

Terms and Conditions of Service

1.0 Our Agreement with You

1.1 As a customer of Power Choice Pty Ltd ABN 63 104 658 960 ('Power Choice') these terms and conditions form the basis of our agreement ('Agreement').

1.2 Our Agreement with you also includes any application form or services Agreement or any other form, which you complete and provide to us ('Application Form(s)'). We may accept and rely on facsimile or scanned email copy of the original application form as if it was an original.

2.0 Service Description

2.1 Power Choice will supply you with various services, which may include Value Added Services, Energy Analytical services, Data Analysis, and related services.

2.2 We will provide the services as detailed in the Application Form ('Service(s)') to you.

2.3

3.0 Charges & Payment

3.1 Charges for the services are determined in accordance with the Application Form ('Fees') and may include:

(a) An establishment fee or brokerage fee. Such fee is agreed between the parties; and

(b) Other charges billed to you as part of your electricity retailer's metering costs; and

(c) Vendor commission or incentives that will be fully disclosed in the report to you.

3.1.1 All Fees will be due and payable whether or not the proposals are implemented by you and only on the basis they are readily available;

3.2 Our terms of trade are 30 days from invoice date.

3.3 Payment is to be by cheque, Electronic Funds Transfer (EFT), Direct Debit or via your electricity retailers metering charge.

3.4 Any costs incurred by us in the collection of outstanding amounts will be added to your total outstanding amount.

3.5 You will provide all reasonable assistance to enable Power Choice to deliver Services and charge for Services, including but not limited to (a) the instruction of meter providers to collect Fees for Services on behalf of Power Choice, (b) your nomination of Power Choice to meter providers as your exclusive data services provider, (c) that you inform and provide written notice of existence and provide copies of any related direct metering agreements with metering providers arranged by Power Choice ("DMA") to any electricity retailer as part of any related electricity contract that you enter into during the term of this Agreement, (d) that you during the term of this Agreement maintain currency and not terminate or cancel any DMA that supports the provision of Services and payment of Fees.

3.6 Fees may be varied annually or on the 1st of July each year. Any increase will be limited to the greater of any increase in the Australian Bureau of Statistics Consumer Price Index, the Australian Electricity Regulator average network tariff increase for that year or 5%.

4.0 GST

4.1 Unless expressly stated otherwise, the charges payable for the services under this Agreement are exclusive of GST.

5.0 Privacy

5.1 Power Choice adheres fully to the Privacy Act. Our privacy policy sets out the way in which we collect, use and disclose information about you. For a full copy of our privacy policy please visit our website at www.PowerChoice.com.au and click on the privacy link, or contact our office on 1300 16 50 20 or info@powerchoice.com.au

6.0 Information

6.1 You consent to allow us or our suppliers to exchange your information and our details.

6.2 You will authorise metering companies and electricity retailers to regularly provide electronically to Power Choice any relevant information in a format required by Power Choice to provide Services. You will take all reasonable steps in a timely manner to ensure that this authorisation is enacted. Information includes in but is not limited to meter details, electricity accounts information and all energy usage details.

7.0 Limitation of Liability

7.1 To the full extent permitted by law & subject to clause (7.2), we will not be liable in any circumstances, however arising, to you or any person claiming through you in contract, tort, or otherwise (including negligence) for:

(a) Any economic loss or damage & in particular (without limitation), any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings of profits; or

(b) Any indirect or consequential loss; or

(c) The acts of omissions of any supplier or any of our servants, officers, agents, contractors or subcontractors; or

(d) Our failure to continue to provide the service to you for any reason

whatsoever. You acknowledge that we do not guarantee continuous fault free provision of the service.

7.2 Power Choice will not be liable for any consequential, direct or special loss resulting from any fluctuation in energy prices, government regulated price, or any other market price into the future that may result from you being advised and contracted on rate higher than that may be available into the future and that is unknown or uncertain at the time.

8.0 Term of the Agreement.

8.1 In respect of any Services that are delivered over a period of time the Agreement will commence on the date of its signing by you and will continue for 60 months or other period as agreed in writing ('Initial Term').

8.1.1 At the end of the any Initial Term or Subsequent Term of the Agreement, the Agreement shall automatically be extended for an additional 12 month period ("Subsequent Term") until such time as you notify us in writing at least 90 days prior to the end of any Initial Term or Subsequent Term of the Agreement and request that no automatic extension takes place.

9.0 Confidentiality

9.1 You will keep confidential all information supplied by us.

10.0 Entire Agreement

10.1 The Agreement contains your and our entire understanding to the exclusion of any and all prior or collateral agreement of understanding relating to the services provided whether oral or written. You acknowledge that you have not entered into the Agreement in reliance upon any statement made by us, other than as expressly contained in the Agreement.

10.2 If any part of the Agreement is found to be invalid or of no force or effect the Agreement shall be construed as though such part had not been inserted and the remainder of the Agreement shall retain its full force and effect.

10.3 To the extent that any service specific term or condition conflicts with any other term or condition in the Agreement, the term or condition specific to the service will apply.

10.4 In the Agreement, unless the context otherwise requires or permits:

(a) Where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;

(b) References to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;

(c) References to months and years means calendar months and years;

(d) The use of headings are only for convenience and do not affect interpretation and any headings, underlining or marginal notes are only included for ease of reference;

(e) The terms "included", "including" and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus.

11.0 Notices

11.1 Any notice, demand, consent or other communication required to be given by either party must be delivered personally, or sent by registered mail or by facsimile to the address of the other as last notified.

12.0 Governing Law

12.1 The Agreement shall be governed & construed in accordance with the law of Queensland and the parties hereby submitted to the jurisdiction of the Courts of that State.

13.0 Early Termination

13.1 The Agreement may not be terminated other than in accordance with the terms and conditions mentioned herein.

13.2 Should you elect to terminate the Agreement early with Power Choice at any time for any reason you must provide Power Choice 30 days notice ("Early Termination").

13.3 At any Early Termination a fee payable by you will apply. This fee includes waste costs and foregone net margin. This fee is the amount that would otherwise be owing to Power Choice if the Agreement continued for the remainder of the current term.

13.4 Power Choice is also entitled to charge an administration fee to process any Early Termination.

13.5 The notice provided in clause 13.2 can take a written form or notice may be implied as being provided by your acts or failure to act in compliance with the terms of this agreement. Termination notices include acts of frustration or delay of the provision of Services including breaches of clause 3.5 and 6.2, and if you breach any term of this agreement and failure to take reasonable steps to rectify that breach after 30 days written notice by Power Choice of any such breach.

14.0 Change of Circumstances

14.1 Power Choice may agree to suspend or terminate all or part of your Agreement that relates to specific locations or sites without penalty where you have undergone a force majeure closure of the site. Such suspension, termination or part termination will be at the sole discretion of Power Choice.

14.2 If Power Choice agrees to terminate or suspend the Agreement under clause '14.1' you may be charged any related costs and an administration fee.

15.0 Assignment

15.1 Power Choice may assign some or all of its rights and obligations under the Agreement without your consent provided that it ensures that the assignee agrees to be bound by all of Power Choice's associated obligations under the Agreement.