



**Just sign here....**

**A review of Victorian retail energy contract terms and conditions**

**Consumer Action Law Centre  
Level 7, 459 Little Collins St  
Melbourne VIC 3000**

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**Acknowledgement**

Consumer Action would like to express its appreciation to the Consumer Utilities Advocacy Centre for funding this project.

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## About Consumer Action Law Centre

The Consumer Action Law Centre (CALC) is a campaign-focused consumer advocacy, litigation and policy organisation. Based in Melbourne, it was formed in 2006 by the merger of the Consumer Law Centre Victoria (CLCV) and the Consumer Credit Legal Service and is funded jointly by Victoria Legal Aid and Consumer Affairs Victoria.

As a community legal centre, Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. As well as working with consumers directly, Consumer Action provides legal assistance and professional training to community workers who advocate on behalf of consumers.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action is represented on a number of national and state-based regulators' consumer consultative committees, including the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission, the Australian Energy Regulator and the Essential Services Commission (Victoria) as well as a range of government, industry and community sector working groups, Ministerial roundtables, boards, consultative committees and roundtables.

Since September 2009, Consumer Action has also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

Consumer Action (and through its predecessor CLCV) has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. The CLCV sought funding for the commissioning of reports, research and analysis on utility regulation as early as 1993 and released several reports into energy and water regulation in the mid 1990s.<sup>1</sup> In mid-1999 the CLCV successfully sought funding to develop and deliver a key capacity building project, the Victorian Essential Services Consumer Advocacy Project (VESCAP), funded by the Myer Foundation, Reichstein Foundation and the Office of the Regulator-General (now the Essential Services Commission of Victoria), which commenced in August 1999. The VESCAP project identified and developed key consumer networks to contribute to energy debates in Victoria, informed those debates through a series of seminars, and developed a comprehensive Essential Services Resource Kit which was launched in June 2002 during the introduction of full retail contestability in Victoria's energy markets. The kit informed workers about the minimum standards frameworks for electricity and gas from a practical perspective and had sixteen sections, including on Marketing; Contracts for supply;

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<sup>1</sup> Consumer Law Centre Victoria, *An Analysis of the Protection of Consumers and Public Interest*, May 1995.

Benson, T (ed.), *Voices in the Market: Consumer Consultation and Advocacy in an Era of Competition*, Consumer Law Centre, October 1995.

Walker, D. *Consumer Benchmarks for Energy and Water: A Consumer Perspective of Regulation and the Service Industry*, Public Utilities Reform Project, Consumer Law Centre, November 1996.

Refundable advances; Concessions; Payment options; Connection and Disconnection; Transferring; and Managing consumption.

Regulation and policy development relating to energy markets was becoming increasingly national, so since June 2003 Consumer Action (formerly CLCV) has received funding for national energy advocacy from the Consumer Advocacy Panel (formerly the National Electricity Code Administrator Advocacy Panel). Over this time we have provided key consumer input into important national and Victorian energy regulatory processes for consumers, including the current Victorian smart meter rollout and the national smart meter program, initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices, electricity distribution pricing and the transition to national non-price retail regulation via the national energy customer framework.

**Disclaimer:**

The views and interpretations expressed in this paper are those of the Consumer Action Law Centre and do not represent the views of the Consumer Utilities Advocacy Centre Ltd.

## List of abbreviations

ACCC - Australian Consumer and Competition Commission

ACL - Australian Consumer Law

AER - Australian Energy Regulator

CAV – Consumer Affairs Victoria

EIA – *Electricity Industry Act 2000* (Vic)

ERC – Energy Retail Code

ESCV – Essential Services Commission of Victoria

FTA – *Fair Trading Act 1999* (Vic)

GIA – *Gas Industry Act 2001* (Vic)

TPA – *Trade Practices Act 1974* (Cth)

For the sake of brevity, ‘terms and conditions’ may be referred to as simply ‘terms’ or, in the comparative tables, as ‘T&C’.

## Executive Summary

Consumer Action Law Centre (Consumer Action) received funding from the Consumer Utilities Advocacy Centre in 2008 to conduct a review of energy contract terms and conditions of the energy retailers in the Victorian energy market at that time.

The project was to look at and assess a consumer's protections under the contracts (based on the retailer's compliance with the relevant regulatory instruments) and determine whether retailer's were proactively ensuring consumers were aware of their rights and obligations.

While one of the biggest obstacles was to gain access to a complete contract without entering into one, of the energy retail contracts reviewed for the purposes of this report, our overall finding was that the contracts were, for the most part, largely in compliance with the regulatory requirements, in terms of their obligations.

We highlight however, that there were several instances where the retailers' contracts, whether intentionally or unintentionally, obfuscated the terms relating to consumer rights, omitted or attempted to subvert the requirements or, quite simply, were badly drafted.

Subsequently there is a need for an increased focus on developing much more clearly drafted energy retail contracts for consumers, with potentially, elements of standardisation to ensure clarity and comparability. We note that there is increasing recognition amongst policy makers of the importance of clarity and comparability as a driver of competition<sup>2</sup>. This is a trend that would be well emulated in the energy market. Further, some concerns regarding breaches that we noted throughout the project also indicated that increased monitoring and enforcement of existing obligations relating to contract terms and conditions is needed.

With the increasing complexity of the energy market in Victoria, due to new developments such as the introduction of smart meters, changes to the way energy is used and monitored, and the imminent introduction of load control products and, importantly, time of use pricing options, consumers will require a higher level of information and understanding of their rights.

Our report recommendations, summarised below, may go some way to achieving this.

### Summary of recommendations

**Recommendation 1:** Retailers should be obliged to provide complete copies of their contracts to interested consumers, on request, prior to signing.

**Recommendation 2:** That energy regulators consult with Commonwealth Treasury and other relevant agencies regarding their work on simplified disclosure.

**Recommendation 3:** Retailers must produce a short form, meaningful, disclosure document around key contract terms.

**Recommendation 4:** Since all market energy contracts are obliged to address the matters raised in the ERC, their contracts should also be structured to reflect the ERC's structure, to

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<sup>2</sup> See for example, the Commonwealth Treasury Financial Services Working Group on simplified disclosure.

facilitate comparison. This could be achieved by introducing more highly standardised contracts. These would also be easier to compare and to identify any deviations or discrepancies.

**Recommendation 5:** Retail energy contracts should be required either to address all matters in the ERC or to specifically include clauses referring consumers to the ERC on matters not separately covered by their contract.

**Recommendation 6:** Further to recommendation 5, retailers should be required to include information about how a disputed bill will be dealt with in their contract terms.

**Recommendation 7:** The ESCV should review retailer compliance with their obligations regarding credit assessment and refundable advances.

**Recommendation 8:** A standard format for information about rights and obligations relating to dealing with payment difficulties should be developed for inclusion in retail energy contracts.

**Recommendation 9:** The ESCV should review and enforce retailer compliance with their obligations regarding limitation of liability and indemnity clauses under the ERC.

CAV should review and enforce retailer compliance with their obligations with their obligations regarding limitation of liability and indemnity clauses under the ACL.

**Recommendation 10:** Retailers should not be permitted to roll over fixed term contracts into new fixed term contracts without obtaining the customer's active and explicit informed consent to do so. Such terms should also be reviewed for compliance with the unfair contract terms law.

**Recommendation 11:** On a contract, retailers should provide, to the greatest extent possible, some indication of how tariffs might change in the future, including a commitment to notifying a customer of a variation before the tariff actually changes and an option to exit the contract without penalty.

## Introduction

In Victoria, the supply of retail electricity and gas has been exposed to, at least theoretical, competition since 1994. Regulatory and structural reform developed over that time, including the corporatisation and subsequent sale and privatisation of previously state owned energy businesses, culminating in the introduction of full retail market competition (consumer choice of retailer) in 2002, and retail price deregulation in 2009. These changes were driven by expectations that they would make the market competitive and the resultant finding in 2007 by the Australian Energy Market Commission that there was *effective* competition. This was also founded on the belief that a competitive market would benefit consumers 'through more cost-reflective prices, improved product and service quality and innovation'.<sup>3</sup> There is significant debate regarding the extent to which these benefits have been delivered in fact, however an analysis of these arguments is beyond the scope of this report.

Nevertheless what is clear is that Victorian consumers are regularly entering into new contracts for energy services - "switching" retailer. There remain questions about the extent to which this is due to consumers actively making the decision to shop around and choose a new deal, or to the direct, door-to-door marketing approach of energy retailers. Marketing practices, while not a focus of this report, do appear to contribute to many of the issues consumers face in entering into an energy retail contract, which are discussed very briefly in this report. However, the core issues of focus here are the content and construct of the contracts and whether retailers are abiding by their regulatory responsibilities, and effectively communicating with consumers in relation to their contractual rights and obligations.

Energy contracts for consumers are often complex and comprise several documents, such as terms and conditions and an offer summary, and at times even a Customer Charter. The detail of the contract is often drafted in legal terms and consumers may find it difficult to make sense of their rights and obligations. This in itself can create a barrier to accessing affordable energy, which raises a significant concern given energy is an essential service, with consumers needing it to support their basic services for living, for example heating, cooling, lighting and cooking.

Over the period from end 2008 to mid 2010, when the analysis for this report was conducted, there have been significant regulatory changes in relation to contract terms and conditions and these combine with changes within the energy market. This report attempts to identify how energy retail businesses are responding to these changes through their contracts with consumers and whether these changes are enabling consumers to better participate in and benefit from a competitive energy market now, and whether they will be sufficiently able to in the very near future.

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<sup>3</sup> AEMC (2007), Review of Effectiveness of Competition in Gas and Electricity Retail Markets - Issues Paper, Sydney: AEMC, at p.9.

## Methodology

The contract analysis took place across a period from the end of 2008 to mid 2010. Over the duration of this project the regulatory framework and the energy market has changed significantly.

In 2008, the report was designed to assess the contract terms and conditions of all energy retailers operating within the Victorian energy market. Over a period of 18 months. however, additional energy retailers have entered the market, been acquired, changed their name or become insolvent.

Further, the regulation of contract terms and conditions has been reformed and as of 1 July 2010, the part of the new Australian Consumer Law introducing a single, national unfair contract terms law has been in force (passed as the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*), to be applied in the same way in each state and territory. Victoria amended its pre-existing unfair contract terms law (Part 2B of the *Fair Trading Act 1999 (Vic)*) as of 1 July 2010, to mirror these changes, and from 1 January 2011 it has adopted the full new set of obligations under the Australian Consumer Law.

Between November and December 2008, we obtained market contracts from the 13 energy retailers who, at that time, were offering gas and/or electricity services to residential consumers in Victoria.

Below are the retailers who were offering energy services:

### **Electricity**

AGL  
Australian Power & Gas  
Click Energy  
Country Energy  
Energy Australia  
Jackgreen Energy<sup>4</sup>  
Neighbourhood Energy  
Origin Energy  
Powerdirect  
Red Energy  
Simply Energy  
TRUenergy  
Victoria Electricity (from mid 2010 - Lumo Energy).

### **Gas**

AGL  
Australian Power & Gas  
Origin Energy  
Red Energy  
Simply Energy  
TRUenergy  
Victoria Electricity

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<sup>4</sup> Jackgreen became insolvent in December 2009.

At least one complete contract was obtained from each retailer. Where a number of contracts were on offer, additional contract-specific terms were obtained, as each of these retailers had a 'general' terms and conditions document, which formed the bulk of the terms of each contract. Variations between contracts offered by any one retailer were often minimal in quantitative terms; in most cases, differences were limited to the type or extent of incentive on offer.

The contracts used in this review (the 'reviewed contracts') were evaluated against all applicable legislation, codes and guidelines as were in force between November-December 2008.<sup>5</sup>

The reviewed contracts were assessed to measure their compliance with the following legislation:

- *Fair Trading Act 1999* (Vic)<sup>6</sup>
- *Trade Practices Act 1974* (Cth)
- *Electricity Industry Act 2000* (Vic)
- *Gas Industry Act 2001* (Vic)

In addition, all retail energy contracts were assessed against the following mandatory codes and guidelines produced by the Essential Services Commission of Victoria under primary legislation, noting that within the assessment period, these too have undergone some changes:

- the Energy Retail Code (ERC)
- the Code of Conduct for Marketing Retail Energy in Victoria
- Guideline No. 01: Gas industry - credit assessment
- Guideline no. 04: Electricity industry - credit assessment
- Guideline No. 10: Confidentiality and informed consent - electricity and gas
- Guideline No. 19: Energy product disclosure (issue 2)

Additionally, the relevant requirements of the gas and electricity retail licences were examined.

Some of the guidelines refer to obligations on retailers that do not need to form part of the contract with the consumer; for example, obligations relating to the credit assessment of potential customers. However, to the extent that contracts do include terms that refer to such obligations, they are assessed in accordance with the appropriate guidelines.

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<sup>5</sup> In this respect it should be noted that the Victorian Energy Retail Code (the major source of obligations on retailers for the purposes of this study) was updated in 2009 and again in 2010 and early 2011. Note that changes in these reviews are not relevant to this report. Thus the previous version of the Energy Retail Code (ERC) is referred to in this review.

<sup>6</sup> Note that reviewed contracts for the 2010 period, under the Fair Trading Act 1999 (Vic), acknowledge the introduced amendments of section 2B, as introduced 1 July 2010.

While a primary purpose of this review is to assess contract clauses against these regulations, there is no systematic assessment of the performance of retailers under their contracts. Neither is there detailed analysis of customer charters or Product Information Statements except where these form part of the contract. Also, as the reviewed contracts were not obtained via door-to-door sales or telephone marketing, there was also no assessment of the obligations on retailers in these circumstances.

We do note however, that as retailers are not obliged to provide the full terms of a contract to potential customers before they enter into it,<sup>7</sup> several were reluctant to do so on request.<sup>8</sup> On this basis it was often necessary to 'sign up' to contracts in order to obtain all the terms for comparison. Such contracts were then cancelled within the 10-day cooling off period.<sup>9</sup> All contracts for the 2008 period were entered into for one East Melbourne residential address. Some were entered into online, while others were agreed to over the phone.

It is important also to note that the contracts reviewed, and any comments made within this report, relate to those contracts that were available at the particular times outlined. Contracts available from those retailers, in the time since then, are likely to have changed.

While it is unusual to make recommendations in the methodology section of a report, in this case our experience has led us to recommend that retailers should be specifically required to provide a copy of the contract relating to an available offer to consumers on request, not merely after a consumer signs the contract. Otherwise, it is difficult to see how a consumer wishing to review a deal before entering into it can make an informed decision. The fact that retailers' standard form contracts are obliged to comply with the ERC, and that consumers benefit from the obligation on retailers to publish Product Information Statements, offer summaries and customer charters, should not preclude retailers from this.

**Recommendation 1:** Retailers should be obliged to provide complete copies of their contracts to interested consumers, on request, prior to signing.

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<sup>7</sup> Except in the case of contracts formed by marketing representatives in person off the business premises of the retailer: *Code of Conduct for Marketing Retail Energy in Victoria* cl 6.3.

<sup>8</sup> See the notes in the retailer tables.

<sup>9</sup> Contracts entered into and then cancelled were from AGL, Australian Power & Gas, Click Energy, Country Energy, Energy Australia, Neighbourhood Energy, Origin Energy, Red Energy, Simply Energy, Victoria Electricity

## Regulation of Retail Energy Contracts in Victoria

Energy is an essential service and all households consume energy. Since October 2002, the entire retail energy market in Victoria has been open to competition, meaning that consumers can now choose their energy retailer.

As is the case with almost all consumer contracts in the modern marketplace, energy market contracts are standard form contracts. This means the retailer drafts the contracts and consumers have little, if any, ability to negotiate the contract terms (other than deciding whether to buy the actual product or service in question and what upfront price to pay).

There are significant advantages to such contracts for suppliers and consumers generally, such as a reduction in the transaction costs needed to produce individualised contracts that would otherwise be passed on to the consumer.<sup>10</sup> There are also specific benefits for consumers, in that they are not obliged to consider the many and complex terms associated with the supply of all their goods and services (many of which contain jargon particular to an industry, such as is the case with energy). But standard form contracts can also limit the ability for consumers to gain access to a fair balance of rights and obligations, particularly if the contract contains terms and conditions a consumer would not have agreed to had they been aware of them, or fully understood them.

The regulatory framework for energy demonstrates an intention on the part of regulators to protect consumers by:

- providing that certain standards must be met in all contracts; and
- assisting consumers to understand the terms of the contracts they sign.

The following discussion explains how the applicable regulations govern market energy contracts in Victoria from 2008 – 2010.

### Electricity Industry Act 2000 and the Gas Industry Act 2001

The Victorian electricity and gas industries are regulated under the *Electricity Industry Act 2000* (EIA) and the *Gas Industry Act 2001* (GIA) - the primary legislation in this area - and these outline the relevant contractual arrangements a retailer must undertake with a customer, including the contract types. The most basic contract type is a standing offer contract. Under s35 of the EIA, a standing offer is defined as an offer made to a domestic or small business customer, and the conditions under which the sale of electricity apply, including the tariffs as published in the Government Gazette and any variations to those tariffs. In other words, a standing offer contract is the contract a customer has with their retailer if they have not entered the marketplace by choosing an energy deal. As a safety net contract, the terms and conditions are officially published and must comply with a set of regulatory obligations.

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<sup>10</sup> Rhonda Smith, 'Unfair contract terms: Costs and benefits of intervention on relation to unfair contract terms' in Consumer Action Law Centre, *The Consumer Protection Provisions of the Trade Practices Act 1974: Keeping Australia up to Date*, (2008) 212, 213.

Specific provisions under these Acts allocate regulatory responsibility to the Essential Services Commission of Victoria (ESCV). The ESCV is able to make licence conditions, codes and guidelines that must be complied with by energy retailers.

### **Energy Retail Code (ERC)**

The Energy Retail Code (ERC) is produced by the Essential Services Commission of Victoria (ESCV), whose role it is under the Essential Services Act 2001 to have regard to competition and efficiency, regulation and consumer interests, including those of vulnerable consumers. In relation to what must be included in energy contracts, it contains provisions relating to billing, credit management, disconnection, liability, termination and general matters.

The provisions of the ERC are made pursuant to s 43 of the GIA and s 36 of the EIA. All of the terms and conditions determined by the ESCV and set out in Parts 1 to 9 (inclusive) of the ERC are provided for in retailers' electricity and gas retail licences.

In short, the ERC sets a series of minimum requirements for consumer energy contract terms and conditions.

Standing offer contracts must comply with all provisions of the ERC. 32% of Victorian consumers remain on a standing offer contract<sup>11</sup> however, the more predominant form of contract today is called a market contract.

A market contract is a contract agreed to be entered into by a consumer and a retailer. Thus, it can involve variations to the terms and conditions that must be adhered to under a standing offer contract, although a market contract cannot deviate from all provisions of the ERC, only those in the ERC identified by an asterisk<sup>12</sup> and listed in Appendix 1 of the ERC. 68% of Victorian consumers are now on a market offer of some type.<sup>13</sup> In practice, the gazetted standard contract of each retailer effectively sets the price to beat, and market contracts typically represent a discount on this. Further, the market contract represents a deviation from the terms and conditions of the standing offer on issues such as:

- under 4.2 (m), which outlines the need to provide a summary of payment methods and payment arrangement options;
- under 5.3 bill smoothing arrangements, for example, an arrangement whereby each bill in a 12 month period is calculated as the same amount, based on an estimated expenditure of that customer, with rebalancing taking place following a meter read at the end of 12 months;

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<sup>11</sup> Wallis Consulting 2009, Essential Services Commission - Communications Effectiveness Final Report, pg 11

<sup>12</sup> Clause 4.2(m), Clause 4.5(a), Clause 5.3, Clause 5.4(a), Clause 7.1(b), Clause 7.2(a), Clause 7.3, Clause 24.1(b).

<sup>13</sup> Wallis Consulting 2009, Essential Services Commission - Communications Effectiveness Final Report, pg 11

- under 5.4 (a) adjustments to bills, such as when a meter is read following a previous estimated read, and the provision that the adjustment must be in accordance with an actual meter reading or updated data;
- under 7.1 regarding when payment is due (ie market contracts are exempt from the requirements that the pay by date on the initial bill must not be less than 12 *business days* from the date of dispatch); and
- under 7.2 payment methods, whereby a market contract is exempt from requiring a retailer to accept payment from a customer in person at a network of agencies or payment outlets; by mail; and by direct debit arrangement.

### **General consumer protection laws - Fair Trading Act and Trade Practices Act (now Australian Consumer Law)**

Consumer protections that existed in the Federal Trade Practices Act and the Victorian Fair Trading Act (now both largely replaced with the provisions of the Australian Consumer Law) that relate specifically to retail energy marketing include:

- protections against unfair practices such as misleading and deceptive conduct, unconscionable conduct and false representations;
- product safety and information;
- implied conditions and warranties (now consumer guarantees) in consumer transactions;
- protections in respect of off-business premises sales (now protections relating to unsolicited consumer agreements); and
- protections against unfair contract terms.

While this list does not represent every consumer protection that exists in these Acts, it provides a good overview of general consumer protections that apply to the provision of the sale of energy (and, of course, other goods and services).

For the purposes of this report, as most relevant, we refer to the protections against unfair contract terms.

In 2008 Victoria was the only jurisdiction to legislate with respect to unfair terms in consumer contracts. The relevant provisions were contained in Part 2B of the Fair Trading Act. The Victorian provisions made void terms in consumer contracts that were 'unfair' as defined in that Act.

A term in a consumer contract was considered unfair if, contrary to the requirements of good faith and in all the circumstances, it caused a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.

The new Australian Consumer Law provisions also provide that an unfair term in a consumer contract will be void. While the principles behind the national version of the law and the

definition of an unfair term are similar to the 2008 Victorian provisions, they are not identical.<sup>14</sup>

Note that particular terms of energy contracts may also be void to the extent they are inconsistent with the Victorian energy specific laws - terms that are inconsistent with the ERC are void,<sup>15</sup> and where they have been found to be so they will be deemed to be replaced by the appropriate term of the ERC.<sup>16</sup> Of course, in practice, this only occurs where a non-compliant clause is the subject of a complaint.

#### *Non-contact sales agreements*

All the reviewed contracts entered into were non-contact sales agreements under the then provisions of the FTA, as they were entered into via the internet or over the telephone with a voice recording to verify entry into the contract.

Under the FTA, the following information must be provided before such an agreement is entered into:

- (a) the total consideration to be paid or provided by the purchaser under the agreement;
- (b) any postal or delivery charges to be paid by the purchaser;
- (c) any rights the purchaser has under the agreement to cancel the agreement and how those rights may be exercised;
- (d) the full name of the supplier and either the full business address of the supplier or the telephone number of the supplier.

This information must also appear in any agreement subsequently made.<sup>17</sup>

**Finding:** All retailers dealt with for this report complied with this requirement.

The new ACL contains provisions related to unsolicited consumer agreements that provide for similar obligations.

#### *Clarity in consumer contracts - s 163 FTA*

Consumer contracts are subject to two competing forces that may prevent their easy comprehension by consumers. On the one hand, consumer protection legislation obliges contracts to incorporate certain mandatory terms. On the other hand, drafters will always seek to maximise the interests of their corporate clients. This means that, where a law covers a certain matter, consumer contracts are drafted to provide the greatest scope possible; a retailer's scope to act is often said to be 'to the maximum extent permitted by

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<sup>14</sup> ACL s24: A term of a consumer contract is unfair if: (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

<sup>15</sup> *Electricity Industry Act 2000* (Vic) s 36(1)(b); *Gas Industry Act 2001* (Vic) s 43(1)(b). This is a condition of the licences issued to retailers: see <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Licences/> at 12 January 2009.

<sup>16</sup> *Electricity Industry Act 2000* (Vic) s 36(2); *Gas Industry Act 2001* (Vic) s 43(2).

<sup>17</sup> *Fair Trading Act 1999* (Vic) s 69.

law', a phrase which has little meaning for non-lawyers. There is also little incentive to make certain terms that are of importance to consumers (such as 'hidden' charges) very apparent, or to avoid obscurantism generally. (This is discussed further below in analysing the reviewed contracts.)

Section 163 of the then Victorian *Fair Trading Act* attempted to address this issue by requiring all consumer contracts to be easily legible, use a minimum 10 point font, and be clearly expressed. The previous CAV Guidelines on Unfair Contract Terms also covered s 163 and gave some examples of matters covered by this section:

- use of a font or typeface that is difficult to read;
- excessively long sentences, clauses or paragraphs;
- important terms being 'buried' in fine print or schedules;
- use of technical terms, jargon, legal, or other forms of language other than plain English;
- extensive cross-referencing, especially to documents not provided on the spot;
- splitting up the agreement into separate documents;
- failure to define key terms, eg references to unspecified fees or charges; and
- too many defined terms, especially the use of technical definitions of commonly used (and untechnical) words.

Instances of the each of the above were found in this study.

While all of the contracts were legible and printed in an appropriately sized font (with the exception of Powerdirect's charter), many were not in any real sense 'clearly expressed'.

All contracts differed greatly in terms of their presentation, making comparison difficult for the consumer. While it might be argued that the variety of presentation styles is the necessary result of market competition, often referred to as 'innovation', it would be much less confusing for consumers seeking to compare contracts for retailers to present their contracts in similar layouts; for example, following the structure of the ERC.

There is increasing recognition amongst policy makers of the importance of clarity and comparability as a driver of competition<sup>18</sup>. This is a trend that would be well emulated in the energy market.

**Recommendation 2:** That energy regulators consult with Commonwealth Treasury and other relevant agencies regarding their work on simplified disclosure.

The new ACL does not contain a provision directly equivalent to former FTA s 163. However, the national unfair contract terms law does require that the extent to which a term is transparent must be taken into account in determining whether the term is unfair. A term is transparent if it is expressed in reasonably plain language; legible; presented clearly; and readily available to any party affected by the term (s 24).

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<sup>18</sup> See for example, the Commonwealth Treasury Financial Services Working Group on simplified disclosure.

## Contract structure

The terms of the reviewed contracts were generally spread across several documents including, for example, an offer summary that contained the variable terms of the contract (mainly price and other incentives), a customer charter, and a standard terms document. Sometimes documents stated that the terms of one document prevailed over another to the extent of any inconsistency.

### *Offer Summary*

Under Guideline 19, a retailer must provide an offer summary to a customer on request and/or when providing the customer the terms or information of any new retail contract, including when engaging in any marketing activity.

The offer summary is a statement in which the retailer discloses information such as; fees and charges, termination fees, the term of the contract, termination notification, rebates, non-price incentives and differences in tariffs. The guideline is clear that the offer summary must be a separate document to the full contractual terms and conditions.

### *Customer Charter*

The ERC requires retailers to provide a copy of their charter to customers as soon as practicable after the retailer begins service or on request.<sup>19</sup> Although the ESCV has stated that charters are not legally binding documents,<sup>20</sup> retailers have often expressly incorporated charters into their contracts with consumers.

Our review found that some retailers did not make it clear to consumers that their customer charter was (or was not) incorporated into their formal contract. It should be clear to consumers which documents that they receive actually form part of their contract, as opposed to those which are simply promotional material or a customer charter.

An example of confusing terms on this issue is Red Energy's Product and Pricing Schedule, which provided:

The terms and conditions of your supply and sale agreement are contained in our Customer Charter and in these Additional Terms and Conditions (which include your Product and Pricing Schedule). Where the terms and conditions in these Additional Terms and Conditions are different from those in the Customer Charter you agree to vary the Customer Charter as set out in these Additional Terms and Conditions.

An example of a preferable approach was Neighbourhood Energy's contract, the complete terms of which were contained in two documents; an Account Confirmation letter (detailing applicable tariffs and other terms of significance) and 'Standard Terms and Conditions' in a brochure-length format. Neighbourhood Energy also provided a charter, which dealt with the matters in the ERC relatively comprehensively.

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<sup>19</sup> ERC cl 26.2.

<sup>20</sup> In an information brochure, *A Guide to Your Retailer's Customer Charter*, available from <<http://www.esc.vic.gov.au/public/For+Consumers/Energy/>> at 20 January 2009.

The ACL provides that the extent to which a term is transparent is relevant in determining whether a term is unfair, and the consumer regulators have noted that putting some terms into separate documents such as a schedule may well make it more likely that terms will be considered unfair.<sup>21</sup>

**Finding:** We found retailers with contracts that arguably breached then s 163 FTA (that consumer contracts be easily legible, clearly expressed and in a minimum 10-point font):

AGL, Australian Power & Gas, Click Energy, Country Energy, Energy Australia, Neighbourhood Energy, Origin Energy, Powerdirect, Simply Energy, TRUenergy

CAV has also noted that, under the previous Victorian law, splitting up an agreement into separate documents could lead to a breach of s 163.<sup>22</sup> Details are contained in the ‘ERC referred to in lieu of terms’ and ‘documents containing terms of contract’ headings in the comparative table in **Appendix 1**.

That said, customer charter documents can be useful for reducing complexity by helping to explain the basic terms of the contract to consumers in plainer language.

**Findings:**

- ◆ Retailers with a document labelled a ‘charter’ (whether or not some or all of its terms form part of the contract): AGL, Australian Power & Gas, Click Energy, Neighbourhood Energy, Origin Energy, Powerdirect, Red Energy, Simply Energy, TRUenergy
- ◆ Retailers without: Country Energy, Energy Australia, Jackgreen, Victoria Electricity.

As with all consumer contracts, it is desirable that a balance be struck between the need to provide consumers with the information they need to make an informed decision, while not overwhelming the consumer with lengthy, detailed terms written in ‘legalese’. While the latter may be required to govern the operation of the contract, many are of little real significance to the consumer. If a consumer is provided with the full terms of a contract with significant terms buried within it, they are very unlikely to be made aware of their existence. This is arguably particularly the case with energy contracts, where consumers remain less familiar with the experience of choice of retailer than with other consumer contracts.

We suggest that best practice would be for a retailer to produce a short form meaningful disclosure document around key contract terms. Again, we note, there are significant developments of this type in other markets, see for example, discussions regarding key fact statements in insurance and credit markets.

*Entire agreement clauses and ‘awareness’ clauses*

Some energy contracts contained terms that claim the contract is the entire agreement between the parties. Others contained terms that informed a customer that they acknowledged a certain state of affairs to exist. For example, Australian Power & Gas’ Contract Terms & Conditions stated:

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<sup>21</sup> Australian Capital Territory Office of Regulatory Services, Australian Competition and Consumer Commission et al, *A guide to the unfair contract terms law*, 2010, p 11.

<sup>22</sup> CAV, *Preventing unfair terms in consumer credit contracts*, 2009, pp 4-5.

## 7. Your acknowledgement about marketing

By signing your Energy Offer you declare and acknowledge that you have been made aware of or received from us the information that we are required to give to you under the Marketing Code.

Such clauses have little successful legal effect. They appear to be an (ineffective) attempt to exclude certain representations (or misrepresentations) that might have been employed as incentives to enter into an agreement from being used in a challenge against the retailer. While they might not ultimately be of legal effect, however, the ordinary consumer is unlikely to know this and may believe the term does work to exclude prior discussions from relevance, making the term likely to be unfair. We suggest that such terms may well be void under the unfair contract terms laws.

**Recommendation 3:** Retailers must produce a short form, meaningful, disclosure document around key contract terms.

**Recommendation 4:** Since all market energy contracts are obliged to address the matters raised in the ERC, their contracts should also be structured to reflect the ERC's structure, to facilitate comparison. This could be achieved by introducing more highly standardised contracts. These would also be easier to compare and to identify any deviations or discrepancies.

## Matters covered by the Energy Retail Code (ERC)

An assessment of how reviewed contracts performed against the ERC was made by assessing terms and conditions within the retailer contracts.

### Catch-all terms

It is a condition of gas and electricity retailer licences that the terms and conditions of the retailer's contract with customers "expressly deal with each matter which is the subject of a term or condition of the Energy Retail Code." However, the Code also states that "If a term or condition of the Energy Retail Code is incorporated by reference into the contract, it is taken to be expressly dealt with".<sup>23</sup>

This requirement does not make it entirely clear what issues contract terms must actually cover, as it depends on whether the definition of a 'matter' raised in the ERC is a general topic (such as 'billing'), an issue raised by one of the 36 clauses of the ERC, or even one raised by one of the many sub-clauses.

Most retailers opted for the broadest definition, leaving their contracts without reference to major subject areas of the ERC and containing 'catch-all' terms that claim the regulations fill any gaps. For example, Neighbourhood Energy's contract contained no reference to its obligations under the ERC to customers who have difficulties paying their bills (nor to several other possible 'matters' raised in the ERC), but included this term:

Any relevant provision that is required to be included in the Contract by a regulatory requirement that is not expressly included is deemed to be incorporated as if it were a term of this Agreement. (Neighbourhood Energy Standard Terms and Conditions cl 17)

It also stated regulatory requirements prevailed over the contract terms to the extent of any inconsistency.

While this may seem a satisfactory solution, it requires consumers to be familiar with the ERC in order to fully comprehend their contracts. It may also be a breach of the then requirement under the FTA that contracts be clearly expressed (and today under the ACL would perhaps render the terms of the contract less transparent).

Of course, this does not necessarily mean that retailers such as Neighbourhood Energy would not observe their obligations (in this example, to provide assistance in cases of payment difficulties). But in practice it makes it difficult for consumers to understand what their rights and obligations under the contract are, and for them to question the interpretation of a term of their contract.

This is a problem for consumer protection and standard form contracts legislation generally. As regulations governing standard form contracts grow, contracts need to be drafted accordingly, and it becomes tempting for drafters to avoid the need for re-drafting and include a 'catch-all' term such as that above. However, it is too confusing for consumers to have to compare the ERC and their contract and understand the ERC (or any other law) as

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<sup>23</sup> Eg Energy Australia - Gas Retail Licence (issued October 2007) cl 8.1; Simply Energy - Gas Retail Licence (issued June 2008) cl 6.1.

prevailing to the extent of any inconsistency. The introduction of more standardised energy retail contracts might be worth considering to help address this problem by setting down more requirements for how contracts must be presented.

**Finding:**

- ◆ Contracts that do not refer to the ERC:

Country Energy, Jackgreen Energy,

- ◆ Contracts that do not expressly deal with significant clauses of the ERC or contain 'catch-all' clauses:

AGL, Click Energy, Neighbourhood Energy, Origin Energy, Powerdirect

Although it is beyond the scope of this review, it should also be noted that retailers are obliged in many cases to refer to guidelines in their customer charters and/or on their websites.<sup>24</sup> In the reviewed contracts, most did not in either case, and many websites that did link to guidelines referred to outdated versions.

**Recommendation 5:** Retail energy contracts should be required either to address all matters in the ERC or to specifically include clauses referring consumers to the ERC on matters not separately covered by their contract.

**Specific terms in contracts**

**Cancellation notices**

The Code of Conduct for Marketing Retail Energy in Victoria requires retailers to provide notice, advising customers of their right to cancel the energy contract within 10 business days of entering the contract. The notice must be accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract which may be used by the customer to cancel the contract.

**Finding:** With the exception of Australian Power & Gas, all retailers provided such a notice with details of the contract entered into. The Australian Power & Gas contract did contain a clause providing the contract could be cancelled within 10 business days, but it was not prominent and required consumers to provide written notice of the cancellation.

We note that a 'notice' is required to appear on the front page of a contact sales agreement or telephone marketing agreement in Victoria and, in the case of a door to door contact sales agreement, to be signed by the purchaser, under the then *Fair Trading Act 1999* (Vic) (Schedule 2), which clearly stated:

"Important notice to the purchaser you have a right to cancel this agreement within 10 days from and including –

- in the case of a contact sales agreement (for example, a door-to-door sale), the day you signed the agreement; or
- in the case of a telephone marketing agreement (that is, an agreement made over the telephone), the day you received the agreement document".

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<sup>24</sup> For example, cl 1.3 of the gas and electricity credit assessment guidelines.

While this obligation was not the study of this review, and therefore not captured as part of the process, it was an essential requirement of the FTA that retailers provide a clear form at the time of any marketing activity, which clearly outlined a consumer's rights to a cooling off period. We note that this obligation will continue in similar terms under the Australian Consumer Law (s 79).

### **Billing**

In certain circumstances retailers are permitted to base a customer's bill on an estimation of energy usage. A consumer's explicit informed consent is required if a retailer wishes to base a customer's bill on anything other than a reading of the meter.<sup>25</sup> Whether or not this happens, a retailer must use its best endeavours to base a customer's bill on a meter reading at least once every 12 months.<sup>26</sup>

The ESCV has noted that while estimated accounts are considered "a relatively inaccurate method of billing", 21 per cent of all electricity customers and 27 per cent of all gas customers received at least one estimated account in 2006-07.<sup>27</sup> This number increased over the period 2008-09.<sup>28</sup> While this dropped to 22 per cent for the period 2009-2010 this means the use of estimated accounts remains an issue of significance to more than 1 in 5 consumers<sup>29</sup> in a market where electricity prices are increasing and consumers need to be more aware of their energy consumption and subsequent energy costs.

Customers are obliged under the ERC to provide safe and unhindered access to their meters.<sup>30</sup> Retailers may disconnect a customer if their meter is not accessible for three consecutive bills, but must first leave a notice requesting access each time it is sought.<sup>31</sup>

The ESCV notes that meter access issues are a primary cause for customers receiving bills based on estimated reads.<sup>32</sup>

**Finding:** All reviewed contracts contained clauses dealing with estimated bills. All were compliant with the ERC.

### **Adjustment of a bill**

Clause 6 of the ERC deals with the procedural obligations of customers and retailers that apply when a bill is in dispute, how overcharging or undercharging is to be rectified and where the bill is incorrect (whether or not there was such a dispute).

