

Decision on the Replacement Clear Energy Pty Ltd Standard Form Contract

27 October 2011

Economic Regulation Authority

WESTERN AUSTRALIA

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DECISION

1. Pursuant to section 51 and 52 of the *Electricity Industry Act 2004 (Act)*, the Economic Regulation Authority (**Authority**) approves the replacement standard form contract for the supply of electricity to small use customers, submitted by Clear Energy Pty Ltd (**Clear Energy**).

REASONS

2. The Authority requested that Clear Energy review its standard form contract to ensure compliance with the requirements of the new Australian Consumer Law and the current version of the *Code of Conduct for the Supply of Electricity to Small Use Customers*. On 28 July 2011, Clear Energy submitted a proposed replacement contract under which the licensee proposed to supply electricity to its small use customers.
3. Feedback was provided to Clear Energy regarding liability limitation, consumer guarantees and unsolicited consumer agreements. As a result of this feedback, Clear Energy proposed a number of further changes.
4. In accordance with the Authority's *Public Consultation Guidelines – For Electricity, Gas & Water Licences and Electricity & Gas Standard Form Contracts (July 2006)*, the Authority provided a public consultation period of at least 15 business days between 7 October 2011 and 24 October 2011. No submissions were received.
5. Under the Act the Authority must not approve a standard form contract if it considers that the contract will not meet the requirements of the regulations in respect of such contracts, or will be inconsistent with the Act or any other written law, or any term, condition or provision of the licence.
6. The Authority has considered Clear Energy's replacement standard form contract and is satisfied that it meets the requirements of the Act and therefore approves the contract.

LYNDON ROWE
CHAIRMAN

/ /

APPENDICES

Appendix 1 Standard Form Contract

Agreement for Renewable Electricity Supply and Installation of Renewable Electricity Supply Equipment

Clear Energy Pty Ltd (ACN 129 057 030)

and

[Customer]

September 14

NOTICE: IF THIS IS AN UNSOLICITED CONSUMER AGREEMENT

Important Notice to the Consumer

You have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement. Details about your additional rights to cancel this agreement are set out in the information attached to this agreement.”

Consumer to sign: _____

Date: _____

An “unsolicited consumer agreement” is defined in the Australian Consumer Law (“**ACL**”). You can obtain further information about unsolicited consumer agreements from the Australian Competition and Consumer Commission (www.consumerlaw.gov.au). Set out below are some guidelines about when an agreement may be an unsolicited consumer agreement. These guidelines are not legal advice.

Guidelines about when your agreement with us may be an unsolicited consumer agreement.

(1) *This agreement may be an unsolicited consumer agreement if:*

(a) *the amount payable by you for the electricity does not exceed the prescribed amount (currently \$40,000) or you acquire the electricity for personal, domestic or household use or consumption; and*

(b) *the agreement is made as a result of negotiations between you and us:*

- (i) *in each other’s presence at a place other than our place of business or by telephone; and*
- (ii) *you did not invite us to come to that place, or to make the telephone call, for the purposes of entering into negotiations relating to the supply of the electricity under this agreement; and*
- (iii) *the total price paid or payable by you under the agreement is not ascertainable at the time the agreement is made or is more than the prescribed amount (currently \$100).*

(2) *This agreement is not an unsolicited consumer agreement, if you acquired the electricity:*

(a) *for the purpose of re-supply; or*

(b) *for the purpose of using it up or transforming it in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.*

(3) *The ACL and its regulations provides further detail relating to the above information and sets out a number of exceptions.*

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**CLEAR ENERGY PTY LTD
(ACN 129 057 030)**

**STANDARD TERMS AND CONDITIONS
Supply of Renewable Electricity to Small Use Customers and installation of
Renewable Electricity Supply Equipment**

1. Supply of Renewable Electricity

- (a) We will sell you electricity that is generated by the Electricity Supply Equipment in accordance with these terms and conditions.
- (b) These terms and conditions apply to the sale of electricity to all our customers who are party to our Standard Form Contract.
- (c) We can change the terms of this Contract in accordance with the Electricity Industry Act 2004 (WA). If these terms change and those changes are approved by the Economic Regulation Authority then your contract will be deemed to be amended to reflect these changes, and we do not require your consent to do this. Any changes will be published as required by the Economic Regulation Authority.

2. Supply of Equipment

- (a) We will supply and install the Electricity Supply Equipment and the Meter at your Premises.
- (b) We will provide you with at least 3 Business Days' notice of the time and date on which we intend to do so.
- (c) The Electricity Supply Equipment and the Meter remains our property at all times and we will be responsible for maintaining the Electricity Supply Equipment and the Meter.
- (d) You must not Intentionally Damage or do anything that will interfere with the Electricity Supply Equipment or the Meter or use electricity in a way that interferes with the Electricity Supply Equipment or the Meter.

