

Alinta Energy

Default Electricity Contract (NEM)

Large Business Customer without a Retail Sale Agreement
Under s 64 of National Energy Retail Law



alintaenergy

Terms of Supply to Large Business Customers in the NEM without a Retail Sale Agreement

Under section 64 of National Energy Retail Law

1. Application of this Agreement

This Agreement applies if: (a) we determine that you are a Large Business Customer at the Supply Address; (b) we are the Financially Responsible Market Participant for the Supply Address; and (c) you do not have a valid electricity sale agreement with us or another retailer to cover payment for electricity consumed at the Supply Address. In determining whether you are a Large Business Customer at the Supply Address we will act reasonably and consider your monthly consumption data and the data from, and the requirements of, your Distributor and Meter Service Provider as applicable.

2. Term of Agreement

This Agreement starts on the date that you become a Large Business Customer in accordance with clause 1 and ends on the earlier of the date that:

- (a) you become a Small Business Customer at the Supply Address, in which case we will notify you and the sale and supply of electricity at the Supply Address will continue under a 'Standard Retail Contract', at the standing offer prices published on our website or as otherwise specified by Applicable Laws;
- (b) your responsibility for payment for electricity starts under a new electricity sale agreement that you sign for the Supply Address (with us or another retailer);
- (c) another customer starts being supplied with electricity by us or another retailer at the Supply Address;
- (d) this Agreement is terminated for a Last Resort Event under clause 10; or
- (e) you stop being responsible for the payment of electricity supplied to the Supply Address under clause 11 because you have vacated it,

without affecting rights and obligations that may have accrued on or before the date this Agreement ends, including obligations to pay us any outstanding amounts and to provide access to your meter.

3. Sale and purchase

We will sell electricity to you, and you will buy electricity from us, at the Supply Address in terms of this Agreement. You are responsible for complying with all Applicable Laws and the terms of this Agreement in your use of such electricity. You must not, and must take reasonable steps to ensure others do not:

- (a) illegally use or allow the illegal use of electricity or metering equipment;
- (b) interfere or allow interference with electricity or metering equipment;
- (c) use electricity or any electricity equipment in a manner that: (i) unreasonably interferes with the connection or supply of electricity to any third party; or (ii) causes damage or interference to any third party; or

- (d) allow electricity purchased from us to be used otherwise than in accordance with this Agreement.

4. Charges

You must pay us for Charges in accordance with clause 6. This includes any additional fees and charges which we pass through from your Distributor, your Meter Service Provider and other third parties in relation to services which we arrange, or which are necessary to supply electricity, at your Supply Address. Such fees and charges are set by the Distributor, Meter Service Provider, and third parties; and are subject to change at their discretion. If there are changes to the Charges, we will provide you as soon as reasonably practicable.

5. Metering

- (a) You must provide safe and unhindered access to your Supply Address and any Metering Installation for all purposes relevant to the sale and supply of electricity to you in accordance with this Agreement and Applicable Laws. You must not damage, modify or interfere with any Metering Installation.
- (b) If a Metering Installation malfunctions or metering data is not available for any reason, then, subject to any Law, the amount of electricity sold may be estimated by us (acting reasonably) based on standard practices in the electricity industry and all relevant information available.
- (c) You are liable for all costs associated with Metering Installation, including CT testing or replacement of a Metering Installation.

6. Billing and payment

6.1 Invoices

- (a) We will issue you with an invoice for Charges after the end of each calendar month or prorated period if applicable (**Billing Period**). An invoice may also include: (i) unbilled Charges from a previous Billing Period; (ii) adjustments in relation to any Charges which were invoiced or should have been invoiced for a previous Billing Period; and (iii) estimated amounts for Charges where relevant, including in circumstances described in clause (b).
- (b) We may send you adjusted or further invoices from time to time: (i) in respect of changes to or reconciliations of Charges payable by you; or (ii) to correct any inaccuracies in previous invoices.