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<sup>25</sup> *Guideline No. 10: Confidentiality and Informed Consent Electricity and Gas*, May 2002, cl 4.2.

<sup>26</sup> ERC cl 5.1.

<sup>27</sup> ESC, Energy Retailers Comparative Performance Report 2008-09, Summary of Findings, December 2009, 14

<sup>28</sup> ESC, Energy Retailers Comparative Performance Report 2008-09, Summary of Findings, December 2009, 14

<sup>29</sup> The functionality of smart meters should reduce the incidence of, or need for, estimated bills.

<sup>30</sup> ERC cl 25.

<sup>31</sup> ERC cl 13.3.

<sup>32</sup> Essential Services Commission, *Special Report: Use of Estimated Accounts by Energy Retail Businesses* (Dec 2008)

### *Over and under charging*

If the retailer undercharges a customer (for whatever reason), it may recover any undercharged amount accrued over the preceding nine months if the retailer's billing system was at fault, or over the preceding 12 months if for another reason.<sup>33</sup> It must also offer a repayment plan, not charge interest, and list the undercharged amount separately on a bill.<sup>34</sup>

If a retailer has overcharged a customer (for whatever reason), it must inform the customer within 10 business days of becoming aware of this, and repay the customer (either by crediting their next bill or according to other reasonable instructions).<sup>35</sup>

### *Disputes*

A customer may request a review of their bill but the customer must either pay the portion of the bill not in dispute or an amount equal to the average of their bill over the past 12 months (whichever is lower).

The customer may also request a meter test. If the meter is functioning correctly, the customer must then pay the bill and the cost of the test.<sup>36</sup>

**Finding:** Retailers are not obliged to include this information in their contracts, but almost all of the reviewed contracts did. Only Powerdirect's and Neighbourhood Energy's contracts contained no mention of the above procedures.

We consider that the retailers are engaging in good practice by informing customers about their rights and obligations regarding bill disputes in their contracts.

**Recommendation 6:** Further to recommendation 5, retailers should be required to include information about how a disputed bill will be dealt with in their contract terms.

### *Payment methods*

Clause 7.2 of the ERC requires standing offer contracts to allow customers to pay their bills by any of in person, by mail or by direct debit. However, it also allows retailers to limit the methods of payment that they will accept under a market contract, for example, a retailer is allowed to offer a particular market deal only if a customer agrees to pay by regular direct debits.

The reviewed contracts were assessed to ensure they did provide more than only one payment method (other than, for example, direct debit only).

**Finding:** All reviewed contracts did provide the necessary options relating to payment methods.

### *Late payment fees*

In 2008 the imposition of late payment fees for domestic customers was prohibited by clause 7.4 of the ERC except where authorised by the ESCV.

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<sup>33</sup> ERC cl 6.2(a)

<sup>34</sup> ERC cl 6.2 (b)-(d)

<sup>35</sup> ERC cl 6.3

<sup>36</sup> cl 6.1 ERC.

**Finding:** No reviewed contracts charged late payment fees, although some contracts contained provisions allowing for them, in the event the retailer received the ESCV's authorisation.

The primary legislation has since been amended and now states that energy retail contract terms or conditions providing for late payment fees are void.<sup>37</sup>

### **Refundable advances**

Clause 8 of the ERC allows retailers to require the payment of refundable advances (or 'security deposits') in certain circumstances. It also regulates how much the refundable advance may be, what it may be used for, how to make its use accountable to the customer, and how it should be repaid.

**Finding:** All reviewed contracts were compliant with the provisions in the ERC relating to refundable advances, however, Neighbourhood Energy's relevant clause contained a minor error.

One of the conditions whereupon a customer can be obliged to provide a refundable advance is if the retailer decides that the customer has an unsatisfactory credit rating. While gas and electricity retailers have been determined to be 'credit providers' for the purposes of obtaining personal credit information under the credit reporting provisions of the *Privacy Act 1988* (Cth),<sup>38</sup> they are restricted by the ERC to taking into account only information that relates to defaults on payment of water, gas or electricity consumption.

In addition, energy retailers are required to comply with the credit reporting provisions of the *Privacy Act 1988* (Cth), and in 2008 were also required to comply with additional credit assessment rules contained in the relevant ESCV credit assessment guidelines.<sup>39</sup> One of these obligations was that retailers could only provide information about energy or water defaults to credit reporting agencies.<sup>40</sup>

**Finding:** The reviewed contract provided by Country Energy contained a document which created an agreement allowing for the broad exchange of information with any other credit provider:

By signing this Offer, you agree that we may exchange information about you with other credit providers under the Privacy Act 1988 for the purpose of assessing an application by you for credit; notifying other credit providers of a default by you; exchanging information with other credit providers as to the status of this credit where you are in default with other credit providers; or to assess your creditworthiness. **The information exchanged can include anything about your creditworthiness, credit standing, credit history or credit**

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<sup>37</sup> EIA s 40C; GIA s 48B.

<sup>38</sup> Credit Provider Determination No. 2006-4 (Classes of credit providers), 21 August 2006, per s 11B(1)(b)(v)(B) *Privacy Act 1988*.

<sup>39</sup> cl 8.3 ERC. See Essential Services Commission, *Gas Industry Guideline No. 1 – credit assessment* (May 2002) 3; Essential Services Commission, *Electricity Industry Guideline No. 4 – credit assessment* (April 2002) 3. As the clauses in both documents correspond numerically, they are referenced below as single clauses.

<sup>40</sup> cl 6.1

**capacity that credit providers are allowed to exchange under the Privacy Act 1988.** (emphasis added)

This exceeds the scope of what is permitted by the ERC (and former credit assessment rules).

**Recommendation 7:** The ESCV should review retailer compliance with their obligations regarding credit assessment and refundable advances.

### ***Shortened billing and collection cycles***

Clause 9 of the ERC allows retailers to place domestic consumers on shortened collection cycles when the procedures dealing with payment difficulties have been followed (in cl 11.2) and repeated reminder notices/disconnection warnings have been issued.

**Finding:** Only the following contracts reviewed dealt with shortened billing and collection cycles ; AGL, Australian Power and Gas, Country Energy, Click Energy, Energy Australia, power direct, Red Energy, True Energy, Simply Energy and Victoria Electricity. Those that didn't include JackGreen, Neighbourhood Energy and Origin.

### ***Payment difficulties***

Clause 11 of the ERC places obligations on customers and retailers when there are payment difficulties. Customers are obliged to inform the retailer as soon as possible if they anticipate they cannot pay their bill by the due date,<sup>41</sup> and retailers must follow certain procedures such as offering an instalment plan or informing the customer about assistance in the form of concessions and grants (such as the Utility Relief Grant Scheme), energy efficiency and the availability of a financial counsellor.<sup>42</sup>

- ♦ Most reviewed contracts contained some mention of what to do in the event of payment difficulties but the information varied in extent and quality across the contracts.

While it is positive that retailers are informing customers in their contracts of what to do if they experience payment difficulties (even though the ERC does not specifically require this), we believe that a standard format for this information might help to ensure people better understood their rights and obligations and encourage them to make contact with their retailer in these circumstances.

**Recommendation 8:** A standard format for information about rights and obligations relating to dealing with payment difficulties should be developed for inclusion in retail energy contracts.

### ***Disconnection***

Clauses 13 and 14 of the ERC detail the circumstances when a retailer can disconnect a customer and what procedures must be followed beforehand.

**Finding:** Almost all reviewed contracts were compliant with the requirements of the ERC, although some did not specify as much detail as others. Only one contract - Red Energy's -

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<sup>41</sup> cl 11.1 ERC

<sup>42</sup> cl 11.2 ERC

contained a term that would be considered void under licence conditions outlined in the EIA and subsequently the ERC, as it specified disconnection could occur if the customer did not pay any amount by the due date.

### ***Indemnity and limitation of liability***

The ERC prohibits contract terms which would have the effect of limiting the liability of the retailer to the customer for the retailer's negligence or their breach of the contract,<sup>43</sup> with one exception: retailers may limit their liability to that "of the sort contemplated by section 68A of the *Trade Practices Act 1974* (Cth) ...or any other similar statutory provision".<sup>44</sup>

Former TPA s 68A (now most closely reflected in ACL s 64A) allows a supplier of goods or services to limit their liability for breach of an implied condition or warranty to the repair, replacement or resupply of those goods or services (or the cost of doing so), but *only* for goods or services *not* of a kind ordinarily acquired for personal, domestic or household use or consumption. In other words, it does allow liability to be limited to the supply itself, but does not allow such limitations of liability in respect of consumer goods and services at all, only in respect of business goods or services.

It is not entirely clear to what extent the ERC intends to import the TPA provision in allowing energy retailers some scope to limit liability for negligence or breach of contract, but it would seem that the ERC allows energy retailers to limit their liability for negligence or breach of contract but only to the resupply of the energy or payment for the cost of the resupply, and only in the case of business customers, not domestic customers.

Additionally, contracts cannot contain terms which have the effect of entitling the retailer to recover from customers in the event of the customer's breach "any greater amount than that which, under the common law (including in equity) or statute, the retailer is entitled to as compensation for the customer's breach of their energy contract or negligence" ("indemnity").<sup>45</sup>

Most of the reviewed contracts contained a clause limiting the retailer's liability and maximising the customer's indemnity 'to the extent permitted by law'. For example, the Australian Power & Gas standard form contract states:

**If we are to any extent liable under your Energy Contract, in tort or under statute in respect of the quality or reliability of energy, then to the extent permitted by law our liability is limited to the re-supply of energy and we are not otherwise liable for any direct or special loss for breach of contract or for any tort, including negligence arising from the physical delivery of energy.**<sup>46</sup>  
(emphasis added)

Similarly, in regard to indemnity, TRUenergy's contract states:

When can we claim indemnity from you?

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<sup>43</sup> cl 16(a) ERC

<sup>44</sup> cl 16(b) ERC

<sup>45</sup> cl 17 ERC

<sup>46</sup> Australian Power & Gas, 'Victorian Market Contract Terms and Conditions – Electricity and Gas' cl 11.2.

You must indemnify us for any breach by you of this agreement or your negligence to the maximum amount which we are entitled to be compensated under the common law (including in equity) or statute for your breach or negligence.<sup>47</sup>

**Finding:** Most reviewed contracts were strictly compliant with the law regarding liability and indemnity, in that they did not exceed these abilities to limit liability. However, a few contained provisions which exceeded the scope of their rights under the law, in that they purported effectively to exclude (not merely limit) liability for negligence or breach of contract (Jackgreen Energy, Origin Energy and Victoria Electricity).

**Finding:** For those contracts that did not technically exceed the retailer's rights to limit liability,, they still did not actually clearly explain the circumstances in which liability would apply or be limited, and often relied on catch-all statements such as that liability was excluded 'to the extent permitted by law'. These terms may well be considered void under the unfair contract terms law. For example, CAV has stated:

Many terms that exclude or limit a supplier's liability for loss or damage suffered by the consumer from the supplier's acts or omissions attempt to cater for the consumer guarantees with words such as 'to the extent permitted by law', or other words that only indirectly refer to the consumer's statutory rights. Such terms are still likely to be considered by CAV to be unfair terms having the object or effect of limiting the consumer's right to sue the supplier for a breach of a statutory condition...because most consumers will not know what that 'law' is. While such terms give the appearance of complying with the law, they signify nothing to consumers who are ignorant of their rights.<sup>48</sup>

A more preferable approach would be to provide clear details to the consumer that outline what happens in the case of a breach by either the retailer or the consumer, for example, that a penalty or compensation may be paid by the retailer or disconnection may occur for a consumer, rather than using legalistic terms that many consumers will struggle to understand, and that certainly do not explain the consequences of their actions. CAV states that it will only regard liability exclusion terms as fair or as not breaching the ACL if the main statutory rights are clearly signposted<sup>49</sup> - this would presumably include statutory rights under the ERC. The national consumer regulators writing as a group have also confirmed that terms permitting a business to avoid or limit liability, such as exclusion clauses, have the potential to be unfair but are less likely to be considered unfair if they are qualified in such a way that consumers understand when and how they are likely to be affected.<sup>50</sup>

**Recommendation 9:** The ESCV should review and enforce retailer compliance with their obligations regarding limitation of liability and indemnity clauses under the ERC.

CAV should review and enforce retailer compliance with their obligations with their obligations regarding limitation of liability and indemnity clauses under the ACL.

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<sup>47</sup> TRUenergy, Charter p 12.

<sup>48</sup> CAV, *Preventing unfair terms in consumer contracts: Guidelines for businesses*, 2011, p 11.

<sup>49</sup> As above.

<sup>50</sup> Australian Capital Territory Office of Regulatory Services, Australian Competition and Consumer Commission et al, *A guide to the unfair contract terms law*, 2010, p 12.

### ***Continuation of a fixed term contract***

Energy contracts with a fixed term do not normally result in disconnection once the fixed term elapses, so they often contain a clause that deals with how the service will continue at the end of the agreed period. They may provide that once the fixed term elapses the consumer can cancel the contract at any time without penalty. Alternatively there may be provision for a new fixed term to immediately commence.

The ERC requires retailers to notify customers with fixed term contracts between one and two months before the date of expiry.<sup>51</sup> The notification must mention the new tariff and terms and conditions that will apply, and inform the customer of their options.

If no new contract is entered into by the expiry date, the contract continues on the terms as stipulated in this notice. The ERC does not prevent retailers from using these terms to commence a new fixed term contract at the expiry of the old, thus these terms could bind a consumer into a new fixed term contract, locking them in for a period of time and forcing them to pay early termination fees if they decide to leave the contract - without the consumer having actively elected to enter into a new fixed term. These terms should not be retained in any ongoing contract, and most certainly a customer's silence should not be perceived as consent.

### ***Findings:***

- ◆ One reviewed contract was clear that after the expiry of the fixed term, the normal termination period (28 days) would apply (Victoria Electricity)
- ◆ Three reviewed contracts were ambiguous about whether a new fixed term contract would commence at the end of the initial term (Click Energy, Jackgreen Energy, Red Energy,
- ◆ Other reviewed contracts were clear that a new fixed term contract would commence if the customer did not respond to the notification that the fixed term was due to expire (AGL, Australian Power & Gas, Country Energy, Energy Australia, Origin Energy, Powerdirect). These obligations, by not being made more apparent in the contract, may be breaches of then s 163 FTA (the requirement for contract to be easily legible and clearly expressed). Now, they might constitute non-transparent and unfair terms under the ACL.

**Recommendation 10:** Retailers should not be permitted to roll over fixed term contracts into new fixed term contracts without obtaining the customer's active and explicit informed consent to do so. Such terms should also be reviewed for compliance with the unfair contract terms law.

### ***Termination period***

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<sup>51</sup> cl 24.3 ERC

Clause 24.1(b) provides that a customer must give 28 days notice to a retailer in order to terminate their contract. This applies whether or not contract has a fixed term and/or early termination fees apply. However, this is a term that can be varied by agreement in market contracts.<sup>52</sup>

**Finding:** Reviewed contracts from two retailers provided for a benefit to consumers in the form of shorter periods of notice to terminate than the 28 days otherwise required by the ERC (20 days for each) (Origin Energy and Simply Energy).

### ***Agreed damages terms***

Some reviewed contracts contained fixed term clauses and early termination fees for their breach. Contracts containing early termination fees must contain provisions that:

- include either the amount that will be payable by the customer, or a simple basis for determining that amount; and
- not, in the particular circumstances, be prohibited by any relevant guideline.<sup>53</sup>

### ***Findings:***

Reviewed contracts from one retailer provide three different methods of calculating the amount of the early termination fee (Victoria Electricity).

- ◆ We also found a contract that provided for a termination fee whenever the customer cancelled the contract even though it was not a fixed term contract (Jackgreen Energy) - this is not technically an agreed damages clause but should be disclosed upfront as part of the price of the contract.

### ***Additional retail charges***

Clause 31 (now clause 30) of the ERC allowed retailers to charge additional retail charges, which are broadly defined as charges relating to the sale of energy by a retailer to a customer other than a charge based on the applicable tariff.<sup>54</sup> Clause 35 (now clause 34) also clearly distinguishes them from agreed damages terms (such as early termination fees) and from network supply charges, including pass throughs of distribution tariffs. Additional retail charges “must be fair and reasonable having regard to related costs incurred by the retailer”.

- ◆ Most reviewed contracts were compliant with the ERC in relation to additional retail charges (where the matter was raised). Only one retailer drafted its ability to charge fees in overly broad terms (Origin Energy):
  - (a) The Charges are the price of other goods and services you choose to buy from us;
  - (b) Any charges that your Distributor imposes on us in relation to services performed by your Distributor (or any other person) at your Supply Address;
  - (c) Our reasonable costs for arranging network services.You must also pay costs, fees and charges we can lawfully recover from you under the Regulatory Requirements, as well as any taxes, levies, regulated charges, costs, fees and charges that we have to pay when we sell and supply energy and other goods and services to you.

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<sup>52</sup> Appendix, ERC

<sup>53</sup> cl 24.1 ERC

<sup>54</sup> cl 35 ERC

If you breach this Contract or a provision of the Regulatory Requirements you will be required to pay any costs we incur as a result of that breach, as well as any fees we charge in relation to that breach.

While the clause complies with the ERC, it is arguably an unfair term as it ostensibly allows the retailer to charge any fee it determines for any breach of the contract, no matter how minor.

### ***Ability to unilaterally vary terms***

Section 32X(d) of the FTA provided that a contract term that has the object or effect of permitting the supplier but not the consumer to vary the terms of the contract may be an indication of an unfair term. The new ACL provisions also provide that a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract may be an example of an unfair term.

Four reviewed contracts contained terms that, to varying extents, allowed retailers to unilaterally vary the terms of their contracts (Jackgreen Energy, Neighbourhood Energy, Origin Energy and TRUenergy). Origin Energy's contract outlines the range of scenarios where charges may increase, for example:

Unless stated in the Contract Schedule, we may vary the Charges by notice to you.

We may vary the Charges at any time by notice to you by passing through all or part of any increase in our costs or any increase in or any new fee, charge or tax imposed on or incurred by us in delivering the energy to you under this Contract or otherwise performing this Contract from the date of its increase or introduction.

If any of the information used in providing the Energy Offer to you is incorrect then we may vary the Charges to the level the Charges would have been had the information used been correct. Notice of this variation will be provided to you in writing and will be effective from the date we commenced supply under this contract.

If the metering device at your Supply Address is changed from one which measures energy on an accumulation basis to one which measures energy on an interval basis, we may vary your Charges. If the Charges are based on or linked to an amount prescribed under any Regulatory Requirements, then notwithstanding any other clause in this Contract, if those Regulatory Requirements are amended we may vary the basis upon which the Charges are calculated in a manner consistent with that amendment by notice to you.

Residential Online Application [online form] Step 5 Things you need to know

Special Condition: We may vary the charges by notice to you. These rates are the standard published rates for your area based on the information you have supplied us. If any of the information you have supplied us is incorrect, different rates may apply.

This level of detail provided by Origin Energy outlines in no uncertain terms that a consumer has no option but to accept an increase in charges under any circumstance. This may well be considered an unfair term.

### ***Ability to vary tariffs***

The varying of tariffs is particularly important to consumers. Aside from agreed damages and additional retail charges, retailers may only earn income from the tariffs charged - they represent the core price for the energy supplied.

The provisions in the ERC dealing with how tariffs might vary, reflect that any variation is essentially possible, provided a customer is notified in writing, or where previously a customer has provided their explicit informed consent when entering into a market contract. Regardless, a retailer need only notify a customer of 'any variation to the retailer's tariffs that

affects the customer.....as soon as practicable and in any event no later than the customer's next bill<sup>55</sup>.

As such, retailers have tended to draft these clauses broadly.

Most reviewed contracts containing clauses relevant to varied charges were clear and reasonable (eg a notice of rate variations would be provided). However, there were exceptions:

***Findings:***

- Energy Australia – some terms were drafted too broadly.
- Simply Energy and Powerdirect – arguably represented a breach of s 163 FTA as there are many defined terms.

**Recommendation 11:** On a contract, retailers should provide, to the greatest extent possible, some indication of how tariffs might change in the future, including a commitment to notifying a customer of a variation before the tariff actually changes and an option to exit the contract without penalty.

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<sup>55</sup> cl 26.4 (b) ERC

# APPENDIX 1 – COMPARATIVE TABLES

## About the Comparative Tables

The tables provided in Appendix 1 are structured loosely around the ERC provisions that pose significant concerns for consumers.

As noted above, despite the retailers' licence requirement that the terms and conditions of their contracts "expressly deal with each matter which is the subject of a term or condition of the Energy Retail Code",<sup>56</sup> few of the reviewed contracts truly met this criterion. Some (but not all) have attempted to dispense with this requirement by including a clause that says the entire contract complies with all applicable energy laws or more cautiously stating that to the extent of any inconsistency, the energy laws prevail over the contract. Consequently, not all provisions are dealt with specifically by each retailer's contract.

## KEY

'T&C' = terms and conditions. Where used, this refers to a document that is the substantive source of contract terms.

Words in bold indicate the document which is the source of a term. Where possible the name of the document and clause are included; for example:

**T&C cl 6**

**Energy Offer (the Schedule) cl 4**

Words in *italics* or square brackets [ ] indicate a comment or summary where a term is absent, for example:

*There is no clause which identifies where all the terms of the contract are located.*

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<sup>56</sup> Cf retail licences AP&G elec cl 7.1 and Simply gas 6.1. FIX REF

## AGL

### Contracts on offer and specific terms

	Advantage 5%	AGL Freedom
notes		
SIGNED		
type of service	gas and/or electricity	
main feature/incentive	5% disc on usage rates. \$50 voucher for spending in AGL Energy Shop in regional areas or \$50 towards gas and electrical services in metro areas. Entry into Toyota Prius competition.	No main feature

greenpower options	AGL Spirit 10% greenpower	AGL Green Living 20% greenpower	AGL Green Energy 100% greenpower
	\$1.10/wk extra	\$1.80/wk elec	5.5c/kWh extra

### Terms applicable to all contracts

ERC referred to in lieu of terms	<p>T&amp;C cl 1.2 About the Energy Retail Code</p> <p>1.2.1 The Energy Retail Code applies to this Energy Plan, and in the case of any inconsistency between the Energy Retail Code and this Energy Plan, the Energy Plan prevails to the extent allowed by the Energy Retail Code. Where this is not allowed by the Energy Retail Code, the Energy Retail Code will prevail.</p> <p>1.2.2 The Energy Plan varies from these basic terms and conditions set out in the Energy Retail Code as identified in the Offer.</p> <p>If you require a copy of the Energy Retail Code, we will supply it to you for a charge to cover the printing and mailing costs. You can also inspect the Energy Retail Code free of charge at the Essential Services Commission website at <a href="http://www.esc.vic.gov.au">www.esc.vic.gov.au</a>.</p>
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	Compliant with the energy regulations, as each matter in the ERC is dealt with in the contract. It is arguable, however, that the clause which claims the ERC prevails to the extent of any inconsistency with the contract, is a breach of s 163 FTA (the requirement for contract terms to be clearly expressed), as it makes the contract essentially incomprehensible to a consumer who does not possess a thorough knowledge of both the ERC and the contract.
documents containing terms of contract	<p>T&amp;C cl 1.1.1 + Offer</p> <p>These are the Terms that apply to the gas and/or electricity which we Supply to you. These terms, and any Offer that we make which refers to them and incorporates them, form a market contract between you and us [Energy Plan] ...</p> <p>The terms of the Offer will prevail over these Terms to the extent of any inconsistency.</p>
relevant codes/law	s 163 Fair Trading Act; CAV Guidelines on Unfair Terms in Consumer Contracts
comments	By this definition, any number of documents that could comprise part of the 'Agreement'. The CAV Guidelines suggest splitting up an agreement into separate documents in such a manner would offend the s 163 requirement that contracts be easily legible and clearly expressed. The 'Retail Electricity Terms and Conditions' are also printed in less than the

	minimum 10-point font.
<i>CONNECTION</i>	
when contract commences	cl 2.3 The Energy Agreement is entered into by you when you accept our offer to supply energy to you by: (a) signing and returning to Schedule to us before the relevant offer expiry date; or (b) giving us your verbal acceptance of the relevant offer, and receiving the verbal consent documents; or (c) giving us your acceptance of the relevant offer on our online acceptance form.
cooling period cancellation notice provided?	Yes – compliant.
<i>BILLING</i>	
estimated bills/unhindered access requirements	T&C cl 6.2.2 [...] 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. 6.2.3 In the event we obtain a Meter Reading after we have used an estimate to identify the amount of gas and/or electricity that has been delivered to your Supply Address, we will make any appropriate adjustment to your next bill and clause 6.6 of these Terms will apply. T&C 3.5.2 If you request a Special Meter Reading outside your scheduled Meter Reading cycle, you agree to pay us the Special Meter Reading Fee in advance.
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	T&C cl 6.5, 6.6 6.5 Bill adjustment 6.5.1 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. 6.6 If there is an error in a bill 6.6.1 If there are errors in your bill or if we are informed of errors in the amount of gas or electricity delivered to your Supply Address, we will refund any amount overcharged or charge you the amount that you were undercharged on the next bill. 6.6.2 If you were undercharged (including the omission of any charges) the following procedure will apply: (a) where the undercharging results from a failure of our billing systems, we will only seek to recover amounts undercharged in the nine months prior to your last bill (or, if we have not sent you a bill, prior to the date on which we notify you of the undercharging); (b) if the undercharging results from a reason other than as set out in paragraph (a), we will only recover amounts undercharged in the 12 months prior to your last bill (or, if we have not sent you a bill, prior to the date on which we notify you of the undercharging); and (c) we will list the amount as a separate item in a special bill or in the next bill in your Billing Period, together with an explanation of the amount. 6.6.3 You will not be charged interest on any undercharged amount. You have the option of paying the undercharged amount in agreed instalments over a period at least equal to the period over which the undercharging occurred. 6.6.4 If we have undercharged you as a result of fraud, or use of gas or electricity otherwise than in accordance with this Energy Plan, we may: (a) estimate your gas and/or electricity usage for which you have not paid; and (b) bill you or take debt recovery action for the amount you have not paid. 6.6.5 If you were overcharged, we will: (a) inform you of the overcharging within 10 Business Days of our becoming aware of the error; and (b) 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. 6.6.6 We are not obliged to pay you interest for any overcharging.

<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>Offer</p> <p>Cash, direct debit, BPAY or any other method listed on your bill or agreed between us.</p> <p>T&amp;C 6.7</p> <p>6.7.1 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 unless you are on a shortened Billing Period.</p> <p>6.7.2 During the Term of your Energy Plan, the available methods for paying each bill will be cash, direct debit or BPay®, or any other method:</p> <p>(a) as set out in the Offer;</p> <p>(b) as set out on the back of that bill; or</p> <p>(c) as agreed between you and us from time to time.</p> <p>6.7.3 If you pay by cheque, direct debit or credit card and the payment is dishonoured or reversed by your bank, you must pay us the Dishonoured Payment Fee.</p> <p>6.7.4 If you pay a bill using a payment method that results in us incurring a merchant services fee (including payment by credit card) you may be charged a payment processing fee.</p> <p>6.7.5 Discounts for eligible concession cards apply under this Energy Plan. On request, we will provide free of charge information on any concessions, rebates or grants that are available and their eligibility requirements.</p>
<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	No mention.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 4.4 Refusal of Security and Acceptable Identification</p> <p>4.4.1 If you refuse to pay a Refundable Advance where required by us, and continue this refusal 10 Business Days after receiving a disconnection warning, we may disconnect the Supply Address or request that the Distributor disconnect the Supply Address.</p> <p>T&amp;C 6.12</p> <p>6.12.1 Subject to all applicable Regulatory Requirements, we may require you to provide a Refundable Advance before connection or reconnection of Supply of gas and/or electricity. However:</p> <p>(a) the Refundable Advance:</p> <p>(i) will be limited to 37.5% of your average bill at your Supply Addresses (or, if we do not have access to this information, all our Small Residential Customers' average bill) over the last four quarters; and</p> <p>(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.</p> <p>6.12.2 We will pay interest on your Refundable Advance at the Bank Bill Rate, accruing daily and capitalised every 90 days until repaid.</p> <p>6.12.3 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.</p> <p>6.12.4 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 of bills by the pay-by date or on termination of this Energy Plan.</p>

<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	<p>6.11 Shortened Billing Periods</p> <p>6.11.1 We may offer a shortened Billing Period to customers as a financial accommodation, or may place you on a shortened Billing Period in the circumstances set out in the Energy Retail Code.</p> <p>6.11.2 If you are placed on a shortened Billing Period, then we may impose an Additional Retail Charge and may charge you for any costs imposed on us if you fail to make the periodical payment you agreed to make.</p>
<i>relevant codes/law</i>	ERC cl 9
<i>comments</i>	Compliant.
payment difficulties	<p>T&amp;C cl 6.8 If you have trouble paying</p> <p>6.8.1 You must notify us if you are experiencing difficulty in paying your bill or if you require payment assistance.</p> <p>6.8.2 If you notify us or we believe that you are experiencing difficulty in paying your bill or that you require financial assistance, we will provide:</p> <ul style="list-style-type: none"> <li>(a) the option of negotiating an instalment plan (provided you are eligible for this);</li> <li>(b) information about, and referral to, government assistance programs such as the Utility Relief Grant Scheme where available; and</li> <li>(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.</li> </ul> <p>6.8.3 We will not commence legal proceedings for debt recovery until we have complied with the above requirements or while you continue to make payments under a payment arrangement agreed with us. In addition to our other obligations under this Energy Plan, we will not disconnect the Supply Address for non-payment if your failure to pay arises through lack of sufficient income. This applies unless we have complied with the above requirements, 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.</p> <p>6.8.4 Unless you are disputing a bill in good faith, if you do not pay your gas and/or electricity bills by their due date and you have received two consecutive reminder notices relating to one bill, we may immediately suspend paying or providing you any discounts, account credits or incentives under this Energy Plan that have not yet accrued. We will recommence paying or providing your discount, account credit or incentive once you resume paying your gas and electricity bills by their due date. However we will not pay or provide you with any discount, account credit or incentive that was not paid while it was suspended under this clause.</p> <p>6.9 Instalment plans</p> <p>6.9.1 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. In that case, you will need to provide reasonable assurance that you will comply with an instalment plan before we will offer you a new plan.</p> <p>6.9.2 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 gas and/or electricity usage and capacity to pay the full amount.</p> <p>6.9.3 Any instalment plan we offer you will:</p> <ul style="list-style-type: none"> <li>(a) specify the period of the plan, the amount and number of instalments, and how the amount is calculated;</li> <li>(b) specify the amount of the instalments that will pay your arrears;</li> <li>(c) specify your estimated consumption during the period of the plan; and</li> <li>(d) provide for re-balancing where you are significantly in credit or debt at the end of the plan.</li> </ul>
<i>relevant codes/law</i>	ERC cl 11

comments	Compliant.
DISCONNECTION	
disconnection	<p>T&amp;C cl 4 DISCONNECTION FOR BREACH</p> <p>4.1 Non-payment</p> <p>4.1.1 We may disconnect the Supply Address or request that the Distributor disconnect the Supply Address if you fail to pay by the pay-by date any charges at the current or any previous Supply Address, but only if:</p> <ul style="list-style-type: none"> <li>(a) the failure does not relate to an instalment under your first instalment plan with us;</li> <li>(b) we have given you: <ul style="list-style-type: none"> <li>(i) a reminder notice at least 14 Business Days after the dispatch of the bill, including a new pay-by date at least 20 Business Days after the dispatch of the bill (unless you are on a shortened Billing Period, in which case we will not give you a reminder notice); and</li> <li>(ii) a disconnection warning at least 22 Business Days after the dispatch of the bill, including a new pay-by date at least 28 Business Days after the dispatch of the bill. However, if you are on a shortened Billing Period, the disconnection warning and new pay-by date will be at least 16 Business Days and 20 Business Days respectively from the dispatch of the bill;</li> </ul> </li> <li>(c) the disconnection warning includes a statement that we may suspend Supply or terminate this Energy Plan no sooner than seven Business Days after you receive the disconnection warning. It will also include a telephone number for payment assistance enquiries;</li> <li>(d) you call that number, we have responded to your enquiry and provided information about financial assistance; and</li> <li>(e) before suspension of Supply or termination of this Energy Plan, you: <ul style="list-style-type: none"> <li>(i) do not provide us with a reasonable assurance that you are willing to pay our bills; or</li> <li>(ii) do provide a reasonable assurance, but then do not pay the amount payable by the pay-by date on the disconnection warning, and do not agree to a new payment arrangement within five Business Days of receiving the warning or do not make payments under such a new payment arrangement.</li> </ul> </li> </ul> <p>4.1.2 Where we have arranged for the disconnection of the Supply of gas and/or electricity to the Supply Address due to non-payment, we may charge you a Disconnection Fee.</p> <p>4.2 Denial of access</p> <p>4.2.1 We may disconnect the Supply Address or request that the Distributor disconnect the Supply Address if:</p> <ul style="list-style-type: none"> <li>(a) due to acts or omissions on your part, access to the Supply Address for the purpose of reading the Meter is not possible for three consecutive bills;</li> <li>(b) we have used our Best Endeavours to give you an opportunity to offer reasonable access arrangements, given you a notice requesting access each time the Meter is inaccessible, and given you at least seven Business Days notice of disconnection; and</li> <li>(c) due to acts or omissions on your part, access to the Supply Address remains not possible, for the purpose of reading the Meter.</li> </ul> <p>4.3 Unauthorised or Illegal Access</p> <p>4.3.1 If you have obtained Supply of gas and/or electricity in a way that is not in accordance with this Energy Plan or any relevant Regulatory Requirements, we may immediately disconnect the Supply Address or request that the Distributor disconnect the Supply Address.</p> <p>4.4 Refusal of Security and Acceptable Identification</p> <p>4.4.1 If you refuse to pay a Refundable Advance where required by us, and continue this refusal 10 Business Days after receiving a disconnection warning, we may disconnect the Supply Address or request that the Distributor disconnect the Supply Address.</p> <p>4.4.2 If you refuse when required to provide Acceptable Identification and continue this refusal for 10 Business Days after receiving a disconnection warning we may disconnect the Supply Address or request that the Distributor disconnect the Supply Address.</p> <p>4.5 Restrictions on our power to disconnect</p> <p>4.5.1 We will not disconnect the Supply Address except in accordance with the Energy Retail Code and any applicable Regulatory Requirement. In particular, we will not</p>

disconnect the Supply Address:

(a) for non-payment of a bill:

- (i) where the amount payable is less than any amount approved by the Essential Services Commission in a relevant gas or electricity guideline;
- (ii) if you have made a relevant complaint to the Energy and Water Ombudsman Victoria or other dispute resolution body which remains unresolved;
- (iii) where you have a formal decision relating to a Utility Relief Grant pending; or
- (iv) where the only unpaid amount is a charge not for the Supply or sale of gas or electricity;

(b) if:

- (i) for electricity, the Supply Address is registered by the Distributor as a Life Support Equipment Supply Address; or
- (ii) for gas, the Supply Address is registered by us, or the Distributor as a medical exemption Supply Address. We must register your Supply Address as a medical exemption Supply Address if you request registration and provide us with a current medical certificate certifying that a person residing at the Supply Address has a medical condition which requires continued supply of gas;

(c) unless otherwise requested by you:

- (i) after 2.00 pm on a weekday; or
- (ii) on a Friday, on a weekend, on a public holiday or on the day before a public holiday.

#### 4.6 Disconnection Fee

4.6.1 Where we have arranged for the disconnection of the Supply of gas and/or electricity to the Supply Address due to an act or omission by you, we may charge you a Disconnection Fee.

#### 4.7 Reconnection

4.7.1 If the Supply Address has been disconnected for any of the following reasons:

- (a) non-payment of a bill;
- (b) access to the Meter was refused;
- (c) for obtaining Supply in a way that does not comply with this Energy Plan; or
- (d) refusing to pay a Refundable Advance or provide Acceptable Identification; we will reconnect the Supply Address at your request and on payment of a Reconnection Fee reflecting our direct costs arising from the disconnection and reconnection. This includes any amount charged to us by the Distributor or another contractor or agent for providing services in relation to the disconnection, connection and our reasonable administration charges.

4.7.2 We will reconnect the Supply Address:

- (a) on the day of your request, if you contacted us before 3.00pm on a Business Day;
- (b) on the next Business Day after your request, if you contacted us after 3.00pm on a Business Day; or
- (c) on the day of your request, if you contacted us after 3.00pm on a Business Day but before 9.00pm and you agree to pay our After Hours Reconnection Fee.

4.7.3 If you are eligible for a Utility Relief Grant and you apply for a grant after being disconnected, we must reconnect you.

4.7.4 If we (or the Distributor or another contractor or agent) have been called out to disconnect the Supply Address for any of the reasons set out in clause 4.7.1 above, and the reason is rectified before we disconnect the Supply Address, then we may charge a Call-Out Fee which will be:

- (a) the fee specified in the Offer or any application form; or
- (b) if no fee is specified in the application form, an amount reflecting our direct costs arising from the disconnection, reconnection or call-out. This includes any amount charged to us by the Distributor or another contractor or agent for providing services in relation to the disconnection, connection or call-out, and our reasonable administration charges.

