

# Power Purchase Terms and Conditions

**Power Retail Corporation trading as Jacana Energy**  
**ABN: 65 889 840 667**

Phone: 1800 522 262

Email: [customercare@jacanaenergy.com.au](mailto:customercare@jacanaenergy.com.au)

Web: [jacanaenergy.com.au](http://jacanaenergy.com.au)

## Note to customers

- 1 This document sets out the terms on which Jacana Energy will purchase the energy generated by your photovoltaic system and exported into our network.
- 2 This document is **not** suitable for:
  - a. customers who have a PV system equal to or greater than 30kVA; or
  - b. customers consuming 750,000kWh or more per annum.

Such customers will be asked to enter into a customised agreement with Jacana Energy.

## Background

- A. The Customer owns or occupies the Premises and has connected (or will soon connect) the PV Unit to the Power and Water network in accordance with a Power and Water Connection Agreement.
  - B. The Customer wishes to sell Export Electricity to Jacana Energy on the terms and conditions of this Agreement.
  - C. Jacana Energy has agreed to pay the Customer for Export Electricity based on these terms and conditions.
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## 1. ELIGIBILITY

To be eligible to receive any

Payment:

- (a) the Customer must have a Power and Water Connection Agreement for the Premises ;
- (b) the PV Unit must be installed at the Premises;
- (c) the PV Unit must be connected to the Power and Water network under a Power and Water Connection Agreement;
- (d) the PV Unit must comply with the Electricity Law;
- (e) all PV Units installed at the Premises, must not be more than 30 kVA;
- (f) the Customer must not consume equal to or more than 750,000 kWh per annum;
- (g) there must be a current Jacana Energy Customer Contract for the Premises;
- (h) the Customer must provide to Jacana Energy proof that it satisfies all of the eligibility requirements in clause 1 and any other information or documents reasonably requested by Jacana Energy .

## 2. JACANA ENERGY AND POWER AND WATER ROLES

- (a) These Terms and Conditions are about the supply of Export Electricity from the Customer to Jacana Energy.
- (b) The Power and Water Connection Agreement is about the connection of the Premises and the PV Unit to the Power and Water network, and the delivery of electricity to the Premises through the Power and Water network.
- (c) These Terms and Conditions will only apply if the Customer has and continues to have a Power and Water Connection Agreement for the Premises and PV Unit.

## 3. JACANA ENERGY CUSTOMER CONTRACT NOT AFFECTED

- (a) Subject to clause 7 and to clause 12.1, these terms and conditions do not amend, directly or indirectly, the Jacana Energy Customer Contract and nothing in these terms and conditions affect Jacana Energy's or the Customer's rights or obligations under the Jacana Energy Customer Contract.
- (b) Without limiting paragraph (a) above, the Customer must continue to pay any standard service charges that are charged under the PWC Connection Agreement or the Jacana Energy Customer Contract, but no additional standard service charges will be payable under these terms and conditions in relation to the PV Unit.

## 4. PERIOD OF AGREEMENT

### 4.1 Term of Agreement

Provided the Customer first meets the eligibility requirements of clause 1, these terms and conditions come into effect on the Commencement Date and will continue in effect until terminated in accordance with clause 9 (**Term**).

### 4.2 This document does not need to be executed by Jacana Energy to be binding

- (a) This document does not need to be executed by Jacana Energy to be binding on Jacana Energy.
- (b) These terms and conditions become binding on Jacana Energy when Jacana Energy notifies the Customer of the Commencement Date.
- (c) Jacana Energy is under no obligation to notify the Customer in accordance with clause 4.2(b) until it is satisfied that the Customer has complied with all the eligibility requirements in clause 1.

### **4.3 Accrued Rights**

Upon termination of this Agreement, the parties will be discharged from any further obligations or liabilities under this Agreement, subject to any rights, obligations or liabilities which have accrued prior to or upon expiry or termination.

## **5. CUSTOMER'S GENERAL OBLIGATIONS**

The Customer will, throughout the Term comply with:

- (a) the Electricity Law;
- (b) any reasonable direction given by Power and Water or Jacana Energy under the Electricity Law or by PWC under the Power and Water Connection Agreement or by Jacana Energy under this Agreement;
- (c) the RET Act;
- (d) any applicable Carbon Scheme; and
- (e) the Power and Water Connection Agreement and these Terms and Conditions.