6.2 Payment

Subject to clause 6.4, you must pay each invoice in full, without deduction or set-off, within 14 days of the date of issue of the invoice. If you do not pay an invoice in full by the due date for payment, then, in addition to any other right we may have, we may charge you interest at the Interest Rate on the unpaid amount from the due date until date of payment.

6.3 Set off

We may withhold and set off payments due from you under this Agreement, against any other agreement you have with us or a Related Body Corporate of us.

6.4 Invoice disputes

- (a) If, after receiving an invoice from us, you, in good faith, dispute all or part of the amount charged in that invoice, then you must ask us in writing to review the invoice setting out the grounds for your dispute.
- (b) If the disputed amount of the invoice is subsequently found to be payable by you, then the disputed amount must be paid to us within 14 days. We may also charge interest on the amount (if reasonably requested by us) at the Interest Rate. If we request that you pay interest, interest will be calculated from the date the amount should have been paid (had there been no dispute) until the date of payment.
- (c) If we have overcharged you, then we must:
 - (i) credit the overcharged amount to your account and apply it to your next invoice (if applicable); or
 - (ii) if no further invoices will be issued, pay you the overcharged amount as soon as reasonably practicable after it the amount is found to have been overcharged.
- (d) Despite clauses 6.4(a) to 6.4(c), we may at any time review your invoice and may send an adjusted invoice in respect of reconciliation of any of the Charges payable by you under this Agreement or to correct any inaccuracies in previous invoices.

7. GST

- (a) Unless expressly stated otherwise, all amounts payable under this Agreement are exclusive of GST.
- (b) A recipient of a taxable supply in connection with this Agreement must pay to the supplier, in addition to the GST exclusive consideration, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply.
- (c) The recipient of any taxable supply must make that payment to the supplier as and when the GST exclusive consideration or part of it is provided, except that the recipient need not pay amount referable to GST unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.
- (d) Where a supplier incurs a cost or expense for which it may be reimbursed, indemnified against, claimed against or set-off against another party under this agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient in respect of the reimbursement, etc., under this clause.
- (e) If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to this clause. Payments to give effect to the adjustment must be made between the parties and the

supplier must issue a valid adjustment note in relation to the adjustment event.

- (f) All GST must be paid at the same time and in the same manner as the payment to which it relates is payable and whether or not that payment is payable directly to Alinta Energy.
- (g) Words in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), unless the context makes it clear that a different meaning is intended.

8. Risk and liability

8.1 Physical connection

You acknowledge that:

- (a) we are not responsible for physically connecting, disconnecting or reconnecting the Supply Address to the network or the transportation, delivery or physical supply of electricity from the network to the Supply Address;
- (b) the Distributor is responsible for the physical connection, disconnection, reconnection and supply of electricity to the Supply Address and your relationship with the Distributor is governed by the relevant Connection Contract and any Law; and
- (c) the Distributor may: (i) refuse to effect the connection and supply of electricity to the Supply Address in circumstances where a Law requires or permits the Distributor to do so, or where such refusal is due to an event or circumstance outside of the Distributor's reasonable control; and (ii) disconnect or interrupt supply to the Supply Address in accordance with any Law.

8.2 No warranties

As we are not responsible for physically connecting or transporting, delivering or physically supplying electricity to the Supply Address: (a) we do not undertake to provide or maintain any particular voltage, frequency or standard of supply; and (b) unless and except to the extent required by Law including the Australian Consumer Law, we give no guarantee, condition, warranty or undertaking and make no representation to you about the condition or suitability of electricity, its quality, fitness or safety.

