

# SmartEnergy™ General Terms and Conditions

Eutility Pty Ltd ABN 56 090 407 346 ('Eutility' or 'we') will provide advice and connect you with entities that may assist with reducing your usage, demand and outlays in relation to your energy usage ("services") on the terms and conditions as follows:

## 1. Provision of Services

We will supply Services to You at Your request upon the terms and conditions described:

- (a) in these Terms and Conditions;
- (b) in the New Business Application Form;
- (c) on the Website; and
- (d) Any document annexed hereto.  
(together described as the Contract Documents).

## 2. Information

We will rely upon the accuracy of any information, documents, advice, records or data You provide to Us.

## 3. Payment

You will pay without deduction such fees and other amounts as are described in the Contract Documents. Our terms of trade are 30 days from the invoice date. All payments made using either American Express or Diners Club credit cards will be subject to a 2.75% surcharge. All payments made using a Visa, Mastercard or Bankcard will be subject to a 1.65% surcharge. If any amount is included in an invoice from a third party pursuant to an agreement between such third party and You, You will pay the Price in accordance with said invoice.

## 4. Services

Annexed hereto is:-

- (a) An agreement to be entered into directly between You and a provider of services, pursuant to which a third party ("the Service Provider") is to provide goods or services that may result in energy savings for You ("the Service Provision Agreement"); and
- (b) A proposed agreement between You and a financier ("the Finance Agreement").

You specifically acknowledge and Eutility specifically discloses that Eutility shall or may receive commissions from the Service Provider in relation to the Contract Documents or associated transactions.

## 5. No Warranty for Services

We make no warranty, promises or representations to You in relation to the Financier, the Finance Agreement, the Service Provider or the Service Provision Agreement. You warrant that you have made extensive enquiries as to whether the Finance Agreement and the Service Provision Agreement are appropriate for your circumstances, and You agree to comply in all respects with those agreements. You must indemnify Eutility in relation to any breach by You of the terms of those agreements. You warrant that you have not received any financial advice or financial product advice from Eutility in relation to the Finance Agreement. You warrant that you are not relying on the specific sums specified on the front page hereof, and you acknowledge that you have comprehensively reviewed the Contract Documents to ascertain your ongoing obligations.

You further warrant that all information, documentation and statements that you have supplied, provided or made to Eutility, the Service Provider or the Financier are complete and accurate in all respects, and you shall indemnify Eutility to the extent of any inaccuracy in that regard.

## 6. Maintenance

You must comply in all respects with all of the requirements of the Service Provider, including but not limited to requirements in relation to the maintenance of any equipment or products supplied by the Service Provider ("Service Provider Requirements"). You must comply in all respects with the Service Provider Requirements, including any time schedules or timeframes referred to therein. You must ensure that your staff are adequately and comprehensively trained in order to comply with the Service Provider Requirements and any instructions from the Service Provider. For the removal of doubt, We are not liable for any Loss or Damage that you suffer if Loss or Damage is caused or contributed to by your failure to comply with the Service Provider Requirements.

## 7. GST

Unless expressly stated otherwise, the charges payable for the Services under this agreement are exclusive of GST. You must pay to Us in addition to the charges for the Services an amount equal to any GST payable on the supply of the Services. That additional amount is payable at the same time any part of the charges for the Services is payable. We will issue a tax invoice to you for the supply of those Services at or before that time.

## 8. Privacy

- 8.1 We comply with the *Privacy Act 1988*. Our privacy policy on the Website sets out the way in which we collect, use and disclose information about You.
- 8.2 You authorise Us to disclose to third parties (including third party carriers) such information as may be reasonably required by them to enable Us and such third parties to provide the services to You.

## 9. Exclusion of Implied Terms

- 9.1 Any guarantee, condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

- 9.2 To the extent any legislation implies any guarantee, condition or warranty, Our liability for breach of such guarantee, condition or warranty shall be limited at Our option to:

- (a) if the breach relates to goods;
  - (i) the replacement of the goods or the supply of equivalent goods; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again or the cost of having the services supplied again.