3. Code of Conduct

- (a) If you are a customer who consumes less than 160 megawatt hours of electricity per annum, we will supply electricity to you under this contract in accordance with the Code of Conduct.
- (b) The Code of Conduct regulates the conduct of electricity retailers, network operators and electricity marketing agents. The Code of Conduct is designed to protect the interests of residential and small business users. Matters covered by the Code of Conduct include electricity marketing, billing, connection, payment, payment difficulties and financial hardship, disconnection, reconnection, pre-payment meters in remote communities, information and communications, Customer Service Charters, complaints and dispute resolution, record keeping and compensation payments to customers for breaches of the Code of Conduct.
- (c) You can obtain more information about the Code of Conduct from us or from the Economic Regulation Authority (www.era.wa.gov.au).

4. When the Contract Starts

This contract will start on the date that you and we sign this Contract.

5. Charges

5.1 Electricity Charge

- (a) You must pay us for the electricity we supply to you under this contract in accordance with the Electricity Charges stated in the Electricity Charges Schedule.
- (b) The Electricity Charge will be adjusted on each anniversary of the Contract Start Date (“**Adjustment Date**”) in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

- A = the charges payable from and including the relevant Adjustment Date;
 B = the charges payable immediately before the relevant Adjustment Date;
 C = CPI last published before the Adjustment Date; and
 D = CPI last published before the Adjustment Date preceding the relevant Adjustment Date, except that in the case of the first Adjustment Date, D = CPI last published before the date of this Agreement.

5.2 Fees

You must also pay certain Fees which we incur in the normal course of supplying electricity to you. We will publish these Fees from time to time either by sending a copy of the Fees to you in your next bill or by publishing them on our website.

5.3 Changes to the Fees

- (a) We reserve the right to change the Fees at any time.
- (b) If we alter the Fees, we will give notice to you on your next bill and will also publish the changes on our website.

6. Adjustments for change in Relevant Taxes

If a change in a Relevant Tax occurs or a new Relevant Tax is imposed, we may adjust the Electricity Charge to the extent necessary to reflect that proportion of the effect of that change in Relevant Tax or new Relevant Tax which we estimate in good faith is fairly attributable to or payable by you taking into account the amount of electricity we supply to you.

7. Adjustments for Change in Law

If a Change in Law occurs, we may adjust the Electricity Charge to the extent necessary to put us into the position we would have been in under the Contract had it not been for the Change in Law.

8. How we calculate your electricity use

8.1 Meter Reading

- (a) We will charge you for the electricity generated by the Electricity Supply Equipment as measured by our Meter. We will supply and install the Meter at the same time that we install the Electricity Supply Equipment.
- (b) We will use Meter readings taken by our Metering Agent to prepare your bill. We will use our best endeavours to ensure that our Metering Agent reads the Meter once every billing cycle. However you can agree to read the Meter yourself and provide us with the Meter readings. In that case, we will bill you on the basis of your Meter Readings.
- (c) In any event, we will use our best endeavours to ensure that the Metering Agent makes an Annual Meter Reading of the Meter at your Premises at least once a year.
- (d) If we cannot reasonably base a bill on the Metering Agent's reading of the Meter, then we will provide you with an estimated bill based on one of the following (we will choose which one) –
 - (i) your reading of the Meter; or
 - (ii) your prior billing history; or
 - (iii) if we do not have your prior billing history, the average usages of electricity by those customers who we consider are in a comparable position to you (generally by location or usage pattern).
- (e) If we have provided you with an estimated bill and we subsequently obtain a Meter reading from our Metering Agent, then your next bill will be adjusted to take account of that Meter reading.

8.2 Renewable Energy Buyback

- (a) After the Electricity Supply Equipment is connected you may be able to sell any excess electricity generated by the Electricity Supply Equipment back to your Grid Retailer under their Renewable Energy Buyback Scheme.
- (b) If there is an outage on the Network Operator's distribution system we will not be liable to you if you are unable to claim credits under the Renewable Energy Buyback Scheme of your Grid Retailer.

8.3 You can ask for a meter test

You can ask us to test the Meter to ensure that it is measuring accurately and we will test the Meter if you first pay us a meter testing fee. If we find that the meter is not measuring accurately, as required by the law, then we will refund the meter testing fee to you and we will repair the meter or install a new Meter at our expense.

9. Bills

9.1 When we will bill you

We will bill you in accordance with the billing cycle that we set for our customers from time to time. As an indication, our billing cycle is expected to be every two months, no more than once every month and no less than once every 3 months.

9.2 Paying your bill

- (a) You must pay the total amount payable for each bill by the due date. The due date will be at least 12 business days from the date of the bill.
- (b) You can find the range of payment options that you can choose from by referring to your bill, or by visiting our website.
- (c) No payment fees apply if you choose to pay your bill by direct debit or BPay.
- (d) If you choose to pay your bill by credit card (Visa or Mastercard) a transaction fee will apply. We publish Fees from time to time either by sending a copy of the Fees to you in your next bill or by publishing them on our website.

