

Powerswitch Website: Retailer Terms of Use ('the Terms')

1 The Powerswitch Service

- 1.1 The Powerswitch website (the Website) is owned and operated by Consumer New Zealand ('we', 'us', Consumer NZ).
- 1.2 The Website provides a free, independent price comparison service in relation to residential electricity and/or gas retailers (the Service). We do not participate in the electricity and gas retail space, nor do we act as an agent for any Retailer.

2 Application of these Retailer Terms of Use

- 2.1 These Terms apply to the engagement between Retailers and Consumer NZ in relation to the Service on the Website.
- 2.2 By providing us with any Retailer or pricing information, you are deemed to accept and agree to these Terms. If you agree to these Terms on behalf of a Retailer, that organisation is bound by these Terms.
- 2.3 If you do not agree to these Terms, the Retailer information you provide will not be displayed within the Service.

3 Changes to these Terms

- 3.1 We may periodically update these Terms. When we update the Terms, we will provide you with at least 10 Business Days' prior written notice of any such change by emailing you at the Nominated Email Address. By continuing to allow your information to be displayed in the Service and providing us with information, you are deemed to agree to the updated Terms.
- 3.2 We may change, suspend, discontinue, or restrict access to, the Website without notice or liability.
- 3.3 These Terms were last updated on [*insert date*].

4 Definitions

Some definitions are included within these terms. In addition:

Business Day means a day on which trading banks are open for business in Wellington;

Final Retailer Verification has the definition included within these Terms at 5.2(c);

Generally Available Retail Tariff Plan means a retail tariff plan that a Retailer will make available to any consumer (subject to credit and other eligibility requirements) if the consumer satisfies the requirements specified for the retail tariff plan relating to (i) physical location, (ii) metering configuration and (iii) price category code and has the same definition as outlined in the Electricity Industry Participation Code;

Nominated Email Address means the Retailer's authorised email address that is used for correspondence with Consumer NZ in relation to this Service;

Pricing Plan means a Retailer's residential electricity plan, and where applicable gas pricing plan, that includes tariffs applicable to a user's location, the type of meter at the user's location, and any other criteria relevant to a specific plan, as defined by the Retailer.

Retailer means an organisation which supplies electricity to another person for any purpose other than for resupply by the other person.

Specified Format means the format for sending Pricing Plan information to Consumer NZ, as outlined in these Terms at clause 7.2.

You means both you and the Retailer organisation on whose behalf you have authority to act.

5 Your Obligations as a Retailer

5.1 As a Retailer that provides us with Pricing Plan information, you agree to, and will:

- a Provide us with all the required information on any new or existing Pricing Plan;
- b Ensure that the Pricing Plan information and descriptions provided are complete and correct;
- c Provide Pricing Plan information to Consumer NZ in the Specified Format, as outlined in clause 7.2 of these Terms;
- d Provide Pricing Plan information to Consumer NZ within the required time frame(s) to ensure Consumer NZ can incorporate Pricing Plan information before any price comes into effect (as outlined in further detail in clause 5.2);
- e Only provide Pricing Plan information for electricity and/or gas plans that constitute a Generally Available Retail Tariff Plan;
- f Notify Consumer NZ of any errors it finds in its Pricing Plans listed on the Website and work with us to ensure the errors are corrected as quickly as possible;
- g Comply with all laws, including all advertising and consumer laws; and
- h Check your Pricing Plan information as part of our quarterly Powerswitch pricing plan data confirmation process.

5.2 You will provide Pricing Plan information to Consumer NZ in line with the following timeframes:

- a For amendments to existing Pricing Plans, you will submit the amendments to Consumer NZ in the Specified Format, as outlined at 7.2, as soon as possible and in any case, at least ten (10) Business Days before the amendments are due to take effect.
 - b For new Pricing Plans you are considering developing, you agree to contact the Consumer NZ Powerswitch Manager as soon as practicable, in order to discuss elements of the proposed new Pricing Plan. We will then scope and schedule the changes, if possible, to accommodate the new Pricing Plan. Once the scope of the changes has been ascertained, Consumer NZ will communicate the timeframes for enabling the Pricing Plan to be displayed in the Service.
 - c Where we have updated our internal records to incorporate your new or updated information into the Service, we will request a final confirmation of your Pricing Plan information before we publish the information live on the Service (Final Retailer Verification). You must respond to us as soon as possible to our Final Retailer Verification request and in any event, within five Business Days of our request.
- 5.3 You will provide true, current and complete information in your dealings with us and will promptly update that information as required so that any information we hold about you, the Retailer, or Retailer offerings remains true, current and complete.
- 5.4 You must not act in a way, or use or introduce anything (including any virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Website or any network, system, software, data or material that underlies or is connected to the Website, or otherwise attempt to damage or interfere with the Website or any Consumer NZ system.
- 5.5 You will access the Website via standard web browsers only (unless we have provided you with prior written approval) and not by any other method such as through the use of a robot or spider, automation or any similar data gathering, extraction or monitoring method.
- 5.6 You indemnify us against all loss we suffer or incur as a direct result of your failure to comply with these Terms.

