



SOLAR FEED-IN TERMS AND CONDITIONS

NEW SOUTH WALES

AUGUST 2019

VERSION 1.01

KOGAN ENERGY TEL 1300 005 123 INFO@KOGANENERGY.COM.AU

PO BOX 1639 | MELBOURNE | VICTORIA | 3001

1. About this contract

1.1 This contract

This contract sets out the terms and conditions for the purchase by us of electricity from customers with solar **generating facilities**. Clause 1.5 sets out how these terms might apply to you.

1.2 The parties

This contract is between:

- a. Powershop Australia Pty Ltd (ABN 41 154 914 075) of Melbourne VIC 3000, who sells energy to you at your premises and, in accordance with the terms set out in this contract, purchases electricity from your solar **generating facility** under the name Kogan Energy (in this contract referred to as “we”, “our” or “us”); and
- b. You, the customer to whom this contract applies (in this contract referred to as “you” or “your”).

1.3 Use of defined terms

Clause 12.2 of this contract contains a list of defined terms which are used throughout the contract. Where a term has been given a specific definition, it will be in **bold italic** font. When reading, please keep in mind that defined terms may have a meaning more specific than the general English language meaning. While every effort has been made to avoid giving counterintuitive definitions to common terms, in some cases this is unavoidable. It can often be helpful to read through the defined terms before reading the contract.

1.4 Compliance with *applicable regulations*

In addition to this contract, **applicable regulations** also contain rules about the purchase of solar electricity by us and we will comply with these rules in our dealings with you.

1.5 Application of these terms

This contract applies to you if you are a customer who:

- a. is based in New South Wales;
- b. provides us with explicit informed consent to the applicability of these terms; and
- c. satisfies each of the eligibility requirements in clause 1.6.

1.6 Eligibility

To be eligible for the **FiT** you must:

- a. have connected a **generating facility** with a maximum capacity of 10 kilowatts to the electricity grid;
- b. have an **energy contract** with us in respect of the **supply address** where your **generating facility** is installed, through which we have become the **responsible retailer**;
- c. have a **net meter** installed at that **supply address**; and
- d. have provided us with all relevant documentation regarding the **generating facility** as we request.

1.7 Interaction with your *energy contract*

Terms and conditions in your **energy contract** regarding metering and your meter apply to this contract and any other metering equipment relevant to this contract as if set out here. This contract is closely related to your **energy contract**, and you should read this contract together with your **energy contract** to best understand your relationship with us. Many obligations on each of us are only set out in your **energy contract**, as this contract deals specifically with your **generating facility**.

2. New Installations

2.1 If you want to install a new *generating facility*

If you want to install a new *generating facility* at your *supply address*, so as to become eligible for the *FIT* in accordance with clause 1.5 but you have not yet accepted these terms and conditions, contact us via the Kogan Energy website or by calling 1300 005 123 so that we can assist.

2.2 *Connecting a new generating facility*

We can, if you request, contact your *distributor* to arrange for the connection of your *generating facility* to your *distributor's* network. We will do so as soon as is reasonably practicable and in accordance with any timeframes set out in *applicable regulations*, once we have received your request and any necessary information regarding the *connection* of the *generating facility* or about you or your *supply address*. Information we need will likely include:

- a. if we don't already have it, *acceptable identification*;
- b. if you are a business registered for GST, and we don't already have it, your ABN;
- c. confirmation of the metering arrangement at your *supply address*;
- d. if the *supply address* is a rental property, the details of the rental agent and of the property owner;
- e. any documentation required by *applicable regulations* dealing with the installation of such *generating facilities* (eg: Certificate of Compliance Electrical Work or CCEW); and
- f. confirmation that, if necessary, that any *connection* forms or other forms have been completed and provided to your *distributor* for the *connection* of your *generating facility* to their network.

We may need to pass on *connection* costs from your *distributor* in respect of the *connection*, and will advise at the time what these costs will be (before you need to commit to them).

3. Feed-in Tariff Credits

3.1 *Feed-in tariff credits generally*

You'll be entitled to *feed-in tariff credits* for any net export generation (as described in clause 3.2) from your *generating facility* for as long as one of the eligibility categories set out in clause 1.6 continues to apply.