9.3 If you are having trouble paying your bill

If you are having trouble paying your bills, please advise us. We will assess your request within 3 Business Days of you contacting us. We may be able to offer assistance (for example instalment plans) in accordance with Part 6 of the Code of Conduct, however you must qualify for this assistance.

9.4 If you don't pay your bill

- (a) If you do not pay the full amount payable for any bill by the due date then we may:
 - (i) send a notice to you warning you that you are in breach of this contract;
 - (ii) charge you a fee for the overdue account notice we send to you;
 - (iii) charge you interest at the Specified Rate on the amount you haven't paid. Interest will be applied immediately should your account become overdue; and
 - (iv) shorten your billing cycle.
- (b) If your bill remains unpaid for 90 days we can end this contract under clause 23.4.

9.5 Dishonoured cheque

If you pay by cheque and the cheque is dishonoured or reversed and as a result we have to pay fees to any other person such as a bank, you must reimburse us for those fees. If as a result, your bill becomes overdue, you will also have to pay the charges and penalties stated in clause 9.4(a).

9.6 Debt Collection

If you still have not paid the total amount payable for any bill after we send you a warning, we can refer your debt to a debt collection agency, and if we do so you must pay any costs that we incur in connection with the recovery of the unpaid bill (including the agency's fees and any legal fees).

We will not refer your debt to a debt collection agency if we have agreed to an instalment plan contemplated in clause 9.3 and you make your payments.

10. Reviewing your bill

10.1 Reviewing a bill

- (a) If you have a query about any aspect of your bill and you ask us to review the bill then we will review it.
- (b) In the meantime you must pay to us the balance of the bill that is not being queried or an amount equal to the average amount of your bills over the previous 12 months (excluding the bill that you are querying) whichever is less. If you have any other bills that are due, then you must also pay those bills by the due dates.

10.2 Undercharging & overcharging

- (a) If we undercharge you for any reason (including where the Meter has been found to be defective) we can require you to make a correcting payment and we will offer you the option to pay the correcting payment by instalments. In any event we will require you to make a correcting payment for amounts undercharged in the 12 months prior to the date that we advise you that you have been undercharged.
- (b) If we overcharge you for any reason (including where the meter has been found to be defective), then we will credit the amount to your account or you have the option of having the amount repaid to you. The 12 month limit referred to in clause 10.2(a) does not apply to amounts that we have overcharged you.

11. Electricity Supply Equipment

- (a) The Electricity Supply Equipment will at all times remain our property, even though it is affixed to the Premises.
- (b) Provided you do not Intentionally Damage the Electricity Supply Equipment, we will maintain the Electricity Supply Equipment at our cost, subject to clause 11(c) below, and we will have no recourse against you for any damage caused to the Electricity Supply Equipment.
- (c) If you Intentionally Damage the Electricity Supply Equipment, we can terminate this contract in accordance with clause 23.5 and we can demand that you pay to us the reasonable cost of replacing or repairing the Electricity Supply Equipment.

12. Renewable Energy Certificates

You permanently assign any right that you have to the RECs created by the Electricity Supply Equipment to us at no charge and you grant us the right to register and sell, assign or trade on the REC Registry (or otherwise) all RECs generated by the Electricity Supply Equipment and to retain the proceeds.

13. Your Equipment

- (a) You are responsible for maintaining Your Equipment in good working order and condition.
- (b) "Your Equipment" means all wiring and other equipment located at the Premises which are used to take supply of or consume electricity, except the Electricity Supply Equipment, the Meter or the equipment that is the property of the Network Operator.

14. Prohibited Activity

- (a) You must not tamper with, circumvent, bypass or otherwise interfere with the Electricity Supply Equipment, the Meter, or Your Equipment or allow anyone else to do so.
- (b) You must not use electricity in a way that interferes with the supply of electricity to anyone else or causes loss to anyone else.

15. Moving out of the Premises

Subject to the provisions of clause 23 relating to ending this contract:

- (a) if you move out of the Premises and no longer wish to obtain electricity from the Electricity Supply Equipment, then you must advise us at least 5 days before you move out, and give us an address where the final bill can be sent.
- (b) If you advise us as described in clause 15(a) and you move out of the Premises at the time specified in your notice, then we will make a final meter reading on the day that you move out of the Premises and issue a final bill to you. If we are unable to do this for any reason, we will estimate in good faith your energy consumption up to and including your last day at the Premises. You are required to pay for electricity used up to the date you move out of the Premises as measured or estimated.
- (c) If you have demonstrated to us that you were evicted from the Premises or were otherwise required to vacate the Premises we will not require you to pay for the electricity consumed at the Premises from the date that you advise us of the following:
 - (i) the date that you vacated or intend to vacate the Premises; and
 - (ii) a forwarding address to which a final bill may be sent.
- (d) If you do not advise us as described in clause 15(a) then subject to any applicable laws, we may require you to pay for electricity used at the Premises to a maximum of 5 days after we discover that you have moved out of the Premises.
- (e) If your final bill is in credit after you have paid us all amounts payable under clause 15(b) and 15(c) and clause 23.5 then we will repay the credited amount to you.