6 Consumer NZ responsibilities:

- 6.1 We will endeavour to compile, verify and load your submitted Pricing Plans onto the Website within the following timeframes:
- a For amendments to existing Pricing Plans, as soon as reasonably practicable and in any instance, within ten (10) Business Days after the updated information has been provided to us with full and correct information in the Specified Format.

- b For new Pricing Plans, within the agreed timeframes as outlined in 5.2(b) of these Terms.
 - c Following receiving confirmation that the Final Retailer Verification information we have provided you is correct, we will push the Pricing Plan information live within two Business Days of receiving your confirmation.
- 6.2 We will acknowledge via return email to the Nominated Email Address upon receipt of any Pricing Plan change request, or a new Pricing Plan request, sent by a Retailer.
- 6.3 For any Pricing Plan changes or new Pricing Plans, we will send the Retailer a request for Final Retailer Verification prior to pushing any changes live on the Website.
- 6.4 Subject to clause 12 (Confidential Information) we will display the Pricing Plans and any agreed descriptions and explanations on the Website. Any descriptions or wording used by Consumer NZ to describe a Retailer's Pricing Plan will be discussed with the Retailer and confirmed by the Retailer prior to it being displayed on the Website. We reserve the right to remove any Retailer information that does not comply with your obligations at clause 5.1.
- 6.5 Where we have received notification of an amendment to an existing Pricing Plan, we will create a flag in relation to that Pricing Plan within the system that will make it clear to users of the Website that there is a change pending.
- 6.6 We will receive any feedback from you in relation to how the Pricing Plan is represented on the Website and make any reasonable changes to ensure the Pricing Plan is represented accurately.
- 6.7 Consumer NZ is the owner of the user experience on the Powerswitch Website and retains final authority on the look and feel of the Powerswitch Website, which includes the format and layout of where and how the Pricing Plan is displayed to Website users. A Retailer may provide Consumer NZ with feedback or suggestions to the Website, which it considers appropriate. Consumer NZ will consider it, but is under no obligation to make the suggested changes.
- 6.8 Consumer NZ will inform Retailers of any proposed material changes (such as changing or adding to the existing functionality) to, and development of, the Powerswitch Website before such changes are made live on the Powerswitch Website.
- 6.9 We will undertake a quarterly confirmation process of the Pricing Plans contained in the Powerswitch model.
- 6.10 We will email all Retailers, which have had Pricing Plans displayed on the Website during a given month, with a Website statistics report for that month, at the beginning of the following month.

7 User Experience and Specified Format

7.1 Retailers acknowledge that Consumer NZ has complete ownership of the user experience on the Powerswitch Website. As such, we have a Specified Format, with the requirements for receiving Pricing Plan information outlined at clause 7.2, for you to provide us with all information that is displayed on the Website.

7.2 The Specified Format is designed to reduce the possibility for informational errors and to ensure Pricing Plan information and updates are displayed on the Website in a timely manner. The current version of the Specified Format can be downloaded here [\[A hyperlink will be provided here which will take user to the standard tariff data provision form on the website\]](#).

Within the Specified Format,

- All values must be GST exclusive;
- The information must be provided for both new Pricing Plans and any updates to existing Pricing Plans;
- The Retailer will submit this information to Consumer NZ in either .csv or an excel worksheet via email to updates@powerswitch.org.nz; and
- Any deviation from the Specified Format or the information required [\[A hyperlink will be provided here which will take user to the standard tariff data provision form on the website\]](#), must be agreed in writing between Consumer NZ and the Retailer.

7.3 Consumer NZ will not accept Pricing Plans with incorrect or missing information or provided in a different format to what is outlined as the 'Specified Format' in clause 7.2 of these Terms. Where pricing information has been supplied to Consumer NZ in an incomplete or incorrect format, we will contact you to work with you to attempt to resolve any issues within reasonable timeframes, given the issues at stake, and ensure the complete information can be supplied in the Specified Format.