## **6. SUPPLY OF ELECTRICITY**

### **6.1 Sale and purchase**

During the Term:

- (a) the Customer will supply and sell Export Electricity to Jacana Energy; and
- (b) Jacana Energy will purchase Export Electricity generated at the Premises from the Customer at the Supply Point for the Purchase Price and otherwise, in accordance with this Agreement.

### **6.2 Re-selling**

The Customer agrees that Jacana Energy may re-sell the Export Electricity to any person and for any purpose without the Customer's consent.

### **6.3 PV Credits**

PV Credits created or otherwise held by the Customer, or any right or entitlement of the Customer to create PV Credits, in respect to or connected with the PV Unit or the Export Electricity are not transferred by the Customer to Jacana pursuant to this Agreement.

### **6.4 Title**

Title to Export Electricity will pass to Jacana at the Supply Point.

## **7. INVOICING AND PAYMENT**

### **7.1 Payment obligation**

Jacana will pay the Customer for the supply of Export Electricity under this Agreement at the rate specified in the Charges and in accordance with this clause 7.

### **7.2 Invoicing**

- (a) The Meter will be read by Power and Water.
- (b) The Jacana Energy Customer Contract Invoice will show:

- (i) *the volume of Export Electricity supplied by the Customer in the period covered by the invoice; and*
- (ii) *the Payment due to the Customer for the volume of Export Electricity shown on that invoice.*
- (c) If the Payment due to the Customer in any relevant period is less than the amount payable by the Customer under the Jacana Energy Customer Contract Invoice, the relevant Payment will be off-set against the amount due pursuant to the Jacana Energy Customer Contract Invoice and the Customer will only be required to pay the difference.
- (d) If the Payment due to the Customer in any relevant period is more than the amount payable by the Customer under the Jacana Energy Customer Contract Invoice, the relevant Payment will be set-off against the amount due pursuant to the Jacana Energy Customer Contract and the excess portion of the relevant Payment will, subject to clause 7.2(f), be carried forward to the next period.
- (e) Each Jacana Energy Customer Contract Invoice will show the balance to be paid by or payable to the Customer after taking into account all amounts due to Jacana Energy and the Payment shown on that invoice.
- (f) After applying clauses 7.2(c) and 7.2(d) above, Jacana Energy will, at the end of each calendar year, either:
  - (i) *pay any balance due to the Customer; or*
  - (ii) *deduct any balance due to the Customer from any amounts payable by the Customer under any other accounts held between the Customer and Jacana Energy.*

### **7.3 Meter reading and inspections**

Jacana Energy will either:

- (a) arrange for the Meter at the Premises to be read for each Account Period; or
- (b) estimate the volume of Export Electricity supplied by the Customer in accordance with clause 7.4.

### **7.4 Estimating the Export Electricity**

- (a) Jacana Energy may estimate the quantity of Export Electricity for an Account Period.
- (b) Jacana Energy may reflect any required adjustment between the actual volume of Export Electricity supplied by the Customer and the volume estimated under paragraph (a) in a subsequent Jacana Energy Customer Contract Invoice, once the actual volume of Export Electricity for the relevant Account Period is known.

### **7.5 Disputed amounts**

- (a) If the Customer disputes any amount shown on an invoice, the Customer must, within 14 days of the date of the invoice, give Jacana Energy notice in writing of the grounds of the dispute.
- (b) Jacana Energy will investigate the items disputed by the Customer and report the outcome of its investigations to the Customer, within 14 days of the receipt of the Customer's notice.
- (c) If the Customer disputes the outcome of Jacana Energy's investigation, clause 10 will apply to the dispute.

### **7.6 Goods and Services Tax**

#### **(a) Interpretations**

In this clause 7.6 and clause 7.7, a word or expression has the same meaning as defined 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.

#### **(b) GST exclusive amounts**

All amounts used in this Agreement, including amounts and variables in formulas, are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.

(c) **GST gross up**

If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 7.6 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

(d) **Reimbursements**

If a party must reimburse or indemnify another party for a loss, costs, damages, liabilities and expenses, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, costs, damages, liabilities and expenses and then increased in accordance with clause 7.6(c). That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be paid, that its entitlement is otherwise.