16. Access to the Premises

16.1 Safe and Unrestricted Access

At any reasonable time, you must give us or a person nominated by us (including our Metering Agent) safe and unrestricted access to the Premises when we need it:

- (a) to read the Meter;
- (b) to inspect or maintain or remove any Electricity Supply Equipment;
- (c) to disconnect the Electricity Supply Equipment;
- (d) to inspect or Work on Your Equipment; or
- (e) for any other reason having to do with the Contract.

16.2 Notice

Unless you otherwise agree to a reduced notice period, we must give you at least 5 Business Days notice before coming onto the Premises. We do not have to provide notice if:

- (a) for a routine Meter reading or Meter replacement;
- (b) in an Emergency; or
- (c) if we suspect electricity is being used illegally at the Premises.

16.3 Identification

A person coming onto the Premises on our behalf must clearly display a form of identification that he or she is our agent or an agent of the Network Operator and show a form of identification to the customer if requested to do so.

17. Interruptions to your Electricity Supply

17.1 Emergencies

- (a) We can interrupt or disconnect the Electricity Supply Equipment at any time without notice to you in an Emergency. We will use our best endeavours to reconnect the Electricity Supply Equipment again as soon as possible.
- (b) If we disconnect the Electricity Supply Equipment because you cause the Emergency then we will reconnect the Electricity Supply Equipment when you ask us to do so and we are satisfied that the Emergency no longer exists. In that case, we can also charge you a fee for reconnecting the Electricity Supply Equipment.

17.2 Planned work on distribution system

The Network Operator can interrupt or disconnect the electricity supply at any time if there is a need to carry out planned work on a distribution system. We or the Network Operator will provide you with notice of any planned work as required by any relevant law. No fees apply for turning your electricity back on in this instance.

17.3 Events Beyond Your Control

If an event occurs which is Beyond Your Control and that event affects your ability to perform any of your obligations under this Contract, you must tell us immediately and you will not be required to perform that obligation for as long as the event continues. However, you must pay your bill by the due date shown on the bill even if an event occurs which is Beyond Your Control.

17.4 Events Beyond Our Control

If an event occurs which is Beyond Our Control and that event affects our ability to perform any of our obligations under this Contract, then we are not required to perform that obligation for as long as the event continues. If such an event occurs and we consider it appropriate to do so, we may notify you of the event by a public announcement (for example television, radio or newspaper).

18. Removal of Electricity Supply Equipment due to your actions

This section describes the circumstances in which we have the right to disconnect supply through the removal of the Electricity Supply Equipment. The removal of Electricity Supply Equipment will not impact on the supply of electricity to your premises from the Grid.

18.1 Actions that may result in the removal of the Electricity Supply Equipment

The following actions may result in the removal of the Electricity Supply Equipment from the Premises:

- (a) you fail to pay a bill in full by the due date shown in the bill, you fail to agree to an offer of an instalment plan or other payment arrangement to pay the bill or you fail to make a payment as part of an agreed instalment plan or other payment arrangement;
- (b) you do not give us safe and unrestricted access to the Premises or the Electricity Supply Equipment;
- (c) you deny us access to the Meter for at least 12 consecutive months;
- (d) you commit a fraud relating to our supply of electricity to you at the Premises or any other Premises;
- (e) you get electricity supplies from the Electricity Supply Equipment to the Premises illegally;
- (f) you Intentionally Damage our Electricity Supply Equipment or you fail to keep Your Equipment in good working order and condition; or
- (g) you get electricity supplied to the Premises in breach of this Contract.

18.2 Removal of Equipment for failure to pay a bill or make a payment under an agreed instalment plan

We will follow the timeframe and procedures outlined in the Code of Conduct when removing the Electricity Supply Equipment in the event of you failing to make a payment under Clause 18.3. We will:

- (a) send you a reminder notice not less than 13 Business Days from the date of dispatch of the bill;
- (b) use our best endeavours to contact you; and
- (c) send you an equipment removal notice not less than 18 Business Days from the date of dispatch of the bill.

The equipment removal notice will provide not less than 5 Business Days warning of equipment removal from date of receipt. It will also provide advice as to the existence and operation of the complaint handling processes including the existence, operation and contact information of the electricity ombudsman.

18.3 Removal of Equipment in circumstances other than failure to make a payment

In the event that we believe you have taken any of the actions described in clauses 18.1(b), 18.1(c), 18.1(d), 18.1(f) or 18.1(g) we will:

- (a) send you a warning notice stating the action we believe you have taken. This notice will provide you with 20 Business Days for you to address the matter;
- (b) use our best endeavours to contact you; and
- (c) send you an equipment removal notice not less than 30 Business Days from the date of dispatch of the bill.

