

# LPG sale and supply

## Terms and conditions



These Terms and Conditions for LPG Sale and Supply, as well as the attached Contract Details and any attached special conditions, comprise the agreement between the customer specified in the Contract Details (referred to as “you” or “your”) and Origin Energy Retail Limited (ABN 22 078 868 425) (“Origin”, “we”), (“Agreement”).

### 1. Supply and purchase of LPG

- 1.1 We agree to sell and supply to you and you agree to buy, LPG on the terms and subject to the conditions of this Agreement.
- 1.2 We will commence supply of LPG to you on the Supply Start Date.
- 1.3 LPG will be delivered by bulk supply, LPG exchange cylinders or a combination of both, as specified in the Contract Details.
- 1.4 We will deliver LPG to the Delivery Point in accordance with a delivery schedule to be determined by us.

### 2. Access to your site

- 2.1 You agree that we, our contractors and agents may enter your Site on and from the Access Date and during the term of this Agreement for the purpose of performing this Agreement.
- 2.2 You must ensure that access to your Site is safe, convenient and unhindered.

### 3. Origin equipment

- 3.1 This clause 3 only applies if the Contract Details specifies that Origin Equipment (including LPG exchange cylinders) will be provided to or installed and used at your Site.
- 3.2 We will provide or, where applicable, install the Origin Equipment at an agreed location at your Site for you to rent from us on or after the Access Date. You give us permission to do so and agree to pay the Installation Contribution Amount and the Equipment Rental Fee in respect of the Origin Equipment.
- 3.3 As you will be renting the Origin Equipment from us you must:

- (a) obtain and comply with all Regulatory Requirements (including council approvals) required to have the Origin Equipment installed and used at your Site;
  - (b) ensure that any person (other than us, our contractors or our agents) using the Origin Equipment at your Site is fully trained to use it and instructed as to the known dangerous qualities of LPG, to at least the standard required by Regulatory Requirements;
  - (c) keep the area containing the Origin Equipment at your Site safe and unobstructed;
  - (d) not access or use any Origin Equipment if it is not, or appears to not to be, in good working order and you must notify us by telephone immediately if this is the case;
  - (e) only use the Origin Equipment for the dispensing of LPG purchased from us;
  - (f) not allow any LPG not supplied by us to be stored in the Origin Equipment without our prior written approval;
  - (g) cease using the Origin Equipment and LPG, and notify us immediately by telephone if you become aware that the LPG is not odourised;
  - (h) (except in respect of LPG exchange cylinders) not move or remove the Origin Equipment from its installed position at your Site without our prior written approval. If you require us to move any Origin Equipment, you may be charged our reasonable costs to do so which we will discuss and agree with you in advance; and
  - (i) not alter or modify the Origin Equipment or allow any non-standard LPG attachment to be affixed to or used in the operation of, or permit construction in the vicinity of, the Origin Equipment.
- 3.4 You must return any empty LPG exchange cylinders to us including on demand.
  - 3.5 You agree to reimburse us for the costs of repairing or replacing any damaged or destroyed Origin Equipment other than as a result of normal wear and tear or any damage we or our contractors cause.

3.6 If you request us to repair, maintain or replace any Origin Equipment or other non-Origin LPG equipment at your Site and we agree to do so, you agree that you will pay for our (or our contractor's) travel and service charge costs (if we or our contractor attends your Site) as well as the full costs of any repair, maintenance or replacement performed (including parts and labour).

#### **4. Your equipment**

4.1 If we agree to deliver LPG into equipment that is not Origin Equipment ("your equipment"), we will not be liable to repair or maintain your equipment and you must ensure that you and it meet all applicable Regulatory Requirements and it is safe and maintained in good working order.

4.2 Without breach of this Agreement, we may refuse to deliver LPG into your equipment if it appears un-safe, damaged or non-compliant with a Regulatory Requirement, until you repair or replace it to our satisfaction.

#### **5. Payment and payment terms**

5.1 You must pay the Selling Price for the LPG supplied to you under this Agreement as well as all Fees and any applicable stamp duty or other taxes or duties arising in connection with this Agreement.

