

# ELECTRICITY INDUSTRY ACT 2000 AND GAS INDUSTRY ACT 2001

**AGL Sales Pty Limited ABN 88 090 538 337**

**And**

**Powerdirect Pty Ltd ABN 28 067 609 803**

## **Standing Offer Terms for Small Residential and Small Business Customers**

### **IMPORTANT NOTE**

- A. AGL now publishes pursuant to section 35 of the Electricity Industry Act and section 42 of the Gas Industry Act its terms and conditions for the sale and Supply of Energy to:
- Customers who have existing Standing Offer Contracts or Deemed Contracts with AGL immediately prior to 18 April 2010;
  - Customers who accept AGL's Standing Offer on or after 18 April 2010; and
  - Customers who are deemed under section 39 of the Electricity Industry Act or section 46 of the Gas Industry Act to have a contract with AGL for the sale and Supply of Energy to a Supply Address after 18 April 2010.
- B. Powerdirect now publishes pursuant to section 35 of the Electricity Industry Act its terms and conditions for the sale and Supply of electricity to:
- Customers who have existing Deemed Contracts with Powerdirect immediately prior to 18 April 2010;
  - Customers who accept Powerdirect's Standing Offer for electricity on or after 18 April 2010; and
  - Customers who are deemed under section 39 of the Electricity Industry Act to have a contract with Powerdirect for the sale and Supply of electricity to a Supply Address after 18 April 2010.

These terms and conditions have been approved by the Essential Services Commission and will be effective from 18 April 2010.

### **STANDING OFFER TERMS**

#### **1. THE PARTIES TO THIS ENERGY CONTRACT**

This Energy Contract is made between:

1.1.1 where AGL is the retailer Responsible for your Supply Address:

**AGL Sales Pty Limited** (ABN 88 090 538 337) of Level 22, 120 Spencer Street, Melbourne;

1.1.2 where Powerdirect is the retailer Responsible for the sale of electricity for your Supply Address:

**Powerdirect Pty Ltd** (ABN 28 067 609 803) of 303 Burwood Highway  
Burwood East,

(in this Energy Contract referred to as 'we', 'our' or 'us')

and

1.1.3 You, the Customer to whom these Terms are expressed to apply  
under clause 2.1 (in this Energy Contract referred to as 'you' or 'your').

## **2. WHEN WILL THESE TERMS APPLY?**

### **2.1 Do these Terms apply to you?**

These Terms will apply to you if:

- 2.1.1 you are a Small Residential Customer or a Small Business Customer and you had a Standing Offer Contract or a Deemed Contract with us for the sale and Supply of Energy for your Supply Address immediately prior to 18 April 2010;
- 2.1.2 you are a Small Residential Customer or a Small Business Customer and you choose to accept our Standing Offer to purchase electricity from us for your Supply Address on or after 18 April 2010;
- 2.1.3 you are a Small Residential Customer or a Small Business Customer and you choose to accept AGL's Standing Offer to purchase gas from AGL for your Supply Address on or after 18 April 2010;
- 2.1.4 you are a Small Residential Customer or a Small Business Customer who is deemed under section 39 of the Electricity Industry Act to have a contract with us for the sale and Supply of electricity to you at your Supply Address on or after 18 April 2010; or
- 2.1.5 you are a Small Residential Customer or a Small Business Customer who is deemed under section 46 of the Gas Industry Act to have a contract with AGL for the sale and Supply of gas to you at your Supply Address on or after 18 April 2010.

### **2.2 These Terms can apply to both electricity and gas**

2.2.1 For the avoidance of doubt, these Terms will apply where you purchase:

- (a) only electricity from AGL or Powerdirect; or
- (b) only gas from AGL; or
- (c) both electricity and gas from AGL,

for your Supply Address in one of the circumstances described in clause 2.1.

2.2.2 However, this Energy Contract is not a 'dual fuel contract' (as that term is defined in the Energy Retail Code) because even though AGL may sell both electricity and gas to you at your Supply Address under this Energy Contract, the Billing Periods for electricity and gas under this Energy Contract are not synchronised.

## **2.3 What is covered by your Energy Contract?**

- 2.3.1 Under this Energy Contract we agree to sell (and arrange for your Distributor to Supply) Energy to you at your Supply Address and to perform our other obligations under this Energy Contract.
- 2.3.2 In return, you are required to pay our charges from time to time and perform your other obligations under this Energy Contract.
- 2.3.3 Please note that this Energy Contract is not suitable for:
  - (a) Supply Addresses that are connected to an embedded network; or
  - (b) all types and configurations of electricity Meters which may be installed at your Supply Address.

Please contact us if you think this Energy Contract may not be suitable for your Supply Address and we will outline the options which are available to you.

## **2.4 Marketer**

- 2.4.1 We may use the services of a Marketer in relation to your Energy Contract. If we do, that Marketer will receive a fee for those services.

## **2.5 About the Energy Retail Code**

- 2.5.1 The Energy Retail Code applies to this Energy Contract.
- 2.5.2 If a term or condition of this Energy Contract is inconsistent with a term or condition of:
  - (a) the Energy Retail Code, then to the extent of that inconsistency the relevant term or condition set out in this Energy Contract is void and the relevant term or condition set out in the Energy Retail Code will be deemed to form part of this Energy Contract in its place; or
  - (b) any other Regulatory Requirement, then to the extent permitted by that Regulatory Requirement, the provisions of this Energy Contract will prevail. Otherwise the provision of the Regulatory Requirements will prevail to the extent of that inconsistency.
- 2.5.3 If any matter the subject of a term or condition of the Energy Retail Code is not expressly dealt with (or, is only expressly dealt with in part) in these Terms, then the relevant term or condition of the Energy Retail Code (or the relevant part of that term or condition) dealing with that matter will be incorporated into these Terms.
- 2.5.4 If you require a copy of the Energy Retail Code, please contact us and we will send a copy to you. Your first copy of the Energy Retail Code will be provided free of charge. However we may impose a charge to cover the printing and mailing costs for providing more than one copy during any 12 month period. You can also inspect the Energy Retail Code free of charge at the Essential Services Commission website at [www.esc.vic.gov.au](http://www.esc.vic.gov.au).
- 2.5.5 We will also advise you of any significant change to the Energy Retail Code which may impact upon you as soon as reasonably practicable after that change occurs.

## **2.6 Acceptance**

- 2.6.1 If you wish to accept our Standing Offer for your Supply Address simply contact us to advise of your acceptance. We will then record your acceptance in our system.
- 2.6.2 However, please note that in the case of a Deemed Contract you will be treated as having entered into this Energy Contract on the day that you commence to take a Supply of Energy from us at your Supply Address.
- 2.6.3 When your Energy Contract refers to 'acceptance' it means acceptance as described in clause 2.6.1 or deemed acceptance as described in clause 2.6.2.
- 2.6.4 By accepting this Energy Contract, you agree to be bound by these Terms and the Applicable Tariffs.
- 2.6.5 If you already have a contract with us for the sale and Supply of Energy to your Supply Address, this Energy Contract replaces that contract for the relevant Energy type from the Supply Commencement Date onwards.
- 2.6.6 We will send you a letter to confirm that we have received your acceptance of this Energy Contract, unless you have accepted your Energy Contract in person with a marketing representative.

## **2.7 Definitions and Interpretation**

- 2.7.1 The glossary set out in clause 13 of these Terms provides the meanings of certain words used in this Energy Contract and the rules of interpretation applying to this Energy Contract.

## **3. SUPPLY COMMENCEMENT AND TERM**

### **3.1 When will these Terms begin to apply to you?**

- 3.1.1 If you had a Standing Offer Contract or a Deemed Contract with us for your Supply Address immediately prior to 18 April 2010 (i.e. where clause 2.1.1 applies), these Terms will replace the terms and conditions of that Standing Offer Contract or Deemed Contract on and from 18 April 2010.
- 3.1.2 Otherwise, these Terms will commence to apply to you, and your Energy Contract with us in relation to your Supply Address will start:
  - (a) where clause 2.1.2 or clause 2.1.3 applies, on the day that you accept our Standing Offer or if you are Transferring to us from another retailer, on the day you give your Consent to that Transfer (whichever happens last); or
  - (b) where clause 2.1.4 or 2.1.5 applies, on the day that you commence to take a Supply of Energy from us at your Supply Address.

### **3.2 Cooling-off Period**

- 3.2.1 You may have the right under the Fair Trading Act 1999 or under clause 3.4 of the Marketing Code to cancel your Energy Contract by giving us a notice to that effect during the Cooling-off Period for your Energy Contract.
- 3.2.2 If you do have that right, we will send to you within 2 Business Days of the date on which your Energy Contract started under clause 3.1, a notice explaining that right to you and setting out all of the other details referred to in the Marketing Code or required by the Fair Trading Act 1999 to be included in that notice.

3.2.3 We will also dispatch to you at the same time, a document setting out your Applicable Tariff and the other terms and conditions of your Energy Contract. We will do this regardless of whether or not you have a right to cancel your Energy Contract under the Fair Trading Act 1999 or under the Marketing Code.