7.4 You agree to provide us with accurate content, which has been prepared with all reasonable care. You ensure that all information is legally compliant, factually correct, and will correct anything brought to your attention that needs amending.

7.5 Both parties shall take all care to supply and display information that is true and correct to the best of their ability; however, each party is aware that potential errors can occur and these are to be identified and minimised.

8 Intellectual Property

8.1 All intellectual property will remain the property of the originating party, unless otherwise agreed.

8.2 Consumer NZ owns all proprietary and intellectual property rights in the Website (including all information, data, text, graphics, artwork, photographs, logos, icons, look

and feel and improvements), and any algorithms and underlying systems of the Website.

8.3 We grant you a limited, non-exclusive, non-transferable and revocable licence to use our Website in accordance with these Terms.

9 Disclaimers

9.1 We are dedicated to ensuring the Website is secure and performing well. However, to the extent permitted by law, we have no liability or responsibility to you or any other person for any loss (such as loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs) in connection with:

- a the Website being unavailable (in whole or in part) or performing slowly;
- b any error in, or omission from, any information made available through the Website;
- c any exposure to viruses or other forms of interference which may damage your computer system that you use to access or use the Website; and
- d any site linked from the Website. Any link on the Website to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

9.2 You are responsible for ensuring that you comply with all relevant laws.

10 Liability

10.1 To the maximum extent permitted by law:

- a you provide us with information for the Service at your own risk and assume full responsibility for any loss or damage that results from your engagement with Consumer NZ in relation to the Website and Service; and
- b we are not liable or responsible to you or any other person for any loss or damage (whether direct or indirect) under or in connection with these Terms, the Website, or your access and use of (or inability to access or use) the Website or Service. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

10.2 To the maximum extent permitted by law and only to the extent clause 10.1 of these Terms does not apply, our total liability to you under or in connection with these Terms, or in connection with the Website, or your access and use of (or inability to access or use) the Website, must not exceed NZD1,000.

11 Privacy

- 11.1 Both the Retailer and Consumer NZ will comply with any obligations under the New Zealand Privacy Act 2020 and the Consumer NZ privacy statement, in relation to the provision, collection, use or storage of personal information in connection with the Service.
- 11.2 We may provide tariff data, and any other information included in your Pricing Plan, to third parties such as MBIE, the Electricity Authority and other interested parties. No personal information will be included in any reports supplied to third parties.

12 Confidential Information

- 12.1 Confidential Information means all information (whether written, verbal or electronic) that is disclosed by one party (the Owner) to another party (the Recipient). This includes, without limitation:
- (a) pricing plan information and data, which has not been disclosed to the public, and strategic plans of the Owner;
 - (b) the fact that Confidential Information is being made available to the Recipient;
 - (c) the nature of the Confidential Information; and
 - (d) derivative works that include the Confidential Information.
- 12.2 The Recipient will protect and keep confidential all Confidential Information supplied to it by the Owner in relation to the Service or for future use in the Service. The Recipient will take the same precautions to protect the Owner's Confidential Information as it does to protect its own Confidential Information.
- 12.3 The Recipient will not disclose Confidential Information except: (a) to its employees, contractors, or advisors having a need to know such Confidential Information; (b) in accordance with legal requirements, provided that prior to such disclosure the Recipient shall provide the Owner with written notice and shall comply with any reasonable instructions from the Owner.
- 12.4 The Recipient has no obligation to maintain the confidentiality of information that: (a) it received from another party prior to its receipt from the Owner; (b) the Owner discloses generally without any obligation of confidentiality; (c) is or subsequently becomes publicly available without the Recipient's breach of any obligation owed to the Owner; or (d) is independently developed by the receiving party without reliance upon or use of any Confidential Information.

13 Suspension and Termination

- 13.1 Without prejudice to any other right or remedy available to us, if we reasonably consider that you have materially breached these Terms or we otherwise consider it

appropriate, we may immediately, and without notice, suspend or terminate the Website or your engagement with the Service and access to the Website (or any part of it).

14 General

- 14.1 These Terms, and any dispute relating to these Terms or the Website, are governed by and must be interpreted in accordance with the laws of New Zealand. Where any dispute arises, the Retailer agrees to attempt to first resolve this dispute directly with the Consumer NZ Powerswitch Manager. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Website.
- 14.2 For us to waive a right under these Terms, the waiver must be in writing.
- 14.3 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 14.4 These Terms set out everything agreed by the parties relating to your engagement with Consumer NZ in relation to the Website and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Website that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.