3.2 *Metering systems*

- a. **Net meter:** Net export generation means the electricity that you feed into your *distributor's* network, and does not include generation that you consume at your *supply address*. This means that you don't get *feed-in tariff credits* for electricity generated and consumed on site, but that generation does reduce the amount of electricity you need to pay for under your *energy contract*.
- b. **Gross meter:** Gross export generation means all of the electricity that you generate on site, including the generation that you consume at your *supply address*. This means that you receive *feed-in tariff credits* for all the electricity generated on site, and that you will pay for the electricity you consume at your *supply address* under your *energy contract*.

3.3 *Rate of feed-in tariff credits*

The rates applicable to the *FIT* credits are published on our *rate card*, available on the Kogan Energy website. These rates are subject to change in accordance with clause 5.2. We will notify you if an applicable *feed-in tariff credit* rate is varied. At or about the time that this contract commences we will notify you of any additional amount intended to apply to your net export generation.

3.4 *Accumulation of feed-in tariff credits*

For each *billing cycle* under your *energy contract*, you will be entitled to *feed-in tariff credits* in accordance with clause 3.3, for all metered generation during that *billing cycle*.

3.5 Payment of feed-in tariff credits

If your **feed-in tariff credits** for a **billing cycle** exceed the amount of any charges under your **energy contract**, we will apply that surplus balance of **feed-in tariff credits** to future bills under your **energy contract**, but:

- a. if you have a positive balance of **feed-in tariff credits** at the time that another retailer becomes the **responsible retailer** for your **supply address**, after all outstanding amounts have been paid under your **energy contract**, then we will make a payment to you equivalent to the balance of **feed-in tariff credits**, at which point that balance is extinguished;
- b. we may elect, from time to time during the term of this contract, to make a payment to you equivalent to your balance of **feed-in tariff credits**, at which point that balance is extinguished; and
- c. if your balance of **feed-in tariff credits** exceeds \$100, and that balance is confirmed by an actual meter reading or as otherwise permitted by **applicable regulations**, you can request that we make a payment to you equivalent to that balance,

and you must give us your consent to make that payment to you in such manner as we see fit (for example by EFT to your bank account or credit card).

3.6 GST and tax invoices

You hereby confirm that either:

- a. you are not registered for GST, in which case we will send you statements regarding any payments made to you, and we both hereby agree that no invoice will be issued by either of us in respect of those payments or the relevant supplies; or
- b. you are registered for GST, in which case:
 - i. in respect of all goods or services supplied under this contract, you hereby authorise us to issue you with recipient-created tax invoices and agree that you will not issue any tax invoices; and
 - ii. you must notify us if you cease to be registered for GST, and we must notify you if we cease to be registered for GST.

3.7 Treatment of feed-in tariff credits on your bill

Each bill issued under your **energy contract** will show the amount of net export generation, the amount of **feed-in tariff credit** applied, and any current balance of **feed-in tariff credit**. To the extent that charges under your **energy contract** for the **billing cycle** exceed the **feed-in tariff credits** credits that have been applied to your account as at the time of issue of your bill, you will need to make a payment under your **energy contract** as per usual.

3.8 Basis of feed-in tariff credit calculations

The basis of the calculation of **feed-in tariff credit** entitlements for your account will be as per the basis of calculation of your bills under your **energy contract**. Generally this will mean that calculations are based on reads of your meter, but otherwise may mean that calculations are based on estimates undertaken in accordance with **applicable regulations** or your **energy contract**.

3.9 Adjustment of a feed-in tariff credit calculation

If we have undertaken a calculation of **feed-in tariff credits** on the basis of an estimate or become aware of an error with a calculation, and we subsequently read your meter or otherwise get a more reliable meter reading or estimate, we will apply the conditions set out in your **energy contract** regarding adjustment of bills.

3.10 Review of a feed-in tariff credit calculation

We will review a calculation of **feed-in tariff credits** at your request, in accordance with the conditions set out in your **energy contract** regarding review of bills.