### **3.3 Connection to Distribution Systems**

3.3.1 Your Supply Address must be connected to the Distribution System before we can sell Energy to you at that Supply Address.

### **3.4 New Connections**

3.4.1 If you would like to accept our Standing Offer but your Supply Address is not already connected to the relevant Distribution System, we can arrange (on your behalf) for your Distributor to connect your Supply Address to its Distribution System.

3.4.2 In particular, we will contact your Distributor by no later than the next Business Day after we receive your application for connection or after your Energy Contract starts under clause 3.1 (whichever occurs last) to arrange for the connection of your Supply Address to the relevant Distribution System.

3.4.3 However, before we can arrange for this to occur we will need certain information from you. In addition, depending upon your circumstances you may need to satisfy some pre-conditions before your Supply Address can be connected. Some examples of these pre-conditions are set out in clause 3.5.3. We will tell you before you accept our Standing Offer if you need to satisfy any pre-conditions.

3.4.4 Any charges relating to the connection of your Supply Address to the Distribution System will be passed through to you under clause 6.6.

### **3.5 New Customers**

3.5.1 This clause 3.5 only applies if:

- (a) you do not currently purchase any Energy for your Supply Address from us; or
- (b) you currently purchase electricity for your Supply Address from us and you want to commence to purchase gas for your Supply Address from us (or vice a versa).

3.5.2 If your Supply Address is already connected to the Distribution System and you would like to accept our Standing Offer but you are not currently purchasing Energy from us at that Supply Address, we may ask you to comply with certain pre-conditions.

3.5.3 These could include:

- (a) the provision by you of Acceptable Identification;
- (b) the payment of any applicable charges for Excluded Services;
- (c) the installation of new Metering equipment;
- (d) the completion of any required Transfer process in relation to your Supply Address; and/or
- (e) the provision of a Refundable Advance.

3.5.4 We will tell you before you accept our Standing Offer if you need to satisfy any of the pre-conditions described in clause 3.5.3.

- 3.5.5 Please note that if you are Transferring to us from another retailer:
- (a) when you accept this Energy Contract your Distributor will remain the same and therefore the reliability of Supply for your Supply Address will remain the same; and
  - (b) the Transfer will take place at the next scheduled Meter Reading.

However, if that Meter Reading does not occur when expected, and we are legally entitled to Transfer your Supply Address to us based on an estimated Meter Reading, you agree to that Transfer.

Otherwise the Transfer will be delayed until the following scheduled Meter Reading. This is usually for a period of up to three months but occasionally delays longer than this may occur.

### **3.6 Supply Commencement Date**

- 3.6.1 Our obligation to sell you Energy at your Supply Address under this Energy Contract will not commence until the Supply Commencement Date.
- 3.6.2 Where you are purchasing both gas and electricity from us for your Supply Address, our obligation to sell you electricity at your Supply Address and your obligation to pay us for electricity consumed at your Supply Address may start at a different time than those obligations in relation to gas.
- 3.6.3 The Supply Commencement Date for a Standing Offer Contract will be the date on which all of the following conditions are satisfied:
- (a) the Cooling-off Period referred to in clause 3.2 has expired;
  - (b) all necessary Transfers have been completed;
  - (c) we become Responsible for your Supply Address;
  - (d) your Supply Address is connected to the relevant Distribution System in accordance with the Regulatory Requirements;
  - (e) the relevant pipe work, cables and appliances are certified as complying with the all necessary Regulatory Requirements, and there is a suitable Meter available for our use, at your Supply Address; and
  - (f) if requested by us, you have provided to our satisfaction:
    - (i) Acceptable Identification, billing details and information concerning the appliances installed at your Supply Address and the anticipated usage of those appliances;
    - (ii) where you are not the owner of the property, the consent of, or contact numbers for, the property owner or agent;
    - (iii) a Refundable Advance; and
    - (iv) payment of, or arrangements to pay, all amounts currently owing by you to us under any other Energy sale and Supply arrangement (other than a debt which is the subject of an unresolved dispute).
- 3.6.4 The Supply Commencement Date for a Deemed Contract will be the day that you commence to take a Supply of Energy from us at your Supply Address.

### **3.7 Term of Supply**

- 3.7.1 We will Supply you with Energy for your Supply Address from each relevant Supply Commencement Date for the Term of your Energy Contract.

- 3.7.2 Please note that there may be separate periods of Supply in relation to gas and electricity because the Supply Commencement Date may be different.
- 3.7.3 Your Energy Contract has no set term and therefore will continue until terminated.

#### **4. TERMINATION**

##### **4.1 How can your Energy Contract be brought to an end?**

Subject to clause 4.3, your Energy Contract can be brought to an end in one of the following ways:

- 4.1.1 if you have a Standing Offer Contract, by you giving to us 28 days notice that you wish to stop purchasing Energy from us for your Supply Address;
- 4.1.2 if you have a Deemed Contract, by you entering into a new contract with another retailer for the sale and Supply of Energy to you for your Supply Address;
- 4.1.3 if you have a Deemed Contract under section 39 of the Electricity Industry Act and/or section 46 of the Gas Industry Act for the sale and Supply of Energy to you at your Supply Address, at the end of the period covered by the second bill issued by us to you or when that Deemed Contract otherwise ends under either section 39 of the Electricity Industry Act and/or section 46(5)(b) of the Gas Industry Act;
- 4.1.4 by entering into a new contract with us for the sale and Supply of Energy to you at your Supply Address;
- 4.1.5 when under clause 4.8 you cease to be responsible to pay for Energy consumed at your Supply Address;
- 4.1.6 if you are in breach of your Energy Contract by notice to you but only if:
- (i) we have the right under clause 5 to disconnect your Supply Address; and
  - (ii) we have first complied with the disconnection and other procedures set out in clause 5; and
  - (iii) you no longer have the right under clause 5.4 to have your Supply Address reconnected; or
- 4.1.7 when you Transfer to another retailer in respect of your Supply Address,

whichever occurs first.

The ending of your Energy Contract will not affect any rights or obligations which may have accrued under your Energy Contract prior to that time.

##### **4.2 We will notify you before the expiry of any Fixed Term Contract**

- 4.2.1 If your Energy Contract is a Fixed Term Contract, at least one month, but no more than two months, before the expiry of the Term of your Energy Contract, we will:
- (a) notify you that the Term of your Energy Contract is about to expire, and the date of that expiry;

- (b) notify you of the charges, terms and conditions that will apply to you if you do not exercise any other option once the Term of your Energy Contract has expired; and
- (c) notify you of your other options once the Term of your Energy Contract has expired, including the options to:
  - (i) accept our or another retailer's standing offer;
  - (ii) enter into a market contract offered to you by us or another retailer; or
  - (iii) request disconnection.

4.2.2 If you do not exercise any of the options set out in clause 4.2.1 before the expiry of the Term, then from the expiry of the Term the charges, terms and conditions set out in the notice will be deemed to form part of your Energy Contract with us for your Supply Address.

### **4.3 Your Energy Contract will not end until certain conditions are satisfied**

Despite clause 4.1, the termination of your Energy Contract will not be effective until:

- 4.3.1 if your Energy Contract has ended because you have entered into a new contract with us for the sale and Supply of the relevant type of Energy to your Supply Address, the expiry of any Cooling-off Period in relation to that new contract;
- 4.3.2 if your Energy Contract has ended because you want to Transfer to another retailer in relation to the sale and supply of the relevant type of Energy for your Supply Address, your new retailer becomes Responsible for the sale and Supply of that Energy type to that Supply Address; or
- 4.3.3 if your Energy Contract has ended because your Supply Address has been disconnected, when you no longer have the right under clause 5.4 to have that Supply Address reconnected;

whichever occurs last.

### **4.4 Consequences of Termination**

- 4.4.1 If your Energy Contract is for the sale of both gas and electricity, and is terminated in respect of one Energy type (that is, gas or electricity) but not the other Energy type, your Energy Contract will continue in respect of the other Energy type.
- 4.4.2 You are responsible for paying for all Energy consumed at your Supply Address at the Applicable Tariffs for your Energy Contract until your Energy Contract is terminated. Termination will not affect your or our obligation to pay any amount due at the date of termination, or any accrued rights or remedies that we or you may have under your Energy Contract.

### **4.5 New Energy purchase arrangement with us**

- 4.5.1 Subject to the terms and conditions of your Energy Contract, if you enter into another contract with us for the sale of Energy to you for your Supply Address, this Energy Contract will end when that other contract begins (i.e. once any relevant Cooling-off Period has expired and all other relevant pre-conditions have been satisfied).

#### **4.6 Request for disconnection**

- 4.6.1 If you request that your Supply Address be disconnected:
- (a) we will disconnect or request that your Distributor disconnects your Supply Address as soon as practicable; and
  - (b) unless otherwise agreed, your Energy Contract will terminate on the date of that disconnection.