#### 4.8 Exercise of discretion

4.8.1 Where we have the right to disconnect the 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 this Energy Plan and any previous Supply arrangements;
- (c) our evaluation of the likelihood that you will fulfil your obligations under this Energy

	<p>Plan in the future; and</p> <p>(d) the consistent application of AGL's policies applying to similar customers in similar circumstances (including departing from these policies in relevantly different circumstances).</p> <p>4.8.2 The exercise of our discretion not to disconnect the Supply Address is not a waiver of our right to do so, and we may decide to disconnect the Supply Address according to this Energy Plan at any time until the grounds for disconnection are rectified.</p>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	
indemnity and limitation of liability	<p>T&amp;C cl 11.1 Our liability</p> <p>11.1.1 Title and risk in all gas and/or electricity supplied to you will pass to you at the respective Supply Point.</p> <p>11.1.2 The <i>Commonwealth Trade Practices Act 1974</i> and the <i>Victorian Fair Trading Act 1999</i> automatically incorporate conditions, warranties and rights for your benefit and protection into this Energy Plan, if you are what those laws call a 'consumer'. If you are a consumer under these laws, this Energy Plan cannot lessen the benefits these laws give, except to the extent permitted by these laws.</p> <p>11.1.3 To the extent permitted by these 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 this Energy Plan, its quality, fitness or safety, other than those set out in this Energy Plan.</p> <p>11.1.4 Where conditions, warranties or undertakings are implied by these 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:</p> <p>(a) providing equivalent goods or services provided under this Energy Plan to your Supply Address; or</p> <p>(b) paying you the cost of replacing the goods or services provided under this Energy Plan to your Supply Address, or acquiring equivalent goods or services.</p> <p>11.1.5 Nothing in this Energy Plan varies or excludes in any way the operation of section 117 of the <i>Electricity Industry Act 2000 (Vic)</i>, section 78 of the <i>National Electricity Law</i>, section 232 or 233 of the <i>Gas Industry Act 2001 (Vic)</i> or section 33 of the <i>Gas Safety Act 1997 (Vic)</i>.</p> <p>11.1.6 You acknowledge that the quality and reliability of gas and/or electricity Supply may be subject to events beyond our reasonable control.</p> <p>T&amp;C cl 11.4 Applicable law</p> <p>11.4.1 This Energy Plan shall be governed by the laws of Victoria.</p> <p>11.4.2 We and you submit to the non-exclusive jurisdiction of the courts of Victoria.</p>
<i>relevant codes/law</i>	s 68A TPA; ERC cl 16-18
<i>comments</i>	Compliant.
<b>TERM AND TERMINATION</b>	
continuation of term	<p>T&amp;C cl 2.4 Term of Supply</p> <p>2.4.4 If this Energy Plan is an Advantage Plan, at least one month, but no more than two months, before the expiry of the Term of your Energy Plan, we will:</p> <p>(a) notify you that the Term of your Energy Plan is about to expire, and the date of that expiry;</p> <p>(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 Plan has expired; and</p> <p>(c) notify you of your other options once the Term of your Energy Plan has expired, including the options to:</p> <p>(i) accept our or another retailer's standing offer, depending on the location of the Supply Address;</p>

	<p>(ii) enter into any market contract offered to you by us or another retailer; or</p> <p>(iii) request disconnection.</p> <p>2.4.6 If you do not exercise any of the options in the manner set out in clause 2.4.4 above, before the expiry of the Term, then from the expiry of the Term the charges, terms and conditions set out in the notice will form part of this Energy Plan.</p>
<i>relevant codes/law</i>	cl 24.3 ERC; s 32W FTA
<i>comments</i>	Arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a fixed term, a customer's silence is consent to signing a new fixed term contract with AGL (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term),
<i>termination period</i>	<p>T&amp;C cl 3.5.1</p> <p>You or your new retailer must give us written notice of your intention to transfer to another retailer. 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. Your transfer to another retailer may take up to 60 days for gas and 90 days for electricity in accordance with Regulatory Requirements. If the Meter Reading is not completed at the next scheduled Meter Reading date, this transfer may take longer. In some cases you may request a special Meter Reading.</p>
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.
<i>agreed damages terms</i>	<p>Product Information Statement</p> <p>AGL Advantage Energy Plan</p> <p>An Early Termination fee of \$75.00 applies if your Energy Plan is terminated before the expiry of its Term</p> <p>T&amp;C cl 3 TERMINATION</p> <p>3.1 When does the Early Termination Fee apply?</p> <p>3.1.1 Subject to any Regulatory Requirements prohibiting or affecting the charging of exit fees, if this Energy Plan is terminated before the expiry of its Term, or is terminated for one energy type in the case of an Energy Plan for both gas and electricity, we may charge you an Early Termination Fee set out in the Offer to reflect our costs of processing the termination and any other loss or damage suffered by us due to your early termination. Reasons for early termination may include situations such as:</p> <ul style="list-style-type: none"> <li>(a) you moving to a new address;</li> <li>(b) you agreeing to purchase gas and/or electricity from another retailer; and</li> <li>(c) moving out of the Supply Address and no longer being responsible for the purchase of gas and/or electricity at any address.</li> </ul> <p>3.1.2 If you are terminating this Energy Plan because you are moving to a new address, we will waive the Early Termination Fee if we offer to sell you gas and/or electricity at your new address and you accept that offer.</p>
<i>relevant codes/law</i>	ERC cl 24.1, 32
<i>comments</i>	Compliant.
<b>GENERAL</b>	
<i>additional retail charges</i>	<p>T&amp;C cl 5 CHARGES AND VARIATIONS</p> <p>5.1 Charges and variations set out in the Offer</p> <p>5.1.1 The initial fees and charges for gas and/or electricity are as set out in the Offer. Unless otherwise stated, all charges are inclusive of GST (where applicable).</p> <p>5.1.2 The basis for the calculation of charges under this Energy Plan will be:</p> <ul style="list-style-type: none"> <li>(a) if the Offer states a bundled rate (in cents per megajoule or 'c/MJ' for gas or in cents per kilowatt-hour or 'c/kWh' for electricity) then the charges will be calculated by multiplying your gas and/or electricity consumption during the Billing Period (derived in accordance with clause 6.2) by that bundled rate;</li> <li>(b) if the Offer states a demand-based rate (in cents per megajoule per hour or 'c/MJ/h' for gas or in cents per kilowatt or 'c/kW' for electricity) then the charges will be calculated by multiplying your peak gas and/or electricity half-hour demand during the</li> </ul>

	<p>Billing Period (derived in accordance with clause 6.2) by that demand-based rate;</p> <p>(c) if the Offer states separate rates of charges then the charges payable by you will be the sum of:</p> <ul style="list-style-type: none"> <li>(i) for energy consumption rates, the amount resulting from multiplying your gas and/or electricity consumption during the Billing Period (derived in accordance with clause 6.2) by that energy consumption rate;</li> <li>(ii) for demand-based rates, the amount resulting from multiplying your peak gas and/or electricity half-hour demand during the Billing Period by that demand-based rate; and</li> <li>(iii) for daily rates, the amount resulting from multiplying the number of days in the Billing Period by that daily rate; or</li> <li>(iv) for rates which are payable in respect of a Billing Period, the amount for that Billing Period;</li> </ul> <p>(d) if the Offer states different rates of charges for separate periods (such as a peak or off-peak rate) within a Billing Period for an energy consumption rate or a bundled rate, then the charges will be the sum of your gas and/or electricity consumption during any separate periods within the Billing Period (derived in accordance with clause 6.2) multiplied by the applicable energy consumption rate or bundled rate for that separate period;</p> <p>if the Offer states different rates of charges for separate periods (such as a peak or off-peak rate) within a Billing Period for an energy demand-based rate, then the charges will be the sum of your peak gas and/or electricity half-hour demand during any such separate periods within the Billing Period multiplied by the applicable energy demand-based rate for that separate period.</p>
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant.
ability to vary charges	<p>T&amp;C cl 5</p> <p>5.3.1 You understand and agree that we may vary any of the fees and charges for gas and/or electricity under this Energy Plan at any time (including after the date you accept this Energy Plan but before it commences as contemplated in clause 1.3.2) by giving you written notice (which may consist of a statement on your bill) of the variation.</p> <p>5.3.2 Subject to clause 5.3.3, you may terminate this Energy Plan within 10 Business Days after being informed that we are increasing your charges if the new charges are more than the greater of:</p> <ul style="list-style-type: none"> <li>(a) the charges that would be applicable under your local retailer's standing offer contract; or</li> <li>(b) the amounts that would result from increasing your charges by the percentage increase in the Consumer Price Index since the later of the Supply Commencement Date and your most recent price variation, and if your Energy Plan is an Advantage Plan we will waive the Early Termination Fee.</li> </ul> <p>5.3.3 If you terminate this Energy Plan in accordance with clause 5.3.2:</p> <ul style="list-style-type: none"> <li>(a) such termination will not be effective until the date you become financially responsible for your energy consumption under: <ul style="list-style-type: none"> <li>(i) our or another retailer's standing offer contract, depending on the location of the Supply Address; or</li> <li>(ii) any other market contract with us or another retailer, such date called the 'Termination Date'; and</li> </ul> </li> <li>(b) subject to clause 5.3.4, on and from the date we receive notice of such termination until the Termination Date, you will continue to be charged the fees and charges that were applicable immediately before we informed you of the increase.</li> </ul> <p>5.3.4 If you have not become financially responsible for your energy consumption under:</p> <ul style="list-style-type: none"> <li>(a) our or another retailer's standing offer contract, depending on the location of the Supply Address; or</li> <li>(b) any other market contract with us or another retailer—within 90 days after terminating this Energy Plan in accordance with clause 5.3.2 then you agree that clause 5.3.3 (b) will not apply and you will be charged the increased fees and charges as notified to you pursuant to clause 5.3.1.</li> </ul> <p>5.4.1 We may vary your charges to reflect any increase in our overall costs of purchasing, selling or supplying gas or electricity including (but not limited to) costs arising from increased price risk and our costs of minimising or meeting that price risk.</p> <p>5.4.2 The amount of any such variation will be calculated by:</p>

	(a) dividing the total amount of the cost increase in relation to the relevant customer segment (which may be the whole of our customer base) by the volume of energy purchased in relation to that customer segment; and (b) applying up to the resulting amount to the charges on the basis of c/MJ of gas or c/kWh of electricity consumed at the Supply Address.
<i>relevant codes/law</i>	ERC cl 26.4, 31, 35
<i>comments</i>	Compliant. Notably AGL (in cl 5.3.2) will waive early termination fees when charges reach a level above a standing offer/CPI increases, but the procedure is still very complex.
ability to unilaterally vary terms	T&C cl 11.3 Waiver and variation 11.3.1 Except as otherwise provided in this Energy Plan, a right created under this Energy Plan may not be waived except in writing signed by the party granting the waiver. 11.3.2 Other than as required or permitted by law or the terms of this Energy Plan, any variation of this Energy Plan must be made in writing between the parties. 11.3.3 We may vary this Energy Plan by written notice to you to the extent reasonably necessary to comply with any change in any Regulatory Requirements to the extent permitted by Regulatory Requirements.
<i>relevant codes/law</i>	ss 32W, 32X(d) <i>Fair Trading Act</i>
<i>comments</i>	Compliant.

overall comments	Difficult to obtain full details of contract prior to signing. The contract contains many terms which attempt to limit liability or mitigate attempts to challenge charges.
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## Australian Power and Gas

### Contracts on offer and specific terms

	Simplicity Plus Gas	Simplicity Plus Electricity	Savings Plus Gas	Savings Plus Electricity	Super Saver Seven Gas	Super Saver Seven Electricity
notes			For existing customers only; no new contracts available.		Replaces Savings Plus contracts.	
type of service	gas	electricity	gas	electricity	gas	electricity
main feature/incentive	Offer Summary 5% off usage & supply charges when account paid in full by due date		Offer Summary 3% off usage and supply charges when account paid in full by due date. Up front rebate: \$25 (22.73 ex GST) off your first energy account.		Offer Summary 7% off usage charge	
fixed term (see also 'continuation of term') below	Offer Summary N/A		Offer Summary 3 years, 28 days notice required for cancellation by customer.		Offer Summary 3 years, 28 days notice required for cancellation by customer. Cancellation fees: \$30 if contract cancelled at any time during the contract period	
agreed damages terms	Offer Summary N/A		Offer Summary Cancellation fees: \$60 if contract cancelled in first year, \$50 if cancelled in second year, \$40 if cancelled in third year [GST will be applied if applicable]		Offer Summary Cancellation fees: \$30 if contract cancelled at any time during the contract period [GST will be applied if applicable]	

### GreenPower options

- greentricity 10%: no fixed term, no cancellation fee, \$0/week inc GST for gas & electricity contract, \$1/week inc GST for electricity only contract.
- greentricity 50%: 3 year contract term, 28 days notice to terminate, early termination fee applies. \$1.50/week inc GST for gas and electricity contract, \$3/week for electricity only contract.
- greentricity 100%: 3 year contract term, 28 days notice to terminate, early termination fee applies. \$3/week inc GST for gas and electricity contract, \$6/week inc GST for electricity only contract.

### Terms applicable to all contracts

ERC referred to in lieu of terms	T&C 11.6 Compliance with Energy Laws Your Energy Contract complies with the applicable provisions of the Energy Laws, and all instruments and market operations rules made under that legislation. T&C cl 12 Glossary of terms used in your Energy Contract ... Energy Laws means the <i>Electricity Industry Act 2000</i> , and the <i>Gas Industry act 2001</i> and the instruments passed under such legislation including the Regulations. ... Regulations means the Energy Retail Code, Retail Gas Market Code, the Marketing Code, the Licences and the Rules and guidelines published by the Commission from time to time.
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	Clause 11.6 is superfluous appears only to be an attempt to dissuade consumers from challenging a term of their contract.
documents containing	T&C cl 1.1 What is an Energy Contract and who does it apply to? Your Energy Contract is a market contract between you and us for the retail supply of energy to

terms of contract	<p>your premises.</p> <p>Your Energy Contract consists of three parts:</p> <ul style="list-style-type: none"> <li>• The Energy Offer</li> <li>• The Pricing Schedule</li> <li>• These Terms and Conditions (this document)</li> </ul> <p>Together these 3 documents form a legally binding agreement between you and us. Copies of your Energy Contract can be obtained by calling 133 298.</p> <p>We agree to sell to you and supply to your premises energy (electricity, natural gas or both) and perform other obligations set out in your Energy Contract. The energy to be supplied by us is as selected by you and set out in the Energy Offer. In return you agree to pay the amount billed by us, and perform your other obligations set out in your Energy Contract. It's really about keeping it simple and fair to both parties.</p>
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts
comments	Compliant.
CONNECTION	
when contract commences	<p>T&amp;C cl 1.2 Commencement date</p> <p>Your Energy Contract starts on the Commencement Date and will continue until the Expiry Date unless cancelled earlier.</p>
cooling period cancellation notice provided?	<p>T&amp;C cl 1.3 What if you change your mind?</p> <p>We understand that things can change and if you change your mind that's fair enough. If you change your mind, you can cancel your Energy Contract without being liable to us by giving us written notice that you wish to cancel your Energy Contract within 10 business days of the Commencement Date. You will only have to pay us for any energy or other service supplied by us to you during that 10 Business Day period. It's called a cooling off period and we think that's a cool thing to offer. [emphasis added]</p>
relevant codes/law	ERC cl 23.4(a)
comments	ERC cl 23.4(a) requires retailers to provide a 'notice' advising of the customer's right to cancel their energy contract within the 10 day cooling off period. No such notice was received, other than this contract clause.
BILLING	
estimated bills/unhindered access requirements	<p>Offer If you request a meter reading at a time other than the time scheduled by the network operator in the ordinary course of the meter reading cycle, or if a relevant operator charges Australian Power &amp; Gas for a special meter reading as a result of your failure to provide access to your meter the liability for these charges will be passed on to you.</p> <p>T&amp;C cl 2.6 What if you disagree with your account? [...]</p> <p>You may also request that we check your meter or meter readings. If you make such a request, you will need to pay to us the fees for checking your meter readings. [...]</p> <p>T&amp;C cl 2.7 Meter Readings and Estimation</p> <p>Each Energy Account you receive will, where possible, be based on an actual meter reading. If meter data is not available we can estimate the energy you have consumed during the period covered by an Energy Account, in compliance with the Regulations and as stated on your Energy Offer. When reliable meter data is obtained for that period we will adjust your Energy Account for the difference between the estimate and the actual amount of energy used in accordance with the Regulations. We will use our best endeavours to have your meter read at least once in each 12 month period.</p> <p>If you are transferring to us from another retailer then the Regulations may permit us to use an estimation of your energy usage as the basis for your Energy Account.</p> <p>You must allow safe, convenient and unhindered access to your meter by meter readers and authorised officers at all reasonable times. Where you do not provide access and we cannot read your meter, then we may estimate your energy usage and charge you an additional charge if you later request that your meter be read for the purposes of replacing that estimate with measured data.</p>

<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant. See also 'adjustment of a bill', below.
adjustment of bill	<p>T&amp;C cl 2.6 What if you disagree with your account?</p> <p>You can ask us to review your Energy Account. The review will be undertaken in accordance with the appropriate regulatory requirements (which can be found on <a href="http://www.esc.gov.au">www.esc.gov.au</a>). During the time that we are reviewing your energy account, we may still require you to pay the lesser of:</p> <ul style="list-style-type: none"> <li>• that portion of your Energy Account not in dispute; or</li> <li>• an amount equal to the average amount of your Energy Accounts in the 12 months prior to the Energy Account in dispute.</li> </ul> <p>You will also be required to pay any future Energy Accounts you receive after the Energy Account in dispute.</p> <p>[...]</p> <p>If following a review of your Energy Account we are satisfied that your account is correct, you will be required to pay the amount of the Energy Account still outstanding. If you are overcharged, we will refund you in accordance with the Regulations, including refunding any fees paid (for example, for testing your meter). You will still be required to pay any portion of your Energy Account that is still outstanding. If we undercharge you, we may recover the undercharged amount in a special Energy Account or your next Energy Account.</p> <p>If you wish to make a complaint regarding our billing processes, please follow our complaint handling procedures set out in clause 9 of these Terms and Conditions.</p>
<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>T&amp;C 2.4 Paying your Energy Account</p> <p>You can pay your Energy Account using any of the payment methods listed on your Energy Account. ...</p> <p>If direct debiting was offered to you on the Energy Offer and you have elected to pay your Energy Accounts by direct debit and have completed a direct debit authorisation form then we will deduct the amount of an Energy Account from your nominated account. It's that simple. If there are insufficient funds in your account such that a direct debit is declined, any fees imposed on us by a financial institution are payable by you to us and we may include them in a subsequent Energy Account. Other terms and conditions may be set out on the direct debit authorisation. Upon cancellation of the direct debt arrangement by you through your financial institution or bank, you must use your best endeavours to notify us as soon as practicable after the cancellation. You must continue to pay your Energy Accounts by mailing your payments to Australian Power &amp; Gas, GPO Box 217, Melbourne VIC 3001 or by such other method as we may then agree with you.</p> <p>...</p> <p>Such late fees will only be charged by us on a disconnection warning sent to you under clause 4.2 and in accordance with the Energy Laws and Commission's guidelines. The Energy Laws and the Commission's guidelines also set out the circumstances where we may not charge you a late fee or where we will waive any such fee.</p> <p>You agree that such a late fee and such interest charges are genuine pre-estimates of the losses suffered by us as a result of your failure to pay the amounts due to us.</p>
<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	<p>T&amp;C cl 2.4 ... If you do not pay your Energy Account on time we may require you to pay our costs for recovering the billed amount from you (including GST). We may include an amount representing those costs on a subsequent Energy Account. Any merchant service fees payable by us in connection with your payment method are recoverable from you by us.</p> <p>[...] We will not charge you late fees if you are a small retail customer. A small retail customer is defined by the Energy Laws and includes most households. However, if you are not a small retail customer and the Commission has authorised us to charge you late fees, we may charge you late fees on any amounts that remain unpaid by the due date for payment as follows [...]</p>

<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 2.8 Is a security deposit required?</p> <p>The Energy Laws provide that we may require you to pay us a security deposit (or a "refundable advance" under the Regulations if you:</p> <ul style="list-style-type: none"> <li>- still owe us money from another premises;</li> <li>- have used energy unlawfully;</li> <li>- you refuse to give acceptable identification; or</li> <li>- have a poor credit history in our reasonable opinion.</li> </ul> <p>Your security deposit will be deposited by us into our bank account and it will accrue interest at a rate that is not less than the Published Rate, and which is capitalised every 90 days.</p> <p>The amount of the security deposit will not exceed the maximum amount permitted under the Energy Laws (which in any event will not be more than 37.5% of the amount billed to you in the previous four quarters). We will not use any part of your security deposit (or any interest earned on it) to recover amounts due to us from you for charges for things other than energy supply or connection services arranged by us.</p> <p>On cancellation of your Energy Contract we will return to you the balance of the security deposit (including interest accrued on the security deposit from day to day) after all amounts owing to us from you for charges relating to energy supply or connection services have been paid.</p> <p>We will only use your security deposit, and must repay it to you, in accordance with the Energy Laws.</p> <p>We may use the security deposit and accrued interest to offset any amount overdue for payment by you which has resulted in disconnection of your premises and where you have no right of reconnection, or where you have vacated your premises, requested disconnection or transferred to another retailer.</p> <p>We will repay to you the balance of your security deposit and accrued interest in accordance with your reasonable instructions within 10 Business Days of you either completing one year's payment of accounts by the initial due dates for payment of each respective Energy Account, or ceasing to take supply at your premises, If you do not give us such instructions then we will credit amounts owing to you under this clause on your next Energy Account.</p> <p>If we use your security deposit then we will give you a written account of its use and repay any balance within 10 Business Days.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant. See also 'disconnection', below.
shortened billing and collection cycles	<p>T&amp;C cl 2.1 What will we charge you?</p> <p>[...]</p> <p>If we give you reminder notices for three consecutive Energy Accounts or two consecutive disconnection warnings, and we have complied with our obligations to assist you with payment difficulties under the Energy Retail Code, we may put you on a shortened collection period for the payment of the money that you owe us. The time of the shortened collection period will be determined by us. Once you are on a shortened collection period:</p> <p>(a) you will not receive a reminder notice from us; and</p> <p>(b) you will only be removed from the shortened collection period if you pay three consecutive Energy Accounts by the pay by date. [...]</p>
<i>relevant codes/law</i>	ERC cl 9
<i>comments</i>	Compliant.
payment difficulties	<p>T&amp;C cl 2.5 Payment Difficulties</p> <p>If you're having difficulties paying your Energy Account by the due date, you must contact us as</p>

	<p>soon as possible on 133 298. We will provide you with information about:</p> <ul style="list-style-type: none"> <li>- instalment plans for payment and other payment options; and</li> <li>- any Government funded relief schemes for which you may be eligible.</li> </ul> <p>The Energy laws set out the circumstances in which we will offer you an instalment payment plan.</p>
<i>relevant codes/law</i>	ERC cl 11
<i>comments</i>	Compliant. See also 'disconnection', below.
<b>DISCONNECTION</b>	
disconnection	<p>T&amp;C cl 4. Disconnecting energy supply at our request</p> <p>4.1 Why would we arrange to disconnect your energy supply?</p> <p>We may disconnect your energy supply if you do not pay your Energy Account by the due date (but excluding a failure to pay an instalment under your first instalment plan with us) and we have followed the process set out below:</p> <ul style="list-style-type: none"> <li>• if you have paid your Energy Account we will send you a reminder notice not less than 14 Business Days after the date that we issued your Energy Account (but we will not send you a notice if you are on a shortened collection period);</li> <li>• if your Energy Account remains unpaid we will send you a disconnection warning not less than 22 Business Days from the date that we issued your Energy Account (or not less than 16 business days if you are on a shortened collection period);</li> <li>• if your Energy Contract is for both gas and electricity, the disconnection warning will state that we may disconnect your gas no sooner than seven Business Days and your electricity no sooner than 22 Business Days after receipt of the disconnection warning. If your Energy Contract is for gas or electricity only the disconnection warning will state that we may disconnect your energy no sooner than seven days after the date of receipt of the disconnection warning;</li> <li>• the disconnection warning from us will contain the information required by the Energy Laws, including a telephone number for payment assistance advice. We will provide that payment assistance advice if you call us.</li> <li>• If your Energy Contract is for both gas and electricity, we will also give you a further disconnection warning no less than six Business Days before your electricity is to be disconnected; and</li> <li>• If you are on a shortened collection cycle we will attempt to telephone you in person to warn you of the imminent disconnection [sic].</li> </ul> <p>If your Energy Account remains unpaid after we follow the above process, we may disconnect your energy supply if you do not provide us reasonable assurance to us that you are willing to pay your [sic] Energy Account, or you do give us that assurance but then do not pay by the applicable due date or if you do not agree to a new payment arrangement within five Business Days after the receipt of the disconnection warning, or if you do not make payments under the new payment arrangement.</p> <ul style="list-style-type: none"> <li>• if you fail to pay an Energy Account because you lack sufficient income we will attempt to contact you in person or by telephone to discuss the options set out in clause 2.5. We will not disconnect your energy supply until we have attempted to contact you and unless you have not accepted an instalment plan within 5 Business Days if we offer one to you.</li> </ul>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	
indemnity and limitation of liability	<p>T&amp;C 11.2 Liability</p> <p>We do not physically deliver energy to your premises. Your Energy Distributor is responsible for the delivery of energy and to the extent permitted by law we are not responsible for any act, omission, default or negligence of any third party including the Energy Distributor. Accordingly, to the extent permitted by law we are not liable for any curtailment, disruption or interruption of energy supply or the quality of the energy supplied.</p>

	<p>If we are to any extent liable under your Energy Contract, in tort or under statute in respect of the quality or reliability of energy, then to the extent permitted by law liability is limited to the re-supply of energy and we are not otherwise liable for any direct or special loss for breach of contract or for any tort, including negligence arising from the physical delivery of energy.</p> <p>Without limiting the previous paragraph, you agree to:</p> <ul style="list-style-type: none"> <li>(a) release us from any and all liability to you, including where that liability arises from a claim brought by you against an Energy Distributor or other supplier of energy, in respect of losses, costs, damages suffered by you as a result of a failure to supply energy to you, including without limitation a failure resulting from the negligence of an Energy Distributor or other supplier of energy or any of its employees or agents;</li> <li>(b) indemnify us in respect of any liability that we have to any Energy Distributor or other supplier of energy for liabilities, losses, costs and damages suffered or incurred by the Energy Distributor or other supplier of energy as a result of a claim brought by you against them in respect of a failure to supply energy, including without limitation a failure resulting from the negligence of an Energy Distributor or other supplier of energy or any of its employees or agents.</li> </ul> <p>You acknowledge that nothing in your Energy Contract varies or excludes the operation of section 117 of the <i>Electricity Industry Act 2000</i>, section 78 of the <i>National Electricity Law</i>, sections 232 or 233 of the <i>Gas Industry Act 2001</i> or section 33 of the <i>Gas Safety Act 2001</i>.</p> <p>T&amp;C 11.9 Governing Law and jurisdiction</p> <p>Your Energy Contract is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.</p>
relevant codes/law	s 68A TPA; ERC cl 16-18
comments	Compliant.
continuation of term	<p>T&amp;C cl 1.6 What happens at the end of your Energy Contract term?</p> <p>We will send you a written notice at least one month, but not more than two months, before the Expiry Date of your Energy Contract. This notice will provide you with details of:</p> <ul style="list-style-type: none"> <li>• The Expiry Date of your Energy Contract;</li> <li>• The contract renewal or cancellation options available to you as well as including any revised Pricing Schedule or new terms and conditions that would apply to a renewed Energy Contract term; and</li> <li>• Details of other options available to you as required by the Energy Laws.</li> </ul> <p>If you do not respond to our notice before the Expiry Date, advising us that you wish to cancel your Energy Contract or accepting other arrangements that we might offer, we will automatically extend your supply arrangements for a further term on the terms and conditions in our notice.</p>
relevant codes/law	cl 24.3 ERC; s 32W FTA
comments	Arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a fixed term, a customer's silence is consent to signing a new fixed term contract with Australian Power & Gas (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term),

termination period	<p>T&amp;C cl 1.5 [...] If you wish to cancel your Energy Contract after the cooling off period, you will need to provide us with at least 28 days written notice. [...]</p> <p>cl 6.2 Cancellation by you</p> <p>You may cancel your Energy Contract in respect of:</p> <ul style="list-style-type: none"> <li>- natural gas only or both natural gas and electricity; or</li> <li>- electricity only if your contract is for only electricity</li> </ul> <p>by giving us 28 days written notice that you wish to disconnect your energy supply.</p> <p>If your Energy Contract is for the supply of both natural gas and electricity and you cancel your Energy Contract in respect of natural gas only, then:</p> <ul style="list-style-type: none"> <li>- at our option we can issue a notice to you requiring you to enter into a new energy contract for the supply of electricity, in which case your Energy Contract shall terminate and a new energy contract shall commence upon the expiration of a cooling off period applicable to the new energy contract; or</li> <li>- if we do not give you any such notice then your Energy Contract shall continue to be binding on you and us in accordance with its terms as if all references to "energy" were references to "electricity" and to the extent that a term and condition relates to the supply of natural gas it shall be of no further effect.</li> </ul>
relevant codes/law	ERC cl 24.1
comments	Compliant
additional retail charges	<p>T&amp;C cl 2.2 From time to time government or Energy Distributors or other industry participants may impose on us new or increased charges or taxes to the supply of energy to you. Consistent with the law, we may pass the liability for these charges or taxes onto you by providing you notice of any changes as soon as possible and, in any event, no later than your next Energy Account. All such charges or taxes will be included in your Energy Account and be payable to us.</p>
relevant codes/law	ERC cl 31
comments	Compliant.
agreed damages terms	<p>T&amp;C cl 1.5 [...] You should be aware that you might have to pay us charges or fees for the cancellation of your Energy Contract before the Expiry Date. Any applicable charges and fees are detailed in your Pricing Schedule and you acknowledge that such fees are genuine pre-estimates of the loss we have suffered as a result of the cancellation or disconnection.</p>
relevant codes/law	ERC cl 24.1, 32
comments	Compliant. See contract specific terms (above) for the amounts of the early termination fees.
ability to vary charges	<p>[Offer] Rates 'based' on regulated retail tariff. Rates may change in line with changes to RRT.</p> <p>T&amp;C cl 2.1 What will we charge you? [...]</p> <p>You can find a statement of your rights with respect to your Energy Accounts and billing by us on <a href="http://www.australianpowerandgas.com.au">www.australianpowerandgas.com.au</a> or by calling us on 133 298. The Energy Retail Code can also be obtained on our web site.</p> <p>Our energy discounts are set against the current Regulated Retail Tariffs that have been approved by the government and which apply to your area. The tariff applicable to your Energy Contract (Your rates) will be based on the Regulated Retail Tariff applicable to your premises (as determined by us) at the time that you entered into your Energy Contract. You agree to any correction to Your rates to reflect the correct Regulated Retail Tariff applicable to your premises (as determined by us) if Your rates is based on a Regulated Retail Tariff that does not apply to your premises at the time you entered into your Energy Contract. If this happens, we are entitled to correct Your rates to reflect the Regulated Retail Tariff that applies to your premises at the time you entered into your Energy Contract. In addition to this, the Regulated Retail Tariffs may change during the course of your Energy Contract. If that happens we are entitled to revise the tariffs set out in the Pricing Schedule applicable to your Energy Contract. The new tariffs, or any corrections to Your rates, will not be effective until after we give you the new Pricing Schedule and/or a correction to Your rates in writing.</p> <p>Any percentage discount amount or other credit offered in the Energy Offer is fixed for the term of</p>

	your Energy Contract, unless the term is extended or renewed under clause 1.6.
<i>relevant codes/law</i>	ERC cl 31, 35
<i>comments</i>	Compliant.
ability to unilaterally vary terms	T&C cl 11.5 Variations to your Energy Contract Your Energy Contract (but not including the tariffs payable under it) can only be varied by you and us agreeing to the valuations or changes in writing.
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Compliant.

## Click Energy

### Contracts on offer and specific terms

	ClickQuick	ClickEasy	ClickNatural
Type of service	electricity only		
SIGNED	Signed up online, 3 step process, all info available prior to signing. Sent email to cancel 9/12 - confirmed 9/12. There was no ability to cancel online and some difficulties cancelling over the phone.		
Main feature?	PIS 5% disc off total amount; no fixed term or termination fees (must pay on time by approved method). 4 bills per year. Email bills only. \$50 rebate for signing up online (\$25 off first bill, \$25 in second year).	PIS 5% disc off total amount; no fixed term or termination fees (must pay on time by approved method). \$50 smoothed bills with a quarterly settlement. Optional annual review of monthly amount to improve smoothing. Email bills only. \$50 rebate for signing up online (\$25 off first bill, \$25 in second year).	PIS GreenPower: Actual percentage unspecified., however PIS states: *The average customer buys 1.39MWh of accredited GreenPower energy reducing CO2 emissions by 1.92 tonnes. Email bills only.
additional retail charges	N/A	Charter p 6 You give <i>your</i> explicit informed consent that, if you chose to receive <i>your</i> monthly bill for ClickEasy by paper we may charge you an additional retail charge per monthly bill.	N/A
	Charter p 20 Definitions and interpretation <i>additional retail charge</i> means a charge relating to the sale of energy by <i>us</i> to <i>you</i> other than a charge based on the applicable <i>tariff</i> . It does not include any charge relating to the supply, but not sale, of energy or any amount payable by <i>you</i> for a breach of <i>your Contract</i> .		
relevant codes/law	ERC cl 31		
comments	Compliant.		
estimated bills/unhindered access requirements			
	Charter p 5 If we are not able to reasonably or reliably base a bill on a reading of <i>your</i> meter we may provide		

	you with an estimated bill. If we estimate <i>your</i> bill but subsequently obtain an actual meter reading, we will adjust <i>your</i> bill as required by the <i>Energy Retail Code</i> .	
relevant codes/law	ERC cl 5	
comments	Compliant.	
fixed term	N/A	PIS 2 years
agreed damages terms	N/A	PIS \$55 max GST incl
relevant codes/law	ERC cl 24.1, 32	
comments	Compliant.	