The equipment removal notice will provide not less than 5 Business Days warning of equipment removal from date of receipt.

18.4 Re-installation of the Electricity Supply Equipment

If we remove the Electricity Supply Equipment and disconnect your supply under this Clause 18, we will reconnect your supply if you:

- (a) Remedy the situation that caused us to disconnect you;
- (b) Request us to reconnect your supply; and
- (c) Pay a reconnection Fee.

19. Limitation on Liability in Certain Circumstances

Nothing in this clause should be read as excluding, restricting or modifying the consumer guarantees provided for under the Australian Consumer Law.

Subject to these consumer guarantees and except where you are a Consumer:

- (a) We do not guarantee that the electricity supplied to you will be of any particular quality or that it will be free from surges or that you will obtain a continuous supply of electricity without interruptions; and
- (b) We will not be liable to you, whether arising from or in connection with our breach of contract, our breach of statutory duty, and our negligence or otherwise for –
 - (i) any loss or damage associated with any surge in the electricity supply or failure of quality of electricity supplied;
 - (ii) business interruption loss;
 - (iii) lost profits;
 - (iv) loss of an opportunity;
 - (v) your liability to other people under contracts or otherwise;
 - (vi) the electricity supplied to you not being of a particular quality; and
 - (vii) surges or interruption in electricity supplied to you.

20. Limitation in relation to consumer guarantees

Where the goods supplied under this Contract are not goods ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, our liability for breach of a consumer guarantee applicable to our supply of electricity due to the operation of the Australian Consumer Law, is limited to any one of the following determined by us (but does not necessarily have to be electricity supplied from a renewable source):

- (a) the supply of an equivalent amount of electricity; or
- (b) the payment of the cost of acquiring an equivalent amount of electricity.

21. Things you must tell us

You must tell us as soon as possible:

- (a) if you propose to sell or lease the Premises;
- (b) if there is a change in the person responsible for paying your bills;
- (c) if there is a change in your billing address or contact details;
- (d) if you change something at the Premises which makes our access to the Meter or the Electricity Supply Agreement more difficult;
- (e) if you are planning a change to Your Equipment which might affect the quality or safety of any electricity supply to you or anyone else;
- (f) if you become aware of any problem or fault with the Electricity Supply Equipment, at or reasonably close to the Premises; or
- (g) subject to clause 23.3(c), if you vacate the Premises.

22. Complaints

You can register a complaint about us by emailing us at complaints@clear-energy.com.au. We will notify you within three business days of receiving your complaint.

We will respond to your complaint within 20 Business Days. If you are not satisfied with this response, you may ask for your complaint to be referred to the Clear Energy Board. It will respond to you within a further 20 Business Days.

If you remain unsatisfied, you may refer your complaint to the energy ombudsman (www.ombudsman.wa.gov.au/energy).

23. Ending the Contract

23.1 When the contract ends:

This contract for the supply of electricity will continue until you end the contract or we end the Contract under this Clause 23.

23.2 You can end the contract

- (a) You can end the Contract at any time, but you must give us at least 5 days notice of the day you want the Contract to end and you must pay us the amounts that are due in accordance with clause 23.5.
- (b) If this Contract is an Unsolicited Consumer Agreement, you can end this Contract within 10 Business Days starting from the first *Business Day after* the Contract is made, or, where the contract has been negotiated over the telephone, within 10 days starting from the first *Business Day after* the contract is received (**cooling-off period**) by giving us notice that you want this Contract to end. We will not supply electricity or install the Electricity Supply Equipment during the cooling-off period.
- (c) If you end the contract because you enter into a new contract for the supply of electricity with us, this contract ends on the expiry of the cooling off period for the new contract.

23.3 Moving out of the Premises

- (a) If you are ending the contract because you are moving out of the Premises you must follow the procedure specified in clause 17 and give us at least 5 days notice and advise us of:
 - (i) the date that you intend to move out of the Premises;
 - (ii) an address where the final bill can be sent;
 - (iv) whether you intend to assign your rights and obligations to the new owner or occupier of the Premises; and
 - (v) the name and contact details of the new owner/occupier, if applicable.
- (b) We will issue a final bill to you based on the meter reading or estimate undertaken in Clause 15(b). Subject to clause 23.3(c) you must pay us the amount stated in the Electricity Supply Equipment Schedule.
- (c) Provided you obtain our prior written consent to transfer this contract and the new owner or occupier agrees to the assignment of this contract, you will not have to pay the amount due under clause 23.5(a).