4. Liability

4.1 Limitation of liability

To the extent permitted by law:

- a. other than to the extent we are in breach of this contract or negligent in relation to this contract, our liability to you under this contract is limited to five per cent of the value of payments you have made to us under your **energy contract** in the three months preceding any claim; and
- b. if you are a **business customer**, our liability to you under this contract for breach of any term, condition, warranty or guarantee implied to form part of this contract is limited at our election to either:
 - i. supplying to your **supply address** goods or services equivalent to those supplied under your **energy contract**; or
 - ii. paying the cost of supplying to your **supply address** goods or services equivalent to those supplied under your **energy contract**.

4.2 Mitigation of loss

If you are a **business customer**, you must take reasonable precautions to minimise the risk of loss or damage to any of your equipment, your premises or your business which may result from poor quality or reliability of energy supply or from any act or omission of yours or behaviour of your **generating facility**.

4.3 Indemnity

You hereby indemnify us against any loss or claim we may suffer due to your breach of this contract or due to your negligence in relation to this contract, with our recourse to such indemnity to be limited in amount to the amount which we are entitled under common law (including equity) or statute as compensation for the relevant instance of your breach or negligence (as applicable).

4.4 Set off

You hereby agree that we may set off any amount owed by us under this contract against any amount owed to us under this contract or any **energy contract** between you and us, and that our liability to make payment will be reduced by the extent of any such set off.

5. Variations

5.1 Variations to these terms and conditions

We may vary the terms and conditions set out in this contract from time to time, including but not limited to circumstances where **applicable regulations** are varied. We will give you notice of any such variation. We will give you this notice within any timeframes mandated by **applicable regulations**, and in any event as soon as is reasonably practicable.

5.2 Variations to feed-in tariff credit rates

We may vary the **FIT** rate (either for all customers or some customers) from time to time, including but not limited to circumstances where **applicable regulations** are varied. We will give you notice of any variation to the amount or structure of the **feed-in tariff credit** rate that applies to you under this contract. We will give you this notice within any timeframes mandated by **applicable regulations**, and in any event as soon as is reasonably practicable.

6. Obligations on you

6.1 Generating facility information

You must inform us as soon as possible of any change to your **generating facility**, metering, or your relationship with the **supply address** (eg: if you're moving out). You authorise us to request, and your **distributor** to provide us, details of your net export generation from periods prior to the commencement of this contract.

6.2 General obligations

You must, and our obligations under this contract are subject to the requirement that you:

- a. keep your **generating facility** and associated installations in safe condition;
- b. comply with any **applicable regulations** regarding your **generating facility** and this contract; and
- c. if your **supply address** is a rental property, procure that the property owner comply with any obligations that you're unable to comply with without their assistance.

7. Disconnection

We or your **distributor** may disconnect your **generating facility** if required by **applicable regulations** or if disconnecting your **supply address** under your **energy contract**.

8. Privacy

We will collect, use and disclose your personal information in accordance with our privacy policy which is available at www.powershop.com.au/privacy-policy, and the Kogan Energy privacy policy, which is available at www.koganenergy.com.au/privacy. To the extent that part of this contract refers to us contacting your **distributor** or others about you or your **supply address**, you hereby consent to us making that contact and consent to those third parties providing us with any relevant information.

9. Complaints and Dispute Resolution

9.1 Complaints

If you have a complaint relating to this contract you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

Note: Our standard complaints and dispute resolution procedures are published at www.koganenergy.com.au.

9.2 Our obligations in handling complaints

If you make a complaint, we will respond to your complaint within the required timeframes set out in our standard complaints and dispute resolution procedures and inform you:

- a. of the outcome of your complaint and the reasons for our decision; and
- b. that if you are not satisfied with our response, you have a right to refer the complaint to the Energy and Water Ombudsman NSW.

10. Notices

Any notice, consent, document or communication we give you under this contract will be in **writing** and either given by hand, faxed, posted or emailed, other than in the case of communications which other clauses of this contract contemplate being provided via an alternative communication method.

11. Assignment

You must not assign this contract or any of your rights or obligations under this contract without our consent (which we may withhold in our absolute discretion).