#### Terms applicable to all contracts

Notes	The Charter makes a good attempt at complying with the ERC. It makes reference to all ERC matters, is clearly expressed and refers consumers to the ERC and the Ombudsman.	
ERC referred to in lieu of terms	Charter p 18 Inconsistency This <i>Contract</i> cannot be inconsistent with the <i>Energy Retail Code</i> . If a term or condition of this <i>Contract</i> is inconsistent with the <i>Energy Retail Code</i> , that part is to be read as deleted and the rest of the <i>Contract</i> is not affected.	
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence; s 163 FTA.	
comments	This is compliant with the ERC. However, is also arguable that this clause is a breach of s 163 FTA (the requirement for contract terms to be clearly expressed), as it makes the contract essentially incomprehensible to a consumer who does not possess a thorough knowledge of both the ERC and the contract.	
documents containing terms of contract	Charter This <i>Charter</i> contains information about <i>your</i> rights and responsibilities. Together with any <i>Additional Terms and Conditions</i> it sets out the <i>Contract</i> between <i>you</i> and <i>us</i> for the sale and purchase of electricity. Terms that appear in <i>italics</i> are defined at the end of this <i>Charter</i> . <i>We draw your attention to a number of terms in this Contract which require your explicit informed consent.</i>	
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts	
comments	Complaint.	
CONNECTI ON		
when contract commences	Charter p 1 This <i>Contract</i> commences on the date <i>you</i> accept <i>our</i> offer to enter into this <i>Contract</i> .	
cooling period cancellation notice provided?	Charter p 1 <i>You</i> have a right to cancel this <i>Contract</i> up to 10 business days after <i>you</i> enter this contract. <i>You</i> must provide us with express written notice that <i>you</i> wish to exercise <i>your</i> rights.	

relevant codes/law	ERC cl 23.4(a)
comments	Compliant.
BILLING	
adjustment of a bill	<p>Charter p 6 Adjustment of a bill</p> <p>We will review <i>your</i> bill at <i>your</i> request. <i>You</i> must though pay the lower of that portion of <i>your</i> bill that <i>you</i> agree is not in dispute or an amount equal to the average of <i>your</i> bills in the previous 12 months.</p> <p>If the bill is correct <i>you</i> must pay any unpaid amount or, if <i>you</i> believe <i>your</i> meter is faulty, <i>you</i> may request a test. If <i>your</i> meter is found to comply with industry regulations <i>you</i> must pay any unpaid amount and the cost of the test. If <i>your</i> meter does not comply with industry regulations and <i>your</i> bill is incorrect we will adjust it.</p> <p>If we have undercharged <i>you</i>, we may recover that amount so long as we comply with the <i>Energy Retail Code</i>. We will list the amount owing in a special bill or in <i>your</i> next bill with an explanation of the amount. We can not recover more than the amount undercharged in the 12 months prior to the date on which we notify <i>you</i> on the undercharging.</p> <p>If we have overcharged <i>you</i>, we will notify <i>you</i> within 10 <i>business days</i> of us becoming aware of the error. We will repay the amount in accordance with <i>your</i> reasonable instructions or credit the amount on <i>your</i> next bill.</p>
relevant codes/law	ERC cl 6.1
comments	Compliant.
payment methods (direct debit arrangement s etc)	<p>Charter p 5 Payment – Approved Payment Methods</p> <p>You give <i>your</i> explicit informed consent that you must pay <i>your</i> bill using one of our approved payment methods. These approved payment methods are paying:</p> <ul style="list-style-type: none"> <li>• via the Click Energy website;</li> <li>• via BPAY®; and</li> <li>• over the telephone.</li> </ul> <p>Relevant information about our approved payment methods will be set out in <i>your</i> bill. You will not be charged any fees for using one of these approved payment methods. We accept VISA® and MasterCard®.</p> <p>You give <i>your</i> explicit informed consent that we may charge you a credit card processing fee of 1% of the amount paid. We do not pass on this fee at the moment and will not do so unless the banks increase their merchant service fees to an excessive level. We will only pass on this fee if we have given you at least 20 business days notice.</p> <p>If you wish to use a direct debit arrangement, you must complete an approved direct debit request. You can download this form from our website.</p>
relevant codes/law	ERC cl 7.2
comments	Compliant. A separate document contains the direct debit terms 'Direct Debit Service Agreement'.
late payment fees	No mention – compliant.
CREDIT MANAGEMENT	
refundable advances	<p>Charter p 9 Refundable advances</p> <p>If we require <i>you</i> to provide a refundable advance as set out in the <i>Energy Retail Code</i> we will do so according to the requirements of the <i>Energy Retail Code</i>.</p>
relevant codes/law	ERC cl 8

comments	Compliant.
shortened billing and collection cycles	<p>Charter p 6 Bill Smoothing</p> <p><i>You give your explicit informed consent that, if you choose our monthly billed product, ClickEasy, you will be sent a bill monthly. Your monthly bill will be based on your estimated average annual consumption. When we have an actual meter reading for your supply address we will send you a bill for the balance of the amount payable that you owe us for that quarter. Every 12 months we will review your consumption and may adjust the amount we charge you monthly. We will e-mail you if the amount changes. You must notify us in writing if you do not want the amount to change.</i></p> <p>Charter p 9 Shortened Collection Cycle</p> <p><i>We may place you on a shortened collection cycle if we have complied with the provisions of the Energy Retail Code which includes giving you a reminder notice for three consecutive bills or a disconnection warning for two consecutive bills.</i></p> <p><i>If we do so, we will give you notice within 10 business days of doing so.</i></p> <p><i>If you are on a shortened collection cycle we will only send you a disconnection warning. You will not be entitled to receive a reminder notice until you have paid three consecutive bills by the due date.</i></p>
relevant codes/law	ERC cl 9, 10
comments	Compliant.
payment difficulties	<p>Charter p 9 Payment Difficulties</p> <p><i>You must contact us if you anticipate that you will be unable to pay the bill by the due date. If you contact us, or we believe that you are experiencing repeated difficulties paying your bills, we will:</i></p> <ul style="list-style-type: none"> <li>- <i>discuss with you alternative payment arrangements;</i></li> <li>- <i>assess your capacity to pay and make available to you information about our assessment;</i></li> <li>- <i>offer you an instalment plan, unless in the previous 12 months you have failed to comply with two previous instalment plans and you do not provide a reasonable assurance to us that you are willing to meet your payment obligations;</i></li> <li>- <i>provide you with details on concessions including the Utility Grant Scheme;</i></li> <li>- <i>provide you with telephone information about energy efficiency, and advice on the availability of an independent financial counsellor; and</i></li> <li>- <i>if you wish, for an additional retail charge, conduct an energy efficiency audit for you.</i></li> </ul>
relevant codes/law	ERC cl 11
comments	Compliant.
DISCONNECTION	
disconnection	<p>Charter p 10 Grounds for Disconnection</p> <p><i>You must contact us if you anticipate that you will be unable to pay the bill by the due date. We will not disconnect you for not paying the bill by the due date unless we have complied with the Energy Retail Code. Amongst other things, the Energy Retail Code requires us to:</i></p> <ul style="list-style-type: none"> <li>- <i>offer you an instalment plan as required by the Energy Retail Code;</i></li> <li>- <i>give you all the prescribed reminder notices and a disconnection warning which states that we may disconnect you no sooner than 7 business days after receipt of the notice; and</i></li> <li>- <i>provide you with details on concessions including the Utility Relief Grant Scheme.</i> <p><i>We or your distributor may disconnect you, or your supply may be interrupted, amongst other things:</i></p> <ul style="list-style-type: none"> <li>- <i>if you do not pay your bill by the due date and we have followed the procedures stipulated by the Energy Retail Code;</i></li> <li>- <i>if, due to your acts or omissions, we or your distributor have been unable to access your meter as stipulated by the Energy Retail Code;</i></li> <li>- <i>if you have tampered with the meter or you are otherwise using electricity in a manner</i></li> </ul> </li></ul>

	<p>that is not permitted by applicable laws and codes;</p> <ul style="list-style-type: none"> <li>- if you refuse to provide <i>acceptable identification</i> when you are required to;</li> <li>- in an emergency;</li> <li>- for health and safety reasons;</li> <li>- for maintenance;</li> <li>- at the end of this <i>Contract</i> if the <i>Energy Retail Code</i> allows us to do so.</li> </ul> <p>Subject to other terms of this <i>Contract</i>, you may request us to disconnect your supply address at any time.</p> <p>No Disconnection</p> <p>We will not disconnect you for non-payment of a bill if:</p> <ul style="list-style-type: none"> <li>- the amount payable is less than any amount approved by the <i>Commission</i>;</li> <li>- your complaint to the <i>Ombudsman</i>, directly related to the non-payment of the bill, is unresolved;</li> <li>- you have applied for a Utility Relief Grant and a decision has not been made;</li> <li>- the only charge you have not paid is not for the supply or sale of electricity; or</li> <li>- your supply address is registered by us or your distributor as a life support machine supply address.</li> </ul>
relevant codes/law	ERC cl 13, 14
comments	Compliant.
LIABILITY	
indemnity and limitation of liability	<p>Charter p 12 Limitation of liability</p> <p>You acknowledge that, because of the nature of electricity, we can not guarantee the quality, frequency and continuity of electricity to your supply address. If you are a <i>business customer</i> you must take reasonable precautions to minimise the risk of loss or damage to any equipment, property or your business which may result from poor quality or reliability of electricity supply. Our liability to you for any breach of this <i>Contract</i> is limited to the maximum extent permitted by the <i>Trade Practices Act 1974</i> or any other law. If we breach this <i>Contract</i> we will, at our option, supply to you the equivalent electricity and/or services or pay the cost of having the equivalent electricity and/or services supplied again.</p> <p>You must indemnify us for any breach by you of this <i>Contract</i> or your negligence to the maximum amount which we are entitled to be compensated under the common law (including in equity) or statute.</p>
relevant codes/law	s 68A TPA; ERC cl 16-18
comments	Compliant.
TERM AND TERMINATION	
termination period	No mention.
continuation of term	<p>Charter p 1 If the Cooling-off period has expired and you want to terminate this contract you must notify us in writing as soon as possible. You must pay all outstanding amounts owing. [...]</p> <p>If you have entered into this <i>Contract</i> for a fixed term and you wish to terminate the <i>Contract</i> prior to the end of that term, we may charge you an exit and administration fee. The amount of the exit and administration fee will be set out in your <i>Product Information Statement</i>.</p>
relevant codes/law	ERC cl 24.1
comments	Compliant, although there is no mention of whether a new fixed term contract might commence at the end of the contract term.
GENERAL	

ability to vary charges	Charter p 2 Transfer If <i>you</i> transfer with us to a new <i>supply address</i> , your <i>tariff</i> may change.
<i>relevant codes/law</i>	ERC cl 31, 35
<i>comments</i>	Compliant. This is the only mention of varied tariff charges.
ability to unilaterally vary terms	Charter p 18 Variation This <i>Contract</i> may be varied by agreement in writing between <i>you</i> and <i>us</i> . The tariff <i>you</i> are charged is the tariff approved by the <i>Commission</i> and may change without notification to <i>you</i> . If the <i>Energy Retail Code</i> is amended, <i>we</i> will inform <i>you</i> of any amendment that materially affects <i>your</i> rights, entitlements and obligations as soon as reasonably practicable after the <i>Energy Retail Code</i> is amended. <i>We</i> will provide <i>you</i> with a copy of the <i>Energy Retail Code</i> (a large print copy is available) if <i>you</i> request it.
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Compliant.

## Country Energy

Terms applicable to Country Energy's market contract (only one market contract on offer)

	Standard Electricity
signed	Yes. Spent some time waiting for details. Told takes up to 10 days to come. Offer valid for 14 days from date generated. 2yr fixed term, fixed rate, \$40 incentive on 1st a/c.
comments	If signing up online, only the standard form contract for NSW is made available, not Victoria's.
notes	T&C document includes an Appendix/Customer Charter, which is not part of the contract but includes terms referred to in the contract (cl 1.1)
type of service	electricity only
main feature/incentive	2 yr term [Form A Electricity Agreement] 2. Your Agreement Expiry Date is 2 years from the Start Date as defined in the Terms and Conditions. Greenpower options: everydayGREEN 10% greenpower \$1.30 extra per week (incl GST) - 647 kWh's pa liteGREEN 20% greenpower \$2.00 extra per week (incl GST) - 1,294 kWh's pa livingGREEN 50% greenpower \$4.50 extra per week (incl GST) - 3,235 kWh's pa foreverGREEN 100% greenpower \$8.00 extra per week (incl GST) - 6,470 kWh's pa
ERC referred to in lieu of terms	Country Energy's contract deals with all the applicable matters in the ERC without referring to the ERC in this capacity.
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	Compliant.
documents containing terms of contract	<ul style="list-style-type: none"> <li><i>Terms and Conditions for Electricity Retail Services to Victorian customers whose consumption of electricity is less than 160MWh per year; ('T&amp;C')</i></li> <li><i>Form A Electricity Agreement;</i></li> </ul> <p>T&amp;C cl 2 Definitions and interpretation Contract: means the contract between Country Energy and the Customer, comprising Form A and the terms and conditions contained in this document, together with any schedules and annexures forming part of this document. T&amp;C cl 24.5 Entire Contract The Contract constitutes the entire agreement between the Parties. Appendix 1 The Customer Charter 1.3 This Charter is not a contract although the Contract the customer has entered into with Country Energy does incorporate some of the provisions set out in this Charter as part of that Contract.</p>
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence; s 163 FTA.
comments	<p>The terms of the contract are lengthy, complex and contain many cross-references. The 46-page Terms and Conditions document has no contents page, and contains over 60 contract-specific definitions referred to throughout. It also contains a Charter in its Appendix, which is referred to in the Terms and Conditions as not being part of the contract in its entirety, but that some Charter clauses are referred to in the preceding terms.</p> <p>In addition, the above clauses contain an entire agreement clause, which Country Energy could attempt to rely upon in order to deny any claims by the customer that they relied upon additional promises or representations.</p>

	Such an entire agreement clause would preclude the inclusion in the contract of other documents sent with the offer (ie, not 'schedules' or 'annexures') that purport to be part of the contract. This includes the Exchange of Credit Worthiness Between Credit Providers, which begins with the words: 'By signing this Offer, you agree that...' (although this document effectively restates statutory obligations under the <i>Privacy Act 1988</i> (Cth)).
when contract commences	Form A Electricity Agreement cl 1 Your Agreement with Country Energy Start Date is the date you sign this Agreement.
cooling period cancellation notice provided?	Yes – compliant.
<b>BILLING</b>	
estimated bills/unhindered access requirements	T & C cl 5 Electricity Charges If the metering equipment at the Supply Address malfunctions or registers incorrectly, giving rise to an error in registration (as prescribed by an applicable law from time to time), or metering data is not available for any reason, Country Energy will estimate the Customer's Consumption based on the Customer's historical data. Country Energy will adjust the bill if a reliable meter reading is subsequently obtained in accordance with the terms and conditions set out in clause 5 of Appendix 1. [...] cl 5.5 If the Customer has denied Country Energy access to the meter and a bill has been issued on an estimate, the Customer may subsequently request that the bill be replaced with a bill based on an actual reading of the meter. If a subsequent bill is issued, Country Energy may impose an additional charge specified in the Miscellaneous Charges.
relevant codes/law	ERC cl 5
comments	Compliant.
adjustment of a bill	T&C cl 9 Payment [...] 9.4 If the Customer disputes a bill the Customer may ask Country Energy to review the bill and the parties agree to comply with the terms set out in clause 7 of Appendix 1.
relevant codes/law	ERC cl 6.1
comments	Compliant – the terms of cl 7 of Appendix 1, noted above, meet the requirements of s 6.1 ERC.
payment methods (direct debit arrangements etc)	No mention.
late payment fees	No mention.
<b>CREDIT MANAGEMENT</b>	

refundable advances	<p>T&amp;C cl 20 Security [...]</p> <p>20.2 If at any time the Domestic Customer meets the requirements in cl 17 of Appendix 1 the Domestic Customer must on request, provide a refundable advance or bank guarantee to Country Energy in respect of the Domestic Customer's payment obligations contained in this Contract.</p> <p>20.3 If clause [...] 20.2 applies to a Customer, the Customer must satisfy its security obligation by providing to Country Energy a refundable advance or, at the Customer's option, a bank guarantee for an amount determined by Country Energy in accordance with any relevant guideline or code from time to time.</p> <p>20.4 Country Energy will comply with the terms set out in clause 17 of Appendix 1 in relation to repaying and using the refundable advance or guarantee.</p>
relevant codes/law	ERC cl 8
comments	Compliant – the terms of cl 17 of Appendix 1, noted in cl 20.4, meet the requirements of s 8 ERC.
shortened billing and collection cycles	<p>T&amp;C cl 9 Shortened Collection Cycle</p> <p>9.1 Where you are experiencing payment difficulties we may at our discretion place you on a shortened collection cycle if we have given you:</p> <p>(1) reminder notices for three consecutive bills or disconnection warnings for two consecutive bills; and</p> <p>(2) prior to the third reminder notice or the second disconnection notice, a notice informing you that:</p> <ul style="list-style-type: none"> <li>(a) receipt of the third reminder notice or second disconnection warning may result in you being placed on a shortened collection cycle;</li> <li>(b) being on the shortened collection cycle means you will not receive any reminder notices until you have paid three consecutive bills on time;</li> <li>(c) alternative payment options may be available;</li> </ul> <p>and</p> <p>(d) further information may be obtained from us on a specified telephone number.</p> <p>9.2 If you are experiencing payment difficulties, we must also have given you the necessary assistance required by Energy Retail Code.</p> <p>9.3 We will inform you that you have been placed on a shortened collection cycle within 10 Business Days of doing so.</p>
relevant codes/law	ERC cl 9
comments	Compliant.
payment difficulties	<p>T&amp;C cl 10 Payment Difficulties</p> <p>10.1 If the Customer anticipates that it will be unable to pay a bill by the Due Date, the Customer may ask to pay the bill by an instalment plan. If Country Energy agrees, Country Energy may impose an additional charge specified in the Miscellaneous Charges and the instalment plan must comply with the requirements in Appendix 1.</p> <p>10.2 Where a Customer contacts Country Energy in accordance with clause 10.1 and Country Energy and the Customer do not agree on alternative payment arrangements, or Country Energy considers that a Domestic Customer is experiencing payment difficulties, Country Energy must comply with clause 9 of Appendix 1.</p> <p>10.3 Country Energy may not commence debt recovery proceedings whilst the Customer continues to make payments under an agreed instalment plan or, in the case of a Domestic Customer, unless Country Energy has complied with clause 9 of Appendix 1. Any proceedings for debt recovery will comply with any guidelines issued by the Australian Competition and Consumer Commission (ACCC) from time to time.</p>
relevant codes/law	ERC cl 11
comments	Compliant – the terms of Appendix 1, noted in cl 10.1, meet the requirements of the ERC.
DISCONNE	

<i>CTION</i>	
disconnection	<p>T&amp;C cl 11 Disconnection and Reconnection</p> <p>11.1 Country Energy may discontinue the supply of electricity to the Supply Address if the period of supply under this Contract ends or if the person who owns or occupies the Supply Address has:</p> <ol style="list-style-type: none"> <li>(1) failed to provide any security, required by clause 20, for payment of charges related to the supply of electricity or connection services arranged;</li> <li>(2) failed to pay an amount due to Country Energy under the Contract with respect to the supply of electricity or connection services arranged by Country Energy (unless it is the first instalment under the Customer's first instalment plan);</li> <li>(3) denied Country Energy's officers/agents access to the meter for 3 consecutive bills;</li> <li>(4) refused when required to provide acceptable identification (if the Customer is a new Customer of Country Energy); or</li> <li>(5) requested to be disconnected;</li> </ol> <p>and Country Energy has complied with relevant procedures set out in clause 11 of Appendix 1 and, in the case of a Domestic Customer, clause 9 of Appendix 1.</p> <p>11.2 The Customer may request reconnection of electricity and Country Energy will use all reasonable endeavours to procure the reconnection of the Customer as soon as possible if, subject to other applicable laws and codes and the Customer paying any reconnection charge, the reason for disconnection is remedied within 10 Business Days of disconnection.</p> <p>11.3 Where Country Energy disconnects the supply of electricity to the Supply Address without following the procedures and requirements referred to in this document, Country Energy will provide all or any compensation to the Customer in accordance with any applicable laws.</p>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<i>LIABILITY</i>	
indemnity and limitation of liability	<p>T&amp;C cl 19 Liabilities of Country Energy</p> <p>19.1 Notwithstanding any other provision of this Contract, nothing in this Contract is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.</p> <p>19.2 Except as expressly set out in this Contract, any representation, warranty, condition or undertaking which would be implied in this Contract by law, is excluded to the maximum extent permitted by law.</p> <p>19.3 Country Energy's Liability, if any, under this Contract is limited to the maximum extent permitted by section 68A of the Trade Practices Act 1974. That is, in relation to the supply of goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption, Country Energy's liability for breach of this Contract is limited to (at Country Energy's option):</p> <ol style="list-style-type: none"> <li>(1) in the case of goods being energy: <ol style="list-style-type: none"> <li>(a) the replacement of the energy or the supply of equivalent energy; or</li> <li>(b) the payment of the cost of replacing the energy or of acquiring equivalent energy; or</li> </ol> </li> <li>(2) in the case of services: <ol style="list-style-type: none"> <li>(a) the supply of the services again; or</li> <li>(b) the payment of the cost of having the services supplied again.</li> </ol> </li> </ol> <p>19.4 The Customer acknowledges that the terms of this Contract do not represent a waiver by Country Energy of, or an agreement to vary or exclude, any limitation of Country Energy's liability under sections 119 or 120 of the National Electricity Law or section 117 of the Electricity Industry Act 2000.</p> <p>[...]</p> <p>19.6 Country Energy does not guarantee the quality, frequency or continuity of the electricity delivered to the Customer's Supply Address.</p>
<i>relevant codes/law</i>	s 68A TPA; ERC cl 16-18
<i>comments</i>	Compliant.

<i>TERM AND TERMINATION</i>	
continuation of term	<p>Form A cl 2 Your Agreement Expiry Date is 2 years from the Start Date as defined in the Terms and Conditions.</p> <p>T&amp;C cl 13 Continuation of Term</p> <p>13.1 Not earlier than 2 months and at least 1 month before the Expiry Date Country Energy will notify the Customer that this Contract is due to expire, and when the expiry will occur, and Country Energy may offer to extend this Contract for an Extended Period at the Electricity Prices quoted in that offer (Continuation Notice). Country Energy will include in the Continuation Notice details of other supply options available to the Customer.</p> <p>13.2 If Country Energy gives the Customer a Continuation Notice and the Customer does not notify Country Energy before the Expiry Date that the Customer does not wish to extend the Contract for the Extended Period, this Contract will be extended for the Extended Period on the same terms except that the Electricity Prices (and any revisions to the terms and conditions of this Contract made by Country Energy) will be as set out in the Continuation Notice and the Expiry Date will be extended by the Extended Period. If the Customer elects not to extend this Contract a contract for the sale of electricity shall be deemed to exist on the terms of this Contract with the exception that the Default Prices will apply in place of the Electricity Prices (and any revisions to the terms and conditions of the Contract made by Country Energy) until the date the Customer arranges for another retailer to become responsible for the Supply Address under the procedures established under the Rules.</p> <p>13.3 For the avoidance of doubt, Country Energy may give an offer to extend this Contract in accordance with clause 13.1 on more than one occasion, on the basis that the reference to the "Expiry Date" in clause 13.1 includes and date to which the Contract has previously been extended in accordance with clause 13.</p> <p>T&amp;C cl 2 Definitions and Interpretation Continuation Notice: has the meaning given in clause 13.1. Extended Period: means the period specified in the relevant Continuation Notice</p>
<i>relevant codes/law</i>	s 32W FTA
<i>comments</i>	Arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a fixed term, a customer's silence is consent to signing a new fixed term contract with Country Energy (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term),
termination period	<p>T&amp;C cl 12 Term and Termination</p> <p>12.2 The Customer may terminate this Contract: [...]</p> <p>(2) after the Cooling-Off Period by giving Country Energy at least 28 days notice of its intention to do so, and must pay any fees as detailed in clause 12.5.</p>
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.
agreed damages terms	<p>Form A Electricity Agreement</p> <p>T&amp;C cl 12.5</p> <p>Form A cl 2 An early termination fee of up to \$95 (GST inclusive) may apply if the Customer terminates the Agreement prior to the Expiry Date.</p>
<i>relevant codes/law</i>	ERC cl 24.1, 32
<i>comments</i>	Compliant.
additional retail charges	<p>T&amp;C cl 9 Payment</p> <p>9.3 If the Customer's payment is dishonoured or reversed resulting in Country Energy incurring a fee, Country Energy may recover the fee from the Customer. Similarly, if the Customer pays</p>

	Country Energy's bill using a method which results in Country Energy incurring a merchant service fee, Country Energy may recover the fee from the Customer.
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant. Aside from the above clause, there is no mention of additional retail charges.
ability to vary charges	<p>T&amp;C cl 6 Variation in Charges</p> <p>6.1 For the purpose of this Contract, a "Relevant Event" means the introduction or happening of any of the following or a change to any of the following after the Commencement Date:</p> <p>(1) any tax, levy or duty that is imposed or passed on to Country Energy by any government or semi-governmental or other body, including, without limitation, consumption, goods and services or value added tax, production tax, energy tax, carbon tax or greenhouse gas emissions tax, environmental tax or any other tax, levy or duty, of similar purpose or effect; or</p> <p>(2) any cost, levy or charge in connection with participating in the National Electricity Market or acquiring electricity (including the cost of complying with obligations to acquire electricity from renewable resources) which Country Energy is required to pay.</p> <p>6.2 If a Relevant Event occurs, then Country Energy may charge the Customer, and the Customer must pay the Customer's Proportion. The Customer's Proportion may be passed through as a separate charge in the Customer's bill or by revising the Electricity Prices.</p>
<i>relevant codes/law</i>	ERC cl 31, 35; ss 32W, 163 <i>Fair Trading Act</i>
<i>comments</i>	Compliant.
penalty for late payment	No mention – compliant.
ability to unilaterally vary terms	<p>T&amp;C cl 24.3 Amendment</p> <p>Unless otherwise specifically provided for under this Contract, any variation to the Contract, including any variation to Form A, must be in Writing and signed by both Parties.</p>
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Compliant.

## Energy Australia

Contracts on offer and specific terms

	Electricity Offer	Gas and Electricity Offer	Online Electricity	Online Gas and Electricity	Smarter Pay Electricity	Smarter Pay Gas and Electricity
notes					optional credit card/direct debit incentive	
signed				Y		
type of service	electricity	gas and electricity	electricity	gas and electricity	electricity	gas and electricity
main feature/incentive	2 Hoyts movie vouchers 4% discount in first 12 months of supply; 6% discount for second 12 months of supply; 8% discount for third 12 months of supply.		\$50 credit split over first yr (\$12.50/qtr) 2 Hoyts movie vouchers 4% discount in first 12 months of supply; 6% discount for second 12 months of supply; 8% discount for third 12 months of supply.		\$20 one-off credit	

Terms applicable to all Energy Australia contracts

ERC referred to in lieu of terms	<p>Related Documents</p> <p>2.11 We will provide you with copies of our Customer Charter, our Privacy Statement, these Agreement Conditions, the <i>Schedule</i> and any Disclosure Statement or Offer Summary in accordance with the <i>energy laws</i>.</p> <p>2.12 In addition to these Agreement Conditions, a range of <i>energy laws</i>, codes, guidelines and our retail licences govern your <i>energy supply</i>.</p> <p>2.13 Your and our rights and obligations under the Energy Agreement are subject to, and supplemented by, the terms of the <i>energy laws</i>. The Energy Agreement should be read in conjunction with the <i>energy laws</i>.</p> <p>2.14 In certain circumstances, we may be permitted to depart from the terms of the <i>energy laws</i>. If we do so, these departures will be included as special conditions in the <i>Schedule</i> and we will obtain your consent to those departures in accordance with the <i>energy laws</i>.</p> <p>T&amp;C cl 17 Interpretation</p> <p>17.1 The Following words have there meanings: [...]</p> <p><i>energy laws</i> means the <i>National Electricity Rules</i>, all applicable pipeline access arrangements, our retail licence, all regulatory documents referred to in that licence and (as applicable):</p> <p>(a) for Victoria, the Electricity Industry Act 2000 (Vic) and related regulations, the Gas Industry Act 2001 (Vic) and related regulations, the Energy Retail Code and any other laws or codes relating to the supply of <i>energy</i>; [...]</p>
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	Compliant.
documents containing terms of contract	<p>Energy Details Residential – Electricity; Offer</p> <p>Your Energy Agreement is for electricity and gas [electricity only] and consists of the Energy Offer, including these Energy Details, the Energy Agreement (VIC/SA Version 1, 12/05/2008), the Privacy Statement and, if relevant, the SmarterPay details.</p>
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts

<i>comments</i>	The term 'Energy Agreement' is used to refer to both the entire contract and a document comprising part of it. The document called 'Energy Agreement' was only provided on the final page of the online application process (in the form of a PDF link). This page also noted that a copy would be available from the site <a href="http://www.welovevictoria.com.au">www.welovevictoria.com.au</a> (none was available), and by phoning Energy Australia. As a result, if customers did not download a copy of the Energy Agreement document at the time of signing, they would need to call Energy Australia to obtain one. Although possibly not a contravention of s 163 of the FTA, this procedure makes it difficult for consumers to understand and comply with their contracts.
<b>CONNECTION</b>	
when contract commences	T&C cl 2.3 The Energy Agreement is entered into by you when you accept our offer to supply energy to you by: (a) signing and returning to Schedule to us before the relevant offer expiry date; or (b) giving us your verbal acceptance of the relevant offer, and receiving the verbal consent documents; or (c) giving us your acceptance of the relevant offer on our online acceptance form.
cooling period cancellation notice provided?	Yes – compliant. T&C cl 2.5 You may cancel the Energy Agreement without penalty by giving us notice, either in writing or by telephone, within the cooling-off period that applies from the latest of (a) the day you entered into the Energy Agreement; or (b) the day you received the verbal consent documents.
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>T&amp;C cl 4.2 Meters and Supply Points To facilitate the supply of energy to the premises, you agree to:</p> <ul style="list-style-type: none"> <li>(a) make available sufficient land at the premises (to our reasonable satisfaction) to situate the meter (including any additional or replacement meters) and supply point (and any associated equipment) safely;</li> <li>(b) protect and not disconnect, by-pass, interfere with or damage any meter or supply point at your premises and promptly notify us of any problems with them;</li> <li>(c) give the meter readers, authorised persons and the distributor, information and safe, convenient and unhindered access at all reasonable times to the premises (including any meter, the supply point and any related equipment at the premises) for any reasonable purpose required; and</li> <li>(d) comply with any directions from us or the distributor about any meter or the supply point.</li> </ul> <p>T&amp;C cl 5.10 You also agree to:</p> <ul style="list-style-type: none"> <li>(a) pay us the reasonable costs we incur if you do not give access to the meter readers or you request an unscheduled meter reading</li> </ul> <p>T&amp;C cl 6.2 If we:</p> <ul style="list-style-type: none"> <li>(a) do not have metered data from an actual meter reading;</li> <li>(b) are unable reasonably and reliably to base your bill on a reading of your meter; or</li> <li>(c) are authorised to do so under the energy laws,</li> </ul> <p>we may base the bill on an estimate of the energy you have consumed for a relevant period determined in accordance with the energy laws.</p> <p>T&amp;C cl 6.3 If we subsequently obtain a meter reading or more reliable data, we will adjust your next bill as appropriate.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	<p>T&amp;C cl 6.11 Bill Reviews 6.11 You may request a review of a bill. The review will be undertaken in accordance with the <i>energy laws</i>. You must still pay the amount of the bill that is not in dispute or an amount equal to the average amount of your bills in the last 12 months (whichever is greater).</p> <p>6.12 If the review shows the bill is correct, you must pay for the cost of any meter test or check of a meter reading or data (if you requested one) and pay any amounts outstanding. Should the review disclose an error, we will adjust the bill (subject to conditions 6.13 to 6.15).</p>

	<p>Undercharging and Overcharging</p> <p>6.13 If we have undercharged you or not charged you at all, we may recover this amount from you in accordance with the <i>energy laws</i>. Unless you have used <i>energy</i> illegally, we will limit the amount we seek to recover to no more than the amount undercharged in the last 12 months (unless the <i>energy laws</i> specify a shorter period) from the date we notify you of the amount undercharged.</p> <p>6.14 If you request, we must provide a payment arrangement for you to pay the undercharged amount over a period equivalent to that during which the undercharging occurred.</p> <p>6.15 If you are overcharged, we will inform you within 10 <i>business days</i> of the date that we become aware of it and either repay the overcharged amount according to your reasonable instructions or credit the amount to your next bill as required under the <i>energy laws</i>.</p>
<i>relevant codes/law</i>	ERC cl 6
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>T&amp;C cl 6.9 You may pay your bill by any method set out on your bill, including direct debit, cheque or credit card.</p> <p>T&amp;C cl 6.10 We will offer you the option of paying on an instalment plan where we are required to do so under the energy laws. For instalment plans, refer to conditions 6.21 to 6.23.</p> <p>Energy Details Residential – Electricity</p> <p>D. SmarterPay</p> <p>You may pay your bill by any methods set out on your bill, including direct debit, cheque or credit card.</p> <p>'SmarterPay' is the easy, no fuss way of paying your EnergyAustralia bills. With SmarterPay, there are two options:</p> <ul style="list-style-type: none"> <li>• Regular Payment Option (RPO): RPO is a bill smoothing payment method that allows you to pay your energy consumption amount over a series of estimated regular payments from your chosen bank, credit union or building society account, or from your credit card.</li> <li>• Automatic Payment: Payment is made on the due date of the bill from your chosen bank, credit union or building society account, or from your credit card.</li> </ul> <p>When you sign up to one of these SmarterPay options you will receive a one-off \$20 credit on your account.</p>
<i>relevant codes/law</i>	ERC cl 5.3, 7.2
<i>comments</i>	Separate documents list the terms of the bill smoothing options (the RPO) and the Automatic Payment. Compliant.
late payment fees	<p>Energy Offer cl 5 Fees</p> <p>[...] You will [...] be exempt from administration, late payment and transfer fees.</p>
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 9</p> <p>9.1 We may require you to provide us with a security deposit in accordance with the energy laws if you:</p> <ul style="list-style-type: none"> <li>(a) owe money to other retailers which is more than the amount specified under the energy laws;</li> <li>(b) have illegally used energy in the past 2 years (see condition 4.1);</li> <li>(c) are a new customer and have refused to provide acceptable identification to us;</li> <li>(d) are a residential customer and have an unsatisfactory credit rating and you do not</li> </ul>

	<p>accept our offer of an instalment plan;</p> <p>(e) are a business customer and have an unsatisfactory account payment record or credit rating; or</p> <p>(f) we are otherwise permitted under the energy laws.</p> <p>9.2 The amount of the security deposit will be calculated in accordance with the energy laws (including any increase in the deposit).</p> <p>Time for Payment</p> <p>9.3 You agree to provide the security deposit within 10 days after we request it.</p> <p>Content</p> <p>9.4 Cash or securities provided as a security deposit are to be transferred to us absolutely and not by way of security.</p> <p>Use of the Deposit</p> <p>9.5 We may apply a security deposit against, or draw on it for, any amount you owe us under the Energy Agreement in accordance with the energy laws, but not otherwise.</p> <p>9.6 We may set-off against amounts you owe us any money we owe you unrelated to any security deposit, in accordance with the energy laws. Application of a security deposit or the set-off of any amount we owe you does not affect any other right we have against you for amounts you owe us.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	<p>T&amp;C cl 6.19 Shortened Collection Cycles</p> <p>If you are consistently late paying your bills and we have complied with the requirements of the energy laws, we may place you on a shortened collection cycle.</p>
<i>relevant codes/law</i>	ERC cl 9
<i>comments</i>	Compliant.
payment difficulties	T&C cl 6.10 We will offer you the option of paying on an instalment plan where we are required to do so under the energy laws.
<i>relevant codes/law</i>	ERC cl 11
<i>comments</i>	Compliant.
<i>DISCONNECTION</i>	
disconnection	No mention.
<i>LIABILITY</i>	
indemnity and limitation of liability	No mention.
<i>TERM AND TERMINATION</i>	
continuation of term	<p>T&amp;C cl 2.7 Term</p> <p>2.7 The term of the Energy Agreement begins on the date we commence supplying energy to you and, if you are on a fixed term Energy Agreement, continues for the period stated in the Schedule.</p> <p>Extending the term of a fixed term Energy Agreement</p> <p>2.8 If you are on a fixed term Energy Agreement, then in accordance with the energy laws before the end of the term, we will send you a notice advising you of your energy supply options after the term expires. In that notice we may include an offer containing</p>

	<p>a proposal to vary the Energy Agreement by extending the term and the conditions of that extension. If you do not reject the offer within the period set out in the notice, you are taken to have accepted the offer and this Energy Agreement is to be varied accordingly. If you give us a notice rejecting the offer, this Energy Agreement terminates at the end of the term.</p> <p>2.9 If the term ends without being extended or terminated under condition 2.8, then this Energy Agreement will continue indefinitely on the same terms (including the charges) until it is varied by us or terminated. We may vary the terms (including the charges) by providing you with notice.</p> <p>2.10 You or we may terminate this Energy Agreement to take effect at the end of the term or, if the Energy Agreement has continued indefinitely after the end of the term under condition 2.9, by giving the other party at least 28 days' notice.</p> <p>Energy Offer (the Schedule)</p> <p>The no fixed term agreement begins when we commence supplying energy to you and continues until terminated by you or Energy Australia in accordance with the agreement. You may terminate your no fixed term agreement by giving us at least 28 days notice in writing. Energy Australia may also terminate this no fixed term agreement if we discontinue the no fixed term offer - in which case we will provide you with 28 days notice in writing and details of your options for supply beyond the termination date (which may include another agreement offer from us.) No early termination fees apply to this offer.</p>
<i>relevant codes/law</i>	cl 24.3 ERC; s 32W FTA
<i>comments</i>	Arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a fixed term, a customer's silence is consent to signing a new fixed term contract with Energy Australia (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term),
<i>termination period</i>	<p>Energy Details Residential – Electricity cl 4</p> <p>You may terminate your no fixed term agreement by giving us at least 28 days notice in writing.</p> <p>T&amp;C cl 7.4 If you do not give us the required notice and we have not entered into a new energy supply agreement for the premises, you will continue to be liable for all costs incurred until (which ever occurs first): (a) you have given us the required notice of termination; or (b) the supply of energy to the premises is disconnected or transferred to a new retailer.</p>
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.
<i>agreed damages terms</i>	<p>T&amp;C cl 7.9 Early Termination Fee</p> <p>If the Schedule specifies an early termination fee and:</p> <ul style="list-style-type: none"> <li>(a) you terminate the Energy Agreement; or</li> <li>(b) we terminate this Energy Agreement under condition 7.1 (such as if you are in default), before the end of the term,</li> </ul> <p>then (unless prohibited by energy laws) you must pay the termination fee specified in the Schedule. This fee is payable even if you give us the notice required.</p> <p>T&amp;C cl 7.10 The termination fee is payable within 15 business days of us notifying you of the amount payable. We refund any amount paid under this provision if you terminate the Energy Agreement because you move out of the premises and, within 3 months, sign a new Energy agreement with us.</p>
<i>relevant codes/law</i>	ERC cl 24.1, 32
<i>comments</i>	Compliant. The 'Energy Details Residential – Electricity' document states this is a no fixed term agreement (cl 4).
<i>GENERAL</i>	
<i>additional retail charges</i>	<p>T&amp;C cl 5 Charges</p> <p>5.1 You agree to pay us the charges.</p>

	<p>5.2 The Schedule sets out the rates you will be charged based on energy consumed at the premises. These rates comprise the following components:</p> <ul style="list-style-type: none"> <li>(a) the amount we charge for energy;</li> <li>(b) metering charges;</li> <li>(c) market charges;</li> <li>(d) network charges; and</li> <li>(e) for electricity only, emission charges.</li> </ul> <p>5.3 The Schedule may indicate that some rates (such as off peak rates) may not be available, depending on your meter. In those cases, we determine, by reference to your meter, as soon as practicable after the Energy Agreement commences, which of these rates apply. Your first bill will indicate the rates that apply.</p> <p>5.4 If the Schedule includes a charge that is a daily charge, we will bill you for that charge for each day of the term.</p> <p>5.5 Any other charges are separately identified in the Schedule or these Agreement Conditions.</p> <p>5.6 You are not liable to pay for any charges unless the amount of, or basis for, calculating the charge is set out in this Energy Agreement.</p>
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant.
ability to vary charges	<p>T&amp;C cl 5.7 We may vary the rate or amount of any charges or impose any further charge in the manner set out in these Agreement Conditions or the Schedule.</p> <p>T&amp;C cl 5.8 Unless the Schedule indicates otherwise: (a) we may vary the charges by providing you with 28 days notice, in which case you may elect to terminate your Energy Agreement before the end of the notice period.</p> <p>(b) we may pass through to you the effect of variations applicable to metering charges, market charges, network charges and emission charges. We may do this by varying the amounts you must pay us in connection with these items if they are varied by the distributor, market and system operator or other relevant third party, or we reasonably determine or estimate that the cost to us of any of them has varied;</p> <p>(c) we may vary a daily charge or other charge shown in the Schedule if any component that makes up that charge is varied; and (d) we may vary the rate or amount of any charges or impose any further charge; (i) if there is a change to the loss factors; (ii) if there is any change in the law; (iii) if the metering for the premises is changed; (iv) in respect of the supply of gas only, if the cost to us of purchasing, transporting, selling or supplying gas has increased to an upstream event (including managing, mitigating or minimising the impact and price risks of the event). We will allocate the increased costs to our relevant customers on a pro-rata basis, based on the volume of gas purchased in relation to those relevant customers; or (v) in respect of the supply of gas only, once during the second half of the each year, in accordance with the following formula: <math>A = B \times C / D</math> Where A = the applicable charge payable from and including a particular date after the application of this formula; B = the applicable charge payable immediately before that date; C = the CPI for the last December quarter before that date; D = the CPI for the second last December quarter before that date. (e) you agree to any correction to the charges to reflect the correct regulated retail tariff applicable to your premises (as determined by us) if the charges in the Schedule were based on a regulated retail tariff that does not apply to your premises. Subject to conditions 6.13 to 6.15, the correction will apply from the time you entered into your Energy Agreement.</p> <p>T&amp;C cl 5.9 We will notify you, in accordance with any applicable energy laws, of variations to charges in writing (which may be in a bill).</p>
<i>relevant codes/law</i>	ERC cl 26.4, 31, 35, s 163 <i>Fair Trading Act</i>
<i>comments</i>	Compliant, although some of the terms are drafted rather broadly (eg cl 5.8(c)(iv) provides that a charge may be varied "if there is any change in the law"). There may also be an argument that these clauses breach the requirement that contract terms be clearly expressed (s 163 FTA).
ability to unilaterally vary terms	No mention.