23.4 We can end the Contract

Notwithstanding anything in clause 18.3 we can remove the Electricity Supply Equipment (with notice as required by Clause 16.2) and end the Contract. You will have to pay us the amounts due under clause 23.5 immediately if you:

- (a) sell, lease or otherwise vacate the Premises without notifying us;
- (b) become insolvent;
- (c) go into liquidation;
- (d) become bankrupt; or
- (e) breach any of your obligations under this Contract for which we have a right, under the contract or a written law to remove the Electricity Supply Equipment.

23.5 What happens if the Contract ends

If the Contract ends:

- (a) you will pay us the amount stated in the Electricity Supply Equipment Schedule, with reference to the period of time that has elapsed since the date of installation of the Electricity Supply Equipment.
- (b) we may remove our Electricity Supply Equipment
- (c) we may arrange for a final Meter reading.
- (f) we can charge you a Fee for the final Meter reading, removal of the Electricity Supply Equipment and issuing a final bill.
- (g) you will remain liable to pay any outstanding payments to us and we will have no further obligation to supply electricity to you under this Contract.

24. Confidentiality

Unless we are permitted to do otherwise under this Contract, we will keep your information confidential. We will:

- (a) only use your information for our direct business purposes (for example, debt collection, or to investigate complaints), in accordance with the National Privacy Principles as set out in the Privacy Act 1988;
- (b) not pass on your information to anyone else except where:
 - (i) we have your prior consent;
 - (ii) disclosure is required to comply with any accounting or stock exchange requirement;
 - (iii) disclosure is required to comply with any legal obligation or regulatory requirement or in the course of legal or other proceedings, or arbitration;
 - (iv) the information is in the public domain other than by a breach of this clause;
 - (v) we think that you have used electricity illegally;
 - (vi) you have not paid your electricity bill, and we disclose information to a credit reporting agency, but we will not provide information about a default to a credit reporting agency if:
 - A. you have made a complaint in good faith about the default and the complaint has not been resolved; or
 - B. you have requested us to review your electricity bill and the review is not yet completed.

25. GST

- (a) In this clause:
 - (i) GST has the meaning given to that term in the GST Law.
 - (ii) GST Law has the meaning given to that term in A New Tax System (Goods and Services) Tax Act 1999 (Cth).
 - (iii) "Adjustment Note", "Recipient", "Supply", "Tax Invoice" and "Taxable Supply" have the meanings given to those terms in the GST Law.
- (b) All sums payable or considerations to be provided under the contract are expressed to be exclusive of GST unless expressly stated to be inclusive of GST.
- (c) If there is a Taxable Supply under or in connection with the Contract then the Recipient must pay to the Supplier an amount equal to the GST payable on the Taxable Supply in addition to and at the same time as, payment for the Taxable Supply is required to be made under the Contract.
- (d) The Supplier must provide a Tax Invoice (or an Adjustment Note) to the recipient in respect of the Taxable Supply and the obligation of the Recipient to pay the GST on a Taxable Supply is conditional upon the Supplier providing a Tax Invoice or Adjustment Note.

26. Information

If you request it, we will supply you with a copy of:

- (a) the Code of Conduct;
- (b) the Fees and Standard Prices or Electricity Charges payable under this Contract;
- (c) a copy of this Contract.

27. Miscellaneous

27.1 No assignment

- (a) Except in terms of clause 23.3(c) you must not transfer, assign or otherwise dispose of any of your rights or obligations under this Contract without our prior written consent.
- (b) We can assign or novate the Contract without notice to you, to any person that we believe has reasonable commercial and technical capability to perform our obligations under this Contract provided that such an assignment or novation will not cause you detriment.

27.2 Application of Laws

Nothing in this Contract limits or excludes the rights, powers and remedies that we have at law or in equity. This contract does not in any way limit our obligation to comply with the Minister for Energy or the Coordinator of Energy or the Director or Energy Safety in relation to emergencies and safety or otherwise.

27.3 Governing Law

The Contract is governed by the laws of the State of Western Australia.

27.4 Waiver of rights

If we do not enforce any right under this Contract then this must not be construed as a waiver of our rights under the Contract.

27.5 Entire agreement

The Contract and all applicable written laws represent the entire understanding between you and us relating to the matters covered by this Contract.

27.6 Severability

If any term of this Contract is found to be invalid or not enforceable, all other clauses will continue to be valid and enforceable.

27.7 Notices

- (a) Any notice or other communication given under the Contract does not have to be in writing unless this Contract expressly requires that it must be in writing.
- (b) A notice is taken to be received:
 - (i) in the case of verbal communication, at the time of the communication;

- (ii) in the case of hand delivery, on the date of delivery;
- (iii) in the case of post, on the second business day after posting;
- (iv) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (v) in the case of e-mail, on the date on which the sender's computer or other device from which the e-mail was sent records that the e-mail was successfully transmitted

if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

27.8 Publications and Electronic communication

- (a) We will publish things in the following manner:
 - (i) advertise in a local newspaper;
 - (ii) place details on our website; or
 - (iii) post you a notice which may be sent before your next bill or may be sent with or printed on your next bill.
- (b) We can use electronic communication (such as e-mail or SMS) to give information to you with your consent.
- (c) We can decide procedures as to how electronic communications will operate and what can be communicated electronically.