#### **4.7 Transfer to another retailer**

- 4.7.1 You (or your new retailer on your behalf) must give us written notice of your intention to Transfer to another retailer.
- 4.7.2 This must include the earliest date on which you wish to Transfer (which must be at least 28 days after the date of your notice).
- 4.7.3 Your Transfer to another retailer (in accordance with the Regulatory Requirements) may take up to 60 days for gas and 90 days for electricity.
- 4.7.4 Please note that if the Meter Reading is not completed at the next scheduled Meter Reading date, this Transfer may take longer.
- 4.7.5 In some cases you may request a special Meter Reading (i.e. a Meter Reading outside of your scheduled Meter Reading cycle). If you request a special Meter Reading you agree to pay us the Special Meter Reading Fee in advance.

#### **4.8 Vacating your Supply Address**

- 4.8.1 Subject to clause 4.8.3, you must give us at least 28 days prior written notice if you intend to vacate your Supply Address (including the proposed vacation date and a forwarding address to which a final bill may be sent). If you fail to give us this notice, you must notify us that you intend to vacate your Supply Address, or that you have vacated your Supply Address, before you vacate or as soon as possible after you have vacated that Supply Address (including the vacation date and a forwarding address to which a final bill may be sent).
- 4.8.2 Subject to clause 4.8.3, you must pay us for all Energy delivered to your Supply Address until the later of:
- (a) 3 Business Days after the date on which you give us notice under clause 4.8.1; or
  - (b) the date on which you vacate that Supply Address.
- 4.8.3 Your Energy Contract will terminate earlier than the date provided for in clause 4.8.2 in the following circumstances:
- (a) if you can show us that you were evicted or otherwise forced to vacate your Supply Address, your Energy Contract will be terminated on the date you give us the notice referred to in clause 4.8.1;
  - (b) if we enter into a contract with another Customer for the sale and Supply of Energy for that Supply Address, your Energy Contract will terminate when the obligation to pay for Energy sold under that new contract commences;
  - (c) if another retailer becomes Responsible for your Supply Address, your Energy Contract will terminate when the new retailer assumes that responsibility; and
  - (d) if your Supply Address is disconnected after you have vacated, your Energy Contract will terminate on disconnection.

- 4.8.4 If you give notice of your intention to vacate your Supply Address under clause 4.8.1, we will:
- (a) use our Best Endeavours to ensure that your Meter is read or Metering Data obtained at your Supply Address on a date and time agreed by you, or as soon as possible after that date if you do not provide access to your Meter on that date and time; and
  - (b) prepare and send you at the forwarding address you provide, a final bill based on the Meter Reading or Metering Data.

#### **4.9 Ceasing to be a Small Residential Customer or a Small Business Customer**

- 4.9.1 If you become aware that the consumption of Energy at your Supply Address has exceeded or will exceed the threshold for a Small Residential Customer or Small Business Customer (whichever is applicable), you must notify us within two Business Days.
- 4.9.2 If you notify us under clause 4.9.1, or if we otherwise become aware that your consumption of Energy at your Supply Address has exceeded the threshold for a Small Residential Customer or Small Business Customer, we may terminate this Energy Contract by giving you 28 days written notice.

### **5. DISCONNECTION**

#### **5.1 When can we request your Distributor to disconnect your Supply Address for non-payment?**

We can request your Distributor to disconnect your Supply Address if:

- 5.1.1 you have failed to pay a bill in relation to that Supply Address by the relevant pay by date for that bill;
- 5.1.2 the Energy Retail Code does not state that we cannot arrange for the disconnection of your Supply Address in those circumstances; and
- 5.1.3 we have first complied with all other steps which we are required to comply with under the Energy Retail Code before requesting disconnection of your Supply Address.

These steps include the provisions of a reminder notice and a disconnection warning in the form and at the times referred to in the Energy Retail Code.

Full details of these steps are set out in the Energy Retail Code.

#### **5.2 In what other circumstances can we request your Distributor to disconnect your Supply Address?**

Unless the Energy Retail Code states that we cannot request your Distributor to disconnect your Supply Address, we may also request your Distributor to disconnect your Supply Address:

- 5.2.1 if you request us to;
- 5.2.2 if due to your acts or omissions we or our representative is unable to gain access to your Supply Address (in accordance with the requirements of clause 9.4) for the purposes of reading your meter in relation to 3 consecutive bills (but only if we have also complied with all applicable pre-conditions referred to in the Energy Retail Code);
- 5.2.3 where you refuse to pay a Refundable Advance, (but only if we have complied with all applicable pre-conditions referred to in the Energy

Retail Code and you continue to refuse to provide a Refundable Advance); or

- 5.2.4 where you are a new Customer in relation to us at your Supply Address and you refuse or fail to provide us with Acceptable Identification when required under this Energy Contract (but only if we have complied with all applicable pre-conditions referred to in the Energy Retail Code and you continue to refuse or fail to provide us with Acceptable Identification).

The disconnection of your Supply Address will not prevent or limit any other action that we may be entitled to take on account of your breach of this Energy Contract.

### **5.3 Disconnection Fee**

- 5.3.1 Where we have arranged for the disconnection of your Supply Address we may charge you a Disconnection Fee.

### **5.4 Reconnection after Disconnection**

- 5.4.1 Where disconnection of Supply to your Supply Address in accordance with clauses 5.1 or 5.2 has occurred, and you have either rectified the circumstances which gave rise to that disconnection within 10 Business Days of disconnection occurring or you have applied for a Utility Relief Grant in circumstances where you are eligible for such a grant, you may ask us to procure your Distributor to re-connect Supply to your Supply Address.

- 5.4.2 Following receipt of your request, and subject to you:

- (a) paying to us the applicable Reconnection Fee for that reconnection; and
- (b) complying with any relevant requirements of the Regulatory Requirements,

we will procure your Distributor to reconnect Supply to your Supply Address in the manner and within the time periods agreed with you at that time or, if no time period is agreed, within the time period referred to in the Energy Retail Code.

The current time periods under the Energy Retail Code are:

- (c) if you request us before 3pm on a Business Day to reconnect your Supply Address, we will reconnect your Supply Address that day; or
  - (d) if you request us after 3pm on a Business Day to reconnect your Supply Address, we will reconnect your Supply Address before the end of next Business Day; or
  - (e) if you request us before 9pm on a Business Day to reconnect your Supply Address and you pay any applicable After Hours Reconnection Charge, we will reconnect your Supply Address that day.
- 5.4.3 If we (or your Distributor or any of our or your Distributor's respective contractors or agents) have been called out to disconnect your Supply Address for any of the reasons set out in clause 5.1 or 5.2 and the reason is rectified before we disconnect your Supply Address, then we may charge you a Call-Out Fee.

### **5.5 Exercise of discretion**

- 5.5.1 Where we have the right to disconnect your Supply Address, we may at our discretion elect not to do so based on:

- (a) the nature of the grounds under which our right to disconnect arise, including whether these grounds were beyond your reasonable control or were accidental but not negligent;
  - (b) any factors arising from your history with us, including your conduct under your Energy Contract and any previous contract with us for the sale and Supply of Energy;
  - (c) our evaluation of the likelihood that you will fulfil your obligations under your Energy Contract in the future; and
  - (d) the consistent application of AGL's policies applying to similar Customers in similar circumstances (including departing from these policies in relevantly different circumstances).
- 5.5.2 The exercise of our discretion not to disconnect your Supply Address is not a waiver of our right to do so, and we may decide to disconnect your Supply Address according to your Energy Contract at any time until the grounds for disconnection are rectified.

## **6. CHARGES AND VARIATIONS**

### **6.1 What are our Tariffs?**

- 6.1.1 Our Tariffs are published in the Government Gazette under section 35 of the Electricity Industry Act and section 42 of the Gas Industry Act. If you ask us, we will provide you with a copy of our Tariffs applying at the time that you ask.
- 6.1.2 Our Tariffs (and various other charges which might apply to you from time to time under this Energy Contract) will also be described and listed in our latest Price List. Our latest Price List can be found on our website (at [www.agl.com.au](http://www.agl.com.au) or [www.powerdirect.com.au](http://www.powerdirect.com.au) as relevant).

If you ask us we will also provide you with a copy of our Price List applying at the time that you ask.

### **6.2 Which Tariff and other charges apply to you?**

- 6.2.1 Our Price List describes each category of Tariff and explains the conditions that need to be satisfied for each category before it can apply to you.
- 6.2.2 We will assign you to the category of Tariff which we believe is the most appropriate to your circumstances given the information that we have at that time. We will notify you of that category of Tariff in your next bill. This will be your Applicable Tariff until you are transferred to a different Tariff in accordance with this clause 6.
- 6.2.3 If at any time you can demonstrate to us that you satisfy the conditions applying to another category of Tariff, you may apply to transfer to that alternative category of Tariff.
- 6.2.4 Where you transfer from one category of Tariff to another and that transfer requires a change to the Meter at your Supply Address, the effective date of that transfer (for billing and other purposes) will be the date on which the new Meter becomes operational.
- 6.2.5 Our Price List also sets out other fees and charges which might apply to you and/or your Supply Address.