## Jack Green

### Contracts on offer and specific terms

	10% GreenPower	25% GreenPower	50% GreenPower	100% GreenPower
		extra \$1.10/wk	extra \$2.20/wk	extra \$4.40/wk
type of service	Electricity only			
main feature/incentive				

### Terms applicable to all contracts

ERC referred to in lieu of terms	There is no mention of the Energy Retail Code in the contract, although there are several references to compliance with “the Regulations”. These are not defined.
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	The references to ‘the Regulations’ seem redundant, since the retailer is complying with the law if a regulatory body excuses them from observing some provision. However it does serve to alert consumers that regulations apply to their contracts outside of the terms of the contract. Licensees are required to expressly deal with each matter in the ERC in the terms of their contracts (or incorporate them by reference).
documents containing terms of contract	T&C cl 2.1 Your Agreement with us consists of these Terms and Conditions and your Retail Supply Agreement (if applicable).
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts
comments	Compliant.
<b>CONNECTION</b>	
cooling period cancellation notice provided?	T&C cl 4 Cooling-Off Period During Which You May Terminate If you have signed a Retail Supply Agreement with Jackgreen, you may terminate your Agreement without penalty by giving written notice to Jackgreen within 10 business days of the Commencement Date (the Cooling off Period). Notice requesting cancellation of your contract can be done by post, email or fax. - By Post - Cancellations Officer, Level 5, 52 William Street East Sydney NSW 2011 - By Email - Cancellations Officer, enquiries@jackgreen.com.au - By Fax - Cancellations Officer, 1800 452 989
relevant codes/law	ERC cl 23.4(a)
comments	Compliant.
<b>BILLING</b>	
estimated bills/unhindered access requirements	T&C cl 9 Billing and Payments [...] 9.2 The metered consumption of electricity will be measured on each meter read, which will normally be every three months. To enable us to charge you accurately you must give meter readers and our authorised officers safe access at all reasonable times to the meters and your Premises at the point at which the Service Providers distribution systems connects to your premises. 9.3 If your meter is not read for any reason or if your meter is faulty, we may estimate the amount of electricity you have used. Subsequent statements or invoices will be adjusted for the difference between the estimates and the actual amount of electricity used, based on the reading of the meter. You give your explicit informed consent for us to use estimates for the calculation of charges.

	<p>9.4 We will bill you for your estimated or measured consumption of electricity during a billing period, including any charges relating to connection services or metering services and any additional payments as set out in clause 9.1 below. You are not obliged by this Contract to pay any amount to us for electricity supply unless the basis for calculating that amount is set out in this Contract. The Regulation sets out various matters that must be included in an energy bill. You can also find a statement of your rights with respect to invoices and billing on <a href="http://www.jackgreen.com.au">www.jackgreen.com.au</a> or by calling us on 1300 46 5225.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	<p>T&amp;C cl 9 Billing and Payments</p> <p>9.6 You can ask us to review your bill, and we will do so in accordance with the Regulations. If you are overcharged, we will issue you a refund in accordance with the Regulations.</p>
<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	No mention.
late payment fees	No mention.
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 14 Security</p> <p>14.1 You may be charged a security deposit. The amount of a security deposit for a small customer who is on a quarterly billing cycle must not be greater than 1.5 times the estimated quarterly bill. Jackgreen must base a customer's estimated quarterly bill on:-</p> <ul style="list-style-type: none"> <li>- The customer's previous billing history</li> <li>- The previous billing history at the premise</li> <li>- If no such history is available, typical electricity usage of customers of the same type as the customer.</li> </ul> <p>14.2 We may not use any part of a security deposit paid under your contract to recover amounts due in respect of charges other than charges related to the supply of electricity or Connection Services arranged by us.</p> <p>14.3 At any time, we may use the security to pay amounts owing by you to us in respect of Connection Services or the supply of electricity only which has resulted in disconnection of your premises and where you have no right of reconnection, or where you have vacated your premises, requested disconnection or transferred to another retailer.</p> <p>14.4 We must repay to you the balance of your security deposit (and accrued interest) in accordance with your reasonable instructions within 10 business days of you either completing one year's payment of bills by the initial due dates for payment of each respective bill, or ceasing to take supply at your premises. If you do not give us such instructions then we must credit amounts owing to you under this clause on your next bill. If we use your security deposit then we must give you a written account of its use and repay any balance within 10 business days.</p> <p>14.5 Interest is payable by us in respect of any security paid by you at the Default Rate</p>

	calculated daily until the date of payment but capitalised on the first Business Day of each month. On termination of your Contract, we will return to you the balance (if any) of security and accrued interest remaining after all payments in respect of the supply of electricity or Connection Services have been received.
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	No mention.
payment difficulties	T&C cl 15 Payment Difficulty If you have difficulty in paying for electricity you must contact us or phone Jackgreen on 1300 46 5225 to discuss whether we can help you by arranging an instalment plan or referral to an independent financial counsellor, or to determine whether you are eligible under government concession or grant scheme, or for advice about efficient energy use.
<i>relevant codes/law</i>	ERC cl 11
<i>comments</i>	Compliant.
<b>DISCONNECTION</b>	
disconnection	<p>T&amp;C cl 17 When Disconnection of Supply May Occur</p> <p>We may discontinue the supply of electricity to your Supply Address if you (or the person who owns or occupies the Supply Address) have not paid an electricity bill by the due date (but excluding a failure to pay an instalment under your first instalment plan with us) and it remains unpaid 14 Business Days after the date of dispatch of the electricity bill.</p> <p>We must give you written notice that you have not paid your bill, stating a new pay by date that is not less than 20 business days from the date of dispatch of the electricity bill, unless the Laws allow shorter notice.</p> <p>We must also give you a disconnection warning not less than 22 business days from the dispatch of the electricity bill, which includes a new pay by date not less than 28 business days from the date of dispatch of the electricity bill. We must provide you with a telephone number for payment assistance advice and provide that advice if you call us.</p> <p>We must also give you a further disconnection warning no less than 6 business days before your electricity is to be disconnected.</p> <p>After complying with the above we may disconnect your premises only if you do not provide a reasonable assurance to us that you are willing to pay our electricity bill, or you do give us that assurance but then do not pay by the applicable due date or if you do not agree to a new payment arrangement within 5 Business Days after the receipt of the disconnection warning, or if you do not make payments under the new payment arrangement.</p> <p>The Laws also provide that we are not permitted to disconnect you for failing to pay our bill if that was due to you lacking sufficient income and we have not used our best endeavours to contact you in person or by telephone or where you accept an instalment plan within 5 business days of our offering one to you.</p> <p>Any disconnection warning issued by us must contain the information required by Law.</p> <p>T&amp;C cl 18 When Disconnection May Not Occur</p> <p>We must not discontinue electricity supply to your premises (including requesting a network operator to disconnect your premises from an electricity distribution system) unless we have complied with the requirements of this Contract or the Laws.</p> <p>If you have requested that EWOV resolve a complaint made by you that directly relates to the non-payment of your bill, then we may not discontinue supply until your</p>

	<p>complaint is resolved.</p> <p>We may not discontinue supply or arrange for discontinuation of supply on a Friday, Saturday, Sunday, a public holiday or a day before a public holiday, or after 2.00pm on any other day.</p> <p>We may not discontinue supply or arrange for discontinuation of supply while an application is pending from you for assistance under any government funded rebate or relief scheme, or if a life support machine is registered at your address.</p> <p>Where we are entitled to discontinue supply of electricity to you and have otherwise complied with this clause and clause 16 then we are entitled to request that a network operator disconnect your premises from an electricity distribution system.</p>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	
indemnity and limitation of liability	<p>T&amp;C cl 8 Supply of Electricity</p> <p>8.1 Your Service Provider is responsible for the physical supply of electricity to the Supply Address. The supply of electricity may be subject to variations in voltage and frequency and may contain voltage surges, which may cause damage to your equipment. We are unable to guarantee the quality and security of supply of electricity. Your Service Provider may disconnect, interrupt or reduce the supply of electricity to the Supply Address. To the extent permitted by law, you agree to release us from any liability for such disconnection, interruption or reduction in the supply of electricity or any variation in the voltage and frequency of the supply. To the extent permitted by the Trade Practices Act 1974, all warranties are excluded.</p>
<i>relevant codes/law</i>	s 68A TPA; s 32LA FTA; ERC cl 16-18
<i>comments</i>	Compliant, although it is arguable the last sentence does not meet the requirements of s 32LA FTA (which states that certain warranties contained in the FTA cannot be excluded).
<b>TERM AND TERMINATION</b>	
continuation of term	<p>T&amp;C cl 7 Expiry of a Fixed Term Contract</p> <p>7.1 Prior to the expiry of the fixed term, Jackgreen must notify the customer of the following information:-</p> <ul style="list-style-type: none"> <li>- that the contract is due to expire</li> <li>- when the expiry will occur</li> <li>- of the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any other option</li> <li>- what the customer's other options are.</li> </ul>
<i>relevant codes/law</i>	CI 24.3 ERC; s 32W FTA
<i>comments</i>	Compliant, although there is no mention of whether a new fixed term contract might commence at the end of the contract term.
termination period	<p>T&amp;C cl 6 Expiry Of A Non Fixed Contract</p> <p>6.1 This Agreement commences on the Commencement Date and continues until you notify us in writing that you wish to terminate this Agreement and your Supply Address transfers to another retailer, or Jackgreen notifies you in writing that this Agreement is to be terminated.</p> <p>6.2 If you request that we terminate this agreement, you must make arrangements to transfer your electricity supply to another retailer and take all necessary steps to effect the transfer. You will remain liable to us for all electricity supplied to the Supply Address under the terms of this Agreement until the date on which your Supply Address transfers to another retailer.</p> <p>[...]</p>

<i>relevant codes/law</i>	ERC cl 24.1, 32
<i>comments</i>	Compliant.
agreed damages terms & additional retail charges	<p>T&amp;C cl 6 Expiry Of A Non Fixed Contract [...]</p> <p>6.3 If you transfer to another electricity retailer you must pay us a termination fee of \$49.</p> <p>T&amp;C cl 10 Possible Additional Payments</p> <p>10.1 Without limiting clause 10.2, you may be required to pay the following additional payments:</p> <ul style="list-style-type: none"> <li>- GreenPower Premium. If you have agreed to pay an additional GreenPower premium, this will be shown in your confirmation letter and welcome pack.</li> <li>- Termination Fee. If you terminate your Contract after the Cooling Off Period, you will be required to pay \$49.</li> <li>- Administration Payment. An Administration Payment will be charged by Jackgreen for reasonable costs incurred by Jackgreen if you do not comply with your contract or if you request something that is not contemplated in this Agreement.</li> <li>- Disconnection and Reconnection Payments. These payments will apply if Jackgreen disconnects, or reconnects following a disconnection, the supply of electricity to your Supply Address.</li> <li>- Any other fees or charges specified in your Retail Supply Agreement where applicable.</li> </ul> <p>10.2 From time to time government or other industry participants may impose on us new or increased charges or taxes relating to the supply of energy to you. Consistent with the law, we may pass the liability for these charges or taxes onto you by providing you notice of any changes as soon as possible, and in any event no later than your next energy bill. All such charges or taxes will be included in your energy bill and be payable to us.</p>
<i>relevant codes/law</i>	ERC cl 24.1, 31, 32
<i>comments</i>	Clause 24.1 ERC allows the imposition of an early termination fee, but only for fixed term contracts. Here the contract expressly applies to a non-fixed term contract.
<i>GENERAL</i>	
ability to vary charges	<p>T&amp;C cl 11 Variation of this Agreement</p> <p>11.1 We may vary the charges payable under your Agreement, including the charges for electricity consumed. If we are going to vary your charges, we will endeavour to give you at least 14 days notice of the variation. The notice will specify the date when the changes will take effect and will provide details of the new rates or the amount of the variation. Any variation will take effect from the date specified in the notice.</p>
<i>relevant codes/law</i>	ERC cl 31, 35
<i>comments</i>	Compliant.
ability to unilaterally vary terms	<p>T&amp;C cl 11 Variation of this Agreement [...]</p> <p>11.2 We may vary any other terms of this Agreement by notifying you in writing of these changes.</p> <p>T&amp;C cl 5 Jackgreen May Cancel</p> <p>Jackgreen reserves the right to cancel your Agreement at any time. Jackgreen may cancel your Agreement if we are not satisfied with your credit history, or if your Agreement does not pass our contract verification process.</p>
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Arguably a breach of s 32X FTA, as it allows Jackgreen to unilaterally vary terms.

guidelines published on website	
<i>relevant codes/law</i>	
<i>comments</i>	
<p>transfer of agreement</p> <p>No 1 (gas) or No 4 (elec): Credit assessment cl 1.3(a) No 10: Confidentiality and informed consent cl 1.5(a)</p>	<p>T&amp;C cl 27 Assignment or Transfer of your Agreement</p> <p>27.1 You may transfer this Agreement to another person only with Jackgreen's consent. You must notify us of the proposed transfer at least 14 days in advance.</p> <p>27.2 Jackgreen may assign or transfer your Agreement only with your consent. By entering into this Agreement, you give your consent to any future assignment or transfer by us.</p>

## Neighbourhood Energy

Contracts on offer and specific terms

	Neighbourhood Plus	GreenLight (100% Greenpower)
Notes		
Type of service	electricity only	
<b>SIGNED</b>	Y	
main feature/incentive	<ul style="list-style-type: none"> <li>• 10% pay on time discount, either credited to customer's account or donated nominated charity/community group.</li> <li>• \$10 gift voucher from Coles Myer for direct debit</li> <li>• \$10 gift voucher from Coles Myer for email billing</li> <li>• \$30 gift voucher for referring a friend, colleague or family member</li> </ul>	<ul style="list-style-type: none"> <li>• Same incentives as Neighbourhood Plus.</li> <li>• Additional cost of 5.5c/kWh excl GST for Greenpower.</li> </ul>

Terms applicable to all Neighbourhood Energy contracts

ERC referred to in lieu of terms	<p>Standard Terms and Conditions ('T&amp;C') cl 17 Energy Retail Code and Regulatory Requirements</p> <ol style="list-style-type: none"> <li>Any relevant provision that is required to be included in the Contract by a regulatory requirement that is not expressly included, is deemed to be incorporated as if it were a term of this Agreement.</li> <li>In the event of any inconsistency between a regulatory requirement and the terms of this Contract, the regulatory requirement will prevail. In the event there is express inconsistency between a regulatory requirement and a term of this Contract, the relevant term of this Contract is void and the regulatory requirement is deemed to be part of this Contract in its place.</li> <li>Both you and us must perform our obligations and exercise our rights under this Contract in accordance with the requirements of the relevant regulatory requirement.</li> </ol>
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence; s 163 FTA.
comments	<p>The licences issued to energy retailers prohibit them from entering into contracts with customers without "expressly deal[ing] with each matter which is the subject of a term or condition of the ERC", but such ERC terms are deemed to be expressly dealt with if they are referred to in the contract. Arguably, such a 'catch-all' clause, which claims the ERC prevails to the extent of any inconsistency with the contract, does not adequately deal with ERC terms in the prescribed manner. Additionally, it is essentially incomprehensible to a consumer who does not possess a thorough knowledge of both the ERC and the contract, and thus is likely a breach of s 163 FTA (the requirement for contract terms to be clearly expressed).</p>
documents containing terms of contract	<p>Charter cl 3 Legal rights and obligations</p> <p>As well as being governed by our Standard Terms and Conditions the contract that exist between us is regulated by the laws, codes and guidelines which create rights and obligations between us. For more information about your rights and obligations, refer to the Energy Retail Code, issued by the Essential Services Commission of Victoria. This document sets out minimum standards for electricity contracts in Victoria. This document can be found on the Essential Services Commission's website <a href="http://www.esc.vic.gov.au">www.esc.vic.gov.au</a>. Other sources of rights and obligations are:</p> <ul style="list-style-type: none"> <li>• The Fair Trading Act 1999,</li> <li>• The Electricity Industry Act 2000,</li> <li>• The Trade Practices Act 1974, and</li> </ul>

	<ul style="list-style-type: none"> <li>The Code of Conduct for Marketing Retail Energy.</li> </ul>
<i>relevant codes/law</i>	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts
<i>comments</i>	<p>Although not mentioned above, the Account Confirmation Letter contains additional terms of the contract. (The Customer Charter quoted above is not part of the contract.)</p> <p>It is arguable the incorporation of a range of regulations into the contract by reference makes it very difficult to determine what the terms of the contract are. Equally, though, if such regulations were expressly laid out, it is also arguable the contract would become too long and complex. In this case it appears that, on balance, the contract balances these competing pressures relatively well.</p>
when contract commences	<p>T&amp;C cl 3 Agreement</p> <p>This Agreement between us and you is made when you give your written or verbal consent to enter into the Agreement.</p>
cooling period cancellation notice provided?	Yes – compliant.
<i>relevant codes/law</i>	ERC cl 23.4(a)
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>T&amp;C 6 Billing, Pricing and Tariffs</p> <p>Unless an actual meter reading is available, the bills that we issue to you will be based on our best estimate or your likely usage based on the historical information available to us.</p> <p>You provide us with explicit informed consent to a billing cycle shorter than three months and to issuing you with estimated bills in the absence of an actual meter reading.</p> <p>If we have billed you based on estimates of your electricity usage and we subsequently obtain an actual meter reading we will adjust your subsequent bill accordingly. [...]</p> <p>T&amp;C 10 Access</p> <p>You agree to provide unhindered and safe access to the meter at the Supply Address at all times to the agents of Neighbourhood Energy, the agents of your local Distributor or metering provider whilst you are a customer of Neighbourhood Energy and for a reasonable period thereafter.</p> <p>You acknowledge that failure to provide access to the meter at the Supply Address can result in continuous estimated bills being issued and resulting in a disconnection under the Energy Retail Code.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	No mention.
payment methods (direct debit arrangements etc)	<p>T&amp;C 6 We will bill you each calendar month for the supply of electricity to the Supply Address during the preceding month. Each month we will bill you in accordance with the published prices for the electricity which we have supplied to you. We will deduct from that amount any concessions that you may receive and then apply any Pay-on-Time Discount to which you are entitled.</p> <p>T&amp;C cl 7 Payment</p> <p>All bills issued by us under this Contract must be paid, using one of the payment options set out in the invoice, within 10 business days of the issue date of that bill, unless we have made separate written arrangement with you.</p> <p>Account Confirmation</p> <p>We encourage electronic payment by using Direct Debit, Electronic Funds Transfer or BPay from your cheque or savings account. We are also happy to accept POSTbillpay, Internet or Telephone payments.</p>

<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	No mention.
<i>CREDIT MANAGEMENT</i>	
refundable advances	<p>T&amp;C cl 9 Refundable Advances</p> <p>We may require you to provide us with a refundable advance if:</p> <ol style="list-style-type: none"> <li>You have left a previous address or have transferred to an electricity retailer and still have relevant arrears in respect of the previous account;</li> <li>Within the previous two years you have used electricity otherwise than in accordance with applicable laws and codes;</li> <li>You are a new customer and have failed to provide acceptable identification;</li> <li>We decide that you have an unsatisfactory credit rating; or</li> <li>Your account is in arrears and you have failed to accept an instalment plan offered to you by us.</li> </ol> <p>We will notify you of the amount we require for a refundable advance.</p> <p>We will pay interest on a refundable advance based on the prevailing bank bill rate.</p> <p>We may use the refundable advance and any accrued interest to offset any amount owed to us under this contract as payment in the following instances:</p> <ol style="list-style-type: none"> <li>If you fail to pay a bill which results in the disconnection of your electricity supply and you no longer have a right of reconnection;</li> <li>You vacate the supply address;</li> <li>You request to be disconnected; or</li> <li>You transfer to another retailer.</li> </ol> <p>The refundable advance will be refunded to you within 10 business days if you pay a year's bills by their due date, or if you cease to take supply of electricity under this Agreement.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Generally compliant, except that (cf T&C cl 9d, above), where a customer has an unsatisfactory credit rating, the retailer must first offer an instalment plan and the customer fail to accept that offer (cl 8.1 ERC) before a refundable advance can be taken.
shortened billing and collection cycles	No mention.
payment difficulties	No mention (although the charter states customers should contact Neighbourhood Energy).
<i>DISCONNECTION</i>	
disconnection	<p>T&amp;C cl 11 Termination and Disconnection</p> <p>We may disconnect the Supply Address and/or terminate this Agreement for any of the following reasons:</p> <ol style="list-style-type: none"> <li>On request by you;</li> <li>If your account remains in arrears following the issue and expiry of a disconnection notice and you have failed to make alternative arrangements with us concerning your account;</li> <li>You unreasonably refuse to provide us, our agents or your Distributor or its agents (as the case may be) with access to the Supply Address;</li> <li>If we conclude that you have fraudulently obtained electricity at the Supply Address.</li> <li>You have refused to provide us with a refundable advance; or</li> <li>You have vacated the Supply Address.</li> </ol> <p>If we disconnect the Supply Address for any of the above reasons you have 10 business days to</p>

	resolve the matter before this Contract will terminate without further action from you or us. If this Contract terminates in accordance with this clause you remain liable to us for any amounts owed by you to us under this Contract immediately prior to termination (including amounts not at that date billed by us).
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<i>LIABILITY</i>	
indemnity and limitation of liability	No mention.
<i>TERM AND TERMINATION</i>	
continuation of term	No mention.
termination period	T&C cl 11 Termination and Disconnection You may cancel this Contract by giving us ten business days notice.
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.
agreed damages terms	No mention.
<i>GENERAL</i>	
additional retail charges	T&C cl 6 [...] In addition to any charges outlined above, we may charge you for any fees, charges or other expenses that we incur if a payment on your account is dishonoured or reversed, you deny access or fail to provide us with reasonable and safe access to the Supply Address for the purposes of reading your meter or where we are permitted to do so by the Energy Retail Code, an Act, Regulation of Order in Council.
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant.
ability to vary charges	Account Confirmation letter Neighbourhood Energy may vary its prices at anytime by giving you not less than 30 days notice.
<i>relevant codes/law</i>	ERC cl 31, 35
<i>comments</i>	Compliant.
ability to unilaterally vary terms	T&C cl 16 Variations and Amendments We may amend or vary this Contract at any time in writing by publishing a variation to these Terms and Conditions on our website and providing you with thirty-day written notice.

<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Arguably an unfair term: see ss 32W, 32X(d) FTA.

## Origin

Contracts on offer and specific terms

	Choice Plus	HomeChoice	One Month's Free Electricity	Green Your Home
type of service	gas and/or electricity (separate contracts)	gas and/or electricity (separate contracts)	gas and/or electricity (separate contracts)	
documents containing of contract	T&C cl 18 The Contract Schedule and these Contract Terms form our Contract with you. If any matter that is required to be included in this Contract by a Regulatory Requirement is not expressly dealt with in this Contract, the Regulatory Requirement is incorporated as if it were a term of this Contract.			
	Choice Plus Special Conditions	HomeChoice Special Conditions	One Month's Free Electricity Special Conditions	Green Your Home Special Conditions
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts			
comments	The Contract Schedules are the 'Special Conditions' referred to. See 'ERC referred to in lieu of terms', below.			
signed	Y - cancelled 9/12/08, no troubles, no spruiking	received offer details 28/11/08		
main feature/incentive	<p><i>Free 2 year subscription to Pacific Publications P/L magazine.</i></p> <p>Online quote</p> <p>Simply choose our ChoicePlus energy plan and we'll reward you with a 2 year magazine subscription to one of the following:</p> <ul style="list-style-type: none"> <li>• Better Homes and Gardens</li> <li>• Home Beautiful</li> <li>• Your Garden</li> <li>• Men's Health</li> <li>• marie claire</li> <li>• Girlfriend</li> <li>• K-Zone.</li> </ul> <p>You'll also receive the following with our ChoicePlus energy plan:</p> <ul style="list-style-type: none"> <li>• Electricity and/or natural gas supplied to your home</li> <li>• Choice of Government accredited Origin GreenPower options – 25%, 50% 100% GreenPower</li> </ul>	<p><i>5% off standard published energy rates for area fixed for 12 mths; 2% off standard published gas rates for 12 mths</i></p> <p>Online quote</p> <p>Once you accept this energy promotion you'll be eligible to receive 5% off the standard published electricity rates for your area, PLUS 2% off the standard published gas rates for your area, both for 12 months.</p>	<p><i>1 mth's free electricity for remaining with Origin for 12 mths</i></p> <p>Online quote</p> <p>Simply switch to us for your household electricity and natural gas needs, and we'll reward you with a month off from paying your electricity bill*.</p> <p>With our One Month FREE electricity* energy offer, you receive:</p> <ul style="list-style-type: none"> <li>• One Month's FREE electricity - credited to your electricity account at the conclusion of your 12 month qualifying period</li> <li>• Electricity and natural gas supplied to your home</li> <li>• Choice of government accredited Origin GreenPower options</li> </ul>	<p>Online quote</p> <p>Simply by switching to our Green Your Home energy plan, our energy experts will come to your home and supply and install:</p> <ul style="list-style-type: none"> <li>• energy efficient light globes, replacing all incandescent globes.</li> <li>• 3 star rated water saving showerheads, replacing those with a 2 star rating or less.</li> </ul> <p>And they'll do it on the spot, at a time that suits you, 7am to 7pm, Monday to Saturday.</p> <p>Our Green Your Home energy plan also provides you with</p>

	<ul style="list-style-type: none"> <li>• Choice of Australia's first Green Gas</li> <li>• Flexibility, with no lock-in contract and no exit fees</li> <li>• Choice of convenient payment options</li> </ul>		<ul style="list-style-type: none"> <li>– 25%, 50% 100% GreenPower</li> <li>• Choice of Australia's first Green Gas</li> <li>• Flexibility, with no lock-in contract and no exit fees</li> <li>• Choice of convenient payment options</li> </ul> <p>How is my One Month's FREE electricity calculated? We'll calculate the total amount of electricity you used over the previous 12 months and divide it by 12. This amount will then be credited to your electricity bill after your 12 month qualifying period, so long as you pay your accounts with us by the due date.</p> <p>*In most cases you need to sign up to both electricity and gas to qualify for ChoicePlus. Your subscription is valid for two years, as long as you stay with us at the same address for that time. Not available in conjunction with any other Origin market offer.</p>	a choice of green energy options, including Government-accredited Origin GreenPower and Australia's first Green Gas.
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#### GreenPower options

GreenEarth 25% GreenEarth Extra 50%  
100%

GreenEarth Wind 100%

GreenEarth Solar

#### Terms applicable to all Origin Energy contracts

general comments	The contract terms is are relatively clear, well laid out and generally compliant with the codes. However, it is not readily apparent which documents comprise the total contract. Contract terms are spread among the Energy Offer Contract Terms document, and the Contract Schedule, but also in the charges listed on the online application, and the Contract Confirmation received at the end of the signing up process.
ERC referred to in lieu of terms	T&C cl 18 If there is and inconsistency between a Regulatory Requirement, the Contract Schedule or the Contract Terms the order of precedence will be the same as the order in which they are listed below: <ul style="list-style-type: none"> <li>• the Contract Schedule;</li> <li>• the Contract Terms;</li> <li>• the Regulatory Requirement.</li> </ul>

	<p>However, if a Regulatory Requirement provides that it must prevail, it will prevail to the extent of the inconsistency.</p> <p>T&amp;C cl 28 Definition of terms in this Contract</p> <p>Regulatory Requirements – means all relevant legislation, regulations, codes, Guidelines, orders in council, licences, proclamations, directions or standards applicable to participants in the Victorian region of national electricity market or participants in the Victorian gas market, and includes, without limitation, the Retail Code, the Electricity Industry Act 2000 (Vic), the Electricity Safety Act 1998 (Vic), the National Electricity Law, the Gas Industry Act 2001 (Vic), the Gas Safety Act 1997 (Vic) and the Privacy Act 1988 (Cth).</p>
<i>relevant codes/law</i>	s 163 FTA; s 43 GIA; s 36 EIA; ERC; applicable retail licence.
<i>comments</i>	It is arguable that this is an unduly broad and complex construction of the contract, and thus a contravention of s 163 FTA. For a consumer to understand if any one term of the contract is applicable, they must be familiar with all three elements dot-pointed above, and in particular to understand when one of the many 'Regulatory Requirements' provides that it must prevail (or indeed when it can be contracted out of).
<b>CONNECTION</b>	
when contract commences	<p>All Special Conditions</p> <p>Your Contract will become effective as of the date you accept this energy promotion.</p>
cooling period cancellation notice provided?	Yes – compliant.
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>T&amp;C cl 11 What are my other obligations?</p> <p>[...] You agree to give us (and our representatives and your Distributor) safe, convenient and unhindered access to the meter at the Supply Address to read it and for connection, disconnection and reconnection purposes. If you do not give us (or our representatives or the Distributor) access to the meter and we estimate your energy consumption, we may charge you an additional amount if you later request a bill based on an actual reading of the meter. Things you need to know (charges listed at final stages of online application)</p> <p>A fee of \$38.01 [...] will apply if [...] a special meter read service order is required.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	<p>T&amp;C cl 8 What happens if have been overcharged or undercharged?</p> <p>On request we will review any bill. You must pay the portion of that bill that is not in dispute or an amount equal to the average amount of your bills in the previous 12 months (whichever is lower). If the Bill under review is correct, you must pay the unpaid amount or request a meter test. If the meter complies with Regulatory Requirements you must pay the cost of the meter test and any unpaid amount.</p> <p>If you have been overcharged, undercharged or not charged then these amounts will be paid to you or recovered from you in accordance with the Retail Code.</p>
<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>T&amp;C cl 9 What are my payment options?</p> <p>Unless we make a different agreement with you, you can pay your bill by any of the options listed on your bill.</p> <p>If you choose to pay your bill by credit card we will pass through any fee we incur and charge you an additional amount based on our reasonable estimate of any additional costs we incur.</p> <p>If your payment is dishonoured or reversed, which results in us incurring a fee, we may</p>

	<p>recover the amount of that fee from you as well as any additional costs we incur.</p> <p>Things you need to know (charges listed at final stages of online application)</p> <p>A credit card payment processing fee may apply for bills paid over the phone using a credit card. This fee is 1.00% (GST inclusive) of the payment amount and will be shown on your next bill. [...]</p>
<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	[A late payment fee is applicable to customers whose electricity consumption is over 20 Megawatt hours p.a.] – compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 3 What needs to happen before this contract commences?</p> <p>[...] Where you are applying for consumer credit you also agree that we may obtain information about you from a business which provides information about the commercial creditworthiness or persons for the purpose of assessing your application. Where you are applying for commercial credit you agree we may obtain a consumer credit report containing information about you for the purpose of assessing your application.</p> <p>Depending on your creditworthiness we may require you to pay us a Security Deposit.</p> <p>If you are taking supply, or have agreed to take a supply of energy from us you agree we may obtain from or give to related companies a report about your creditworthiness for the purposes of the supply of energy.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant, although reference could be made the to ERC to allow consumers to be informed about refundable advances.
shortened billing and collection cycles	No mention.
payment difficulties	No mention.
<b>DISCONNECTION</b>	
disconnection	<p>T&amp;C cl 14 Disconnection – why and when would this happen?</p> <p>We may disconnect your energy supply in the circumstances permitted by the Retail Code including:</p> <ul style="list-style-type: none"> <li>• on your request; or</li> <li>• if you fail to pay your bill; or</li> <li>• if you have denied us, or an authorised agent, access to your Supply Address for three consecutive meter readings; or</li> <li>• if you have refused to provide a Security Deposit when requested to do so; or</li> <li>• if you have failed to provide acceptable identification as required by the Retail Code.</li> </ul> <p>We will only disconnect your energy supply after we have followed the procedures set out in the Retail Code.</p>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	

indemnity and limitation of liability	<p>T&amp;C cl 11 What are my other obligations?</p> <p>The title and risk in the energy supplied to you under this Contract will pass to you at the point of connection with your Supply Address. From that point on, the energy supplied under this Contract is your responsibility.</p> <p>You agree to indemnify us against any liability arising out of the use of energy supplied under this Contract where risk in the energy has passed to you, or where we have suffered any loss or damage arising as a result of your failure to comply with this Contract. [...]</p>
relevant codes/law	s 68A TPA; ERC cl 16-18
comments	<p>Compliant, although the phrase “where we have suffered any loss or damage” appears to go beyond the scope of the prohibitions on indemnity in cl 17 ERC.</p> <p>The Green Your Home contract contains an additional term (as it deal with the supply of non-energy goods):</p> <p>Green Your Home Special Conditions</p> <p>Limit of Liability: The Trade Practices Act and other laws imply certain conditions and warranties for the supply of goods and services. If any condition or warranty is implied as part of our supply of showerheads and/or light globes to you, then you agree that our liability for any breach of that term or condition is limited, as far as the law permits and at our option, to resupplying the goods or services or arranging for them to be resupplied.</p>
TERMINATION	
continuation of term	<p>T&amp;C cl 16 What happens when the Contract ends?</p> <p>When this Contract ends, you are still required to make any outstanding payments to us and we have no further obligation to supply energy or other services to you under this Contract.</p> <p>If this Contract is a Fixed Term Contract, we will give you a notice between one and two months before the end date of the Term. On and from that date (unless by then you have entered into another Contract with us for the Supply Address), if you continue to take energy from us, you will do so in accordance with the terms and charges as set out in that notice.</p> <p>If we notify you that we are terminating this Contract because you are not, or you have ceased to be, a Customer to which this Contract applies, and you have not entered into a new energy contract with us or transferred to a new energy retailer for the supply of energy to your Supply Address, then we will from the date of that notice continue to arrange the supply of the energy to you at your Supply Address. We may notify you that different changes or terms and conditions apply in those circumstances.</p>
relevant codes/law	cl 24.3 ERC; s 32W FTA
comments	Arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a fixed term, a customer's silence is consent to signing a new fixed term contract with Origin Energy (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term),
termination period	<p>T&amp;C cl 15 How will this contract end?</p> <p>If this Contract is a Fixed Term Contract, it finishes at the end of the fixed term (this will be set out in the Contract Schedule), unless terminated earlier.</p> <p>If this is not a Fixed Term Contract, this Contract will end when either you or we terminate it. In either case, this Contract will terminate earlier if we are no longer entitled to sell energy due Last Resort Event. [sic]</p> <p>Subject to the Retail Code, you or we can terminate the Contract by giving 28 days notice or such other period as set out in the Contract Schedule.</p>
relevant codes/law	ERC cl 24.1
comments	<p>Compliant. The Green Your Home contract has a shorter termination period:</p> <p>Green Your Home Special Conditions</p> <p>Things you should know</p> <p>If you wish to terminate your Contract after the cooling off period you must give us 20 business days notice; however, all rewards and/or benefit entitlements will be discontinued upon cancellation.</p>

agreed damages terms	<p>All Special Conditions</p> <p>An Early Termination Fee of \$44.00 (GST inclusive) per fuel applies if you cancel your Contract for that fuel during the first 12 months of supply commencing under this Contract.</p> <p>Additional Charges</p> <p>Early termination of contract.</p> <p>If you have entered into a market contract with us and cancel your contract before the expiry date, an early termination fee may apply. Please refer to the terms and conditions of your market contract for more information.</p>
relevant codes/law	ERC cl 24.1, 32
comments	Compliant.
GENERAL	
additional retail charges	<p>T&amp;C cl 5 What am I required to pay?</p> <p>(d) The Charges any the price of other goods and services you choose to buy from us;</p> <p>(e) Any charges that your Distributor imposes on us in relation to services performed by your Distributor (or any other person) at your Supply Address;</p> <p>(f) Our reasonable costs for arranging network services.</p> <p>You must also pay costs, fees and charges we can lawfully recover from you under the Regulatory Requirements, as well as any taxes, levies, regulated charges, costs, fees and charges that we have to pay when we sell and supply energy and other goods and services to you.</p> <p>If you breach this Contract or a provision of the Regulatory Requirements you will be required to pay any costs we incur as a result of that breach, as well as any fees we charge in relation to that breach.</p>
relevant codes/law	ERC cl 31, s 32W FTA
comments	While clause complies with the ERC, it is arguably an unfair term as it ostensibly allows the retailer to charge any fee it determines for any breach of the contract, no matter how minor.
ability to vary charges	<p>T&amp;C cl 6 Can the price of energy increase under this Contract?</p> <p>Unless stated in the Contract Schedule, we may vary the Charges by notice to you.</p> <p>We may vary the Charges at any time by notice to you by passing through all or part of any increase in our costs or any increase in or any new fee, charge or tax imposed on or incurred by us in delivering the energy to you under this Contract or otherwise performing this Contract from the date of its increase or introduction.</p> <p>If any of the information used in providing the Energy Offer to you is incorrect then we may vary the Charges to the level the Charges would have been had the information used been correct. Notice of this variation will be provided to you in writing and will be effective from the date we commenced supply under this contract.</p> <p>If the metering device at your Supply Address is changed from one which measures energy on an accumulation basis to one which measures energy on an interval basis, we may vary your Charges.</p> <p>If the Charges are based on or linked to an amount prescribed under any Regulatory Requirements, then notwithstanding any other clause in this Contract, if those Regulatory Requirements are amended we may vary the basis upon which the Charges are calculated in a manner consistent with that amendment by notice to you.</p> <p>Residential Online Application [online form] Step 5 Things you need to know</p> <p>Special Condition: We may vary the charges by notice to you. These rates are the standard published rates for your area based on the information you have supplied us. If any of the information you have supplied us is incorrect, different rates may apply.</p>
relevant codes/law	ERC cl 31, 35; s 163 FTA
comments	Compliant.
ability to unilaterally vary	<p>T&amp;C cl 21 Can changes be made to this Contract?</p> <p>Where according to the Contract Schedule you have elected to enter into contracts with us for</p>

terms	<p>the supply of both electricity and gas and;</p> <ul style="list-style-type: none"> <li>• we are entitled to disconnect your supply under one contract, or</li> <li>• supply under one contract does not commence within 3 months of the Acceptance Date under that other contract (the 'Transfer Failure Contract'),</li> </ul> <p>then we may on written notice to you, vary this contract, so that at our discretion;</p> <ul style="list-style-type: none"> <li>• any special conditions, rewards or benefits are cancelled, and</li> <li>• if it is not a Fixed Term Contract, or is a Fixed Term Contract with more than 2 months before it ends, this Contract becomes a Fixed Term Contract with a term of between 2 months and the remaining unexpired period as determined by us in our discretion.</li> </ul> <p>If we elect to make a variation under this clause the variation will be effective from the date our entitlement to disconnect arises, the Transfer Failure Date or another date which we may choose in our discretion.</p> <p>In addition, this Contract may be varied by agreement between you and us in writing. You must agree to any amendments we propose to this Contract that we reasonably consider are required as a consequence of changes to the Regulatory Requirements.</p>
relevant codes/law	ss 32W, 32X(d) <i>Fair Trading Act</i>
comments	Arguably not compliant, in particular in relation to the ability to create or extend a fixed term contract.
	We reserve the right to amend, review and/or withdraw the Green Your Home offer at our own discretion.