27.9 Contact Details

- (a) If you need to contact us, our contact details at the date of this Contract are:

Postal address

PO Box 1268, West Perth, WA 6872

Telephone

1300 690 043

Fax

+61 8 9278 6449

E-mail

info@clear-energy.com.au

Internet

www.clear-energy.com.au

Registered business address:

Clear Energy Pty Ltd, 18 Colin Street, West Perth, WA 6005

- (b) Any changes to our contact details will be published on your bill and on our website.

28. Interpretation

28.1 Definitions

In these terms and conditions, unless the context otherwise requires:

Annual Meter Reading	means the meter readings our Metering Agent will perform at least annually to measure the amount of electricity that you are using at the Premises;
Adjustment Date	means each anniversary of the Contract Start Date.
Australian Consumer Law	means: <ul style="list-style-type: none"> (a) Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth) as applied as a law of the Commonwealth under section 131 of that Act; and (b) The Australian Consumer Law (WA) as defined in and applied as a law of Western Australia under section 19 of the <i>Fair Trading Act 2010</i> (WA).
Beyond Your Control or Beyond Our Control	in relation to an event means an event or circumstance beyond the direct control or influence of you or us (as applicable) including acts of God, government orders, court orders, emergencies, operational necessity, required maintenance, network breakdown at power stations elsewhere, or insufficient volumes of electricity, or network outage or any other action by the Network Operator that affects the Electricity Supply Equipment.
Business Day	means a day which is not a Saturday, Sunday or public holiday in Western Australia;
Change in law	means a change in an existing law or the imposition of a new law which: <ul style="list-style-type: none"> (a) directly or indirectly results in an increase or decrease in our cost of producing, conveying, supplying or selling electricity to you under this Contract; and (b) is not a change to or imposition of a Relevant Tax.
Code of Conduct	means the Code of Conduct for the Supply of Electricity to Small Use Customers a copy of which is published on our website.
Consumer	has the meaning given in the Australian Consumer Law.
Contract	means the legally binding agreement between you and us, of which these are the terms and conditions.
Cooling-off Period	means a period of 10 Business Days starting from the first Business Day after the Contract is made, or, where the Contract has been negotiated by telephone, a period of 10 days starting from the first Business Day after the contract is received.

Customer Service Charter	means the Customer Service Charter that is published on our website.
CPI	means the Consumer Price Index (All Groups for the City of Perth) published annually by the Australian Bureau of Statistics.
Emergency	means any situation which we consider acting reasonably constitutes an emergency or otherwise justifies urgent or unilateral action including the actual and imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or disrupt the supply of electricity to any person or which destroys or damages or threatens to destroy or damage the Electricity Supply Equipment, the Network Equipment or the equipment of any other person.
Electricity Charge	means the price we will charge you for the electricity generated by the Electricity Supply Equipment which is stated in the Electricity Charges Schedule.
Electricity Supply Equipment	means the electricity supply equipment specified in the Electricity Supply Equipment Schedule.
Fee	means a Charge other than a Standard Price or the Electricity Charge.
Grid	means all the Network Operator's assets.
Grid Retailer	means an electricity retailer that supplies you with electricity using the Network Operator's Network.
Intentionally Damage	means to deliberately, wilfully, recklessly or negligently cause damage.
Meter	means the accumulation meter we have installed (or will install) at the Premises to measure the electricity generated by the Electricity Supply Equipment.
Metering Agent	means the entity that we have appointed to provide us with Meter readings from your Meter, currently Western Power.
Network Equipment	means the Meter and any wires, switches, voltage regulators, pressure regulators or other equipment used to transport, measure, or control electricity for delivery to you, before (upstream of) the point where electricity leaves the Meter.
Network Operator	means Western Power;
Network Operator's Network	means the South West Interconnected System controlled by the Network Operator;
Premises	means the address to which electricity will be supplied under the Contract and on which we will install the Electricity Supply Equipment.

Relevant Tax	means any tax: <ul style="list-style-type: none">(a) relating to the production, acquisition, conveyance, supply or sale of electricity (including any tax on or which affects directly or indirectly the cost of goods, services or materials used by us to produce, acquire, convey, supply or sell electricity); or(b) imposed upon us which are specific to the electricity industry.
Renewable Energy Buyback Scheme	means the scheme managed and operated by your Grid Retailer in terms of which excess electricity generated by the Electricity Supply Equipment and measured by the Meter is purchased from you by your Grid Retailer;
RECs or Renewable Energy Certificates	Has the meaning prescribed under the <i>Renewable Energy (Electricity) Act 2000</i> or any subsequent legislation.
Schedule	means the schedule at the end of this Contract;
Specified Rate	means 2% per month.
Unsolicited Consumer Agreement	has the meaning given in the Australian Consumer Law.
we and us	means Clear Energy Pty Ltd and includes our employees, subcontractors, agents and successors in title;
Work	includes installing, operating, maintaining, renewing and replacing any Electricity Supply Equipment;
you or your	means the person to whom electricity is (or will be) supplied under the Contract;
Your Equipment	means all wiring and other equipment located at the Premises which are used to take supply of or consume electricity, except the Electricity Supply Equipment, the Meter or the equipment that is the property of the Network Operator.