- 9.3 You acknowledge that you have not entered into this agreement in reliance upon any statement (written or verbal) made by Us, other than expressly contained in the Contract Documents.

## 10. Provision of Information

To enable Us to perform the Services, We may require additional information from You. To the maximum extent permitted by law, You must provide such information, which may include names and contact details of the people to which reports and quotations are to be supplied, billing information, output information, equipment and calibration details, competing or related quotes for any energy related services which may be related to the Services provided by Us.

## 11. Safety

You must advise all Our relevant staff or contractors of any requisite safety protocols or appropriate procedures that apply to visitors of Your premises on or prior to arrival at your premises. You must ensure that your premises are safe in all respects for all purposes upon any visit by Our staff or contractors. You must advise us immediately upon any concerns that you have in relation to safety on, in or around your premises for the purposes of this clause. If Our staff or relevant contractor determines that the site is unsafe in any respect, such staff member or contractor may immediately terminate their attendance at your premises, and such termination will not constitute a breach of any agreement with You.

## 12. Indemnity

You shall indemnify Us for any Loss or Damage that arises directly or indirectly from any non-compliance by You or any other entity with any provision of any contract with any energy or other retailer, or of the Contract Documents.

## 13. Disputes

- 13.1 If a dispute arises in connection with this Agreement, a disputant may give the other disputant a notice specifying the dispute.
- 13.2 Within 5 business days after that notice is given, the disputants (each represented by its Chief Executive Officer or other person authorised by the disputant to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute.
- 13.3 Unless the disputants otherwise agree, the dispute must be referred to mediation if not resolved within 15 business days after the notice is given. The disputants must appoint a mediator within 20 business days after the notice is given. If they fail to agree, the mediator must be nominated by the then current President of the Institute of Arbitrators and Mediators Australia or his nominee. Mediation must be conducted in accordance with the Institute of Arbitrators and Mediators Australian Mediation Rules.
- 13.4 The mediation ends if the dispute is not resolved within 20 business days after the mediator's appointment.
- 13.5 The mediation must be kept entirely confidential unless disclosure is required by law.
- 13.6 Neither disputant may commence Court proceedings in respect of the dispute until the mediation period ends. This does not affect a disputant's right to seek injunctive or urgent declaratory relief.
- 13.7 Each disputant must pay its own costs in respect of the dispute resolution process. The mediator's costs will be equally shared between the disputants.

## 14. Confidentiality

You will keep confidential at all times all information supplied by You to Us or by Us to You.

## 15. Whole Agreement

- 15.1 These terms and conditions and the Contract Documents contain the whole of the agreement between You and Us.
- 15.2 Any illegal or invalid provision of our agreement will be severable to the extent required to make this agreement enforceable and all other provisions will remain in full force and effect.

## 16. Notice

Any notice required to be given by either party must be delivered personally, or sent by pre-paid mail or by facsimile to the address of the other as last notified.

## 17. Governing Law

This agreement shall be governed and construed in accordance with the laws of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that state.

## 18. Defined Terms

"Loss or Damage" includes (without limit) direct loss or loss of profits or indirect, consequential, incidental, special, exemplary or punitive loss or damage howsoever caused (including through the negligence of You or others).

**"New Business Application Form"** means the new business application form prepared by Us and executed by You.

**"Price"** means the price for the services to be provided to You at your request, by Eutility or a third party as referred to in the Contract Documents.

**"Services"** means providing advice in relation to energy usage, and introducing You to third parties who may assist in reducing such usage and expenditure.

**"Term"** means the term of any contract procured by Us for the provision of services by a third party carrier for You.

**"We"** and **"Us"** means Eutility Pty Ltd ABN 56 090 407 346, its employees and agents.

**"Website"** means [www.eutility.com.au](http://www.eutility.com.au).

**"You"** means you, your employees and agents.