## Powerdirect

general comments	The Customer Charter deals with all matters in the ERC, and is one of the clearest and most comprehensive documents of those surveyed in this regard. However it does not form part of the contract, and it is one of the licence requirements that contracts deal with all matters in the ERC.
SIGNED	requested quote online 27/11. called again 3/12 (also completed online form again) to see what's happening; no record of online form; requested offer and T&C to be sent out to home. Phoned and obtained offer 22/12. Did not enter into contract.
type of service	electricity only
main feature/incentive	<p><i>discounted tariff rates:</i> [Domestic Electricity Agreement]</p> <p>Excl GST Incl GST            Peak(1): 13.180 14.498 c/kWh            Peak(2): 14.080 15.488 c/kWh            Off Peak: 0.000 0.000 c/kWh            Ancillary #: 7.270 7.997 c/kWh            Ancillary Service Charge 0.00 0.00 p.a            Service Charge: \$ 155.88 171.47 p.a</p>

ERC referred to in lieu of terms	Retail Electricity Terms and Conditions cl 1 1.3 Where the application of a term of this Agreement is inconsistent with a provision of a Regulatory Requirement,
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	The Customer Charter refers to the ERC, and deals with important matters contained therein. However the Charter does not form part of the contract, and thus neither do many of these matters in the ERC.
documents containing terms of contract	<p>Retail Electricity Terms and Conditions cl 1 This Agreement</p> <p>1.1 The Agreement between us and you consists of these terms and conditions, the Supporting Documentation, and any Regulatory Requirements or other documents incorporated by reference into these terms and conditions (together referred to as 'this Agreement').</p> <p>28.1</p> <p>28. Glossary of Terms</p> <p>Regulatory Requirements means a requirement under the National Electricity Rules or any other law, regulation, code, rule, proclamation, order in council. Direction, tariff, standard, guideline or licence condition applicable to you or us or to the generation, transportation, acquisition, trading or sale of electricity.</p> <p>Supporting Documentation means the form or quotation signed by you or on your behalf when entering into this agreement, or the letter of confirmation of your earlier voice recorded agreement.</p>
relevant codes/law	s 163 Fair Trading Act; CAV Guidelines on Unfair Terms in Consumer Contracts
comments	<p>By this definition, numerous documents comprise the 'Agreement'. CAV Guidelines suggest that splitting up an agreement into separate documents in such a manner, as well the use of such extensive cross-referencing, technical legal language and excessively long sentences, would offend the s 163 requirement that contracts be easily legible and clearly expressed. Also, 'Retail Electricity Terms and Conditions' are also printed in less than the minimum 10-point font required by s 163 FTA.</p> <p>Many of the matters discussed below are not covered in the contract, but are covered in the Retail Customer Charter.</p>

<i>CONNECTION</i>	
when contract commences	<p>Retail Electricity T&amp;C 3. Retail Transfer</p> <p>3.1 The commencement of this Agreement is conditional upon the Agreement meeting our internal approval process including our credit checking, contract closure and verification process (i.e. our obligations under this Agreement will not commence until this occurs).</p> <p>3.2 By entering into this Agreement, you understand that you have chosen us as your electricity retailer and, if required, you consent to us taking the necessary steps to complete the transfer of your Supply Point to us.</p> <p>Retail Electricity T&amp;C 5. Term of this Agreement</p> <p>5.1 This Agreement will commence:</p> <p>(a) except where paragraph (b) below applies, on the Start Date, which is:</p> <p>(i) the later of: the date on which we become the financially responsible market participant for your Supply Point, the date immediately following expiry of the Cooling Off Period, and the date on which the Agreement passes our internal approval processes; or</p> <p>(ii) the date we commence to sell you electricity if:</p> <p>(A) the sale of electricity to you involves the provision of a new connection service; or</p> <p>(B) (b) your Supply Address is located in New South Wales [...]; or</p> <p>(b) where we have an existing agreement with you which is extended by you signing an Extension Form to which these terms and conditions are attached, from the date specified in the Extension Form and the Agreed Extension Date.</p>
cooling period cancellation notice provided?	Compliant: individual notice provided. Also clearly expressed in Domestic Electricity Agreement.
<i>BILLING</i>	
estimated bills/unhindered access requirements	<p>Retail Electricity T&amp;C 3. Retail Transfer</p> <p>3.3 You will be required to pay any costs associated with a special Meter Reading performed to transfer your Supply Point to us as a result of:</p> <p>(a) a request to transfer your Supply Point on a day other than a scheduled Meter Reading; or</p> <p>(b) our, or your Distributor's, inability to access your Supply Point in order to obtain the scheduled Meter Reading required to transfer your Supply Point.</p> <p>Retail Electricity T&amp;C cl 13. Meters</p> <p>13.2 You must provide access to the Supply Point and comply with reasonable instructions from us, the Meter Reader or the meter provider for the purposes of installing, testing, maintaining or reading the meter.</p> <p>Retail Electricity T&amp;C cl 14. Meter Reading</p> <p>14.1 The metered consumption of electricity by you will be measured at intervals of not more than 6 months. In most cases, Meters are read quarterly.</p> <p>14.2 If the Meter at the Supply Point is not read for any reason (for example, if we agree to a billing cycle which is inconsistent with a Meter Reading cycle, if access cannot be gained, or if the Meter breaks down or is faulty, or if metering communications malfunction or are interrupted), the amount of electricity consumed at at your Supply Point may be estimated by us based on any previous billing history (if any) for the purposes of calculating the charges applying to a billing cycle. When the Meter at the Supply Point is subsequently read, the next bill will be adjusted for the difference between the estimates and the actual amount of electricity used, based on the Meter Reading.</p> <p>14.3 You give your consent for us to use estimates for the calculation of your electricity bills.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	No mention (but discussed in the Retail Customer Charter).
payment methods (direct debit arrangements etc)	<p>Victorian Disclosure Statement</p> <p>Payment Options – I can elect to pay by direct debit, cheque, cash, B-Pay or a credit card accepted by Powerdirect. A full list of payment options will be displayed on my bills.</p>

<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	No mention – compliant.
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	No mention (but discussed in the Retail Customer Charter).
shortened billing and collection cycles	No mention.
payment difficulties	No mention (but discussed in the Retail Customer Charter).
<b>DISCONNECTION</b>	
disconnection	<p>Retail Electricity T&amp;C cl 7. Restrictions on our Power to Disconnect</p> <p>7.1 We will not disconnect your Supply Point or request that your Supply Point be disconnected from the Distribution Network:</p> <p>(a) for non payment of a bill where the amount payable is less than any amount approved by the relevant Regulatory Requirements;</p> <p>(b) if you have made a complaint that is directly related to the reason for the proposed disconnection to the principal energy ombudsman available in the State in which your Supply Address is located;</p> <p>(c) where an application made by you for assistance under any Government funded rebate or relief scheme that is available to electricity consumers or any payment plan that may offered by us is pending;</p> <p>(d) where the only unpaid amount is a charge for something other than the sale of electricity;</p> <p>(e) while any life support system that relies on electricity for its operation is in use at your Supply Address; or</p> <p>(f) on a day during which, or at a time after which, disconnection is prohibited by the Regulatory Requirements applicable to your Supply Point.</p>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	
indemnity and limitation of liability	<p>Retail Electricity T&amp;C cl 10. Supply of Electricity</p> <p>10.1 The supply of electricity may be subject to variations in voltage and frequency and may contain voltage surges, which may cause damage to your equipment. We are unable to guarantee the quality or the security of the supply of electricity. Your Distributor may disconnect, interrupt or reduce the supply of electricity to the Supply Point in accordance with a Regulatory Requirement or the terms of your connection contract with your Distributor. To the extent permitted by law, you agree that we are not liable for such disconnection, interruption or reduction in the supply of electricity or any variation in the voltage and frequency of the supply.</p> <p>10.2 You must take reasonable precautions to minimise the risk of loss or damage to your equipment, premises or business which may result from poor quality or reliability of</p>

	<p>electricity supply. This includes an obligation to install and maintain any necessary and appropriate equipment to protect all electrical equipment at your Supply Point against power surges from lightning and other causes, partial reduction of electrical voltages resulting in a reduction of loads and any other material disruption to the quality of electricity.</p> <p>10.3 To the extent permitted by the <i>Trade Practices Act 1974</i> (Cth) and any other applicable legislation, all warranties are excluded. Any liability that cannot be excluded but that can be limited is (at our option) limited to providing equivalent goods or services provided under this Agreement to your Supply Point, or paying you the cost of replacing the goods or services provided under this Agreement to your Supply Point, or acquiring equivalent goods or services.</p> <p>10.4 This clause 10 will apply in addition to, and will not vary or exclude the operation of, any exclusion from or limitation of liability either party may be entitled to claim the benefit of under any Regulatory Requirements.</p>
relevant codes/law	s 68A TPA; ERC cl 16-18
comments	Compliant.
TERM AND TERMINATION	
continuation of term	<p>Victorian Disclosure Statement</p> <p>Unless otherwise agreed, the Minimum Period of my agreement is 36 months.</p> <p>PIS</p> <p>1. Minimum contract term is 3 years.</p> <p>Retail Energy T&amp;C cl 5.1</p> <p>This Agreement will commence:</p> <p>(a) except where paragraph (b) below applies, on the Start Date, which is:</p> <p>(i) the later of: the date on which we become the financially responsible market participant for your Supply Point, the date immediately following expiry of the Cooling Off Period, and the date on which the Agreement passes our internal approval processes;</p> <p>or</p> <p>(ii) the date we commence to sell you electricity if:</p> <p>(A) the sale of electricity to you involves the provision of a new connection service; or [...]</p> <p>(B) where we have an existing agreement with you which is extended by you signing an Extension Form to which these terms and conditions are attached, from the date specified in the Extension Form as the Agreed Extension Date.</p> <p>(b) Where we have an existing agreement with you which is extended by you signing an Extension Form to which these terms and conditions are attached, from the date specified in the Extension Form as the Agreed Extension Date.</p> <p>5.2 This Agreement runs for at least the Minimum Period from the Start Date or from the Agreed Extension Date (whichever is applicable) but is otherwise for an indefinite period (i.e, this Agreement will end when it is terminated in accordance with these terms and conditions).</p> <p>5.3 We may, before the end of the Minimum Period, notify you that this Agreement will be extended beyond the Minimum Period. Unless you notify us before the end of the Minimum Period that you do not wish to extend this Agreement, you agree to extend this Agreement for a period equal to the Minimum Period, and on the terms and conditions accompanying that notice.</p>
relevant codes/law	cl 24.3 ERC; s 32W FTA; s 163 FTA
comments	<p>The Minimum Period is 36 Months unless otherwise agreed (cl 28 Definitions). This Clause is arguably an unfair term in contravention of s 32W FTA, as it effectively assumes that, at the end of a 3 year term, a customer's silence is consent to signing a new 3 year contract with Powerdirect (see s 32X(e), which states the power of a supplier but not a consumer to renew a contract is an indicator of an unfair term), Also the contract does not specify how much time customer may have, before the end of the 3 yr term, to consider whether to renew the contract.</p> <p>By not being not being made more apparent in the contract, it is also possibly a breach of s</p>

	163 FTA (the requirement for contract to be easily legible and clearly expressed).
termination period	<p>Victorian Disclosure Statement</p> <p>Early Termination – I can terminate my agreement on 28 days notice. I will be charged an early termination fee if I terminate the agreement prior to the end of the Minimum Period. However, if I move premises and remain with Powerdirect, there will be no early termination fee. The early termination fee is set out in my agreement.</p> <p>Retail Electricity T&amp;C cl 6.3</p> <p>... you can terminate this Agreement at any time by giving us 28 days notice.</p>
relevant codes/law	ERC cl 24.1
comments	Compliant.
agreed damages terms	<p>Victorian Disclosure Statement</p> <p>I will be charged an early termination fee if I terminate the agreement prior to the end of the Minimum Period. However, if I move premises and remain with Powerdirect, there will be no early termination fee. The early termination fee is set out in my agreement.</p> <p>Domestic Electricity Agreement</p> <p>Early Termination Fee: \$48.00 incl GST.</p>
relevant codes/law	ERC cl 24.1, 32
comments	Compliant.
GENERAL	
additional retail charges	No mention.
ability to vary charges	<p>Victorian Disclosure Statement</p> <p>Electricity Rates – My electricity rates are set out in my agreement. These rates may only be varied in accordance with my Terms and Conditions. If my rates are based on a time of use tariff structure, the times when the respective rates apply will be prescribed by the incumbent retailer for my premises.</p> <p>To compare this information with your current circumstances using the Essential Services Commission's Energy Comparator, visit <a href="http://www.esc.vic.gov.au">www.esc.vic.gov.au</a>.</p> <p>Retail Electricity T&amp;C cl 12 Variation to Energy Rates and Charges</p> <p>12.1 You understand and agree that we may vary the Energy Rates under this Agreement at any time (including after the date you accept this Agreement but before it commences) by giving you prior written notice (which may consist of a statement on your bill) of the variation.</p> <p>12.2 Subject to clause 12.3, you may terminate this Agreement within 10 Business Days after being informed that we are increasing your Energy Rates if the new Energy Rates are more than:</p> <ul style="list-style-type: none"> <li>(a) the energy rates that would be applicable under your local electricity retailer's standard contract; or</li> <li>(b) the amounts that would result from increasing your Energy Rates (inclusive of Pass Through Cost Emissions and Renewable Energy Charges) by the percentage increase in the Consumer Price Index since the later of the Start Date (or if applicable, the Agreed Extension Date) and your most recent price variation - and we will waive the early termination fee.</li> </ul> <p>12.3 If you terminate this Agreement in accordance with clause 12.2:</p> <ul style="list-style-type: none"> <li>(a) such termination will not be effective until the date you become financially responsible for your energy consumption under: <ul style="list-style-type: none"> <li>(i) our or another electricity retailer's standard contract, depending on the location of the Supply Address; or</li> <li>(ii) any other market contract with us or another electricity retailer, such date called the 'Termination Date'; and</li> </ul> </li> <li>(b) subject to clause 12.4, on and from the date we receive notice of such termination until the Termination Date, you will continue to be charged you of the increase.</li> </ul> <p>12.4 If you have not become financially responsible for your energy consumption under:</p> <ul style="list-style-type: none"> <li>(a) our or another electricity retailer's standard contract, depending on the location of</li> </ul>

	<p>the Supply Address; or</p> <p>(b) any other market contract with us or another electricity retailer - within 90 days after terminating this Agreement in accordance with clause 12.2 then you agree that clause 12.3(b) will not apply and you will be charged the increased Energy Rates as notified to you pursuant to clause 12.1.</p> <p><i>CPI Adjustment</i></p> <p>12.5 Subject to the next sentence of this clause 12.5, the Energy Rates (or the Energy Rates as previously adjusted under this clause 12.5) may at our discretion be adjusted on and from each anniversary of the Start Date or the Agreed Extension Date (whichever is applicable) to reflect the percentage increase in the Consumer Price Index for the preceding twelve months. Where the Energy Rates set out in the Supporting Documentation include Pass-Through Costs, the increase in accordance with the relevant Consumer Price Index will only not apply to the component of the Energy Rates which comprises the Pass-Through Costs.</p> <p><i>Interval Meter Upgrade</i></p> <p>12.6 Where a basic or accumulation Meter is operating at your Supply Point and your Distributor installs a manually or remotely read interval Meter, or we are required by a Regulatory Requirement to install a manually or remotely read interval meter, we may vary your Energy Rates, the Service Charge, or the structure of your Energy Rates to take in to account any additional cost incurred by us, or any change in your Network Charges, as a result of the installation and operation of that interval Meter.</p> <p><i>Change in Pass-Through Costs</i></p> <p>12.7 You acknowledge that the Pass-Through Costs may vary from time to time. We may change the Pass-Through Costs at any time prior to or after the commencement of this Agreement (and without having to give you prior notice) to reflect any such variation.</p> <p><i>Other Increased Cost Events</i></p> <p>12.8 We reserve the right to apply an additional charge, or at our option, to vary the Energy Rates, to compensate us for the financial effect of (or connected with):</p> <ul style="list-style-type: none"> <li>(a) any new Regulatory Requirement or a change in an existing Regulatory Requirement or in the interpretation or administration of any Regulatory Requirement;</li> <li>(b) any new tax or charge imposed by a Regulatory Requirement or any new tax, charge or change in an existing tax or charge (for example, a change in the GST rate);</li> <li>(c) compliance with any new Regulatory Requirement, or a change in the manner of compliance with any Regulatory Requirement;</li> <li>(d) any change in, or additional, metering charges. This includes: <ul style="list-style-type: none"> <li>(i) changes to the amount of, or basis for calculation of, any charges imposed on us by the relevant metering providers for the provision, maintenance or Meter Reading of electricity Meters; or</li> <li>(ii) to the extent permitted by the Regulatory Requirements, metering charges imposed on us by the relevant metering providers for the testing of electricity Meters, at, or in relation to, the Supply Point;</li> </ul> </li> <li>(e) any change to an Emissions and Renewable Energy Scheme or the introduction of a new Emissions and Renewable Energy Scheme, for electricity consumed or reasonably expected to be consumed at your Supply Point, which has the effect, directly or indirectly, of increasing our costs, or reducing an amount received or receivable by us, in connection with, our business of purchasing, trading and/or selling electricity or providing other services connected with purchasing, trading and/or selling electricity, or in connection with a Third Party Contract. In this context:</li> <li>(f) the charge, or variation to the Energy Rates, is to be determined on a cost pass-through basis (or a reasonable approximation of that); and</li> </ul> <p>where the financial effect is indirect, we are to apportion the financial effect among our customers and, in doing so, may use averaging, attribution or any other method of calculation (or approximation) we consider appropriate, provided it is fair and reasonable.</p>
<i>relevant codes/law</i>	ERC cl 26.4, 31, 35
<i>comments</i>	The clause is compliant with the ERC. However, contains 15 terms defined elsewhere in the contract, making it difficult to comprehend (cf 163 FTA).
<i>ability to unilaterally vary terms</i>	No mention.

## Red Energy

Contracts on offer and specific terms

	Energy Fixed Term Saver	Electricity Fixed Term Saver	Energy Loyalty Credit	Electricity Loyalty Credit	Let's Grow Trees Energy Saver	Electricity Let's Grow Trees
notes	signed - called an entered oral contract 26/11. cancelled 4/12					
type of service	gas & electricity	electricity only	gas & electricity	electricity only	gas & electricity	electricity only
main feature/incentive	[online promotion] • 7% off every electricity bill you pay on time • 7% off every gas bill you pay on time • 2 year fixed term contract	[online promotion] • 7% off every electricity bill you pay on time • 2 year fixed term contract	[online promotion] • 5% off every electricity bill you pay on time • 3% off every gas bill you pay on time • Extra 5% loyalty credit for electricity after first 12 months (and every 6 months thereafter)	[online promotion] • 5% off every electricity bill you pay on time • Extra 5% loyalty credit after first 12 months (and every 6 months thereafter)	[online promotion] • Grow a tree for every gas bill you pay on time • 5% off every electricity bill you pay on time • 3% off every gas bill you pay on time	[online promotion] • Grow a tree for every electricity bill you pay on time • 5% off every electricity bill you pay on time • No exit fees • No fixed term contract
			Energy Loyalty Credit Terms Eligible customers will be entitled to receive a Loyalty Credit after the first twelve months with Red Energy and thereafter every six months (a calculation period). The Loyalty Credit will be equal to the amount of Pay on Time Discount you have received from Red Energy on <i>your</i> electricity account during the calculation period and will be credited to <i>your</i> next Red Energy electricity bill. If at the time of calculation of the Loyalty Credit <i>your</i> account is in arrears, or is in the process of being transferred to another energy provider, you may not	Let's Grow Trees Energy Saver Terms For each gas bill you pay by the due date, we'll arrange for Landcare Australia to plant sufficient seedlings and seeds to ensure that at least one tree will grow until maturity, which is either 20, 30 or 40 years depending	Let's Grow Trees Terms For each quarterly electricity bill you pay by the due date, we will arrange for Landcare Australia to plant sufficient seedlings and seeds to ensure that at least one tree will grow until maturity, which is either 20, 30 or 40	

			be entitled to a Loyalty Credit for that calculation period.	on the tree species. You do not have any ownership rights to any trees. We reserve the right to terminate this initiative with Landcare Australia at anytime by giving you 30 days written notice.	years depending on the tree species. You do not have any ownership right to any trees. You understand and agree that we reserve the right to terminate this initiative with Landcare Australia at anytime by giving you 30 days written notice. If this initiative with Landcare Australia ends, we will continue to supply you with electricity on our standard terms and conditions of Red Energy's Easy Saver product.
early termination fee	Y [see 'agreed damages terms' below for more information]	N			

Terms applicable to all Red Energy contracts

ERC referred to in lieu of terms	<p>Charter cl 14.4 Relevant Law</p> <p><i>You</i> and we agree to comply with all requirements in the Relevant Laws except where this Agreement is different to those requirements and where that difference is permitted by the Relevant Law, in which case this Agreement will apply. In particular, the Retail Code sets out our obligations to <i>you</i> and <i>your</i> obligations to us and this Agreement cannot be inconsistent with the Retail Code. If a term or condition of this Agreement is inconsistent with the Retail Code, it is void and the corresponding term or condition in the Retail Code is incorporated into this Agreement instead.</p> <p>We will inform <i>you</i> of any amendment to the Retail Code that materially affects <i>your</i> rights, entitlements and obligations as soon as reasonably practicable after that change is made. If <i>you</i> request it, we will also provide <i>you</i> with a free copy of the Retail Code (which, if <i>you</i> request, can be a large print copy).</p>
<i>relevant codes/law</i>	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
<i>comments</i>	Complaint with ERC.
documents containing terms of contract	<p>Product and Pricing Schedule</p> <p>The terms and conditions of your supply and sale agreement are contained in our Customer Charter and in these Additional Terms and Conditions (which include your Product and Pricing Schedule). Where the terms and conditions in these Additional Terms and Conditions are different from those in the Customer Charter you agree to vary the Customer Charter as set out in these Additional Terms and Conditions.</p>
<i>relevant codes/law</i>	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts
<i>comments</i>	The terms of this contract are relatively clear. There are, however, 23 specially defined terms contained therein.
<b>CONNECTION</b>	
when contract commences	<p>Charter cl 4.2 When does this Agreement start?</p> <p>If <i>you</i> are not an existing customer of ours, this Agreement commences on the date on which <i>your</i> assigned meter identifier(s) is transferred to us. <i>Your</i> assigned meter identifier is a unique number on <i>your</i> property that identifies <i>your</i> electricity and gas meter. <i>Your</i> electricity assigned meter identifier is a NMI and <i>your</i> gas assigned meter identifier is a MIRN.</p> <p>If <i>you</i> are an existing customer of ours, this Agreement commences on the date specified in <i>your</i> Product and Pricing Schedule.</p>
cooling period cancellation notice provided?	Yes – compliant with cl 23.4(a) ERC. Cancellation notice provided with contract; also mentioned in Charter.
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>Customer Charter cl 5.4 Meter Readings and Estimation</p> <p>Each bill <i>you</i> receive will be based, where possible, on an actual meter reading unless <i>you</i> agree otherwise. In any event, <i>we</i> will use <i>our</i> best endeavours to read <i>your</i> meter at least once in each 12 month period. If meter data is not available or <i>we</i> are unable to reliably base <i>your</i> bill on a reading of the meter, <i>we</i> can estimate the <i>energy you</i> have consumer during the period. If, in these circumstances, <i>you</i>, have been responsible for <i>us</i> being unable to read the meter and <i>you</i> later request an actual reading <i>you</i> will be charged an <i>Additional Service Charge</i> for this read.</p>

	<p>If we have estimated the <i>energy you</i> have consumed and later get reliable information we will adjust your account in accordance with the <i>Retail Code</i>.  cl 5.5 Access to <i>your Supply Address</i>/meter  <i>You</i> will allow <i>us</i>, <i>our</i> agents and equipment, safe and convenient access to <i>your Supply Address</i> to read <i>your</i> meter and for connection, disconnection and reconnection. <i>Our</i> representatives will carry or wear official identification and produce that identification upon request. <i>You</i> must keep <i>your</i> meter clear of hazards and interference. <i>You</i> have no ownership rights to the meter.</p>
relevant codes/law	ERC cl 5
comments	Compliant.
adjustment of a bill	<p>Customer Charter 4.4 You can ask us to review bills  If you ask us to review a bill we will undertake the review in accordance with the <i>law</i>. We may require you to pay a proportion of the bill up to the amount the <i>law</i> allows. If the review shows the bill is correct, you must pay the unpaid amount or request a meter test which you must pay for if the test shows the meter is compliant. Should the review uncover an error, we will adjust the bill.</p> <p>Customer Charter 4.5 Adjusting your bill</p> <ol style="list-style-type: none"> <li>If we have undercharged you (or not charged you at all), we may recover from you what has been undercharged up to the amount allowed by the <i>law</i>. If we are required to do so by <i>law</i>, we will offer you the opportunity to pay us over a period equivalent to the period over which the recoverable undercharging occurred.</li> <li>If we have overcharged you we will inform you within 10 <i>business days</i> of when we become aware of the overcharging and repay the overcharged amount according to your reasonable instructions (or otherwise as required by the <i>law</i>).</li> </ol>
relevant codes/law	ERC cl 6.1
comments	Compliant.
payment methods (direct debit arrangements etc)	<p>T&amp;C cl 5  5.9. How to Pay  The payment methods for <i>your</i> bill will be set out on <i>your</i> bill.  Unless otherwise agreed, <i>you</i> can pay by:</p> <ul style="list-style-type: none"> <li>- Telephone (credit card)</li> <li>- Direct Debit</li> <li>- BPay</li> <li>- Post BillPay</li> <li>- By mail (cheque or money order only); and</li> <li>- in person at any Australia Post outlet</li> </ul> <p>Before <i>you</i> can pay by direct debit <i>you</i> must complete a direct debit request which will include details of <i>your</i> and our Agreement on the amount, date and frequency of payments and how the arrangement may be cancelled. If we cease to be <i>your</i> Retailer, we will cancel any direct debit arrangements with <i>you</i>.</p>
relevant codes/law	ERC cl 7.2
comments	Compliant.
late payment fees	No mention – compliant.
CREDIT MANAGEMENT	
refundable advances	<p>Charter cl 5.14 Refundable Advances  In some circumstances in accordance with the <i>Retail Code</i>, we may require <i>you</i> to pay a refundable advance. This is similar to a bond on a rental</p>

	property. It will be repaid within 10 <i>Business days</i> in full, along with interest, when <i>you</i> have completed one year ( <i>Residential Customer</i> ) or two years ( <i>Business Customer</i> ) of payments by the due dates, or <i>your Agreement</i> with <i>us</i> ends (unless it is offset against amounts payable by <i>you</i> to <i>us</i> ).
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	Charter cl 5.15 Shortened Bill Cycles If <i>you</i> have received reminder notices for three consecutive bills, or two consecutive disconnection warnings <i>you</i> may get placed on a shortened bill collection cycle, in accordance with the <i>Retail Code</i> . Whilst on a shortened collection cycle, if <i>you</i> do not pay by the due date <i>you</i> will no longer be sent reminder notices and <i>you</i> will only be sent a disconnection warning meaning <i>you</i> will have less time to pay. This will continue until <i>you</i> pay three consecutive bills by the due date.
<i>relevant codes/law</i>	ERC cl 9
<i>comments</i>	Compliant.
payment difficulties	Charter cl 5.11 We will not commence any legal action to collect money owing until we have assessed <i>your</i> capacity to pay our bills and while <i>you</i> are making payments in accordance with an agreed payment arrangement in accordance with the <i>Retail Code</i> (unless the debt arises from the improper consumption of energy).
<i>relevant codes/law</i>	ERC cl 11
<i>comments</i>	Compliant.
<b>DISCONNECTION</b>	
disconnection	Charter cl 6.1 Disconnection After taking certain steps as set out in the <i>Retail Code</i> , we may disconnect <i>you</i> if <i>you</i> : <ul style="list-style-type: none"> <li>- refuse, when required, to provide a refundable advance; or</li> <li>- <i>you</i> do not pay any amount due to us by the due date; or</li> <li>- <i>you</i> refuse or fail to give an authorised person access to the meter providing we have given <i>you</i> a disconnection warning which states that we may disconnect <i>you</i> no sooner than seven Business days after the date of receipt of the notice, and <i>you</i> have continued not to comply with the relevant requirement.</li> </ul> <i>You</i> will not be disconnected by us if: <ul style="list-style-type: none"> <li>- <i>your</i> Supply Address is registered as a life support or a medical exemption address;</li> <li>- any formal complaint <i>you</i> have made to EWOV, directly related to the reason for disconnection, remains unresolved;</li> <li>- <i>you</i> have made application for a Utility Relief Grant which has not been decided; or</li> <li>- any non-payment by <i>you</i> relates only to a charge not for energy.</li> </ul> <i>You</i> may also be disconnected or <i>your</i> supply interrupted by <i>your</i> Distributor in certain circumstances including: <ul style="list-style-type: none"> <li>- for maintenance;</li> <li>- for health and safety reasons;</li> <li>- in the case of an emergency; or</li> <li>- if <i>you</i> are using energy other than in accordance with the law.</li> </ul> <i>You</i> will not be disconnected by us after 2 pm (if <i>you</i> are a Residential Customer) or 3 pm (for a Business Customer) on Monday to Thursday or anytime on a Friday, weekend, public holiday or the day before a public

	holiday. <i>You</i> may request disconnection of <i>your</i> Supply Address at any time.
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	The above term clearly breaches the ERC insofar as it claims disconnection can occur if any amount is not paid by the due date. Cl 13.1(b) of the ERC requires a reminder notice to be sent when a bill is not paid on time, followed by a disconnection warning notice. Both notices give the customer a prescribed minimum period of time to pay before disconnection.
<b>LIABILITY</b>	
indemnity and limitation of liability	<p>Charter cl 11 Limits to our Liability</p> <p><i>You</i> acknowledge that the quality, frequency, voltage and continuity of supply of electricity, and that the variation or deficiency in the quality or pressure for gas is subject to a variety of factors outside our control. <i>You</i> also acknowledge that the nature of energy supply is such that we cannot guarantee to <i>you</i> the quality, frequency or continuity of supply of energy to <i>you</i>. We confirm that this Agreement does not vary or exclude the operation of the law that provides an immunity, limitation of liability or indemnity for us (including under the Relevant Law).</p> <p>...</p> <p>Our liability to <i>you</i> for breach of any conditions, warranties or rights implied by the Trade Practices Act 1974, the Goods Act 1958, the Fair Trading Act 1999 or any other equivalent law is limited to the maximum extent permitted by those Acts or laws. In particular, to the extent permitted by those Acts or laws, our liability for a breach of any condition, warranty, representation or right which is implied into this Agreement by one of those laws will (at our option) be limited to providing to <i>you</i> equivalent goods, replacement goods or payment of the cost of acquiring equivalent goods or re-supplying the service or the payment of the cost of having the services supplied again. <i>You</i> must indemnify us for any breach by <i>you</i> of this Agreement or <i>your</i> negligence to the maximum amount which we are entitled to be compensated under the common law (including in equity) or statute.</p>
<i>relevant codes/law</i>	s 68A TPA; ERC cl 16-18
<i>comments</i>	Compliant.
<b>TERM AND TERMINATION</b>	
continuation of term	<p>Customer Charter cl 4 How does this <i>Agreement</i> work?</p> <p>4.1 The Term of this <i>Agreement</i> [...]</p> <p>If <i>you</i> are on a Fixed Term Contract, we will notify <i>you</i> no sooner than two months before, and no later than one month before, the expiry of <i>your Agreement</i>. This notice will provide you with information on the energy supply options available to you when the term of <i>your</i> Agreement expires.</p>
<i>relevant codes/law</i>	ss 32W, 32X(e), 32Y(1) FTA.
<i>comments</i>	Assuming the notice informs the customer that they have an option not to renew the contract, it should not be an unfair term. It could, however, be arguable that it is an unfair term if a fixed-term contract will recommence if the customer does not provide an indication of their intention to the retailer.
termination period	<p>Customer Charter cl 4 How does this <i>Agreement</i> work?</p> <p>4.5 How does this <i>Agreement</i> end after the cooling off period? [...]</p> <p>If you wish to end this Agreement at any time after the cooling off period, you will need to either:</p> <ol style="list-style-type: none"> <li>notify us that you wish to end this Agreement and we will discuss alternative contracts with you (we are entitled to 28 days notice that</li> </ol>