5.2 We will issue you with invoices (by "ebill" if stated in the Contract Details) in respect of each delivery of LPG made to your Site, any applicable Fees and any other payments required to be made by you under this Agreement and you agree to pay the invoiced amounts within 21 days of the date of each invoice.

5.3 The Selling Price specified in the Contract Details is based on the costs we incur to supply and deliver LPG. As a result, we may change the Selling Price to the extent that these costs change. We will notify you of changes to the Selling Price in the next invoice after the change. If you would like to know the Selling Price at any time please contact us.

#### **6. Credit check and security deposit**

6.1 You consent to us conducting a credit check on you and you agree that we may require you to provide a security deposit or change your payment terms (including to cash) if we determine that you have a less than satisfactory credit rating or if during the term of this Agreement you do not have a satisfactory payment record.

6.2 We may use your security deposit to offset any amount you owe us if you fail to pay an invoice

by its due date. We will advise you if we use a security deposit.

6.3 We will release the security deposit once all amounts payable to us in connection with this Agreement have been paid in full and this Agreement has ended.

#### **7. Risk in and title to LPG**

7.1 All property and title to LPG supplied to you under this Agreement shall remain with us until you have paid for it. We may repossess LPG you haven't paid for at any time until legal title has passed to you.

7.2 Risk in respect of LPG supplied to you shall pass to you upon delivery of the LPG to the Delivery Point.

#### **8. Risk in and title to Origin equipment**

8.1 All property and title in Origin Equipment (including LPG exchange cylinders) shall remain with us but all risk in the Origin Equipment passes to you at the time of its delivery to or installation at your Site.

8.2 You must ensure that the Origin Equipment is covered by your general property insurance and you must provide us with copies of certificates of currency of insurance in relation to the Origin Equipment upon request.

#### **9. Warranties**

9.1 If you don't own the Site, you warrant that you have obtained the consent of the owner of the Site to the installation of the Origin Equipment.

9.2 You warrant that you have the lawful right to buy and (if applicable) sell LPG under this Agreement.

9.3 Any warranty or guarantee required by law to be incorporated into this Agreement is incorporated. Any warranty or guarantee which can be excluded by law is excluded.

9.4 You warrant and acknowledge that:

(a) we have the right to change the Selling Price in accordance with clause 5.3;

(b) you have the power to execute this Agreement;

(c) you have all authority, approvals and rights needed to perform this Agreement;

(d) you have reviewed the terms of this Agreement and you understand and agree with them.

#### **10. Risk and liability**

10.1 You indemnify us against all claims and Liability we incur or suffer:

- (a) in connection with or arising from the use of the Origin Equipment when located or installed at your Site;
  - (b) in connection with or arising from delivery of LPG by us into your equipment pursuant to clause 4.1, regardless of clause 4.2; and
  - (c) for your breach of this Agreement or any Regulatory Requirement,
- except to the extent directly caused by us or our contractors or agents.

10.2 Unless the law provides something greater, our aggregate Liability in connection with or arising from this Agreement (including as a result of negligence, misconduct or any warranty implied by law including for breach of a consumer guarantee under the Competition and Consumer Act 2010 (Cth)) is limited:

- (a) in respect of anything to do with the Origin Equipment: to replacing, repairing or installing equivalent Origin Equipment (as the case may be); or
- (b) in respect of anything to do with LPG: to delivering replacement LPG.

10.3 Notwithstanding anything else, neither of us will be liable to the other in any circumstances for any Consequential Loss.

## 11. Confidentiality

11.1 Both of us must keep confidential the pricing, volume and performance information relating to this Agreement and other confidential information relating to our respective business' during, and for at least 3 years after, the term of this Agreement. We will not need your consent however, to disclose any such information to our related companies, contractors or agents or in connection with the sale of Origin shares or assets or if we are compelled to disclose it by any Regulatory Requirement or to the extent required to perform a credit check on you.

## 12. Information and privacy

12.1 Both of us must, and must make sure our respective personnel, comply with the Privacy Act 1988 (Cth) in respect of all personal information (as defined in the Privacy Act) that is collected, held, used, disclosed and otherwise handled by either of us in connection with this Agreement and ensure that such personal information is not transferred or able to be accessed by persons outside of Australia without consent.