8.3 Limitation of liability

- (a) You have certain rights under the Australian Consumer Law, including the consumer guarantees. Where it is possible to limit liability under the consumer guarantees, then our liability is limited to (at our option) (i) replacing or resupplying relevant or equivalent goods or services; or (ii) paying the cost of replacing the relevant goods or services or acquiring equivalent goods or services. Otherwise, nothing in this agreement excludes, restricts or modifies, or has the effect of excluding restricting or modifying, the application of, or the exercise of rights conferred by or relating to the consumer guarantees.
- (b) So far as the Law allows, we are not liable for any loss or damage that you suffer (save for Alinta Energy's breach of this Agreement, negligence or wilful misconduct), arising out of or in relation to the sale of electricity by us to you under this Agreement. In particular, we are not liable for any loss, damage or expense you may suffer by reason of:

- (i) a consequence of the supply of electricity, a failure to supply electricity or a defect in the electricity supplied (for example, voltage, frequency, continuity or interruptions and fluctuations in the flow of electricity supply) (however caused) which renders it unsuitable for some purpose for you;
 - (ii) a failure or delay in respect of the connection, disconnection, or reconnection of the supply of electricity;
 - (iii) any act or omission of the Distributor, metering personnel or any other third party; or
 - (iv) the control or use of electricity at the Supply Address.
- (c) This clause 8.3 applies in addition to and does not exclude, the operation of section 120 of the National Electricity Law.

9. Disconnection

- (a) We may (without limitation to our other rights under this Agreement) cause the supply of electricity to the Supply Address to be disconnected if:
- (i) we have given you a written notice requiring any amount due to be paid or Insolvency Event to be remedied, and you have failed to comply with the notice within 10 Business Days of the date of the notice, or the time specified within the notice (whichever is longer); and
 - (ii) we have given you a written notice of a non-financial default of your obligations under this Agreement and the default has not been remedied by you within 15 Business Days of the date of the notice.
- (b) We may (without limitation to our other rights under this Agreement) cause the supply of electricity to the Supply Address to be disconnected if we have given you 10 Business Days written notice in respect of the following:
- (i) the Supply Address becomes embedded in a network;
 - (ii) we are required to do so by the Distributor (including for any planned work on the distribution system);
 - (iii) there is an actual or imminent emergency that threatens the health or safety of any person, damage to property or the integrity or safety of the distribution system;
 - (iv) we are no longer entitled to sell electricity at the Supply Address due to an event that triggers a Last Resort Event;
 - (v) for a Supply Address in Victoria, we have reasonable grounds to believe that you do not have a current connection contract;
 - (vi) we are permitted or required to do so by a Law; and
 - (vii) if we reasonably consider that you are not complying with your obligations under this Agreement or Applicable Laws.
- (c) We may (without limitation to our other rights under this Agreement) cause the supply of electricity to the Supply Address to be disconnected without notice if:
- (i) you have used electricity supplied by us for illegal purposes;

- (ii) there is an event beyond our reasonable control which we could not have reasonably avoided or prevented, and which requires us to procure the disconnection;
 - (iii) there is an actual or imminent emergency that threatens the health or safety of any person, damage to property or the integrity or safety of the distribution system; and
 - (iv) we are permitted or required to do so by a Law.
- (d) If disconnection occurs under this clause 9, you must pay any reasonable costs associated with the disconnection and, if relevant, any subsequent reconnection.

10. Termination for Last Resort Event

This Agreement terminates if a Last Resort Event occurs and we are required to transfer you to another retailer, in which case we will provide the appointed retailer with your name, Supply Address, any other address or email address you have nominated to us in writing, and details of your meter to effect the transfer.