	<p>you wish to terminate); or</p> <p>b. notify us that <i>you</i> wish to move out of <i>your</i> Property, and we will arrange for it to be disconnected; or</p> <p>c. enter into a contract with an alternative Retailer who will be responsible for notifying us and arranging the transfer of <i>your</i> assigned meter identifier to that Retailer.</p>
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.
agreed damages terms	<p>Product and Pricing Schedule</p> <p><i>Fixed Term Contracts and Early Termination Fees</i></p> <p>If <i>you</i> have elected to enter into a <i>Fixed Term Contract</i> as set out in this <i>Product and Pricing Schedule</i> and <i>your Agreement</i> is terminated after the cooling off period but before the expiry of the fixed term, <i>you</i> will have to pay the <i>Early Termination Fee</i>. The <i>Early Termination Fee</i> is \$20 plus the value of any upfront benefits <i>you</i> may have received as part of the Sign Up Promotion.</p> <p>Charter cl 4 How does this <i>Agreement</i> work?</p> <p>[...]</p> <p>4.6 <i>Early Termination Fee &amp; Fixed Term Contracts</i></p> <p>If <i>you</i> are on a <i>Fixed Term Contract</i> that is terminated by <i>you</i> after the cooling off period but before its expiry date, <i>you</i> will have to pay the <i>Early Termination Fee</i> as specified in your <i>Product and Pricing Schedule</i>. This fee is payable even if <i>you</i> give us 28 days notice as required under this <i>Agreement</i>. The amount of this fee will depend on when the <i>Agreement</i> is terminated and is set out in your <i>Product and Pricing Schedule</i>. This fee is payable within 12 <i>Business days</i> of <i>us</i> sending <i>you</i> a final bill.</p> <p>If <i>your</i> tariff is changed due to a change of meter, <i>you</i> have the right to terminate this <i>Agreement</i> without incurring an <i>Early Termination Fee</i>.</p> <p>If <i>you</i> terminate this <i>Agreement</i> and enter into a new <i>Fixed Term Contract</i> with <i>us</i> within 1 month, <i>we</i> will refund any <i>Early Termination Fee</i> paid.</p>
<i>relevant codes/law</i>	ERC cl 24.3, 32
<i>comments</i>	Compliant.
additional retail charges	<p>Charter cl 16 Definitions</p> <p>Additional Service Charges means any charges incurred by <i>you</i> (and as explained by <i>us</i> prior to <i>you</i> incurring such charges) for services requested by <i>you</i>, or services required to enforce this <i>Agreement</i>, and includes Excluded Service Charges as defined in the Relevant Law.</p>
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant, so long as the charges are fair and reasonable having regard to related costs incurred by the retailer (ERC cl 31(a)).
ability to vary charges	<p>Product and Pricing Schedule</p> <p>Variable Tariff</p> <p><i>You</i> have agreed to enter into an <i>Agreement</i> with a variable tariff. <i>You</i> understand and agree that <i>we</i> may vary <i>your</i> tariff and/or Pay on Time Discount by providing <i>you</i> with notice of that change. The notice will be given to <i>you</i> as soon as possible, and in any event, no later than <i>your</i> next bill, and will vary this <i>Product and Pricing Schedule</i> accordingly.</p>
<i>relevant codes/law</i>	ERC cl 26.4
<i>comments</i>	Compliant.

ability to unilaterally vary terms	T&C cl 14.1 Variation This Agreement may be varied by agreement in writing between <i>you</i> and us. However, we do not need <i>your</i> agreement where the tariff we charge <i>you</i> is changed in accordance with this Agreement.
<i>relevant codes/law</i>	ss 32W, 32X(d) <i>Fair Trading Act</i>
<i>comments</i>	Compliant.
transfer of agreement	Charter cl 14.4 Relevant Law We may assign or novate this Agreement to another party with your consent or in the event that we sell all or substantially all of Red Energy. We will give you notice of this. You need to get our consent if you want to assign this Agreement.
<i>relevant codes/law</i>	cl 34 ERC
<i>comments</i>	Complaint.

direct debit terms	<p><i>Bill smoothing</i></p> <p>[Charter cl 8] EvenPay™</p> <p>8.1. What and when will <i>you</i> pay?</p> <p>Prior to the EvenPay™ arrangements starting we must receive from <i>you</i> a completed Direct Debit form, or notification from Centrelink that <i>your</i> Centrepay payment arrangement has been set up. If we have not received <i>your</i> Direct Debit form, or notification from Centrelink that <i>your</i> payment has been set up, prior to sending <i>you</i> a bill, <i>you</i> will be required to pay that bill in accordance with our Customer Charter. <i>You</i> will need to pay this bill by the due date in order to receive <i>your</i> Pay On Time Discount. That bill will show the total amount due and the discounted amount <i>you</i> can pay with the Pay On Time Discount applied.</p> <p><i>You</i> agree that, once we have received a completed Direct Debit form, or notification from Centrelink that <i>your</i> payment has been set up, we will deduct from <i>your</i> nominated bank account or credit card, or receive from Centrelink, the amounts agreed with <i>you</i>. These amounts have been estimated based on <i>your</i> expected annual consumption, and <i>your</i> current circumstances, including <i>your</i> entitlement to concessions or any government rebates.</p> <p>Each bill period, we will issue a bill that shows the charges <i>you</i> have incurred and the payments <i>you</i> have made. This will mean from time to time <i>your</i> balance will be in debit or in credit.</p> <p><i>You</i> agree to vary the standard payment terms set out in clause 5.8 to enable this.</p>
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Code of conduct for Marketing Retail Energy in Victoria, cl 6.3	
<i>A retailer must provide the following information to a consumer before entering into a contract:</i>	
The type, frequency of bills and payment methods	Compliant - payment options are listed online.
The details of all applicable charges, tariffs and service levels	Compliant - in Product Information Statement; also available online.
Name and street address of retailer	Not compliant - street address not provided.
Any rights consumer has to cancel contract; charges that apply on cancellation & the circumstances in which they would apply	Compliant – reverse side of Product Information Statement indicates termination before the expiry of the fixed term would result in an Early Termination Fee of \$20 plus the value of any upfront benefits received as part of the Sign Up Promotion.
That the consumer may be contacted as part of an audit procedure to confirm their understanding of and consent to contract	Not compliant – no mention.
All relevant info about any difference between the contract's terms and conditions and the basic terms and conditions under the ERC	Not compliant – a clause of the T&C indicates all contracts terms not permissibly compliant with the ERC are void, but there is no mention of the relevant differences between the contract and the ERC.
A retailer must provide the consumer with a reasonable opportunity to consider this information before entering into the contract	<i>Not assessed.</i>
<i>A retailer shall send the following information to a consumer within 2 business days of entering into a contract with the consumer, unless this information has been previously supplied to the consumer:</i>	
The full terms, conditions and applicable costs of the contract including the period of the contract	<i>Not able to be assessed.</i>
Advice to the consumer that they have a right to cancel the contract, and a retailer contact point which the consumer may require for further information, or to cancel the contract	Compliant.
Government energy assistance schemes which may be available to the consumer	Compliant.
How to make a complaint to, or an enquiry of, the retailer and details of the Energy and Water Ombudsman	Complaint.
The existence and general scope of this Code and how to access Code compliance procedures	Not compliant. No mention made of the Code or compliance procedures.

Guidelines not published on website that should be:

Electricity Industry Guideline No. 4 – Credit Assessment

(those that are: Energy Retail Code, Code of Conduct for Marketing Retail Energy, Greenhouse Gas Disclosure on Electricity Customers' Bills (Guideline No 13), Energy Product Disclosure Guideline 19)

## Simply Energy

### Contracts on offer and specific terms

	Simply Click	Green Touch 10%	Green Premium 100%
notes		Y - signed up for Greentouch 27/11. Cancelled on 5/12. Rep attempted to talk me out of cancelling, first saying they would remain my elec supplier (as it is an essential service) and I would continue to receive bills from them until I changed to a new contract. Also said they had the best contracts around etc. Applies to GD/GR tariff for elec; Gas tariff 03, TRUEast gas network area	
type of service	gas and/or electricity	electricity	electricity
main feature/incentive	7% discount off electricity consumption, 3% discount off gas consumption, 1% discount when pay direct debit, 1% discount when paying on time, 1% discount after remaining with retailer for 24 mths, no lock-in contract or termination fees. -- See 'payment methods, below	Plant a tree, 10% Greenpower, 2% discount off electricity consumption, 2% off gas, 1% discount when pay direct debit, 1% discount when paying on time, 1% discount after remaining with retailer for 24 mths, no lock-in contract or termination fees. -- See 'payment methods', below	Plant a tree, \$5/week premium, no lock-in contract or termination fees.

### Terms applicable to all contracts

ERC referred to in lieu of terms	Market Contract Terms and Conditions ("T&C") 12 Liability 12.1 We will comply with the law a. In selling you <i>energy</i> , we will comply with the <i>law</i> . However, if we are excused from complying with the <i>law</i> by a regulatory authority, we are not obliged to comply with that <i>law</i> to the relevant extent.
relevant codes/law	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	'Law' is defined as including all laws or regulatory or administrative instruments. As such, the clause seems redundant, since the retailer is complying with the law if a regulatory body excuses them from observing some provision. However it does serve to alert consumers that regulations apply to their contracts outside of the terms of the contract. Licensees are required to expressly deal with each matter in the ERC in the terms of their contracts (or incorporate them by reference).
documents	T&C 1.1 The scope of our contract

containing terms of contract	<p>These contract terms form part of a contract you have entered into us for the sale of <i>energy</i> to your <i>premises</i>. The other part of the <i>contract</i> is the <i>contract</i> sheet.</p> <p>T&amp;C 1.4 Understanding these contract terms</p> <p>Words appearing in these contract terms <i>like this</i> have a special meaning and are defined in paragraph 14.6.</p> <p>T&amp;C 14.6 Definitions</p> <p>Contract sheet means either <i>our</i> offer to sell <i>you</i> energy signed by <i>you</i> or, if <i>you</i> verbally accepted <i>our</i> offer or accepted online, the confirmation of acceptance <i>we</i> subsequently provide to <i>you</i>.</p> <p>Contract sheet Your <i>contract</i> comprises your online acceptance, this Online Contract Confirmation (Contract Sheet), the Market Contract Conditions, the Privacy Policy and any additional conditions applying to the payment option you select. The contract only applies to you if you are a 'small customer' as defined in the Market Contract Conditions.</p>
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<i>relevant codes/law</i>	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts
<i>comments</i>	By this definition, any number of documents that could comprise part of the 'Agreement'. The CAV Guidelines suggest splitting up an agreement into separate documents in such a manner would offend the s 163 requirement that contracts be easily legible and clearly expressed.
<b>CONNECTION</b>	
when contract commences	No mention.
cooling period cancellation notice provided?	Yes – compliant.
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>T&amp;C 4.3 Bills based on meter readings</p> <ol style="list-style-type: none"> <li>As a general rule we will base our bills on readings of your meters.</li> <li>However in some cases the <i>law</i> may allow us to provide you with a bill based on an estimate of the <i>energy</i> consumed at your <i>premises</i>. If we do this and we subsequently obtain a meter reading or more reliable data, we will adjust your next bill as appropriate.</li> <li>In any event we will use our best endeavours to ensure your meter is read at least once in any 12 month period.</li> <li>If you ask us to replace an estimated bill with one based on a meter reading, we will do so and may impose an <i>additional charge</i> on you accordingly.</li> </ol>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	<p>T&amp;C 4.4 You can ask us to review bills</p> <p>If you ask us to review a bill we will undertake the review in accordance with the <i>law</i>. We may require you to pay a proportion of the bill up to the amount the <i>law</i> allows. If the review shows the bill is correct, you must pay the unpaid amount or request a meter test which you must pay for if the test shows the meter is compliant. Should the review uncover an error, we will adjust the bill.</p> <p>T&amp;C 4.5 Adjusting your bill</p> <ol style="list-style-type: none"> <li>If we have undercharged you (or not charged you at all), we may recover from you what has been undercharged up to the amount allowed by the <i>law</i>. If we are required to do so by <i>law</i>, we will offer you the opportunity to pay us over a period equivalent to the period over which the recoverable undercharging occurred.</li> <li>If we have overcharged you we will inform you within 10 <i>business days</i> of when we become aware of the overcharging and repay the overcharged amount according to your reasonable instructions (or otherwise as required by the <i>law</i>).</li> </ol>

<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>T&amp;C 5.2 Payment methods You may pay your bills by any of the payment methods stated on your bill.</p> <p>T&amp;C Additional Discount Terms Pay On Time Discount</p> <p>1. The discount specified in the <i>contract sheet</i> for paying on time (the “pay on time discount”) will be applied:</p> <ol style="list-style-type: none"> <li>in respect of those <i>energy charges</i> incurred for energy consumed during the billing period; and</li> <li>to the consumption component of our standard residential rates.</li> </ol> <p>2. You will be eligible for the pay on time discount in respect of a bill if payment of the full amount of charges specified on that bill is received by us on or before the pay-by date specified on the bill (note that payments made after business hours may not be received by us until the next business day and therefore may be ineligible for the pay on time discount). If the pay-by date is a weekend or a public holiday, payment must be received by us on or before the next business day.</p> <p>3. If you are on a Smooth Payment Plan and full payment of each agreed smooth payment instalment amount for each billing period is received by us on or before the agreed smooth payment instalment payment date, you will be eligible for a pay on time discount on consumption charges for that billing period. The pay on time discount may be reflected in a change to your instalment amounts when your outstanding balance is adjusted or the instalment amounts are re-set in accordance with our Smooth Payment Plan Conditions.</p> <p>Direct Debit Discount</p> <p>4. The discount specified in the <i>contract sheet</i> for payment by direct debit or automatic payment from your credit card (the “direct debit discount”) will be applied:</p> <ol style="list-style-type: none"> <li>in respect of those <i>energy charges</i> incurred for energy consumed during the billing period; and</li> <li>to the consumption component of our standard residential rates.</li> </ol> <p>5. You will be eligible for the direct debit discount in respect of a bill if payment of that bill is actually made by direct debit or automatic payment from your credit card in accordance with our Automatic Payment Arrangement Conditions. The amount that we debit from your nominated financial institution to pay your bill will be reduced by the amount of the direct debit discount.</p> <p>6. If you are on a Smooth Payment Plan and full payment of each agreed smooth payment instalment amount for each billing period is actually made by direct debit or automatic payment from your credit card in accordance with our Automatic Payment Arrangement Conditions, you will be eligible for a direct debit discount on consumption charges for that billing period. The amount that we debit from your nominated financial institution to pay your bill will not be reduced by the amount of the direct debit discount. Rather, the direct debit discount may be reflected in a change to your instalment amounts when your outstanding balance is adjusted or the agreed instalment amounts are re-set in accordance with our Smooth Payment Plan Conditions.</p> <p>7. If you are making payment by automatic payment from your credit card you must make payment by Visa or MasterCard to be eligible for the direct debit discount.</p> <p>8. If you do not already have a direct payment arrangement with us, you may request this to be set up by visiting our website <a href="http://www.simplyenergy.com.au">www.simplyenergy.com.au</a> or calling 13 88 08. You will need to provide us with a completed Request for Automatic Payment form, and agree to our Automatic Payment Arrangement Conditions, no later than 14 days before the next scheduled meter read date specified on your latest bill so that we can apply the direct debit discount to your next bill.</p> <p>9. You will not be entitled to the direct debit discount in respect of a bill (and we will not otherwise be responsible) if the direct debit or automatic payment from your credit card fails or is delayed because:</p> <ol style="list-style-type: none"> <li>you did not provide the Request for Automatic Payment form, and agree to our Automatic Payment Arrangement Conditions, within the required timeframe;</li> <li>any of the details you have provided us are incorrect or incomplete; or</li> <li>there were insufficient clear funds or credit available in the nominated account to meet the Automatic Payment Arrangement payment on the pay-by date.</li> </ol> <p>Automatic Payment Arrangement Conditions</p> <p>We may change the terms of the Automatic Payment Arrangement at any time but will give you at least 14 days notice before we do so. We will not change the amount and frequency of the Automatic Payment Arrangement without your agreement.</p>

	<p>T&amp;C Additional Discount Terms</p> <p>12 Month Loyalty Discount</p> <p>10. The discount specified in the contract sheet for staying with us for 12 months (the “12 month loyalty discount”) will be applied:</p> <ol style="list-style-type: none"> <li>in respect of those energy charges incurred for energy consumed during the most recent period of 12 months commencing on the supply start date or an anniversary of the supply start date (the “loyalty discount period”);</li> <li>to the consumption component of our standard residential rates; and</li> <li>as a credit on your first bill issued following each loyalty discount period.</li> </ol> <p>General Conditions</p> <p>The following conditions apply to the pay on time discount, the direct debit discount and the 12 month loyalty discount (each referred to as a “discount”).</p> <p>11. If you are not eligible for a discount in respect of a bill, but we apply that discount to your bill (for whatever reason), the amount of the discount will be debited to your next bill.</p> <p>12. If you are eligible for a discount in respect of a bill, but you overpay the amount of that discount to us, that amount will be credited to your next bill. You will not be entitled to a refund of that amount before your next bill is issued.</p> <p>13. If your bill is based on an estimate of your energy consumption, each discount will be applied to the estimated consumption. If we subsequently receive an actual meter read, we will adjust the discount on the next bill accordingly.</p> <p>14. You will not be eligible for any discount if you are on a Fixed Instalment Plan at the time the relevant bill is issued. In addition, you will not be eligible for a 12 month loyalty discount if you were on a Fixed Instalment Plan at any time during the loyalty discount period.</p> <p>15. The discounts will end 3 years after the supply start date.</p>
<i>relevant codes/law</i>	ERC cl 7.2; s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts; s 52 <i>Trade Practices Act</i>
<i>comments</i>	All terms are compliant except for the last, which ends all discounts after three years. The discounts are a significant incentive, but this term is ‘buried’ and not mentioned more prominently elsewhere, and thus is likely a breach of s 163 FTA. Additionally, as the loyalty discount applies only after two years (and ended after three), there is arguably also a breach of s 52 TPA.
late payment fees	<p>T&amp;C 5.5 Late payments</p> <p>If we do not receive your payment by the pay-by date, we may take legal proceedings or other steps against you to recover the overdue amount and our recovery costs. However, before taking any steps we will comply with all requirements under the law in relation to payment difficulties you may be having.</p>
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C 5.8 Security deposits</p> <p>We may require you to provide us with a <i>security deposit</i> if the <i>law</i> allows us to. This may be the case, for example, if you have an unsatisfactory credit rating and do not accept an instalment plan we offer you. We would determine the amount of the <i>security deposit</i> in accordance with the <i>law</i> and you would have to provide it within 10 business days after our request. We would pay you interest on the <i>security deposit</i> at a 90 day bank bill rate (or otherwise as required by the <i>law</i>). We could apply the <i>security deposit</i> and accrued interest against, or draw on it for, any amount you owed us under the <i>contract</i> in accordance with the <i>law</i> and would provide you with an account of how we used it. If having provided us with a <i>security deposit</i> you then paid all your bills by their pay-by date for the period required under the <i>law</i>, or you stopped taking a supply of energy at your premises, we would return the <i>security deposit</i>, together with accrued interest, in accordance with your reasonable instructions (or otherwise as required by the <i>law</i>).</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.

shortened billing and collection cycles	See 'payment difficulties' below.
payment difficulties	<p>T&amp;C cl 5.6 Payment difficulties</p> <ol style="list-style-type: none"> <li>You must contact us if you anticipate it may not be possible for you to pay a bill by the pay-by date.</li> <li>If you are experiencing difficulties paying your bills, we can offer you assistance: information about your right to have your bills redirected to someone else, advice about independent financial counselling, information about <i>energy</i> efficiency and about various government assistance and concessions schemes and, in some cases, the option of an instalment plan.</li> <li>We may choose not to offer you this assistance if you have been convicted of an offence involving fraud or theft of <i>energy</i>.</li> <li>If you are a residential customer eligible under the <i>law</i> for an instalment plan, we will offer a plan conforming with the requirements of the <i>law</i> under which you will have the ability to either pay your bills by regular instalments in advance or to pay any overdue amounts and future bills by regular instalments. In either case you will be obliged to pay each instalment amount by the agreed pay-by date. We are not obliged to provide small business customers with an instalment plan. However, we will consider doing this if you ask. We may impose an <i>additional charge</i> if we accept your request.</li> <li>If you are consistently late paying your bills and we have complied with the requirements of the <i>law</i>, we may place you on a shortened collection cycle and will give you notice we have done so in accordance with the <i>law</i>.</li> </ol>
relevant codes/law	ERC cl 11
comments	Compliant.
DISCONNECTION	
disconnection	<p>T&amp;C cl 8 Disconnection</p> <p>8.1 When and how disconnection is arranged</p> <ol style="list-style-type: none"> <li>You may request disconnection. Once you ask us, we will arrange disconnection of your <i>premises</i> through your distributor in accordance with your request.</li> <li>In accordance with the <i>law</i>, and only if we comply with all of the requirements under the <i>law</i>, we may request your distributor to disconnect your premises: <ol style="list-style-type: none"> <li>if you fail to pay us an amount we have billed by the pay-by date;</li> <li>if you deny access to your meter;</li> <li>if you refuse to pay a security deposit;</li> <li>if you are using <i>energy</i> illegally; or</li> <li>on other grounds the <i>law</i> allows.</li> </ol> </li> <li>We will give you notice of our intention to disconnect your premises in accordance with the <i>law</i>, unless disconnection is due to an emergency, for health and safety reasons or for illegal use of <i>energy</i>.</li> <li>You must co-operate with and assist your distributor and our personnel in respect of any disconnection.</li> </ol> <p>8.2 Restrictions on us disconnecting your premises</p> <p>We must comply with restrictions under the <i>law</i> on disconnecting your <i>premises</i> including:</p> <ol style="list-style-type: none"> <li>where you have not paid our bill, restrictions that apply: <ol style="list-style-type: none"> <li>if the amount unpaid is less than any minimum set under the <i>law</i>;</li> <li>if there is an unresolved complaint about our bill;</li> <li>if you have an outstanding application for a concession; or</li> <li>if the unpaid amount is not for the supply or sale of <i>energy</i>;</li> </ol> </li> <li>restrictions as to disconnecting electricity supply to premises registered by a distributor as having a life support machine or disconnecting gas supply to premises registered by us as having a medical exemption; and</li> <li>restrictions as to the times and days on which disconnection may take place.</li> </ol>
relevant codes/law	ERC cl 13, 14
comments	Compliant.
LIABILITY	

indemnity and limitation of liability	<p>T&amp;C cl 12 Liability</p> <p>12.2 The distributor is your supplier</p> <p>You agree and acknowledge that:</p> <ol style="list-style-type: none"> <li>it is your distributor, not us, who connects or connected your premises to the network and who will maintain that connection;</li> <li>subject to and without limiting paragraph 13.2, your distributor is responsible for supplying energy to your premises and for the quality and reliability of the energy supplied;</li> <li>the energy supplied to your premises may be subject to voltage, wave or frequency fluctuations (for electricity) or quality or pressure variations or deficiencies (for gas);</li> <li>as already stated in paragraph 7, the supply of energy to your premises may be interrupted; and</li> <li>except in respect of the supply of gas to South Australian premises, we are not liable to you (under contract, tort (including negligence) or on any other basis) in respect of any of these matters.</li> </ol> <p>12.3 You are responsible on your side of the supply point</p> <p>We are not responsible for, and you accept all risks in respect of, the control and use of electricity on your side of the supply point and of gas on your premises.</p> <p>12.4 Uncontrollable events</p> <p>Obligations under the contract will be suspended if they cannot be met due to an event outside your or our control, as the case may be (excluding any obligation to pay money). If we are affected by such an event we will give prompt notice to you in accordance with the law and use best endeavours to remove, overcome or minimise the effects of the event (though we need not settle any industrial dispute unfavourably to us), as you must do if you are affected.</p> <p>12.5 No implied conditions or warranties</p> <ol style="list-style-type: none"> <li>Nothing in these contract terms excludes, restricts or modifies any condition or warranty that the law does not allow us to exclude, restrict or modify. However, all other conditions and warranties, whether or not implied by the law, are excluded.</li> <li>The Trade Practices Act 1974 (Cth) and other laws imply conditions and warranties into certain types of contracts for the supply or sale of goods and services. If any condition or warranty is implied into the contract under those laws, then our liability (if any) for breach of that condition or warranty in connection with any goods or services we supply under the contract is limited, as far as the law allows and at our option, to resupplying the goods or services (or paying for their resupply).</li> </ol> <p>12.6 Indemnity</p> <p>To the extent the law allows, you indemnify us against (and therefore must pay us for) loss or damage arising in connection with any failure by you to comply with any of your obligations under the contract, the control and use of any electricity on your side of the supply point, any damage to the supply equipment and the control and use of any gas on your premises, whether or not the contract has ended. You will not have to do this where the loss or damage is the result of the negligence of us, your distributor or a meter reader.</p> <p>12.7 Non-exclusion</p> <p>Nothing in the contract varies or excludes any limitation of liability or immunity we have under the law.</p>
<i>relevant codes/law</i>	s 68A TPA; ERC cl 16-18
<i>comments</i>	Compliant.
<b>TERM AND TERMINATION</b>	
continuation of term	No mention.
termination period	Contract Sheet You must provide us with 20 business days notice if you wish to terminate.
<i>relevant codes/law</i>	ERC cl 24.1
<i>comments</i>	Compliant.

agreed damages terms	<p>T&amp;C 9 Early termination of the contract</p> <p>9.6 Early termination fee</p> <p>If the <i>contract</i> is terminated early by us under paragraph 9.1 or by you under paragraph 9.2 or 9.3, then, unless the <i>law</i> disallows this, you must pay us the early termination fee set out in the <i>contract sheet</i>. This fee would be payable on the pay-by date on your final bill.</p> <p>9.7 Effect of early termination</p> <p>Early termination of the <i>contract</i> does not affect any rights we have arising before or on termination.</p>
relevant codes/law	ERC cl 24.1, 32
comments	Compliant. As there were no fixed term contracts on offer, there are no fees to which this term currently applies.
GENERAL	
additional retail charges	<p>T&amp;C 3.4 Additional charges</p> <p>a. You must also pay us:</p> <ol style="list-style-type: none"> <li>1. any other distributor charges we pay concerning the <i>energy</i> we sell you and related costs we incur;</li> <li>2. reasonable costs we incur if you do not give access to the meter readers or you request an unscheduled meter reading;</li> <li>3. any administration fee set out in the <i>contract sheet</i>;</li> <li>4. for any additional services you request from us (including meter testing) unless the law requires us to provide that service free of charge;</li> <li>5. any merchant service fees we incur because of the payment method you use in paying your bill;</li> <li>6. to the extent the law allows, any late payment fee set out in the <i>contract sheet</i> and interest on any late payment as set by us from time to time;</li> <li>7. costs imposed on us if, due to fault on your part, payments you make to us are dishonoured or reversed;</li> <li>8. any other additional charges set out in these contract terms or in the <i>contract sheet</i>; and</li> <li>9. GST at the prevailing GST rate on any taxable supplies made by us.</li> </ol> <p>b. Any additional charge will be fair and reasonable having regard to related costs we incur.</p>
relevant codes/law	ERC cl 31
comments	While this term provides a broad scope for the charging of fees, it is compliant with the ERC.
ability to vary charges	<p>3.3 Rate variations</p> <p>a. If after the <i>contract</i> starts there is:</p> <ol style="list-style-type: none"> <li>1. a change in <i>law</i>;</li> <li>2. for electricity only, a <i>loss factor change</i>; or</li> <li>3. for gas only, an unaccounted for gas change,</li> </ol> <p>the result of which is to increase the direct or indirect costs we incur in connection with the <i>energy</i> we sell you, then upon or at any time after the relevant change we may vary your <i>rates</i> (or impose an <i>additional charge</i>) to recover those increased costs.</p> <p>b. If an event described below occurs the result of which is to increase the prices we pay under <i>contracts</i> we enter into to manage fluctuations in the cost to us of the <i>energy</i> we sell you, then upon or at any time after the relevant event we may vary your <i>rates</i> (or impose an <i>additional charge</i>) to recover those increased prices. The relevant events are:</p> <ol style="list-style-type: none"> <li>1. a change in <i>law</i>;</li> <li>2. for electricity only, a <i>nodal event</i>, an electricity generator exercising either a force majeure right under its <i>contract</i> with us or a right to pass through to us additional costs it incurs as a result of a change in fees, <i>law</i>, taxes or subsidies; and</li> <li>3. for gas only, an <i>upstream event</i>.</li> </ol> <p>c. If we reasonably consider that the increase over any 12 month period in any <i>environmental charge</i>, <i>market charge</i>, <i>metering charge</i>, <i>network charge</i> or other cost imposed on us in connection with the <i>energy</i> we sell you will exceed the corresponding increase in CPI, or that the amount of any such cost so</p>

	<p>imposed on us otherwise is extraordinary, then upon or at any time after the imposition of the relevant charge we may vary your <i>rates</i> to recover the excess or extraordinary amount, but only if we give you 90 days prior notice of the <i>rates</i> variation.</p> <p>d. The amount of any <i>rate</i> variation under paragraphs 3.3(a), (b) or (c) will be calculated as follows:</p> <ol style="list-style-type: none"> <li>1. by apportioning the total cost increase, the total price increase or the total excess or extraordinary amount, as the case may be, in relation to the relevant customer segment (which may be the whole of our customer base) by the volume of <i>energy</i> purchased in relation to that customer segment and varying your <i>rates</i> by no more than the resulting amount; or</li> <li>2. using any other method which fairly reflects the cost increase, the price increase or the excess or extraordinary amount across the relevant customer segment.</li> </ol> <p>e. If after the <i>contract</i> starts a new type of meter is installed at your premises, we may vary your <i>rates</i> to those generally applicable to that type of meter.</p> <p>f. On each annual review date in respect of your premises we will vary your <i>rates</i> in line with variations in CPI, as follows:</p> <ol style="list-style-type: none"> <li>3. we will multiply your initial <i>rates</i> (for the first annual review date) or the <i>rates</i> applying on the immediately preceding annual review date (for any subsequent annual review date) by the CPI for the <i>latest available quarter</i> in respect of the annual review date and divide the result by the CPI for the same quarter in the preceding year;</li> <li>4. if in any of the four quarters other than the last quarter immediately preceding the annual review date there has been a rate variation under any of paragraphs 3.3(a), (b), (c) or (e), then we will multiply the amount of that rate variation by the CPI for the <i>latest available quarter</i> in respect of the annual review date and divide the result by the CPI for the <i>latest available quarter</i> in respect of the rate variation; and</li> <li>5. your <i>rates</i> on and from the annual review date will be no more than the sum of the amounts calculated under paragraphs 3.3(f)(1) and (2).</li> </ol> <p>g. We will give you notice of rate variations (or <i>additional charges</i> imposed) which may be in a message on your bill. If the <i>rates</i> vary during a billing period, we will calculate your bill on a proportionate basis using the old <i>rates</i> before the variation and the new <i>rates</i> afterwards.</p>
<i>relevant codes/law</i>	ERC cl 31, 35; s 163 <i>Fair Trading Act</i>
<i>comments</i>	Although compliant with the ERC, these terms may be a breach of s 163 FTA (the large number of defined terms creating confusion about how customers will be charged).
ability to unilaterally vary terms	No mention.

## TRUenergy

overall comments	<p>Each contract was made up of:</p> <ul style="list-style-type: none"> <li>the Charter;</li> <li>a list of the plan's T&amp;C (eg TRUenergy Go For More Terms and Conditions); and</li> <li>for the Go Easy and Go For More energy plans, a 'Product Schedule for your energy plan' (see 'documents containing terms of contract', below)</li> </ul> <p>All contracts terms were obtainable prior to signing except for the 'Product Schedule for your energy plan'. However, while 'quotes' were easily obtainable online, the T&amp;C were only viewable after the online application process was nearly complete.</p>
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### Contracts on offer and specific terms

	TRUenergy Go Green	TRUenergy Go For More	TRUenergy Go Easy
type of service	electricity	gas and/or electricity	gas and/or electricity
main feature/incentive	<ul style="list-style-type: none"> <li>10% renewable GreenPower accredited energy at no extra cost.</li> <li>Plus 3% discount when you pay your bills by the due date.</li> </ul>	<ul style="list-style-type: none"> <li>3% off your gas and electricity charges, and a further 3% discount when you pay your bills by the due date.</li> <li>No security bond or late payment fees.</li> </ul>	<ul style="list-style-type: none"> <li>3% discount when you pay your bills by the due date.</li> <li>No exit fees.</li> <li>No security bond or late payment fees.</li> </ul>
termination period	<p>Product Information Statement Customer must give TRUenergy 30 days notice to terminate.</p>		See below.
	<p>Charter p 8 How can <i>you</i> end this agreement? You need to give us 28 days notice in writing to end this agreement unless we have agreed otherwise with <i>you</i> or <i>you</i> are a <i>deemed customer</i>, in which case <i>you</i> need not give <i>us</i> any notice. If <i>you</i> have entered into an agreement to purchase <i>energy</i> for a minimum period, <i>you</i> will need to pay <i>us</i> an exit fee if <i>you</i> wish to end the agreement earlier, unless prevented by the <i>regulations</i>. If <i>your energy</i> agreement contains an exit fee, we will provide <i>you</i> with details of that fee prior to entering into to the agreement with <i>you</i>. If <i>you</i> wish to transfer to another <i>energy</i> retailer, this agreement will remain in place until <i>you</i> have successfully transferred.</p> <p>How can <i>we</i> end this agreement? We may terminate this agreement immediately if, having breached this agreement, <i>you</i> have been disconnected and <i>you</i> no longer have the right to be reconnected, or under the terms of any specific agreement with <i>you</i>, or as the <i>regulations</i> permit. For <i>deemed customers</i>, this agreement will also end if <i>you</i> are no longer a <i>deemed customer</i> under the <i>regulations</i>.</p>		
relevant codes/law	ERC cl 24.1		
comments	Compliant.		
documents containing terms of contract		<p>All T&amp;C [final page] TRUenergy Green Products – Terms and Conditions 1. You agree to pay the extra amount for your selected TRUenergy green product as shown in the brochure, on you confirmation letter or the document titled 'Product Schedule for your energy plan' which accompanies these terms and conditions. You agree that this amount, which will appear on your TRUenergy electricity account, will be charged in addition to the electricity prices and charges that you are</p>	

		obliged to pay under your electricity sale and supply contract with us.	
	<p>All T&amp;C cl 1 What does the <i>TRUenergy Go Easy Agreement</i> involve?</p> <p>1.1 The terms and conditions applying to <i>your</i> energy supply are contained in the <i>TRUenergy Customer Charter</i> except where they are varied by the terms and conditions contained in this document. <i>You</i> agree to vary the <i>TRUenergy Customer Charter</i> to the extent set out in this <i>agreement</i>.</p> <p>Charter p 3 Part 1 This Agreement</p> <p>[...]</p> <p>Is this the entire agreement with <i>us</i> for the sale of <i>energy</i>?</p> <p>Unless otherwise agreed with <i>you</i>, this is the entire agreement between <i>you</i> and <i>us</i>. <i>You</i> and <i>we</i> have a right or obligation on the basis that the provisions of the <i>Retail Code</i> form the basis of the terms and conditions of this agreement, where <i>we</i> have made reference to the <i>Retail Code</i>. Where <i>we</i> have not expressly dealt with a subject in the <i>Retail Code</i>, the rights and obligations in the <i>Retail Code</i> are incorporated into this agreement.</p> <p>This agreement cannot be inconsistent with the <i>Retail Code</i>, and if it is, the relevant term and condition is void, and the term or condition of the <i>Retail Code</i> is deemed to form part of this agreement in its place. <i>We</i> will provide <i>you</i> with a free copy of the <i>Retail Code</i> upon request.</p>		
relevant codes/law	s 163 <i>Fair Trading Act</i> ; CAV Guidelines on Unfair Terms in Consumer Contracts		
comments	T&C cl 1.1 above does not expressly include the terms of the Product Schedule in the contract, except for the any GreenPower charges referred to in the Go For More and Go Easy plans (in 'TRUenergy Green Products – Terms and Conditions').		
agreed damages terms	<p><i>Scaled fees for exiting &lt;2yrs</i></p> <p>Product Information Statement</p> <p>Exit fee (electricity) - One off charge:</p> <p>If you leave within the first year: \$90 incl GST</p> <p>If you leave within the second year: \$70 incl GST</p> <p>Exit fees do not apply if you end your Go Green plan after 2 years</p>	<p><i>Scaled fees for exiting &lt;3yrs</i></p> <p>Product Information Statement</p> <p>Exit fee (gas) - One off charge:</p> <p>If you leave within the first year: \$90 incl GST</p> <p>If you leave within the second year: \$70 incl GST</p> <p>If you leave within the third year: \$50 incl GST</p> <p>Exit fee (electricity) - One off charge:</p> <p>If you leave within the first year: \$90 incl GST</p> <p>If you leave within the second year: \$70 incl GST</p> <p>If you leave within the third year: \$50 incl GST</p>	N/A
	<p>Go Green T&amp;C cl 7; Go for More cl 6 What happens if this agreement is ended?</p> <p>7.1 If you end this agreement and unless otherwise provided in your product schedule, at any time after the cooling off period but within 2 years of the start of this agreement (as determined under clause 2.1 or 2.2), an exit fee is payable from you to us. The amount of the exit fee is specified in your product schedule. The exit fee payable as specified in your product schedule is a fixed amount irrespective of when you end this agreement during the relevant year.</p> <p>7.2 Exit fees may not apply to certain categories of customer as specified by us from time to time. Details of whether exit fees apply to your agreement can be requested from us.</p> <p>7.3 If we end this agreement, we will notify you of the options you have. Should you continue taking supply from us (and you have not entered into another agreement for the</p>		

	supply of energy to the supply address with us), the terms and conditions and charges applying to the supply and sale of energy will be as notified to you in writing.	
<i>relevant codes/law</i>	ERC cl 24.1, 32; s 32W FTA	
<i>comments</i>	Compliant, although the notification that there are substantial exit fees for the Go Green and Go For More plans does not appear until very late in the online application process (ie, on the 'I accept' page).	