12.2 We may collect, hold, use and disclose personal information about you or your personnel in

connection with this Agreement. For more information on how we manage personal information see: [originenergy.com.au/privacy](http://originenergy.com.au/privacy).

12.3 We may present you with offers in the future (including after this Agreement ends). If at any time you do not wish us to use, or enable our agents and contractors to use, your personal information for this purpose, please call us on 133 LPG (133 574) or write to Origin Opt Out, Reply Paid 1149, GPO Box 1149, Adelaide, SA, 5001. We will continue to provide you with these offers until you advise otherwise.

## 13. Sale of your business and assignment

13.1 If your business is to be Sold you must inform us at least 60 days in advance so that on-going supply of LPG to the business (after the sale) can be discussed. If on-going LPG supply to your business following any sale cannot be agreed to our reasonable satisfaction, we may terminate this Agreement on the date of the relevant sale of your business.

13.2 We may assign or novate any of our rights and obligations under this Agreement upon giving you written notice. You may not assign or novate any of your rights or obligations under this Agreement without our prior written consent.

13.3 You agree that we may appoint one or more agents or contractors from time to time to exercise some or all of our rights and perform some or all of our obligations under this Agreement.

## 14. Term

14.1 After the Initial Term, unless otherwise agreed in writing, this Agreement will continue until either party elects, by giving 3 months written notice to the other party, to terminate.

## 15. Default

15.1 If you fail to pay an invoice on time, breach an obligation under this Agreement, do not pass a credit check to our satisfaction, fail to provide a security deposit within the time required by us under clause 6, if we cannot get safe access to your Site or you or your personnel act in a hostile or aggressive manner towards us or our contractors or agents, we may issue you with a default notice (**Default Notice**) requiring you to remedy the default:

- (a) within 1 week in respect of your failure to pay an invoice on time or to remedy a safety concern; and
- (b) within 4 weeks in respect of any other default.

During this time, we will not be obliged to deliver LPG or LPG exchange cylinders to you. If you fail to remedy the default in accordance with the Default Notice, we may terminate this Agreement by written notice to you.

15.2 If you are subject to an Insolvency Event, we may immediately terminate this Agreement upon written notice to you.

15.3 If:

(a) we are in breach of an obligation under this Agreement, other than a breach that was caused or contributed to by you, and we do not remedy such breach within 4 weeks of being notified by you to do so; or

(b) we become subject to an Insolvency Event, You may terminate this Agreement by written notice to us.

## **16. Termination – during the initial term**

16.1 If this Agreement terminates for any reason other than for our breach or our insolvency during the Initial Term, you agree to pay to us:

- (a) the Early Termination Installation Cost Reimbursement;
- (b) the Equipment Removal Fee ; and
- (c) all other amounts under this Agreement that may be outstanding at the time of termination.

If you terminate this Agreement for our breach or insolvency (b) and (c) above will apply, but not (a).

16.2 We will prepare and present a final invoice to you with all amounts owing upon termination. You must pay the invoiced amount within 14 days of receiving the invoice.

## **17. Termination – after the initial term**

17.1 If this Agreement terminates after the Initial Term for any reason, you agree to pay to us:

- (a) the Equipment Removal Fee; and
- (b) all other amounts under this Agreement that may be outstanding at the time of termination.

17.2 We will prepare and present a final invoice to you with all amounts owing upon termination. You must pay the invoiced amount within 14 days of receiving the invoice.

## **18. After termination**

18.1 Upon termination of this Agreement for any reason, you agree that we or our contractors or agents may enter your Site to recover the Origin Equipment and any LPG or LPG exchange cylinders and any other Origin property located at your Site.

18.2 Termination of this Agreement shall be without prejudice to any pre-existing or accrued rights or obligations of us or you.