11. Vacating premises

- (a) If you are vacating your Supply Address, this Agreement will be terminated from the day you vacate unless you have requested, and we have agreed, to transfer your Agreement to a new address. You must provide at least 10 Business Days' notice of the date on which you intend to vacate the Supply Address, give us your forwarding address for a final bill to be issued to you, and if you are a tenant at the Supply Address, provide us with the details of the owner of the Supply Address.
- (b) After we receive your notice, we will use our best efforts to ensure the meter at the Supply Address is read, or metering data is obtained, on that date and at a time agreed with you. If having used best efforts we cannot read or access the meter as agreed, then as soon as possible after that date we will read the meter and send you a final bill at the forwarding address.
- (c) If you do not give us the required notice, or you have not agreed a time for the meter to be read, or we cannot access the meter, then you will continue to be liable for electricity consumed at the Supply Address even if someone else is consuming it until the first to occur of the following events:
- (i) we become aware you have vacated the Supply Address and we obtain metering data, which we will ensure happens as soon as possible after we become so aware;
 - (ii) another customer enters into a contract and starts being supplied with electricity at the Supply Address by us or another retailer; or
 - (iii) the Supply Address is disconnected.
- (d) If you enter into an agreement with another retailer for the sale and supply of electricity at the Supply Address, then we may seek your consent to charge you a fee for additional costs in relation to your vacation of the Supply Address (including costs related to disconnection or any special reading of the meter). We will disclose the amount of the fee to you at the time we seek your consent under this paragraph (d).

- (e) If you enter into a new contract with us for another address, we may include your charges for the vacated address in an account for the new address.

12. Dispute resolution

- (a) Subject to paragraph (e), if a dispute arises in connection with this Agreement, either party may at any time give written notice (**Dispute Notice**) to the other setting out brief particulars of the matter and requesting that a meeting take place to seek to resolve the dispute.
- (b) Representatives from each party who have sufficient seniority and legal authority to settle a matter requiring resolution must meet within 10 Business Days of the Dispute Notice and endeavour in good faith to resolve the dispute.
- (c) If the dispute is not resolved within 15 Business Days of the Dispute Notice, either party may pursue its rights at law.
- (d) During a dispute, the parties must, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement to the extent that such obligations are not the subject of that dispute.
- (e) Paragraphs (a) and (b) do not restrict or limit the right of either party to commence proceedings of an interlocutory nature.

13. Notices

- (a) Unless otherwise specified, notices under this Agreement must be in writing and may be delivered by hand, or sent by mail or email, to:
 - (i) in your case, the Supply Address or any other address or email address that you have nominated to us in writing from time to time; or
 - (ii) in our case, one of our offices or ci.services@alintaenergy.com.au.
- (b) Notices will be deemed to be given if hand delivered, on the day of delivery; if sent by mail, on the third Business Day after mailing; and if sent by email, at the time it was sent to the recipient's e-mail address unless the sender knows or reasonably ought to suspect that the email and attached communication were not delivered to the recipient's email address provided for the purpose of Notices.
- (c) You must notify us in writing if there are any changes to your nominated address or email address.

14. General

14.1 Privacy

You acknowledge that we will in accordance with our Privacy Policy (published at: alintaenergy.com.au/privacy) collect, use and disclose your personal information as required by Applicable Laws and in order for us to be able to provide you with electricity and otherwise facilitate your dealings with us.

14.2 Governing law

This Agreement is governed by the laws applicable in Western Australia for a Supply Address in that State and the laws applicable in New South Wales for a Supply Address in any other State or Territories.

14.3 Severability

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable under the laws of any jurisdiction, then that part is severed from this Agreement for the purpose of that jurisdiction only but without affecting the continued operation of the rest of the Agreement in that jurisdiction or the operation of that part of this Agreement in any other jurisdiction.

14.4 Survival

Provisions of this Agreement about privacy, liability, notices, governing law and payment will survive the end of the Agreement.

15. Interpretation

15.1 Definitions

Agreement means these 'Terms of Supply to Large Business Customer without a Retail Sale Agreement'.

Alinta Energy is:

- (a) in WA, Alinta Sales Pty Ltd (ABN 92 089 531 984) and any of its successors and assigns; and
- (b) in ACT, NSW, QLD, SA and Victoria, Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300) and any of its successors and assigns,

and references to 'we' or 'us' are a reference to Alinta Energy.