(e) **Tax invoices**

Unless clause 7.7 applies, the recipient of a taxable supply made under or in connection with this Agreement need not make a payment until the supplier has given the recipient a tax invoice for the supply to which the payment relates. The supplier must give the recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Agreement within seven days after the date the supplier becomes aware of the adjustment event.

(f) **Customer becomes registered for GST**

If the Contract Details indicate that Customer is not registered for GST but the Customer is or subsequently becomes registered or required to be registered, the Customer must notify Jacana Energy of this promptly and clause 7.7 will apply from the time such notice is given.

## **7.7 Recipient Created Tax Invoices**

This clause applies if the Customer is a Commercial Customer and the Contract Details indicate that the Customer is registered for GST:

- (a) Jacana Energy may (but will not be obliged to) issue a Recipient Created Tax Invoice (RCTI) in respect of any supply made by the Customer to Jacana Energy under or in connection with this Agreement;
- (b) Jacana Energy will issue a copy of the RCTI to the Customer and retain the original and will issue to the Customer an adjustment note in relation to adjustment events;
- (c) the Customer must not issue tax invoices in respect of any such supply;
- (d) the Customer acknowledges that it is registered for GST and will promptly notify Jacana Energy if the Customer ceases to be registered for GST;
- (e) Jacana Energy acknowledges that it is registered for GST and it will notify the Customer if it ceases to be registered for GST or ceases to satisfy the legal requirements for issuing an RCTI;
- (f) this clause will not apply to any supply after Jacana Energy ceases to satisfy the legal requirements for issuing an RCTI;
- (g) Jacana Energy indemnifies the Customer for any liability for GST or penalty that may arise as a result of an understatement of the GST payable on any supply for which Jacana Energy issues an RCTI to the Customer, but only on the extent that any such liability is caused by an act or omission of Jacana Energy in issuing that RCTI.

## **8. VARIATION OF PURCHASE PRICE**

### **8.1 Jacana Energy to notify variation**

Jacana Energy will notify the Customer promptly of any variation to the Purchase Price and the date from which the variation is effective.

## 8.2 Change in Taxes

If:

- (a) any Tax is imposed which was not in force as at the earlier of the date of this Agreement and the Commencement Date;
- (b) the rate at which any Tax is levied is varied from the rate prevailing as at the earlier of the date of this Agreement and the Commencement Date; or
- (c) the basis on which any Tax is levied or calculated is varied from the basis on which it is levied or calculated as at the earlier of the date of this Agreement and the Commencement Date,

(Tax Variation), then:

- (d) Jacana Energy will determine the necessary variation to the Purchase Price as a result of the Tax Variation and provide the Customer with notice of its determination; and
- (e) if the Customer does not agree with Jacana Energy's determination, it may, within 20 Business Days of the notice under paragraph (d), refer the issue to dispute resolution under clause 10.

## 9. TERMINATION

### 9.1 Termination without default

- (a) This Agreement terminates if for any reason:
  - (i) *the Customer's:*
    - A. Jacana Energy Customer Contract; or
    - B. Power and Water Connection Agreement,terminates (or is terminated); or
  - (ii) *the Customer ceases to own or occupy the Premises.*
- (b) This Agreement may be terminated by Jacana Energy at any time by giving 90 days' notice in writing to the Customer.

### 9.2 Termination for Default

- (a) The Customer is in default (Default) if:
  - (i) *Jacana Energy or PWC deems that the PV Unit or the connection of the Premises to the Power and Water network or any related part of the Customer's production of Export Electricity to be unsafe;*
  - (ii) *the Customer fails to comply with any requirement of the Power and Water Connection Agreement to the reasonable satisfaction of Power and Water;*
  - (iii) *there is a breach by the Customer of any of its obligations under this Agreement;*
  - (iv) *there is a breach by the Customer of any of its other obligations under the PWC Connection Agreement; or*
  - (v) *the Customer assigns, transfers, mortgages or encumbers its interest under this Agreement without Jacana Energy's consent.*
- (b) If the Customer is in Default, Jacana Energy may, by notice to the Customer, terminate this Agreement with immediate effect.

### 9.3 Increase in PV Unit capacity or electricity consumption

This Agreement automatically terminates if:

- (a) all PV Units installed at the Premises exceed 30 kVA; or
- (b) the Customer's quarterly consumption at the Premises is 187,500 kWh or more.