## **19. Partnership and trusts**

19.1 If you are a partner in a partnership, each partner is jointly and severally liable under this Agreement.

19.2 If you enter this Agreement as a trustee, you represent and warrant in your own right and as trustee of the Trust that, as at the date of this Agreement and until such time as all your obligations under this Agreement are discharged:

- (a) you are the sole trustee of the Trust;
- (b) you have the requisite capacity and authority to enter this Agreement on behalf of, and to bind the beneficiaries of, that Trust and to perform all obligations under this Agreement pursuant to the documents governing that Trust; and
- (c) you have the right to be fully indemnified out of the assets of the Trust in relation to this Agreement and the assets of the Trust are sufficient to satisfy all obligations of the Trust under this Agreement.

## **20. Personal property securities act**

20.1 We may apply for any registration, or give any notice, in connection with this Agreement under the PPSA. You consent to such registration or notice and agree to waive your right to receive a verification statement, and agree not to make an amendment demand.

20.2 Except where required by section 275(7) of the PPSA, information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by either party.

## **21. GST**

21.1 All terms that are defined in the GST law have the same meaning in this clause.

21.2 The supplier will add the prevailing rate of GST onto the consideration for any taxable supplies made in connection with this Agreement, and the recipient agrees to pay that GST following the receipt of a tax invoice from the supplier.

21.3 The GST applicable to any taxable supplies made in connection with this Agreement is payable at the same time as the consideration for those supplies.

21.4 Where a party reimburses the other party for an expense or other amount, the reimbursement will be net of any input tax credit the supplier is entitled to claim.

## 22. Excise

22.1 Subject to us being satisfied prior to the sale or supply of any Excisable Goods that you hold at all times the relevant Licences and/or Permissions, we agree to sell and you agree to purchase, the Excisable Goods under the ATO Permissions or a Remission. In these circumstances, we agree not to charge Excise Duty.

22.2 If you do not satisfy the requirements in clause 22.1 or the Remission is reduced (in part or in full), we will charge the appropriate Excise Duty to you which you must pay.

22.3 You indemnify us from any Excise Duty, penalties, interest and other costs incurred by us due to our reliance on any information from you or due to noncompliance by you with any Regulatory Requirements.

## 23. Notices

23.1 A notice under this Agreement is only effective if it is in writing and sent by email or mail to the address specified in the Contract Details.

23.2 A notice is deemed given:

- (a) if sent by email – 24 hours after the email was sent, unless the sender receives an automated message that the email was not delivered or knows the email was not delivered or could not be read;
- (b) if sent by mail – seven Business Days after posting.

## 24. Laws applicable to this agreement

24.1 This Agreement is governed by the laws in force in the State or Territory in which the first Site listed in the Contract Details is located.

## 25. General provisions

25.1 This Agreement supersedes all prior and other negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement.

25.2 Any variation or amendment to this Agreement must be in writing and signed by you and us.

25.3 Clauses 10, 11, 12, 14, 21, 22 and this clause 25.3 survive termination or expiry of this Agreement. Other terms of this Agreement will survive termination or expiry of this Agreement where it is necessary to do so to enable a party to enforce a right accrued on or before termination or expiry.

25.4 It is not necessary for us to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.

25.5 If any part of this Agreement is unlawful, unenforceable or invalid, that part will be treated as removed from the Agreement, but the rest of the Agreement is not affected.

## 26. Definitions

The following definitions apply in this Agreement unless the context requires otherwise.

**Access Date** means the date specified in the Contract Details from which we can enter a Site to install Origin Equipment.

**ATO** means the Australian Taxation Office.

**Consequential Loss** means: i) loss of contract, profit, revenue or anticipated savings; ii) loss of, or damage to, reputation, credit rating or goodwill; iii) loss or denial of opportunity; iv) loss of access to markets; v) overheads and wasted expenditure; vi) financing costs; vii) special, incidental or punitive damages; viii) loss or damage arising from special circumstances that are outside the ordinary course of things; however arising and in respect of any circumstances under or in connection with this Agreement whether made under a Regulatory Requirement, tort, negligence, strict liability, under an indemnity or a warranty, in equity or otherwise.