### **6.3 Changes to our Tariffs and other charges**

- 6.3.1 We can vary our Tariffs and/or the categories or rates of our Tariffs, no more than once every six months by notice published in the Government Gazette and in a newspaper circulating generally throughout Victoria. If we are required by a Regulatory Requirement to follow a specific process before varying our Tariffs we will comply with that process.
- 6.3.2 Any variation to our Tariffs will take effect from the date specified in the notice published in the Government Gazette.
- 6.3.3 We will notify you of any changes to your Applicable Tariff as soon as practicable after notice of that variation is published in the Government Gazette and, in any event, with your next bill.
- 6.3.4 We can also vary the fees and charges listed in our Price List (other than our Tariffs) at any time. Any variation to the fees and charges listed in our Price List (other than our Tariffs) will take effect from the date being one month after that variation is first published on our website (at [www.agl.com.au](http://www.agl.com.au) or [www.powerdirect.com.au](http://www.powerdirect.com.au) as relevant).
- 6.3.5 We will notify you that we have published a new Price List setting out any varied fees and charges on our website as soon as practicable and in any event with your next bill.

#### **6.4 Variation of Applicable Tariff**

- 6.4.1 The continued application of a category of Tariff to you, or to your Supply Address, depends on you continuing to satisfy conditions applying to that category of Tariff.
- 6.4.2 You must inform us if there is a change in:
  - (a) the nature of your Energy usage at the Supply Address;
  - (b) the Meter installed at the Supply Address; or
  - (c) any other circumstance which impacts on your ability to continue to satisfy conditions applying to your current category of Tariff.
- 6.4.3 If we become aware of any change in:
  - (a) your ability to satisfy conditions applying to your current category of Tariff (whether or not you inform us of such a change); or
  - (b) distribution tariffs that your Distributor applies in relation to the Supply Address,

we may transfer you to a different category of Tariff from the time of that change, and where this results in you having been undercharged or overcharged on a bill clause 7.7 will apply.

## **6.5 Calculation of bill following a change in Tariff**

6.5.1 If your Applicable Tariff changes during a Billing Period (such as where you change to an alternative category of Tariff or where the rate of your current category of Tariff changes) we will calculate the amount payable by you for Energy Supplied during that Billing Period on a pro rata basis by using:

- (a) the previous category or rate up to and including the date of the change; and
- (b) the new category or rate from that date to the end of the relevant Billing Period,

and clearly show the relevant details in your bill.

## **6.6 Pass through of Distributor's charges**

6.6.1 Your Distributor sets the prices payable for Excluded Services provided to you in respect of your Supply Address. We will pass through to you at cost your Distributor's charges for any Excluded Services provided in respect of your Supply Address.

6.6.2 We will also pass through to you at cost any other charges that your Distributor may make or levy upon us from time to time which relate to your Supply Address or the Supply of Energy to your Supply Address.

6.6.3 These charges will be shown as a separate item in your bill.

## **6.7 Additional Retail Charges and Agreed Damages Amount**

6.7.1 The amount of each Additional Retail Charge and each Agreed Damages Amount will either be:

- (a) specified in the Price List (together with an explanation as to when that charge or amount will apply); or
- (b) if no charge or amount is specified in Price List:
  - (i) in the case of an Additional Retail Charge, the charge which is reasonably determined by us at that time after taking into account the costs incurred by us in relation to providing the service the subject of that Additional Retail Charge; or
  - (ii) in the case of an Agreed Damages Amount, the amount which is reasonably determined by us at that time represents the costs incurred by us as a result of the relevant breach by the Customer.

6.7.2 For the avoidance of doubt, if a cost of the type referred to in clause 6.7.1 (or a portion of that cost) is being pass through to you under clause 6.6, we will not take that cost or the relevant portion of that cost into account when determining any Additional Retail Charge or Agreed Damages Amount under clause 6.7.1.

## **7. BILLING AND PAYMENTS**

### **7.1 Format and timing of bills**

7.1.1 We will issue a bill to the address or e-mail address nominated by you or a person authorised to act on your behalf.

7.1.2 We will bill you:

- (a) for electricity, at least once every three months; and/ or

(b) for gas, at least once every two months.

Unless one of the following paragraphs apply, this will be your Billing Period.

- 7.1.3 You can agree with us to have a Billing Period with a regular recurrent period which is less than the relevant period under clause 7.1.2. However, our agreement with you will not be effective unless you give your Consent to that change. As part of that agreement, we may also impose an Additional Retail Charge for making that different Billing Period available.
- 7.1.4 You can also agree with us to change your Billing Period for gas to at least once every three months. However, our agreement with you will not be effective unless you give your Consent to that change.
- 7.1.5 Our agreement to change your Billing Period will not terminate your current Energy Contract.
- 7.1.6 If your Energy Contract is for both gas and electricity, you will receive separate gas and electricity bills.
- 7.1.7 Each bill will identify the charges for Energy and will set out all other information required by Regulatory Requirements.
- 7.1.8 If we provide goods or services in addition to the sale and Supply of Energy, those items may be billed separately or as separate items on the bill. We will apply payments for those goods or services as you direct. If you do not direct how to apply payment, we will apply payment to charges related to the sale and Supply of Energy first and then to the additional goods or services.

## **7.2 Calculation of bills**

- 7.2.1 Your bill will be based on:
  - (a) the amount of Energy identified by us or your Distributor as having been delivered to your Supply Address during the applicable Billing Period;
  - (b) the amount payable for any other services (such as Excluded Services) supplied to you under your Energy Contract during the applicable Billing Period; and
  - (c) the balance of any amount payable under clause 6.6 or 6.7 in respect of the applicable Billing Period.
- 7.2.2 Subject to the Energy Retail Code, the amount of Energy will be derived from consecutive Meter Readings. Where Meter Readings are unavailable, it will be derived from estimates determined in accordance with Regulatory Requirements. We will use our Best Endeavours to ensure that your Meter is read at least once in any 12 month period.
- 7.2.3 If we obtain a Meter Reading after we have used an estimate to identify the amount of Energy that has been delivered to your Supply Address, we will make any appropriate adjustment to your next bill.
- 7.2.4 If you consumed Energy from us at another supply address and you vacated that supply address, we may include the amount payable for Energy consumed at the vacated supply address in our bill for Energy consumed at your Supply Address.

## **7.3 Further information**

- 7.3.1 If you would like further information concerning a bill (such as information concerning the different fees and charges which make up the amount payable) please contact us.

## **7.4 Review of bills**

- 7.4.1 We will review your bill at your request, provided that you agree to pay the lower of:
- (a) the portion of the bill that you and we agree is not in dispute; or
  - (b) an amount equal to your average bill amount in the previous 12 months.
- 7.4.2 Our review of your bill will be in accordance with our Complaints and Dispute Resolution Process outlined in clause 11.
- 7.4.3 If our review shows the bill to be correct, you must pay the amount of the bill in full or request a Meter test under clause 7.5. If our review shows the bill to be incorrect, clause 7.7 will apply.

## **7.5 Meter testing**

- 7.5.1 If after the completion of the bill review process you require your Meter to be tested, we will refer you to the Distributor or Meter testing authority that will test the Meter at a charge for their services. You must pay us in advance the Meter Inspection Fee or Meter Testing Fee as applicable. We will give you a copy of the results of the test if the testing authority does not do so.
- 7.5.2 If the Meter is accurate, you will be responsible for paying the Meter Inspection Fee or Meter Testing Fee and the full amount of your bill.
- 7.5.3 If the Meter is defective and favours you by more than the amount allowable in the Metering Standards, you must pay the difference between the metered consumption and the calculated actual consumption, and we will reimburse any fee you are charged pursuant to clause 7.5.1.
- 7.5.4 If the Meter is defective and favours us by more than the amount allowable in the Metering Standards, we will reimburse the difference (if the account has been paid) between the metered consumption and the calculated actual consumption, and we will reimburse any fee you are charged pursuant to clause 7.5.1.

## **7.6 Bill adjustment**

- 7.6.1 If your bill covers a period other than your usual Billing Period, we will adjust any service charge and any Energy usage calculation on a pro-rata basis.

## **7.7 If there is an error in a bill**

- 7.7.1 If there are errors in your bill or if we are informed of errors in the amount of Energy delivered to your Supply Address, we will refund any amount overcharged or charge you the amount that you were undercharged on the next bill, subject to the remaining clauses of this clause 7.7.
- 7.7.2 If we have undercharged or failed to charge you for any reason, we can recover the amount undercharged from you subject to the following conditions:
- (a) Unless the Energy Retail Code states that we are permitted to do so (such as in the case of fraud) we can only recover the amount undercharged:
    - (i) if the undercharging results from a failure of our billing system, during the 9 months prior to the date on which we notify you that the undercharging has occurred; and

- (ii) otherwise, during the 12 months prior to the date on which we notify you that the undercharging has occurred.
- (b) We can either issue a special bill to you setting out the amount undercharged, or include the amount undercharged in your next bill.
- (c) In either case, we will list the amount as a separate item in that bill and include an explanation of the amount charged. We will not charge you any interest on that amount.
- (d) You can elect to pay that amount over the same period of time as it took to accumulate that amount.