## 10. DISPUTE RESOLUTION

If there is a dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or claimed invalidity of this Agreement or any part (Dispute), the following provisions will apply:

- (a) The Dispute will not be subject to litigation unless and until the provisions of this clause 10 have been complied with.
- (b) The party claiming the Dispute will give the other party a written notice setting out the material particulars of the Dispute, and the position which it considers to be correct.
- (c) Representatives from both parties will meet in person or by telephone within 10 Business Days of the date of receipt of the notice under paragraph (b) and each use reasonable endeavours to resolve the Dispute.
- (d) If the Dispute is not resolved as evidenced by a signed statement by each representative within 20 Business Days of the notice under paragraph (b), then the Customer may refer the Dispute to the Ombudsman or such other person or entity having the jurisdiction and power to resolve the Dispute.

## 11. NOTICES

### 11.1 Notices to be in Writing

- (a) Any notices, approval, consent, demand or other communication given under or in connection with this Agreement (Communications) must be in writing and sent to the address of each party set out in the Contract Details or such other address as notified pursuant to clause 11.3.
- (b) Any Communications must be:
  - (i) *delivered by hand;*
  - (ii) *sent by pre-paid certified post;*
  - (iii) *sent by facsimile; or*
  - (iv) *sent by such other electronic means as the parties may agree.*

### 11.2 Receipt of Notices

- (a) Mail will be deemed to have been received on the second Business Day from and including the date of posting.
- (b) Facsimiles sent before 4:00 pm on a Business Day will be deemed to be received on that day, but if sent after 4:00 pm will be deemed to be received at 9:00 am the next Business Day. The sender must have a transmission report stating that the facsimile was sent successfully to the other party's facsimile number as specified in the Contract Details.

### 11.3 Change of address

The Customer must notify Jacana Energy of any change of address for service of notices within 7 days of the change.

### 11.4 Notices sent by email

- (a) Other than a Communication given under clause 9, any Communication may also be sent by email if:



- (i) *the Notice is sent to the relevant email address listed in the Contract Details or the email address last notified by the intended recipient to the sender; and*
- (ii) *the sender keeps an electronic or printed copy of the Notice sent.*

(b) A Communication sent under paragraph (a) will be taken to be duly received on return of a receipt produced by the system to which the email was sent which indicates that the email was sent to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the day the email was sent if a Business Day and otherwise on the next Business Day.

## **12 GENERAL PROVISIONS**

### **12.1 Proper Law and Jurisdiction**

This Agreement is governed by and will be construed in accordance with the laws of the Northern Territory and the parties submit to the exclusive jurisdiction of the courts of, or exercising jurisdiction in, the Northern Territory and warrant that they will not make any objection to the jurisdiction of those courts on the grounds of convenience.

### **12.2 Assignment by the Customer**

The Customer may not assign all or any part of its rights and obligations under this Agreement.

### **12.3 Assignment by Jacana Energy**

Jacana Energy may assign all or any part of its rights and obligations under this Agreement without the Customer's consent.

### **12.4 Successors**

This Agreement is only binding on the Customer and Jacana Energy or its successor and permitted assigns.

### **12.5 No representation or reliance**

- (a) Each party acknowledges that neither party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other party, except for representations or inducements expressly set out in this Agreement.

### **12.6 Variations and waivers**

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver or a consent) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

### **12.7 Waiver**

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Agreement will operate as a waiver of such right, nor will any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Agreement.

### **12.8 Costs**

Each party will bear its own costs (including legal costs) of and incidental to the preparation, negotiation and execution of this Agreement.

### **12.9 Further assurances**

The parties agree that they will perform, execute, acknowledge and deliver all such further acts, documents, agreements and assurances as shall be variably required to give full effect to this Agreement.

### **12.10 Severance**

- (a) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law applicable in the Northern Territory, it is severed to the extent possible and necessary to make this document enforceable, provided that such severance would not materially change the intended effect of this document.
- (b) The existence of such a provision will not affect or impair:
  - (i) *the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or*
  - (ii) *the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.*

## **13. DEFINITIONS AND INTERPRETATION**

### **13.1 Definitions**

In this Agreement:

Account Period means the period for which a Jacana Energy Customer Contract Invoice is issued to the Customer under the Jacana Energy Customer Contract.

Act means the *Electricity Reform Act 2000* (NT).

Agreement means this Power Purchase Agreement between Jacana Energy and the Customer.

Agreement to Issue Recipient Created Tax Invoices means the document with the same name which forms part of the Contract Details.