#### GreenPower options

TRUenergy Planet Starter	TRUenergy Planet	TRUenergy Planet Plus	TRYenergy Wind Power
10% GreenPower accredited additional cost: \$32.40 p.a.	20% GreenPower accredited additional cost: \$64.80 p.a.	50% GreenPower accredited additional cost: \$160.80 p.a.	100% GreenPower accredited additional cost: \$322.20 p.a.
Product Information Statement TRUenergy may amend charges at any time and will use best efforts to provide 30 days prior written notice. No minimum contract term. Customer must give TRUenergy 30 days notice to terminate.			

#### Terms applicable to all TRUenergy contracts

ERC referred to in lieu of terms	<p>Charter p 3 Part 1 This Agreement [...]</p> <p>Where we have not expressly dealt with a subject in the <i>Retail Code</i>, the rights and obligations in the <i>Retail Code</i> are incorporated into this agreement.</p> <p>Charter p 12 Are there other rules that apply to this agreement?</p> <p>This agreement is subject to any relevant <i>regulations</i>, and <i>you</i> and <i>we</i> both agree to comply with all requirements in the <i>regulations</i>, except to the extent modified by <i>your</i> agreement with <i>us</i> where that is permitted by the <i>regulations</i>. <i>You</i> must co-operate with <i>us</i> and the <i>distributor</i> in the exercise of powers, rights or obligations under this agreement or the <i>regulations</i>. In particular, the <i>Retail Code</i> sets out <i>our</i> obligations to <i>you</i>, and <i>your</i> obligations to <i>us</i>. This agreement is subject to any minimum requirements set out in the <i>Retail Code</i>, and will be amended automatically. It should be read as if this agreement has changed to reflect any changes occurring in the <i>Retail Code</i> from time to time.</p>
<i>relevant codes/law</i>	s 43 GIA; s 36 EIA; ERC; applicable retail licence.
<i>comments</i>	Compliant.
CONNECTION	
when contract commences	<p>All T&amp;C cl 2 When will <i>your</i> [plan name] <i>agreement</i> start?</p> <p>2.1 If <i>you</i> are not an existing customer of <i>ours</i>, this <i>agreement</i> commences from the date on which <i>your assigned meter identifier</i> has been transferred to <i>us</i>, except that <i>you</i> will have some obligations if <i>you</i> end this <i>agreement</i> under clause 6.</p> <p>2.2 If <i>you</i> are an existing customer of <i>ours</i>, this <i>agreement</i> commences on the date specified in the <i>product schedule</i> or, if the date is not set out, the date <i>we</i> transfer <i>you</i> to [plan name].</p>
cooling period cancellation notice provided?	Yes – compliant.

<i>BILLING</i>	
estimated bills/unhindered access requirements	<p>Charter p 5 How do we calculate <i>your</i> account?  Unless we have <i>your</i> consent to do otherwise, we will base <i>your</i> account on a read of <i>your</i> meter or estimate in accordance with the <i>regulations</i>. However, we will use <i>our</i> best endeavours to read <i>your</i> meter once in each 12 month period. If we have not been able to read <i>your</i> meter because of an act or omission by <i>you</i>, and <i>you</i> request us to replace an estimated bill with a bill based on an actual reading of <i>your</i> meter, we will try and comply with <i>your</i> request but <i>your</i> request may incur an <i>additional retail charge</i> for costs incurred in complying with <i>your</i> request.</p> <p>If we do estimate <i>your</i> account and afterwards we get a reliable meter reading, we will adjust <i>your</i> account as required by the <i>regulations</i>.</p> <p>Charter p 11 Part 7: Looking after <i>your</i> meter</p> <p>What do we do to connect <i>you</i>?  If <i>you</i> have applied for connection or <i>your energy</i> agreement becomes effective, no later than the next business day we will ask <i>your distributor</i> to connect <i>your supply address</i> as soon as possible.</p> <p>What is <i>your assigned meter identifier</i>?  <i>Your</i> assigned meter identifiers are unique numbers on <i>your</i> property that identify <i>your</i> electricity and gas meters. They will appear on <i>your energy</i> account.</p> <p>What should <i>you</i> do if <i>you</i> think that <i>your</i> meter is faulty?  <i>You</i> may ask us to test the meter at <i>your supply address</i>. If the meter is recording correctly within the <i>regulations</i>, <i>you</i> will be charged for the test.</p> <p>What do <i>you</i> need to know about property access and meter responsibility?  We must have safe, convenient and unhindered access to <i>your</i> premises to read, install, remove or inspect the meter, connect or disconnect the <i>energy</i> supply, inspect or test the <i>energy</i> installation, prune or clear vegetation, and undertake repairs or maintenance. <i>Our</i> representatives must always carry or wear official identification and show it to <i>you</i> on request.</p> <p>Where there is something at <i>your supply address</i> that may be a danger, <i>you</i> must inform us and take action to minimise the danger to <i>our</i> representatives. <i>You</i> must keep the meter safe from hazards and interference. <i>You</i> do not own the meter or any part of the <i>energy</i> distribution system.</p>
<i>relevant codes/law</i>	ERC cl 5
<i>comments</i>	Compliant.
adjustment of a bill	<p>Charter p 5 Can <i>you</i> have <i>your</i> account reviewed?  At <i>your</i> request, we will review an account. While the account is under review, <i>you</i> must pay that part of the account on which we both agree or pay an amount equal to the average of <i>your</i> accounts over the past 12 months (whichever is the lower). <i>You</i> must also pay any future accounts <i>you</i> receive while the account is under review (except any portions of those accounts that <i>you</i> have also asked us to review). If the account is not correct, we will adjust <i>your</i> account. If the account is correct, <i>you</i> must pay the account or request that we arrange a test of <i>your</i> meter in accordance with the <i>regulations</i>. Please also refer to Part 7 of this Customer Charter. If <i>you</i> are undercharged, we will include the amount owing and an explanation on an amended account. We will only charge <i>you</i> for amounts undercharged in accordance with the <i>regulations</i>. However, if the undercharging was due to fraud on <i>your</i> part, we are entitled to recover the full amount from <i>you</i>.</p> <p>If <i>you</i> are overcharged on an account, we will refund <i>you</i> in accordance with the <i>regulations</i> or by agreement with <i>you</i>.</p>
<i>relevant codes/law</i>	ERC cl 6.1
<i>comments</i>	Compliant.
payment methods (direct debit arrangements etc)	<p>Charter p 4 How can <i>you</i> pay <i>your energy</i> account?  We will provide a range of payment options that includes Australia Post, sending a cheque, or arranging a direct debit from <i>your</i> bank account. Before a direct debit arrangement may be used, <i>you</i> must complete a direct debit request. It will include details of the amounts, preferred date and frequency of direct debits, and how <i>you</i> can</p>

	<p>cancel the arrangement. <i>We</i> may make other payment methods available. Please check <i>your</i> account for details.</p> <p>At <i>your</i> request, <i>we</i> will also accept payment in advance.</p> <p>Where <i>we</i> supply <i>you</i> with both electricity and gas, <i>we</i> will apply payments received from <i>you</i> to charges for the supply or sale of electricity and gas as directed by <i>you</i>.</p> <p>Where <i>you</i> give no direction, <i>we</i> will apply the payment in proportion to the relative value of those charges. [...]</p>
<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	Compliant.
late payment fees	<p>Charter p 4 How can <i>you</i> pay <i>your energy</i> account? [...]</p> <p><i>We</i> will only impose any <i>late payment fees</i> strictly in accordance with the <i>regulations</i>. Where required under the <i>regulations</i>, <i>we</i> will waive any <i>late payment fee</i> imposed on <i>you</i>. Any <i>late payment fee</i> <i>we</i> charge will be fair and reasonable having regard to costs incurred by <i>us</i>.</p>
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant.
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>Charter pp 6-7 Is a security deposit required?</p> <p>For <i>domestic customers</i>, <i>we</i> may require a security deposit as permitted by the <i>regulations</i> if <i>you</i>:</p> <ul style="list-style-type: none"> <li>• still owe money from a previous address;</li> <li>• have used <i>energy</i> unlawfully within the past two years;</li> <li>• have refused to provide acceptable identification to <i>us</i> as set out in the <i>regulations</i>; or</li> <li>• have an unsatisfactory credit rating and have not accepted an instalment payment plan when offered.</li> </ul> <p>The amount of the security deposit will not be greater than the amount calculated in accordance with the <i>regulations</i>. Failure to pay a security deposit upon request may lead to a disconnection of <i>your energy</i> supply.</p> <p>When do <i>we</i> refund <i>your</i> security deposit?</p> <p><i>We</i> will use <i>your</i> security deposit and accrued interest to pay any accounts <i>you</i> have outstanding if <i>you</i> are disconnected and do not have the right to be reconnected, or where <i>you</i> leave the <i>supply address</i>, request disconnection or transfer to another retailer. Where <i>we</i> use <i>your</i> security deposit in accordance with the <i>regulations</i>, <i>we</i> will provide <i>you</i> with an account of its use. Where applicable, <i>we</i> will refund <i>your</i> security deposit and any accrued interest in accordance with the <i>regulations</i>.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	<p>Charter p 4 How often will <i>you</i> receive an account? [...]</p> <p>Consistent failure to pay <i>your</i> accounts by the pay-by date may lead to <i>you</i> being placed on a shortened collection cycle, which <i>we</i> will only do in accordance with the <i>regulations</i>.</p>
<i>relevant codes/law</i>	ERC cl 9
<i>comments</i>	Compliant.
payment difficulties	<p>Charter p 7 Are <i>you</i> experiencing payment difficulties?</p> <p>If <i>you</i> are having trouble paying an account by the pay-by date, <i>you</i> must contact <i>us</i></p>

	<p>immediately.</p> <p>If <i>you</i> are a <i>domestic customer</i>, we will not disconnect <i>you</i> for not paying <i>your</i> account before we have:</p> <ul style="list-style-type: none"> <li>• offered <i>you</i> an instalment plan or payment arrangement if required by the <i>regulations</i>;</li> <li>• if agreed with <i>you</i>, conducted an <i>energy</i> efficiency field audit; given <i>you</i> information on government funded concessions including the Utility Relief Grant Scheme; or</li> <li>• met all other requirements under the <i>regulations</i>.</li> </ul>
relevant codes/law	ERC cl 11
comments	Compliant.
DISCONNECTION	
disconnection	<p>Charter p 7 Why would we disconnect <i>you</i>?</p> <p>We or <i>your distributor</i> may disconnect <i>your energy</i> supply for the reasons summarised below, but we must first follow the rules set out in the <i>regulations</i>. We will not disconnect <i>you</i> for not paying <i>your</i> account without giving <i>you</i> at least seven business days notice of impending disconnection. <i>You</i> may also request disconnection of <i>your supply address</i> and finalisation of <i>your</i> account.</p> <p>In summary, <i>your energy</i> supply may be disconnected or interrupted in accordance with the <i>regulations</i> for the following reasons:</p> <ul style="list-style-type: none"> <li>• for non payment;</li> <li>• if <i>you</i> do not provide <i>us</i> with access to the meter in accordance with the <i>regulations</i>;</li> <li>• for refusal to provide <i>us</i> with acceptable identification in accordance with the <i>regulations</i>;</li> <li>• for health and safety reasons;</li> <li>• for maintenance;</li> <li>• in an <i>emergency</i>;</li> <li>• at the direction or request of a <i>regulator</i>;</li> <li>• if <i>you</i> are using <i>energy</i> in a way that doesn't meet the <i>regulations</i>;</li> <li>• if <i>you</i> are required to, but fail to, give a security deposit; or</li> <li>• if this agreement has terminated and we are permitted to by the <i>regulations</i>.</li> </ul> <p>If <i>you</i> are not able to pay <i>your</i> account because of insufficient income we will not disconnect <i>your energy</i> supply:</p> <ul style="list-style-type: none"> <li>• until we try and contact <i>you</i> and do those things required by the <i>regulations</i>, or</li> <li>• if <i>you</i> accept an instalment plan within five business days of <i>us</i> having offered the instalment plan to <i>you</i>.</li> </ul> <p>Are there times when <i>you</i> can't be disconnected?</p> <p>We will not disconnect <i>you</i>:</p> <ul style="list-style-type: none"> <li>• if <i>you</i>, or someone living with <i>you</i> depends on a life support machine or has an approved medical exemption;</li> <li>• if <i>your</i> complaint to the Energy and Water Ombudsman of Victoria, directly related to the reason for disconnection, remains unresolved;</li> <li>• if <i>your</i> application for an Utility Relief Grant has not been decided;</li> <li>• for failing to pay <i>us</i> for something other than <i>energy</i>; or</li> <li>• after 2pm Monday to Thursday (or 3pm for <i>business customers</i>), or on a Friday, a weekend, a public holiday, or the day before a public holiday, except in the case of a planned interruption or other reasons as required by <i>your distributor</i>.</li> </ul> <p>If <i>you</i> are disconnected, when will we reconnect <i>your energy</i> supply?</p> <p>We will reconnect <i>your supply address</i> generally on or before the next business day once:</p> <ul style="list-style-type: none"> <li>• <i>your</i> account is paid, or agreement with <i>us</i> is reached on how it will be paid;</li> <li>• <i>you</i> apply for a grant under a government funded concession scheme such as the Utility Relief Grant Scheme; or</li> <li>• the reason for <i>your</i> disconnection is otherwise resolved.</li> </ul>
relevant codes/law	ERC cl 13, 14
comments	Compliant.

<i>LIABILITY</i>	
indemnity and limitation of liability	<p>Charter p 12 Part 9: In what circumstances are <i>we</i> not liable?</p> <p><i>You</i> acknowledge that the quality, frequency and continuity of supply of <i>energy</i> is subject to a variety of factors outside of <i>our</i> control, for example, accidents, weather and the acts of third parties such as other customers, generators, electricity distribution and transmission owners, gas production facilities and pipeline owners, and regulators.</p> <p><i>You</i> acknowledge that the nature of <i>energy</i> supply is such that <i>we</i> cannot guarantee to <i>you</i> the quality, frequency or the continuity of supply of <i>energy</i> to <i>you</i>, and that this agreement does not vary or exclude any immunity, limitation of liability or indemnity that may be provided in the <i>regulations</i>.</p> <p>Variations in voltage are an inherent characteristic of electricity supply involving a rapid decrease (dip) or increase (spike) in voltage and cannot be completely prevented.</p> <p>Variations in voltage can be in excess of the voltage range tolerated by domestic appliances and business equipment, and may cause damage. Variations in gas pressure may also cause damage or interruption to supply.</p> <p>If <i>you</i> are a business customer, <i>you</i> must take reasonable precautions to minimise the risk of loss or damage to <i>your</i> equipment, premises or business that may result from quality, frequency, pressure or reliability of <i>energy</i> supply.</p> <p>If <i>you</i> do suffer any loss, damage or harm as a result of a variation in voltage <i>you</i> may be able to receive compensation from <i>your distributor</i> (refer to <i>your</i> Distribution Charter for more information).</p> <p>Further, to the extent permitted by the Trade Practices Act and the Goods Act, <i>our</i> liability to <i>you</i> for breach of any condition or warranty implied by either of those Acts is limited (at <i>our</i> option) to, in the case of goods, the replacement of the good, supply of an equivalent good or payment of the cost of acquiring equivalent goods. In the case of a service, it is limited to the re-supply of the service or the payment of the cost of having the service supplied again.</p> <p><i>We</i> confirm that nothing in this <i>energy</i> agreement varies or excludes the operation of:</p> <ul style="list-style-type: none"> <li>• section 117 of the Electricity Industry Act 2000 or section 78 of the National Electricity Law; or</li> <li>• sections 232 or 233 of the Gas Industry Act 2001 or section 33 of the Gas Safety Act 1997.</li> </ul> <p>When can <i>we</i> claim indemnity from <i>you</i>?</p> <p><i>You</i> must indemnify <i>us</i> for any breach by <i>you</i> of this agreement or <i>your</i> negligence to the maximum amount which <i>we</i> are entitled to be compensated under the common law (including in equity) or statute for <i>your</i> breach or negligence.</p>
<i>relevant codes/law</i>	s 68A TPA; ERC cl 16-18
<i>comments</i>	Compliant.
<i>TERM AND TERMINATION</i>	
continuation of term	No mention.
<i>GENERAL</i>	
additional retail charges	<p>Charter p 3 Part 2: What and when do <i>you</i> have to pay? [...]</p> <p><i>You</i> must also pay <i>us</i> for any <i>additional retail charges</i>, any payment permitted or required under this agreement, or any other goods or services which <i>you</i> receive from <i>us</i>, and any other charges applied by the <i>distributor</i> for the supply of <i>energy</i> to <i>you</i>.</p> <p>All T&amp;C</p> <p>3.1 <i>You</i> agree that <i>you</i> will pay the <i>energy</i> charges and the other charges specified in your <i>product schedule</i> and those charges permitted to be charged in accordance with the <i>TRUenergy Customer Charter</i>.</p> <p>3.2 In addition to the charges set out in this <i>agreement</i> and <i>your product schedule</i>, <i>you</i> will need to pay any <i>additional retail charges</i> and <i>distributor imposed charges</i>. <i>Distributor imposed charges</i> will be itemised on <i>your</i> account. Any adjustments for undercharging or overcharging in previous billing periods will also be shown on <i>your</i> account.</p> <p>3.3 The charges payable by <i>you</i> under clause 3.1 may be changed to take into account the</p>

	<p>full amount of any changes to existing, or imposition of any new, <i>distributor imposed charges</i> and/or <i>government imposed charges</i> being introduced or varied; and any change or variation in the <i>regulated tariff</i> as applicable to <i>your supply address</i> or meter type from time to time. Any such changes will be effective from the date of the relevant change taking effect. <i>We</i> will use <i>our</i> best efforts to advise <i>you</i> of these changes by notice in writing.</p> <p>3.4 In addition to our rights under clause 3.3, we may amend the charges you need to pay from time to time by providing you with 10 days prior written notice. Subject to your obligations under clause 7, if we provide you notice under this clause, you may end this agreement by notifying us within 28 days of the date of our notice.</p> <p>3.5 You agree that at the time you entered into this agreement we may not have been able to verify the meter configuration at your supply address and accordingly, the charges in your product schedule may not be appropriate to your usage. In this situation, you agree that, once we have verified your meter configuration, we can amend the charges you need to pay by providing you with 10 days' prior written notice.</p>
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	Compliant.
ability to vary charges	<p>Charter p 3 What pricing applies to <i>you</i>?</p> <p><i>We</i> will charge <i>you</i> either the price published as being relevant to <i>your</i> usage and specified by <i>us</i>, or the amount specially agreed between <i>you</i> and <i>us</i>. The pricing <i>you</i> are on depends on the purpose of <i>your</i> usage, the nature of any dedicated circuits (such as off-peak appliance) and <i>your</i> network tariff arrangements. <i>You</i> can't use the <i>energy</i> for a different purpose. <i>We</i> may require <i>you</i> to change to a different price applicable to <i>your</i> usage, or <i>we</i> may retrospectively transfer <i>you</i> if <i>you</i> haven't given <i>us</i> notice of change of usage. Where the <i>regulations</i> allow it, the prices may change from time to time. If <i>we</i> change the price, <i>we</i> will notify <i>you</i> of the changes and <i>your</i> account will contain charges in proportion to the periods prior to and subsequent to the price change.</p>
<i>relevant codes/law</i>	ERC cl 26.4, 31, 35
<i>comments</i>	Compliant.
ability to unilaterally vary terms	<p>All plans T&amp;C cl 8 (Go Easy cl 7)</p> <p>8.2 Amendment: <i>We</i> may amend this <i>agreement</i> from time to time, including as permitted under the <i>TRUenergy Customer Charter</i> and/or the <i>regulations</i>. <i>You</i> provide <i>your</i> consent to <i>us</i> amending this <i>agreement</i> by notice. If <i>we</i> amend this agreement, <i>we</i> will provide <i>you</i> notice of the changes following which the amended terms will form part of this agreement.</p> <p>Charter p 11 Part 8: Can this agreement be changed?</p> <p>If <i>you</i> request, <i>we</i> will provide <i>you</i> with information on the prices <i>we</i> can offer <i>you</i> in accordance with the <i>regulations</i>. <i>We</i> can change the prices from time to time in line with the <i>regulations</i>.</p> <p><i>We</i> may agree with <i>you</i> to a variation to this standard agreement provided that <i>we</i> have received <i>your</i> explicit informed consent. If <i>we</i> enter into a variation with <i>you</i>, <i>we</i> will provide <i>you</i> with details in writing.</p> <p>In any case, these terms and conditions may be changed from time to time after <i>we</i> have published them in the Government Gazette and complied with any other requirements in the <i>regulations</i> and, where required, once <i>we</i> have received the consent of the <i>ESC</i>. If this happens, the changes will take effect from the time set out in the variation that has been published. <i>We</i> will make sure that <i>we</i> notify <i>you</i> of any changes.</p>
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Compliant, although it can be argued that cl 8.2 is an unfair term insofar as it is a relatively 'buried' term that provides that 'consent' has been given to TRUenergy to vary the agreement.

## Victoria Electricity

### Contracts on offer and specific terms

	Standard Offer	No Risk Offer	10% Green No Risk Offer	100% Green No Risk Offer
notes				
SIGNED	Y			
type of service	electricity or electricity & gas			
main feature/incentive	No fixed term contract or termination fees. Eco-Gold card.	7% prompt payment discount on gas and electricity. Eco-Gold card.	5% prompt payment discount on gas and electricity. 10% GreenPower. Eco-Gold card.	100% GreenPower. Eco-Gold card. [5c more/kwh]

ERC referred to in lieu of terms	T&C cl 33 General [...] 33.2 If any term or clause of this Contract is or becomes invalid or is unenforceable, then the other terms will remain valid and will be unaffected for the duration of this Contract. 33.4 Where an Applicable Law allows any inconsistency with this Contract, you give your explicit informed consent (as defined in the Retail Code) to any such inconsistent terms in this Contract.
relevant codes/law	CI 19 ERC; s 43 GIA; s 36 EIA; ERC; applicable retail licence.
comments	Compliant, although note the contract's own definition of 'explicit informed consent in the Interpretation section': "Explicit informed consent, means that a customer provides consent i.e. "opt-in" consent, is informed and is given by a person competent to give it."
documents containing terms of contract	T&C cl 33 General [...] 33.1 This Contract represents the entire Contract between you and us and supersedes all prior arrangements or understandings between you and us. T&C Interpretation Contract, means any application form signed by you or verbally agreed by you by way of telephone and the terms and conditions set out in this document.
relevant codes/law	s 163 Fair Trading Act; CAV Guidelines on Unfair Terms in Consumer Contracts
comments	Compliant.
CONNECTION	
when contract commences	T&C cl 2 The Commencement date of this contract is the date that you accept our offer to supply you with energy. If you are currently supplied by another energy retailer, then by entering this Contract you have given your consent to transfer to us. You will continue to be supplied by that supplier until the transfer to us is complete. [...].
cooling period cancellation notice	Yes – compliant.

provided?	
<b>BILLING</b>	
estimated bills/unhindered access requirements	<p>T&amp;C cl 9 Actual and estimated readings</p> <p>9.1 Our invoices will be based wherever possible on an actual read of the energy meter. You give us your explicit informed consent (as defined in the Energy Retail Code) to the use of estimates for the calculation of your energy bill. We will base estimations on your prior billing history or our reasonable estimate of your likely consumption over the billing period. We may also provide an estimated bill based on your reading of the meter.</p> <p>9.2 In the case of residential customers the meter is usually read every 3 months while some business customers may have their meters read every month. While every attempt is made to ensure that your meter is read on the usual meter reading cycles the minimum requirement is for best endeavours to ensure that the meter is read at least once in any 12 month period.</p> <p>T&amp;C cl 15 Access</p> <p>You will allow us (including our agents and the Distributor) and our equipment safe, unhindered and convenient access to free and ready access to your Premises during, and for a reasonable period of time after termination of the Contract or after expiration of the term, to read the meter, to connect, disconnect or reconnect your supply, to carry out maintenance and test electrical or gas equipment on the distribution system, in the event of an emergency or for safety reasons and to clear vegetation from electricity lines.</p> <p>T&amp;C cl 16 Meter tests</p> <p>If you request a meter test because you are disputing the bill and the test shows that the meter complies with Applicable Laws and codes, you agree to pay the costs of the test and the unpaid amount. If the test shows that the meter does not comply with Applicable Laws and codes, you will not be charged for the cost of the meter test and we will amend your bill in accordance with the Energy Retail Code.</p>
relevant codes/law	ERC cl 5
comments	Compliant.
adjustment of a bill	<p>T&amp;C cl 13 Review of bill</p> <p>If you disagree with the bill, you must advise us of the portion in dispute. We will review the bill at your request and you agree to pay us any portion of the bill you agree with us is not in dispute or an amount equivalent to the average amount of your bills in the previous 12 months whichever is the lower.</p> <p>T&amp;C cl 10 Adjustments</p> <p>If we undercharge, overcharge or fail to charge you, we may recover from you or pay to you the relevant amount in accordance with the Energy Retail Code.</p>
relevant codes/law	ERC cl 6.1
comments	Compliant.
payment methods (direct debit arrangements etc)	<p>Direct Debit Service Agreement terms</p> <p>By signing this direct debit request form you agree:</p> <ul style="list-style-type: none"> <li>• that your nominated account for drawings can accept direct debits and that your account will contain sufficient funds to enable Victoria Electricity to draw your monthly bill payment directly from your nominated account in amounts as advised by us to your financial institution.</li> <li>• that your account will contain sufficient funds to enable the direct debit to proceed by the scheduled drawing date. If there are insufficient funds in your account or the direct debit is not honoured by your bank, Victoria Electricity will require payment in another form and may charge interest on the unpaid amount and for any administration costs.</li> <li>• if you need to change your details, defer the drawing, alter the schedule, stop and/or suspend an individual debit, cancel the DDR or dispute any debit, or if you have any other problems you should contact us on 1300 136 749. All requests for</li> </ul>

	<p>stops or cancellations may be directed to us or through your financial institution.</p> <ul style="list-style-type: none"> <li>• you will need to provide us with 5 working days notice in advance to allow us to process any change.</li> </ul> <p>Victoria Electricity will ensure that:</p> <ul style="list-style-type: none"> <li>• whenever the due date for payment falls upon a nonworking day, we will debit your account on the next working day.</li> <li>• the information provided by you in the direct debit request form will remain confidential and we will not disclose that information to any person other than your financial institution unless otherwise agreed with you.</li> <li>• if for any reason there is any change to this arrangement, we will provide you with at least 14 days notice of the change.</li> <li>• we will help to resolve any problems you may have with a direct debit by contacting us on 1300 136 749. If after contacting us we are unable to resolve any problem you can contact your financial institution who will respond to you with an answer to your claim, within 5 business days (for claims lodged within 12 months of a disputed drawing) or 30 business days (for claims lodged more than 12 months after the disputed drawing).</li> </ul>
<i>relevant codes/law</i>	ERC cl 7.2
<i>comments</i>	The agreement provides no indication of the amount, preferred date or frequency of the direct debits, as required by cl 7.2 ERC.
late payment fees	<p>T&amp;C cl 13 Agreed Damages Terms</p> <p>We will provide details of late payment fees, early termination fees or additional retail charges in our contract with you that may be payable by you if you breach our market energy contract.</p>
<i>relevant codes/law</i>	ERC cl 7.4
<i>comments</i>	Compliant (no late payment fees).
<b>CREDIT MANAGEMENT</b>	
refundable advances	<p>T&amp;C cl 6 Credit worthiness &amp; Refundable Advances</p> <p>You authorise us to conduct a credit check assessment on you. If your credit worthiness is not acceptable to us in accordance with Applicable Law, then you agree to provide us with a Refundable Advance of an amount we reasonably determine. For residential customers the amount we reasonably determine must not be greater than 37.5% of the amount we billed to you in the previous 12 months or if no such historical billing data exists, the average amount we bill to residential customers. We will pay you interest and only use and will repay your Refundable Advance in accordance with the Energy Retail Code. We may require a refundable advance to be paid to us if a business customer does not have a satisfactory energy account payment record or we decide that the customer has an unsatisfactory credit rating.</p>
<i>relevant codes/law</i>	ERC cl 8
<i>comments</i>	Compliant.
shortened billing and collection cycles	<p>T&amp;C cl 5 Billing cycle &amp; monthly billing</p> <p>We will normally send you a bill for the energy consumed by you every month. Your bills may contain some forward estimation of your energy usage. Your first bill and final bill from us may be for a broken or part month depending on the date of your switch to us and/or the date of your final supply from us. You give us your explicit informed consent (as defined in the Energy Retail Code) to a billing cycle shorter than three months and to the use of estimation of your energy usage, based on your historical billing information in the calculation of your bill where we do not have an actual read.</p> <p>T&amp;C cl 8 Shortened collection cycles</p> <p>We may place you on a shortened collection cycle if we need to send you reminder notices for 3 consecutive bills or disconnection notices for 2 consecutive bills. If this occurs we will</p>

	no longer send you reminder notices until you pay 3 consecutive bills by the Due Date.
<i>relevant codes/law</i>	ERC cl 9, 10
<i>comments</i>	Compliant.
payment difficulties	T&C cl 7 Payment difficulties and assistance If you are a residential customer and have difficulty in paying your bills you must contact us to discuss how we can help you with a suitable instalment plan, referral to a financial counsellor, provision of details concerning government concessions and grants and the provision of efficient use of energy advice.
<i>relevant codes/law</i>	ERC cl 11
<i>comments</i>	Compliant.
<b>DISCONNECTION</b>	
disconnection	T&C cl 18 18 Disconnection and reconnection 18.1 We may disconnect, interrupt or terminate energy supply or Related Services to you if you: <ul style="list-style-type: none"> <li>• Have not paid your bill past the due date and you have received the appropriate reminder and disconnection notices and have refused other payment arrangements.</li> <li>• Do not agree to an alternative payment arrangement</li> <li>• Fail to meet the terms of an agreed payment plan.</li> <li>• Refuse to pay a Refundable Advance.</li> <li>• Refuse to allow the meter to be read for 3 consecutive billing periods.</li> <li>• Request your supply to be disconnected.</li> </ul> 18.2 We will use all reasonable endeavours following a request from you for reconnection of your energy supply to procure the reconnection as soon as if the reason for disconnection is remedied within ten (10) business days of disconnection subject to the payment of a reconnection fee, refundable advance, payment plan and subject to any Applicable Law or code. 18.3 We may disconnect the supply of energy if the connection is not safe. 18.4 We will not disconnect you: <ul style="list-style-type: none"> <li>• If you have registered as having a Life Support Machine</li> </ul>
<i>relevant codes/law</i>	ERC cl 13, 14
<i>comments</i>	Compliant.
<b>LIABILITY</b>	
Indemnity and limitation of liability	T&C cl 26 Indemnity 26.1 You must ensure that your actions will not do anything that will cause harm or impose any liability on us. 26.2 You indemnify us for any claims against us, including those from third parties, which arise from your use of energy beyond the meter. 26.3 You indemnify us for any claims against us in the event that you permit energy to leave the Premises and re-enter the distribution network and this gives rise to a claim against us. 26.4 You agree that we will not be liable for any direct or punitive damages including economic loss resulting or arising from the non-performance of this Contract. T&C cl 27 Liability To the extent permitted by the Trade Practices Act and the Goods Act, our liability to you for a breach of a condition or warranty is limited in relation to a good or service to the re-supply or payment of the cost of re-supply of the good (or equivalent) or service as implied in the Acts.

<i>relevant codes/law</i>	s 68A TPA; 32W FTA; ERC cl 16-18
<i>comments</i>	Clause 26.4 is arguably an unfair term, as it creates a significant imbalance in the parties' rights. Clause 27 should also refer to the Fair Trading Act (cf ss 32LA, 32MA).
<b>TERM AND TERMINATION</b>	
continuation of term	T&C cl 21 Termination & expiration of Fixed Term Contracts [...] 21.2 On the expiration of the Term, this Contract will continue in full force and effect in relation to the supply point unless terminated by either party giving twenty eight (28) days written notice of that termination to the other. We may apply new Retail Charges by providing you with prior notice in writing. [...]
<i>relevant codes/law</i>	cl 24.3 ERC; s 32W FTA
<i>comments</i>	Compliant.
termination period	T&C cl 21 Termination & expiration of Fixed Term Contracts 21.1 If you have a Fixed Term Contract with us and you wish to terminate this Contract before the end of the term in order to obtain energy from another supplier, other than for circumstances as described in clause 20.2 [relating to the cooling off period], you must provide us with twenty eight (28) days notice and in addition to any outstanding amounts owing to us and unless otherwise specified in our offer to you, you must pay to us an administration fee of \$25 plus an early termination fee, equivalent to one (1) of your average monthly power bills (as reasonably determined by us). [...] 21.3 If you have a Contract with us that is not a Fixed Term Contract, and unless otherwise specified in our offer to you, we will not charge you a termination fee.
<i>relevant codes/law</i>	ERC cl 24.1, s 32W FTA
<i>comments</i>	Compliant.
agreed damages terms	T&C cl 13 Agreed Damages Terms We will provide details of late payment fees, early termination fees or additional retail charges in our contract with you that may be payable by you if you breach our market energy contract. Website notification - No Risk Offer - Terms and Conditions Ensuring you get the best possible energy deal The No Risk Offer applies to residential customers only and covers any price provided to you by a licensed energy retailer in Victoria for electricity and/or gas supply to your premises. The price offered must be able to be validated by Victoria Electricity for comparison. Although our prices are subject to change, if Victoria Electricity is unable to provide you with an equal or lower overall combined cost of energy (inclusive of any discount for prompt payment) and based on our estimation of your energy consumption you are free to leave us without paying any cancellation fees. If you wish to transfer to another energy retailer within the first 24 months (or another period of time specified by us in our offer to you) after your application to join Victoria Electricity after Victoria Electricity has offered to match or better the price offered to you or you do not request Victoria Electricity to match or better that price then a cancellation fee of \$80 for electricity-only customers and \$100 for electricity and gas customers will apply, decreasing by \$2.50 every month over the life of the contract. Please note that after the contract term, if you move premises or cease to take electricity and/or gas supply at your premises no cancellation fee will apply.
<i>relevant codes/law</i>	ERC cl 24.1, 32

<i>comments</i>	<p>Information received from VE was conflicting. The Offer makes no mention of the actual charges for early termination, merely that one will apply. The website notification indicates “a cancellation fee of \$80 for electricity-only customers and \$100 for electricity and gas customers will apply, decreasing by \$2.50 every month over the life of the contract”.</p> <p>Another term provided that the fee was “an administration fee of \$25 plus an early termination fee, equivalent to one (1) of your average monthly power bills (as reasonably determined by us).” (see ‘termination period’ above)</p> <p>Also, a promotional brochure (received with Offer package) stated that “a \$20 cancellation fee will apply per fuel, plus the value of any other specified incentive (pro-rata over the contract period)”.</p>
<i>GENERAL</i>	
additional retail charges	<p>T&amp;C cl 13 Agreed Damages Terms</p> <p>We will provide details of late payment fees, early termination fees or additional retail charges in our contract with you that may be payable by you if you breach our market energy contract.</p>
<i>relevant codes/law</i>	ERC cl 31
<i>comments</i>	No details about additional retail charges were provided.
ability to vary charges	<p>T&amp;C cl 3 We may amend your energy charges but will provide you with written notice of any change. The notice will be given to you as soon as practicable, and in any event no later than your next bill.</p> <p>T&amp;C cl 20 Varied charges for customers on Fixed Term Contracts</p> <p>20.1 We reserve the right to vary your energy charges and/or Related Services if any Network Distributor, Government, Tax or Regulated Charges are varied or introduced. This includes an event as contemplated under the Force Majeure clause (clause 32) occurs which directly affects the Generators ability to generate the energy sold to you under this Contract. You give your explicit informed consent (as defined in the Energy Retail Code) for any resulting increase in energy charges being passed on to you and you agree to pay this increase.</p> <p>20.2 We reserve the right to vary your energy charges. Unless you are supplied under the terms of a No Risk Offer, should we increase your energy charges for a reason other than as described in 20.1 you may terminate this Contract at any time without penalty.</p>
<i>relevant codes/law</i>	ERC cl 26.4, 31, 35
<i>comments</i>	Compliant.
ability to unilaterally vary terms	<p>T&amp;C cl 31 Variation</p> <p>Unless otherwise specifically provided for under this Contract any variation to the Contract must be in writing and signed by both parties.</p>
<i>relevant codes/law</i>	ss 32W, 32X(d) FTA
<i>comments</i>	Compliant.