7.7.3 If we have undercharged you as a result of:

- (a) your unlawful act; or
- (b) your failure to provide safe, convenient and unhindered access to your Supply Address and Meter, as required both by this Energy Contract and by the Energy Retail Code,

we may:

- (c) estimate your Energy usage for which you have not paid; and
- (d) bill you or take debt recovery action for the amount you have not paid.

7.7.4 If you were overcharged, and the amount of the overcharging exceeds the relevant limit prescribed by the Regulatory Requirements we will:

- (a) inform you of the overcharging within 10 Business Days of our becoming aware of the error; and
- (b) if you have already paid the overcharged amount, seek your instructions as to how you wish us to refund the amount of the overcharge, or credit the amount on your next bill if you do not give us other instructions.

If the amount of the overcharging is less than the relevant limit prescribed by the Regulatory Requirements, we will credit the amount of the overcharging to the next bill issued to you after we become aware of the overcharging.

7.7.5 We are not obliged to pay you interest for any overcharging.

## **7.8 Payments**

7.8.1 You are required to pay your bill by the date specified in the bill as the pay-by date. The pay-by date will be not less than 12 Business Days from the date the bill is posted.

7.8.2 During the Term of your Energy Contract, the available methods for paying each bill will be cheque, credit card, cash, direct debit or BPay®, or any other mandatory method of payment referred to in the Energy Retail Code.

7.8.3 If:

- (a) you pay by cheque, direct debit or credit card; and
- (b) the payment is dishonoured or reversed by your bank; and
- (c) if you are a Small Residential Customer, the payment is dishonoured or reversed by your bank due to your fault,

you must pay us the Dishonoured Payment Fee.

7.8.4 If you are a Small Business Customer pay a bill using a payment method that results in us incurring a merchant services fee (including payment by credit card) we may charge you a payment processing charge to recover the amount of the merchant services fee.

7.8.5 Discounts for eligible concession cards apply under your Energy Contract. On request, we will provide free of charge information on any concessions, rebates or grants that are available and their eligibility requirements.

### **7.9 If you have trouble paying**

7.9.1 You must notify us if you are experiencing difficulty in paying your bill or if you require payment assistance.

7.9.2 If you are a Small Residential Customer and you notify us or we believe that you are experiencing difficulty in paying your bill or that you require financial assistance, we will provide:

- (a) the option of negotiating an instalment plan (provided you are eligible for this);
- (b) information about, and referral to, government assistance programs such as the Utility Relief Grant Scheme where available; and
- (c) information about independent financial counselling services

and we will consider conducting an Energy efficiency field audit to address the difficulties you may have in paying bills.

7.9.3 If you are a Small Residential Customer, we will not commence legal proceedings for debt recovery until we have complied with the requirements set out in clause 7.9.2 or while you continue to make payments under a payment arrangement agreed with us.

7.9.4 In addition to our other obligations under this Energy Contract, if you are a Small Residential Customer, we will not disconnect your Supply Address for non-payment if your failure to pay arises through lack of sufficient income. This applies unless we have complied with the requirements of clauses 7.9.2 and 7.10 and the other requirements of the Energy Retail Code, including using our Best Endeavours to contact you in person or by telephone, and you have not accepted an instalment plan within five Business Days of our offer.

### **7.10 Instalment plans**

7.10.1 If you are a Small Residential Customer and you request one, or if we reasonably believe that you are having difficulty paying your bills, we will offer you the option of paying on an instalment plan, unless you have had an instalment plan cancelled in the previous 12 months due to non-payment and you do not provide reasonable assurance that you will comply with an instalment plan.

7.10.2 In offering an instalment plan we may, in consultation with you, develop and agree to an individual instalment plan, taking into account your circumstances, including your Energy usage and capacity to pay the full amount.

7.10.3 Any instalment plan we offer you will:

- (a) specify the period of the plan, the amount and number of instalments, and how the amount is calculated;
- (b) specify the amount of the instalments that will pay your arrears;
- (c) specify your estimated consumption during the period of the plan; and

- (d) provide for re-balancing where you are significantly in credit or debt at the end of the plan.

7.10.4 If you are a Small Business Customer, we will consider any reasonable request that you make for an instalment plan. If we and you agree to enter into an instalment plan, we may impose an Additional Retail Charge in consideration of our agreement to enter into that plan.

#### **7.11 Direct debit**

7.11.1 If we offer you the option of payment directly from your bank account, we will do so on terms consistent with the Code of Banking Practice, the Electronic Funds Transfer Code of Conduct in force and as amended from time to time and the Energy Retail Code. We will not alter the amount (which may include the full bill or an agreed instalment) and the frequency of the direct debits without your Consent.

#### **7.12 Shortened Collection Cycle**

7.12.1 We may place you on a shortened collection cycle in the circumstances set out in the Energy Retail Code.

#### **7.13 Refundable Advances**

7.13.1 If you are a Small Business Customer, we may ask you to provide a Refundable Advance in the circumstances permitted by the Energy Retail Code.

7.13.2 If you are a Small Residential Customer, subject to all applicable Regulatory Requirements, we may require you to provide a Refundable Advance before connection or reconnection of Supply of Energy. However:

- (a) the Refundable Advance:
  - (i) will be limited to the amount permitted by the Energy Retail Code at that time; and
  - (ii) will only be required if you still owe a gas or electricity retailer more than the prescribed amount; if you have used gas or electricity otherwise than in accordance with Regulatory Requirements in the past two years; if you are a new Customer and have refused to provide Acceptable Identification; or if we decide you have an unsatisfactory credit rating and you have refused an instalment plan.

7.13.3 We will pay interest on your Refundable Advance at the Bank Bill Rate, accruing daily and capitalised every 90 days until repaid.

7.13.4 We may use the Refundable Advance and accrued interest to offset any amount owed by you to us if you are disconnected for failure to pay and no longer have a right to be reconnected, or if you vacate your Supply Address, request disconnection or Transfer to another retailer.

7.13.5 If we use a Refundable Advance, we will provide you with an account of its use and will repay any balance to you within 10 Business Days. We will also repay the Refundable Advance and interest within 10 Business Days of your completing one year's payment (in the case of Small Residential Customers) or two years' payment (in the case of Small Business Customers) of bills by the pay-by date or on ceasing to take Supply at your Supply Address.

#### **7.14 Interest on overdue payments**

7.14.1 We will only charge you interest:

- (a) if the Regulatory Requirements allow us to; and
  - (b) in accordance with any limitations and restrictions imposed by the Regulatory Requirements.
- 7.14.2 Subject to clause 7.14.1, we may charge you interest on any amounts owing that:
- (a) are not paid by the pay-by date; and
  - (b) we have not agreed to defer, including through an instalment plan.
- 7.14.3 Any interest charged will accrue daily until the overdue amount is paid in full and will be charged at the lower of:
- (a) the Bank Bill Rate; and
  - (b) any maximum rate prescribed by Regulatory Requirements.

### **7.15 Debt collection procedures**

- 7.15.1 If you are a Small Residential Customer and you do not pay any bill by the pay-by date, we will not take any legal proceedings against you (including referring the non payment to a mercantile agent or debt collection agency) unless we have complied with the procedures set out in clause 7.9.2 and 7.10.
- 7.15.2 If we do refer your non payment to a mercantile agent or debt collection agency:
- (a) we will comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the *Trade Practices Act 1974*;
  - (b) we may charge you a Debt Collection Fee; and
  - (c) without limiting clause 8.2, we may also disclose information relating to your credit to a credit reporting agency or to other credit providers.

## **8 INFORMATION, PRIVACY AND COMMUNICATION**

### **8.1 Information we require from you**

- 8.1.1 Without limiting the other clauses of this Energy Contract, you must advise us promptly if there is any change in:
- (a) responsibility for paying your account;
  - (b) your contact details;
  - (c) the major purpose of using Energy at your Supply Address;
  - (d) access to the Meter; or
  - (e) the internal gas pipes, electrical wires or appliances which may affect the quality or safety of the Energy supplied under your Energy Contract.
- 8.1.2 You also authorise:
- (a) us to request from your Distributor(s) your Energy usage data for the 12 months preceding your last Meter Reading; and
  - (b) your Distributor(s) to release to us your Energy usage data for the 12 months preceding your last Meter Reading.

