generally, you may contact us and lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

- (b) Our contact details are as follows:
- | | |
|---------------------|---|
| Call us | 134ERM (134 376) |
| Send us an email | service@ermpower.com.au |
| Visit us on the web | www.ermpower.com.au |
| Write to us at | ERM Business Energy
Customer Advocacy
PO Box 18042, Victoria 3000 |
- (c) Our standard complaints and dispute resolution procedures can be found on our website, or provided to you on request.

16.2. Our obligations in handling complaints

- (a) If you make a complaint, we must handle the complaint in accordance with our standard complaints and dispute resolution procedures and inform you of the outcome of your complaint and the reasons for our decision.
- (b) If you are not satisfied with our response, you may also refer any complaint about our service to the Energy and Water Ombudsman Victoria on the free call number 1800 500 509.
- (c) Contact details for the electricity ombudsman are shown on our standard complaints and dispute resolution procedures published on our website.

17. APPLICABLE LAW

The laws of Victoria govern these terms and conditions.

18. GENERAL

18.1. Other Provisions

- (a) If a party is made up of more than one person, or a term is used in these terms and conditions to refer to more than one party:
- an obligation of those persons is joint and several;
 - a right of those persons is held by each of them severally; and
 - any other reference to that party or that term is a reference to each of those persons separately, so that (for example) an undertaking is given by each of them separately.
- (b) The following rules also apply in interpreting these terms and conditions, except where the context makes it clear that a rule is not intended to apply:
- a singular word includes the plural, and vice versa;
 - a reference to a person includes a reference to a company or other legal entity;
 - if a word is defined, another part of speech has a corresponding meaning; and
 - a reference to AEST is a reference to Australian Eastern Standard Time (without regard to daylight saving or summer time).
- (c) We may assign our rights to receive amounts payable by you to our financier.

18.2. Definitions

Acceptable Information means for a customer which:

- is an individual or partnership, includes one or more of the following for each of the individuals that conduct the business: a driver's licence, a current passport or other form of photographic identification, a Pensioner Concession Card or other current entitlement card issued by the Commonwealth or a birth certificate; or
- is a company, includes the company's Australian Company Number or Australian Business Number.

Additional Service Charges means any charges incurred by you (and as explained by us prior to you incurring such charges) for services requested by you.

business day means a day other than a Saturday, a Sunday or a public holiday in the place where your premises are located.

disconnection means an action to prevent the flow of electricity to the premises, but does not include an interruption.

distributor means the person who operates the system that connects your premises to the electricity distribution network.

electricity laws means Commonwealth and Victorian laws and rules relating to electricity and the legal instruments made under those laws, including all relevant codes.

emergency means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the distribution system or transmission system, or that destroys or damages, or threatens to destroy or damage, any property.

GST has the meaning given in the GST Act (**A New Tax System (Goods and Services Tax) Act 1999** (Cth)).

public holiday means a day that is observed as a local public holiday in the area in which the premises are located (including the whole of the State or Territory in which the area is located).

relevant authority means any person or body who has the power under law to direct us, including the Australian Energy Market Operator and State or Federal Police.

retailer means a person that is authorised to sell electricity to customers.

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