12. Interpretation

12.1 General

The following rules of interpretation apply to this contract:

- a. headings and footnotes are for convenience or information only and do not affect the interpretation of this contract or of any term or condition set out in this contract;
- b. words importing the singular include the plural and vice versa;
- c. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
- d. a reference to a clause or appendix is to a clause or appendix of this contract;
- e. a reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
- f. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document;
- g. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns; and
- h. other parts of speech and grammatical forms of a word or phrase defined in this contract have a corresponding meaning.

12.2 Defined terms

The following definitions apply in this contract unless the context requires otherwise:

- a. **acceptable identification** in relation to:
 - i. a **domestic customer**, includes one or more of the following: a driver's licence, a current passport or other form of photographic identification, a Pensioner Concession Card or other current entitlement card issued by the Commonwealth or a birth certificate;
 - ii. a **business customer** which is a sole trader or partnership, includes one or more of the forms of identification for a **domestic customer** for each of the individuals that conduct the business; and
 - iii. a **business customer** which is a company, includes the company's Australian Company Number or Australian Business Number.
- b. **applicable regulations** means the laws and regulations that apply to us as an energy retailer and a business generally. This may include, but is not necessarily limited to, one or more of the following:
 - i. the National Energy Retail Law set out as a Schedule to the National Energy Retail Law (South Australia) Act 2011 and adopted in other states through various enabling legislative instruments (the **Retail Law**);
 - ii. the National Energy Retail Rules established under the **Retail Law**;
 - iii. the **Electricity Supply Act 1995** (NSW);
 - iv. the **Electricity Supply (General) Regulation 2014** (NSW);
 - v. the **Electricity (Consumer Safety) Act 2004** (NSW);
 - vi. the **Electricity (Consumer Safety) Regulation 2015** (NSW);
 - vii. the **National Electricity Rules**;
 - viii. the Metrology Procedure: Part A (National Electricity Market), as published by the Australian Energy Market Operator in accordance with clause 7.14.1(a) of the **National Electricity Rules**; or
 - ix. the Metrology Procedure: Part B (National Electricity Market), as published by the Australian Energy Market Operator in accordance with clause 7.14.1(a) of the **National Electricity Rules**,

or any other regulatory instrument which substitutes, amends or supplements any of the above.

- c. **billing cycle** means the regular recurrent period in which you receive a bill from us.
- d. **business customer** means a customer who is not a **domestic customer**.
- e. **connect** means the making and maintaining of contact between the electrical systems of two persons allowing the supply of electricity between those systems.
- f. **distributor** means a person who holds or is exempt from holding a distribution licence under the **Electricity Supply Act 1995** (NSW).
- g. **domestic customer** means a person who purchases electricity principally for personal, household or domestic use at the relevant **supply address**.
- h. **energy contract** means a contract for the sale of electricity by us.
- i. **feed-in tariff credits** means credits for generated electricity earned in accordance with clause 3.
- j. **FIT** means the subsidised feed-in tariff voluntarily paid to our customers.
- k. **generating facility** means a complying generator as defined in section 15A of the **Electricity Supply Act 1995** (NSW), but only so far as that definition applies to solar photovoltaic generators.
- l. **gross meter** means a meter that measures the total amount of electricity generated by a renewable energy generator.
- m. **IPART** means the Independent Pricing and Regulatory Tribunal of New South Wales established by the **Independent Pricing and Regulatory Tribunal Act 1992** (NSW).
- n. **National Electricity Rules** means the Rules made under the National Electricity Law applicable in New South Wales as a result of the operation of section 6 of the **National Electricity (New South Wales) Act 1997** (NSW).
- o. **net meter** means a bi-directional meter that measures two-way electricity flows and records them at least half hourly.
- p. **rate card** means the document containing our current feed-in tariff rates, which is available for viewing on the Kogan Energy website as updated from time to time.
- q. **responsible retailer** in respect of a **supply address** means the retailer responsible for the electricity supplied at the **supply address** for the purposes of settlement of a relevant wholesale electricity market under **applicable regulations**.
- r. **supply address** means an address where you are being supplied electricity, and includes the relevant market connection point (as defined in the **National Electricity Rules**) in respect of that **supply address**.