## **8.2 How we use and disclose Personal Information about you**

- 8.2.1 We are committed to protecting your privacy and handling all Personal Information in accordance with the *Privacy Act 1988* (Cth) and all other applicable Regulatory Requirements and laws.
- 8.2.2 In particular, we will comply with any conditions of our retail licence and with our own Privacy Policy (available at [www.agl.com.au](http://www.agl.com.au) or [www.powerdirect.com.au](http://www.powerdirect.com.au) as relevant) concerning the use or disclosure of Personal Information about you.
- 8.2.3 We need to collect Personal Information under this Energy Plan in order to sell Energy to you, to administer this Energy Contract and, if necessary, to Transfer your Supply Address to us from another retailer. You authorise us to use and disclose Personal Information for these purposes.
- 8.2.4 You also authorise us to exchange Personal Information about you with any company in the AGL Group, our agents, contractors, franchisees, and other organisations (such as distributors or organisations that process and distribute our contracts and bills) and for them to use Personal Information exchanged in this way for the purposes outlined above.
- 8.2.5 These acknowledgment are made for the purposes of the Privacy Act. It does not constitute an acknowledgment relevant to the application of the Consumer Credit (Victoria) Code.
- 8.2.6 You also authorise us to seek from, or give to:
- (a) credit reporting agencies;
  - (b) other credit providers;
  - (c) the Distributor or another retailer; or
  - (d) our agents, contractors and franchisees,
- such information about your credit worthiness, credit standing, credit history or credit capacity as credit providers are allowed to give or receive from each other or credit reporting agencies under the Privacy Act and other applicable Regulatory Requirements. This may include information that is needed by us to assess your application for credit or your credit worthiness, to notify other credit providers of a default by you, to monitor your credit arrangements with other credit providers and to collect any overdue payment.
- 8.2.7 In particular, you authorise us to seek a consumer credit report about you from a credit reporting agency to assess your application for consumer credit or to administer or manage your account (including the collection of overdue payments), or both. For this purpose, you agree that we may also provide a credit reporting agency with Personal Information about you (including information about any overdue payments owed by you) for which collection has commenced, cheques drawn that have been dishonoured more than once and details about when credit provided has been paid or discharged.
- 8.2.8 Your Energy Contract constitutes a contract for consumer credit. We may give credit information to a credit reporting agency for the purpose of obtaining a consumer credit report about you and/or allowing the credit reporting agency to create or maintain a credit information file containing information about you. This information may be given before, during or after the provision of credit to you. This information is limited to: your name and address; the fact that you have applied for credit under your Energy Contract; the fact that we provide credit to you; the existence of any loan repayments which are overdue by more than 60 days and for which debt collection action

has started; information that, in our opinion, you have committed a serious credit infringement; or information about cheques drawn by you for \$100 or more which have been dishonoured more than once.

### **8.3 Access to information**

8.3.1 Without limiting your rights under this clause, on request we will provide you with:

- (a) historical billing data for your Supply Address if available;
- (b) information about efficient Energy consumption; and
- (c) information on any concessions, rebates or grants that may be available and your eligibility requirements.

8.3.2 We will use our Best Endeavours to provide you with the historical billing data within 10 Business Days of your request.

8.3.3 We can impose an Additional Retail Charge for providing historical billing data if your request does not relate to a genuine complaint made by you and:

- (a) you ask for billing data which is more than 2 years old; or
- (b) you make more than one request in a 12 month period; or
- (c) we are no longer your retailer at the time of your request.

### **8.4 Means of communication**

8.4.1 Except where a particular method of communication is specified in your Energy Contract or any Regulatory Requirement:

- (a) any communication between us and you under your Energy Contract may be in writing, by telephone or by electronic means such as e-mail to an agreed address; and
- (b) any communication under your Energy Contract required to be in writing may be delivered by facsimile or any other electronic means capable of generating a delivery confirmation report.

### **8.5 Information we will provide to you**

8.5.1 You may request us to provide you with certain information or documents referred to in the Energy Retail Code. In particular, you can ask for a copy of our Customer Charter.

8.5.2 We will provide you with a copy of our Customer Charter within two Business Days of receiving your request. We will also provide you with a copy of our Customer Charter:

- (a) at the same time as or as soon as practicable after your Supply Address is connected;
- (b) at the same time as or as soon as practicable after you Transfer your Supply Address to us from another retailer; and
- (c) as soon as practicable after your Energy Contract commences.

8.5.3 In some circumstances we can ask you to pay an Additional Retail Charge for providing this information or these documents. We will not however charge you for providing a copy of our Customer Charter.

8.5.4 You can also inspect our Customer Charter free of charge at our website at [www.agl.com.au](http://www.agl.com.au) or [www.powerdirect.com.au](http://www.powerdirect.com.au) as relevant.

## **9 YOUR OBLIGATIONS IN USING ENERGY**

### **9.1 General obligations**

- 9.1.1 You must comply at your own cost with the requirements of any relevant Regulatory Requirements which are expressed to apply to Customers or to your Supply Address or otherwise relate to the sale or Supply of Energy to your Supply Address.
- 9.1.2 When requested, you must provide all reasonable assistance and co-operation to enable us to comply with the requirements of the Regulatory Requirements which are expressed to apply to us.

### **9.2 Unauthorised access**

- 9.2.1 If you obtain Energy from us otherwise than in accordance with the Regulatory Requirements, we may take action to disconnect Supply, estimate the usage for which you have not paid and take debt recovery action for the unpaid amount and any disconnection and reasonable legal costs.
- 9.2.2 If your actions result in damage to our (or the Distributor's) equipment, we (or the Distributor) may recover from you the costs of repair or replacement of that equipment together with reasonable investigation and legal costs and costs of disconnection.

### **9.3 Access to Supply Address**

- 9.3.1 You must give us, our agents and the Distributor(s) safe, convenient and unhindered access to your Supply Address for the following purposes:
- (a) to read or test the Meter;
  - (b) to connect or disconnect Supply;
  - (c) to inspect or test gas or electrical installations as appropriate; or
  - (d) to inspect, repair, test or maintain the Distribution System.

### **9.4 If you are not the owner of your Supply Address**

- 9.4.1 If you are not the owner of your Supply Address, you might not be able to fulfil some of your obligations under your Energy Contract. Therefore, we may require you to request that the owner fulfil those obligations on your behalf.

## **10 OUR RESPONSIBILITIES IN SUPPLYING ENERGY**

### **10.1 Force Majeure Event**

- 10.1.1 If a Force Majeure Event results in either party being in breach of your Energy Contract, the obligations of the affected party will be suspended for the duration of the Force Majeure Event, except any obligations to pay money.
- 10.1.2 The party affected by the Force Majeure Event must use its Best Endeavours to give the other party prompt notice and full details about the Force Majeure Event. They must also give an estimate of its likely duration, the obligations affected by it, the extent it affects those obligations and steps taken to minimise, overcome or remove those affects.
- 10.1.3 For the purposes of clause 10.1.2, and only if the Force Majeure event is widespread, our requirement to give you prompt notice is satisfied if we make

the necessary information available by way of providing a 24 hour telephone service within 30 minutes of being advised of the Force Majeure Event, or otherwise as soon as practicable.

- 10.1.4 The party affected by the Force Majeure Event must use its Best Endeavours to minimise, overcome or remove the Force Majeure Event as quickly as practicable. However, this does not require either of us to settle any industrial dispute.

## **10.2 Supply standards and interruptions**

- 10.2.1 As your retailer we do not control or operate the Distribution System which supplies Energy to your Supply Address. We also cannot control the quality, frequency and continuity of Supply of the Energy that we sell to you at your Supply Address.
- 10.2.2 Your Distributor may interrupt or reduce Supply for maintenance or repair, for installation of a new connection, in an Emergency, for health and safety reasons, due to any circumstances beyond our reasonable control or where otherwise permitted under the Regulatory Requirements or any deemed distribution contract under section 40A of the Electricity Industry Act or section 48 of the Gas Industry Act between you and your Distributor for your Supply Address. In this case we will provide a 24 hour telephone number so you can obtain details of the interruption and its expected duration.

## **11 COMPLAINTS AND DISPUTE RESOLUTION**

### **11.1 Your right to review**

- 11.1.1 You may make a complaint to us about any decision we have made in relation to our Supply of Energy to your Supply Address.

### **11.2 Complaints handling and dispute resolution procedure**

- 11.2.1 When we receive a complaint from you, we will deal with your complaint and try to resolve it as quickly as possible in accordance with our Complaints Handling and Dispute Resolution Procedure, which complies with Australian Standard 10002 and is outlined below.

### **11.3 Telephone complaint**

- 11.3.1 You may telephone us on the number set out on your bill or otherwise communicated to you, to notify us of any complaint in relation to our Supply of Energy to your Supply Address.
- 11.3.2 We will try to resolve your complaint through informal negotiations over the telephone.

### **11.4 Written complaint**

- 11.4.1 Where you are not satisfied with the way we have dealt with your complaint over the telephone, or where you prefer to write to us, you may write to us and formally notify us of your original complaint and your request for a review of your complaint.
- 11.4.2 On receipt of your written complaint and request for review, we will review your complaint and respond to you in writing within 28 days with our decision.