Business Day means any day on which banks are open for trading in Darwin.

Carbon Scheme means any existing or future law or regulation (including amendments made from time to time) with respect to the production or emission of greenhouse gases, or which has as one of its implied or express aims or objectives the reduction, limitation, cessation, prevention, abatement, offsetting, management, mitigation, removal or sequestration of greenhouse gas emissions or concentrations, and which relates, or is attributable, in any way to the supply of electricity or the performance of any other obligation under this Agreement.

Commencement Date is the date notified as such by Jacana in the first Jacana Energy Customer Contract Invoice issued after receipt and acceptance of the Customer's application by Jacana Energy.

Commercial Customer means a Customer holding an Australian Business Number.

Communications is defined in clause 11.1.

Contract Details means the information regarding the Customer and the Supply Point, as required from time to time by Jacana Energy, which information is to be provided by the Customer.

Customer means the person specified as the Customer in the Contract Details.

Jacana Energy Customer Contract means the contract between Jacana Energy and the Customer for the sale of Import Electricity.

Jacana Energy Customer Contract Invoice means the periodic invoice issued by Jacana Energy to the Customer under the Jacana Energy Customer Contract, which will show any Payment to be made under clause 7 of this Agreement.

Default is defined in clause 9.2. Dispute is defined in clause 10.

Electricity Law has the same meaning as in the Power and Water Connection Agreement.

Export Electricity means the quantity of electricity generated by the PV Unit and exported into the Power and Water network as measured by the Meter.

GST means any tax, levy, charge or Impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) or an act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

GST exclusive consideration is defined in clause 7.6.

Import Electricity means electricity imported from the PWC Network by the Customer for the Premises via the Supply Point under the terms of the Jacana Energy Customer Contract.

Jacana Energy means the Power Retail Corporation (trading as Jacana Energy) ABN 65 889 840 667 established under the *Power Retail Corporation Act* (NT).

Meter means the instrument installed at the Premises to measure the quantity of electricity passing through it and includes associated equipment attached to the instrument to control or regulate the flow of electricity. The Meter measures both:

- (a) Import Electricity; and
- (b) Export Electricity.

Ombudsman means the Ombudsman of the Northern Territory established under the *Ombudsman Act 2009* (NT) and currently located on 12th Floor, NT House, 22 Mitchell Street, Darwin, Northern Territory 0800.

Payment means the amount payable by Jacana Energy to the Customer for the supply of Export Electricity in accordance with clause 7 (as varied in accordance with clause 8).

Premises means the premises from which Export Electricity is to be supplied under this Agreement as set out in the Contract Details.

Purchase Price means the amount (expressed in dollars and cents per kWh) per kWh that Jacana Energy will pay to the Customer for Export Electricity and, from the Commencement Date and until varied under this Agreement, is the amount specified on Jacana Energy's website at [www.jacanaenergy.com.au](http://www.jacanaenergy.com.au) as amended from time to time.

PV Credit means any unit, credit or permit (or other instrument that is transferable or tradeable, whether or not for value) to which the Customer may be entitled under the RET Act or any Carbon Scheme in connection with the Customer's ownership or operation of the PV Unit or the Export Electricity, and which includes STCs.

PV Unit means a photovoltaic system and inverter which complies with the requirements of the PWC Connection Agreement, and includes all equipment associated with it to make the PV Unit work.

Power and Water means the Power and Water Corporation ABN 15 947 352 360 established under the *Power and Water Corporation Act* (NT).

Power and Water Connection Agreement means an agreement between the Customer and Power and Water for the connection of the Customer's Premises and PV Unit to the Power and Water network.

Power and Water network has the same meaning as "electricity network" in the Act.

RET Act means the *Renewable Energy (Electricity) Act 2000* (Cth) and the *Renewable Energy (Electricity) Regulations 2001*.

STC means a small-scale technology certificate created under the RET Act.

Supply Point means the supply point specified in the Contract Details.

Tax includes any levy, rate, rent, royalty, licence fee or impost which is a cost to Customer in respect of the generation, distribution, supply or sale of electricity.

Tax Variation is defined in clause 8.2.

Term is defined in clause 4.1.

### **13.2 Interpretation**

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexure to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the Party put forward the Agreement or any part;
- (j) includes in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) obligations to indemnify survive termination or expiry of this Agreement.