28.2 Interpretation

- (a) the singular includes the plural and vice versa.
- (b) Any gender includes the other genders;
- (c) A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (d) a reference to a person includes a reference to a public body, company, association, or body of persons, corporate or unincorporated;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation) and permitted assigns;
- (f) a reference to a clause is a reference to a clause in this Contract;
- (g) headings are for reference purposes only and do not affect the interpretation of this Contract;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to any deed, agreement, licence, document or other instrument (including this Contract) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (j) if the word "includes" or "including" is used the words "without limitation" are taken to immediately follow.
- (k) A reference to a liability includes any obligation to pay money and any other loss, cost or expense of any kind.
- (l) a reference to a month is a reference to a calendar month and a reference to a year is to a calendar year.
- (m) if a period of time is specified and dates from a given day or the day of an act or event it is to be calculated inclusive of that date.
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning.
- (o) a reference to a monetary amount means that amount in Australian currency.
- (p) "under" includes by, by virtue of, pursuant to, and in accordance with.

28.3 Simple English

These terms and conditions are written in a “simple English” style. Accordingly, where:

- (a) a contract or other document might traditionally or ordinarily be expected to have expressed an idea in a particular form or words; and
- (b) a provision of these terms and conditions appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style,

the ideas are not to be taken to be different just because different forms of words were used. For example:

- (i) “do our best” means “use best endeavours”;
- (ii) “try” means “use reasonable endeavours”;
- (iii) “end”, in relation to the contract, means “terminate”;
- (iv) “can” means there is a discretion as to whether the thing stated is done or not done; and
- (v) “will” and “must” both mean the thing stated has to be done.

Electricity Supply Equipment Schedule

Electricity Supply Equipment	Number of years after Date of Commencement	Amount to be paid to us exclusive of GST (AUS\$)
[Solar Panels, Inverter, and Meter details of which will be unique to each Premises.]	0-1	
	1-2	
	2-3	
	3-4	
	4-5	
	5-6	
	6-7	
	7-8	
	8-9	
	9-10	

Electricity Charges Schedule

The Electricity Price is [] excluding GST.

ATTACHMENT A

Section 82

Australian Consumer Law

CANCELLATION NOTICE – UNSOLICITED CONSUMER AGREEMENT

Right to cancel this agreement within 10 business day cooling-off period

You have a right to cancel this agreement without any reason within 10 business days from and including the day after you signed or received this agreement.

Extended right to cancel this agreement

If the supplier has not complied with the law in relation to unsolicited consumer agreements, you also have a right to cancel this agreement by contacting the supplier, either orally or in writing.

Refer to the information attached to this agreement (Attachment B). You may have up to 6 months to cancel this agreement in certain circumstances.

To cancel this agreement in writing, complete this notice and send it to the supplier.

Alternatively, write a letter or send an email to the supplier.

Supplier details (to be completed by the supplier)

Name:

Address:

Email address (*if any*):

Fax number (*if any*):

Details of goods or services supplied under the agreement:
.....

Cost of goods or services:

Date of agreement:

Transaction number (*if any*):

Consumer details

Name of consumer:

Consumer's address:

I WISH TO CANCEL THIS AGREEMENT

Signed by the consumer:

Date:

Note: You must either return to the supplier any goods supplied under the agreement or arrange for the goods to be collected.

ATTACHMENT B

Period during which a Consumer may terminate

According to section 82(3) of the Australian Consumer Law:

If you are a Consumer, the period during which you may terminate the agreement is whichever of the following periods is the longest:

(a) if the agreement **was not negotiated by telephone**—the period of **10 business days** starting at the start of the first business day after the day on which the agreement was made;

(b) if the agreement **was negotiated by telephone**—the period of **10 business days** starting at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement;

(c) if one or more of the following were contravened in relation to the agreement:

(i) section 73 (permitted hours for negotiating an unsolicited consumer agreement);

(ii) section 74 (disclosing purpose and identity);

(iii) section 75 (ceasing to negotiate on request);

the period of **3 months** starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;

(d) if one or more of the following were contravened in relation to the agreement:

(i) section 76 (informing consumer of termination period);

(ii) a provision of Subdivision C (requirements for unsolicited consumer agreements);

(iii) section 86 (prohibition on supplies for 10 business days);

the period of **6 months** starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;

(e) such other period as the agreement provides.