### **11.5 Referral to higher level**

11.5.1 Where you are not satisfied with the response received from your first point of contact (whether over the telephone or by written complaint), you may have the complaint reviewed at the higher level. This process elevates your complaint through to the appropriate manager, by telephone or in writing as you prefer.

## **11.6 Referral of complaint to the Ombudsman**

11.6.1 We are a member of the Energy and Water Ombudsman Victoria Scheme. If you are not satisfied with our review and written response to your complaint, you may contact the Energy and Water Ombudsman Victoria for further review.

## **11.7 Detailed review process available**

11.7.1 Please contact us if you would like further details or a copy of our Complaints Handling and Dispute Resolution Procedure.

# **12 GENERAL**

## **12.1 Our liability**

12.1.1 The Commonwealth Trade Practices Act 1974 and the Victorian Fair Trading Act 1999 automatically incorporate conditions, warranties and rights for your benefit and protection into your Energy Contract, if you are what those laws call a 'consumer'. If you are a consumer under those laws, your Energy Contract cannot lessen the benefits those laws give, except to the extent permitted by those laws.

12.1.2 To the extent permitted by those laws, we give no condition, warranty or undertaking, and we make no representation to you about the condition or suitability of any good or service provided under your Energy Contract, its quality, fitness or safety, other than those set out in your Energy Contract.

12.1.3 Where conditions, warranties or undertakings are implied by those laws and cannot be excluded, to the extent permitted by law, our liability for breach of these conditions, warranties or undertakings are (at our option) limited to:

- (a) providing equivalent goods or services provided under your Energy Contract to your Supply Address; or
- (b) paying you the cost of replacing the goods or services provided under your Energy Contract to your Supply Address, or acquiring equivalent goods or services.

12.1.4 Nothing in your Energy Contract varies or excludes in any way the operation of section 117 of the Electricity Industry Act, section 78 of the National Electricity Law, section 232 or 233 of the Gas Industry Act or section 33 of the Gas Safety Act 1997 (Vic).

12.1.5 You acknowledge that the quality and reliability of Energy Supply may be subject to events beyond our reasonable control.

## **12.2 GST**

- 12.2.1 The charges specified in the Tariffs, are inclusive of GST, unless otherwise specified. If the rate of GST changes after the date of your Energy Contract, we may adjust the amounts payable to reflect that change from the date the change is effective.
- 12.2.2 Where any amounts payable or other consideration provided in respect of supplies made under your Energy Contract ('Payments') are expressed to be exclusive of GST, the Payment for that Supply (or deemed Supply) will be increased by the amount necessary to ensure that the Payment net of GST is the same as it would have been prior to the imposition of GST.
- 12.2.3 Where any amount is payable to you or us as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, that amount will be reduced by the amount of any input tax credit available and, if a taxable Supply, will be increased by an additional amount equal to the GST payable in relation to the Supply.
- 12.2.4 Words defined in the A New Tax System (Goods and Services Tax) Act 1999 will have the same meaning when used in this clause 12.2.

## **12.3 Waiver and variation**

- 12.3.1 Except as otherwise provided in your Energy Contract, a right created under your Energy Contract may not be waived except in writing signed by the party granting the waiver.
- 12.3.2 Subject to clause 12.3.3, other than as required or permitted by law or the terms of your Energy Contract, any variation of your Energy Contract must be made in writing between the parties.
- 12.3.3 We may vary your Energy Contract at any time by publishing a variation under either, in the case of electricity, section 35 of the Electricity Industry Act and/or, in the case of gas, under section 42 of the Gas Industry Act in the Government Gazette.
- 12.3.4 Any such variation must be approved by the Commission before it is published and will operate (once that variation becomes effective under either section 35 of the Electricity Industry Act and/or section 42 of the Gas Industry Act as the case may be) to amend the terms of your Energy Contract so that those terms are the same as our then current published terms under either section 35 of the Electricity Industry Act and/or section 42 of the Gas Industry Act as the case may be.
- 12.3.5 We will also give you written notice of any variation in this Energy Contract as soon as practicable but in any event with your next bill after the variation takes effect.

## **12.4 Applicable law**

- 12.4.1 Your Energy Contract shall be governed by the laws of Victoria.
- 12.4.2 We and you submit to the non-exclusive jurisdiction of the courts of Victoria.

## **12.5 When can your Energy Contract be transferred?**

- 12.5.1 We may transfer or novate our rights and obligations under your Energy Contract for one or all types of Energy to another retailer at any time by notice to you if:
  - (a) that novation or assignment forms part of the transfer of all or a substantial part of our retail business to that other retailer; or

(b) you agree to that transfer or novation.

## 12.6 Entire Agreement

12.6.1 Subject to section 36 of the Electricity Industry Act, section 43 of the Gas Industry Act and the terms of the Energy Retail Code, your Energy Contract sets out your entire agreement with us in relation to the sale and Supply of Energy by us to you at your Supply Address and will replace any previous Energy contract we may have had with you concerning those issues as soon as your Energy Contract becomes effective as described in clause 3.1.

## 13 GLOSSARY OF TERMS

### 13.1 Definitions

In your Energy Contract unless the context otherwise requires:

**Acceptable Identification** means one or more of the following:

- (a) a driver's licence;
- (b) a current passport or other form of photographic identification;
- (c) a Pensioner Concession Card or current entitlement card issued by the Commonwealth of Australia; or
- (d) a birth certificate.

**Additional Retail Charge** means a charge relating to the sale of Energy (other than a charge based on your Applicable Tariff) which:

- (a) has been calculated in accordance with the requirements (if any) of the Energy Retail Code from time to time; and
- (b) the Energy Retail Code expressly permits us to impose at the relevant time.

**After Hours Reconnection Fee** means the amount that we may charge you from time to time for reconnection (which includes the Distributor's charges for reconnection) of the Supply of Energy to your Supply Address) when you contact us between the hours of 3.00 pm and 9.00 pm on the same Business Day as your request.

**AGL Group** means AGL Energy Limited (ABN 74 115 061 375) and its related bodies corporate (as that term is defined in the Corporations Act 2001) and for the avoidance of doubt, for the purposes of this Energy Contract includes any partnership where the partners are related bodies corporate of AGL Energy Limited.

**Agreed Damages Amount** means an amount which has been determined in accordance with clause 6.7 as being payable by you to us on account of the costs which we are likely to incur as a result of a particular breach of your obligations under this Energy Contract (for example, the Dishonoured Payment Fee or the Call-Out Fee).

**Applicable Tariff** means such of the Tariffs as apply to you at your Supply Address from time to time.

**Bank Bill Rate** means for a day:

- (a) the rate, expressed as a yield per cent per annum (rounded up to two decimal places if necessary) that is quoted as the average bid rate on the Reuters monitoring system page 'BBSY' (or any page that replaces that page) at about 10.30 am on that day, 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 at about 10.00am on that day for bank bills that have such a tenor.

**Best Endeavours** in relation to a person, means the person must act in good faith and do what is reasonably necessary in the circumstances.

**Billing Period** means the length of the Supply period covered by each bill, as set out in clause 7.1.2.

**Business Day** means a day other than a Saturday, a Sunday or a public holiday in Victoria.

**Call-Out Fee** means the amount that we may charge you from time to time for the costs we incurred if we (or the Distributor or another contractor or agent) have been called out to disconnect your Supply Address but due to the reason for the disconnection being remedied, a disconnection is no longer required.

**Complaints Handling and Dispute Resolution** is the procedure we have in place from time to time regarding any complaint you may make to us about your Energy Contract or the Supply of Energy to your Supply Address. This procedure complies with Australian Standard AS/ISO 10002.

**Code of Banking Practice** means the code of that name published by the Australian Bankers' Association.

**Consent** means explicit informed consent as defined in the Regulatory Requirements.

**Cooling-off Period** means the period during which you can terminate your Energy Contract without penalty as described in clause 3.2.1 of your Energy Contract.

**Customer** means a Small Residential Customer or a Small Business Customer.

**Customer Charter** means the document prepared by us including details of your and our rights and obligations under the Regulatory Requirements.

**Debt Collection Fee** means the amount that we may charge you from time to time for our costs incurred in sending debt collection personnel to your Supply Address if you do not pay your bill in full or make other arrangements with us by the pay-by-date. This fee may include:

- (a) an attendance (field visit collection) fee where debt collection personnel visit your Supply Address and there is no access or where you are not present, to the extent permitted by Regulatory Requirements; and/or
- (b) a field visit collection fee where you are present during a debt collection visit.

**Deemed Contract** means an Energy contract that is deemed to apply between us and a Small Residential Customer or a Small Business Customer in relation to a Supply Address under either section 39 of the Electricity Industry Act and/or section 46 of the Gas Industry Act or an Energy contract that is deemed to apply between us and a Small Residential Customer or a Small Business Customer under section 37 of the Electricity Industry Act and/or section 44 of the Gas Industry Act.

**Disconnection Fee** means the amount that we may charge you from time to time for our costs incurred for the disconnection of the Supply of gas or electricity to your Supply Address.