Applicable Laws means all relevant statutes, regulations, codes, guidelines, directions or standards which govern the supply and sale of electricity to your Supply Address.

Business Day means a day that is not a Saturday, Sunday or public holiday in the capital city of your Supply Address.

Charges means:

- (a) prices, tariffs and charges as determined by Alinta Energy and charged to you in accordance with this Agreement and Applicable Laws, as published at: <https://www.alintaenergy.com.au/business/large-business/rates>; and
- (b) any additional fees and charges which we pass through from your Distributor, your Meter Service Provider and other third parties in relation to services which we arrange, or which are necessary to supply electricity, at your Supply Address.

Connection Contract means an agreement (including an agreement deemed by any Law) between you and the Distributor for the Supply Address providing for the connection, transportation, delivery or physical supply of electricity or any related services.

Distributor means the entity responsible for the connection and physical supply of electricity to the Supply Address.

Financially Responsible Market Participant has the meaning given in the National Electricity Rules.

Insolvency Event means any event that is or that is similar to: (a) an administrator, liquidator, receiver or similar person being appointed to the person or its assets; (b) a person suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; (c) or a person deemed by law to be (or if a court would be entitled or required to presume that a person is) unable to pay its debts or insolvent.

Interest Rate means an annual interest rate which is equal to on any day, 6% above the rate applied by the Reserve Bank of Australia to overdrafts to commercial customers or, if this rate is not published, any other similar rate reasonably determined by us. The Interest Rate that is to be applied is the published rate at the time of calculating the interest charges payable.

Large Business Customer means a Small Business Customer who consumes above the threshold designated under Applicable Laws on an annual basis.

Last Resort Event means an event or circumstance that triggers the operation of the retailer of last resort scheme in relation to us under Applicable Laws.

Law means any relevant law, statute, regulation, proclamation, order in council, order, by-law, rule, code, guideline, standard, direction, notice, levy, license, consent, permit, approval, binding decision or authority governing or affecting those involved in the generation, transmission, distribution, supply, sale, purchase or consumption of electricity.

Metering Installation has the meaning given in the National Electricity Rules.

Meter Service Provider means the provider of services, or coordinator of services, on our behalf, or your Distributor's behalf, in connection with: (i) the meter (including reading, installing, inspecting, altering or replacing it); (ii) meter data (including processing it and providing it to us and anyone else who may need it in relation to supplying you electricity); or (iii) your electricity supply (such as reconnection or disconnection).

National Electricity Law means the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA) which is applicable to this Agreement.

National Electricity Rules means the National Electricity Rules under the National Electricity Law.

National Energy Retail Law means the *National Energy Retail Law (South Australia) Act 2011* (SA) as applicable to this Agreement.

Related Body Corporate means any related body corporate as defined in the Corporations Act and in relation to Alinta Energy (i) means a body corporate controlling or controlled by Alinta Energy and (ii) a body corporate is taken to control another if it directly or indirectly owns not less than 50% of the shares entitled to vote at general meetings of that other body corporate and a body corporate includes any entity and a trust.

Residential Customer means a customer who acquires electricity principally for household or domestic use at the Supply Address.

Small Business Customer means a customer who consumes electricity for business (as opposed to domestic, personal or household) purposes below the small customer threshold designated under Applicable Laws on an annual basis and who is not a Residential Customer.

Supply Address means the address at which we supply electricity to you.

15.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. If a word is defined, another part of speech has a corresponding meaning. A reference to:

- (a) a singular word includes the plural, and vice versa;
- (b) legislation (including subordinate legislation) is to that legislation as amended or replaced;
- (c) a document, or a provision of a document, is to that document as amended, replaced or novated;
- (d) the word "agreement" includes an undertaking or other binding arrangement or understanding;
- (e) a party to any document includes a permitted substitute or a permitted assign of that party; and
- (f) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.

15.3 Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.