**Contract Details** means the details attached to these Terms and Conditions.

**Contract Year** means each period of twelve calendar months commencing from the Supply Start Date.

**Delivery Point** means:

- a) for bulk LPG: the point at which LPG passes into either Origin Equipment at your Site or your equipment at your Site (as applicable);
- b) for LPG delivered in exchange cylinders: the agreed location at your Site where we leave the cylinders.

**Early Termination Installation Cost Reimbursement** means an amount to be determined in accordance with the following formula:

Early Termination Installation Cost Reimbursement =  $(OIC / T_m) \times R_m - ICA$

Where: **OIC** is the Origin Installation Costs; **T<sub>m</sub>** is the total number of months in the Initial Term; **R<sub>m</sub>** is the number of remaining months calculated from and including the month of the early termination of this Agreement until the end of the Initial Term; **ICA** is the Installation Contribution Amount.

**Equipment Removal Fee** means our reasonable costs (as determined by us) to enter the Site and remove the Origin Equipment from the Site.

**Equipment Rental Fee** means the amount specified in the Contract Details payable each Contract Year for your use of the Origin Equipment.

**Excisable Good** means goods listed in the schedules of the Excise Tariff Act 1901 (Cth), as amended.

**Excise Duty** means excise duty imposed under the Excise Act 1901 (Cth), the Excise Tariff Act 1921 (Cth), and any other related legislation.

**Fees** means the Installation Contribution Amount, the Equipment Rental Fee, the Equipment Removal Fee and any other amount payable by you under this Agreement (other than the Selling Price).

**GST** has the meaning given in the GST law and GST law means the “A New Tax System (Goods and Services) Tax Act 1999 (Cth).

**Initial Term** means the period commencing on the Supply Start Date and ending after expiry of the period of time specified in the Contract Details as the “Initial Term”.

**Insolvency Event** means you become insolvent, bankrupt or otherwise cease trading or a liquidator, receiver, administrator or similar official is appointed to you or all of your assets or you are otherwise unable to pay your debts as and when they fall due.

**Installation Contribution Amount** means the amount you must pay to us to contribute towards the cost of installing the Origin Equipment at your Site, as specified in the Contract Details.

**Liability** means any loss, damage, liability, cost, charge or expense.

**Licences** means licences issued by the ATO, under the Excise Act 1901 (Cth), for either the storage or manufacture of Excisable Goods.

**LPG** means, as applicable, propane, butane, autogas or aerosol as nominated in the Contract Details.

**Origin Installation Costs** means the costs to Origin, as specified in the Contract Details, for the installation of Origin Equipment at your Site.

**Origin Equipment** means the equipment stated in the Contract Details as being provided or installed by us at your Site and includes any LPG exchange cylinders delivered to the Site under this Agreement.

**Permissions** means permissions issued by the ATO, under the Excise Act 1901 (Cth), for either the movement of Excisable Goods or the periodic settlement of an Excise Duty liability.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Remission** means that Excise Duty has been remitted (in part or in full) under the terms and conditions set out in the Excise Act 1901 (Cth) and related regulations or other related legislation, as amended.

**Regulatory Requirement** means any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction, any rules of a stock exchange and any applicable standards developed and approved by Australian Standards Limited (ABN 85 087 326 690).

**Sold** means to sell, transfer, assign, novate or otherwise dispose of any interest your company or business, whether directly or indirectly, including by share sale, asset sale, sale of the Site, change of “control” (as that term is defined in the Corporations Act 2001 (Cth)) or other disposal with a similar effect.

**Selling Price** means the LPG selling price to you per tonne, litre or cylinder of LPG as specified in the Contract Details (subject to any change notified pursuant to clause 5 of this Agreement).

**Site** means the site location(s) stated in the Contract Details.

**Supply Start Date** means the date of first supply of LPG or LPG exchange cylinders by us to the Site under this Agreement as specified in the Contract Details or, if not specified, as agreed in writing by you and us.

**Trust** means the trust identified in the Contract Details (if applicable).

26.1 To the extent of any inconsistency, the terms of this Agreement are to be interpreted in the following order of precedence:

- (a) the Contract Details;
- (b) any special conditions attached to this Agreement;
- (c) these Terms and Conditions.