**Dishonoured Payment Fee** means an amount equal to the fees we incur for a dishonoured or reversed payment and our reasonable administration costs in relation to that dishonoured or reversed payment.

**Distribution System** means a network of pipes or wires, Meters and controls used to Supply Energy, or that a Distributor uses to transport Energy for sale to Customers.

**Distributor** means the person who is licensed to distribute, Supply or provide services by means of a Distribution System.

**Electronic Funds Transfer Code of Conduct** means the code of that name issued by the Australian Securities and Investments Commission.

**Electricity Industry Act** means the Electricity Industry Act 2000 (Victoria).

**Electricity Law** means the Electricity Industry Act, the regulations under the Electricity Industry Act and each other law, statute, regulation, proclamation, Order in Council, tariff, licence condition, code, guideline or standard in force from time to time in Victoria which governs the sale or the sale and Supply of electricity.

**Emergency** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages, or threatens to destroy or damage any property.

**Energy Contract** means a contract for the sale of Energy by us to a Customer at a Supply Address (other than a dual fuel contract) and in your case that contract will comprise these Terms (as amended from time to time in accordance with clause 12.3) and the category and rate of Tariffs applying to you from time to time (i.e. the Applicable Tariff for you and your Supply Address from time to time).

**Energy Retail Code** means the code of that name published by the Essential Services Commission from time to time.

**Excluded Services** means a service other than any network supply service provided by your Distributor in respect of your Supply Address (such as connection, disconnection, reconnection, special meter reads, service truck visits) and includes:

- (a) for electricity, services which are excluded from the price controls contained in the 2006 - 2010 Electricity Distribution Price Determination;
- (b) for gas, the ancillary reference services for which charges and terms are set by each of the gas distributors and approved by the Commission, and which include gas connection and metering services and which are published in each distributor's reference tariffs;
- (c) any other services for which a charge is imposed on us by a Distributor with respect to your Supply Address for connection of your Supply Address or the use of the Distributor's Distribution System; and
- (d) any other similar services for which fees or charges are paid by us with respect to your Supply Address.

**Fixed Term Contract** means an Energy contract the term of which continues for a fixed, certain or definite period including, in the case of a Deemed Contract, any fixed, certain or definite period under or contemplated by the Regulatory Requirements.

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

**Gas Industry Act** means the Gas Industry Act 2001 (Victoria).

**Gas Law** means the Gas Industry Act, the regulations under the Gas Industry Act, the Gas Distribution System Code, the Retail Rules, the Market System and Operation Rules and each other law, statute, regulation, proclamation, Order in

Council, tariff, licence condition, code, guideline or standard in force from time to time in Victoria which governs the sale or the sale and Supply of gas.

**Life Support Equipment** means any equipment that requires continuous supply of electricity for a medical condition that has been confirmed in writing by a doctor or hospital and includes oxygen concentrators, haemodialysis machines and polio respirators.

**Marketing Code** means the Code of Conduct for Marketing Retail Energy in Victoria issued by the Essential Services Commission from time to time.

**Meter** means an instrument that measures the quantity of gas or electricity passing through it and includes associated equipment attached to the instrument to control or regulate the flow of gas or electricity.

**Meter Inspection Fee** means the amount that you must pay us in advance from time to time for physically inspecting your Meter for faults at your Supply Address.

**Meter Reading** means:

- (a) figures or other information shown on a Meter register or instrument either read or collected directly or transmitted or transformed by electronic, radio, microwave, sonic or other means; or
- (b) the process of collecting figures or other information from a Meter either directly or through being transmitted or transformed by electronic, radio, microwave, sonic or other means.

**Meter Testing Fee** means the amount that you must pay us in advance from time to time for physically testing your Meter at your Supply Address.

**Metering Standards** means the Regulatory Requirements which:

- (a) regulate the basis for the installation of new Meters and the operation and maintenance of new and existing Meters at your Supply Address;
- (b) establish rights and obligations with respect to metered data; and
- (c) includes relevant or prescribed industry codes or standards.

**National Electricity Law** means the laws set out in the schedule to the National Electricity (South Australia) Act 1996 (SA) as in force from time to time under the National Electricity (Victoria) Act 1997 (Vic).

**NEMMCO** means the company responsible for management of the National Electricity Market, currently National Electricity Market Management Company Limited (ABN 94 072 010 327).

**Personal Information** means information or opinion about you from which your identity is apparent or can reasonably be ascertained.

**Price List** means the list which we publish from time to time on our website ([www.agl.com.au](http://www.agl.com.au) or [www.powerdirect.com.au](http://www.powerdirect.com.au) as relevant) which sets out our Tariffs and our other fees and charges.

**Privacy Act** means the Privacy Act 1988 (Cwlth).

**Reconnection Fee** means the amount that we may charge you from time to time for reconnection of the Supply of gas or electricity to your Supply Address (and which includes the Distributor's charges for reconnection) when you contact us:

- (a) before 3.00 pm on the same Business Day as your request; or

- (b) after 3.00 pm on a Business Day and we arrange for reconnection of your Supply Address on the next Business Day after your request, which we may vary from time to time.

**Refundable Advance** means an amount of money or other arrangement acceptable to a retailer as security against a Customer defaulting on a final bill.

**Regulatory Requirements** means the Electricity Law and the Gas Law.

**Responsible** will have the same meaning as is given to that term in the Energy Retail Code.

**Small Business Customer** means in respect of a Supply Address, a Customer:

- (a) who is a domestic or small business customer (as that term is defined in section 35 of the Electricity Industry Act and/or Section 42 of the Gas Industry Act (as applicable) at that Supply Address; and
- (b) who is not a Small Residential Customer.

**Small Residential Customer** means in respect of a Supply Address, a Customer:

- (a) who is a domestic or small business customer (as that term is defined in section 35 of the Electricity Industry Act and/or Section 42 of the Gas Industry Act (as applicable) at that Supply Address; and
- (b) who acquires Energy principally for personal, household or domestic use at that Supply Address. .

**Special Meter Reading Fee** means the amount that we may charge you from time to time for any Readings of your Meter that occur outside the scheduled Meter Reading timetable.

**Special Meter Reading** means a Meter Reading requested by you on a date outside of the planned Meter Reading schedule.

**Standing Offer** means an offer by us to Supply and sell Energy to a Small Residential Customer or a Small Business Customer at that Customer's Supply Address in accordance with either section 35 of the Electricity Industry Act or section 42 of the Gas Industry Act, or both, as the case may be.

**Standing Offer Contract** means the Energy contract which is created between us and a Small Residential Customer or a Small Business Customer when that Customer accepts our Standing Offer.

**Supply** means the delivery of Energy by a Distributor via its Distribution System to a Supply Address and the provision of any related services.

**Supply Address** means:

- (a) the address at which you purchase Energy from us where there is only one Supply Point or connection point at that address; or
- (b) where there is more than one Supply Point or connection point at that address, each Supply Point or connection point through which you purchase Energy.

**Supply Commencement Date** means the date described in clause 3.6 (as applicable) as the Supply Commencement Date.

**Supply Point** means the point where Energy leaves the Distribution System before being supplied to you, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied (which in the case of electricity will include the relevant market connection point under the National Electricity Rules).

**Tariffs** means the tariffs published by us from time to time under section 35 of the Electricity Industry Act for electricity, or section 42 of the Gas Industry Act for gas;

**Term** means the period commencing on the Supply Commencement Date and ending on the date your Energy Contract is terminated.

**Transfer** will have the same meaning as is given to that term in the Energy Retail Code and **Transferred** will have a corresponding meaning.

**Utility Relief Grant Scheme** provides one-off assistance for Small Residential Customers who are unable to pay their gas, electricity or water bills due to a temporary financial crisis.

**VENCorp** means the Victorian Energy Networks Corporation Pty Limited (ABN 63 010 390 253), being the transmission system operator established under the Gas Industry Act.

### **13.2 Interpretation**

In this Energy Contract, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Energy Contract;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) all references to 'include' or 'including' are non-exhaustive and do not imply any limitation;
- (e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporation and any governmental agency;
- (f) a reference to a clause, schedule, appendix or section is to a clause, schedule, appendix or section of this Energy Contract;
- (g) a reference to terms of an agreement is to all terms, conditions and provisions of the agreement;
- (h) a reference to any statute, regulation, proclamation, order in council, ordinance, by-law or rule, includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or rule varying, consolidating, re-enacting, extending or replacing them. A reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws or rules issued under that statute;
- (i) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (j) a reference to a person includes that person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and permitted assigns;
- (k) a reference to a person includes that person's officers, employees, contractors, agents or other representatives;
- (l) when capitalised, grammatical forms of a word or phrase defined in this Energy Contract have a corresponding meaning;
- (m) a period of time which:

- (i) dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (ii) commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (n) an event which is required under this Energy Contract to occur on or by a stipulated day which is not a Business Day may occur on or by the next Business Day.