



## CUSTOMER TERMS AND CONDITIONS

### Pennsylvania - Fixed Rate Plan

1901 W. Cypress Creek Rd., Suite 600  
Ft. Lauderdale, FL 33309  
1-866-POWER-99 (8:30 am - 5:30 pm ET)  
Customer Care Fax: 1-877-772-2354  
Email: info@libertypowercorp.com  
www.libertypowercorp.com

"Liberty Power", "us", "we" or "our" means Liberty Power Holdings LLC and refers to the retail electricity provider supplying electricity to you as provided in these Customer Terms and Conditions. "Customer", "you", or "your" means the customer identified in the Voice Authorization or Written Authorization, and as addressed in the Liberty Power Plan Description.

**Entire Agreement:** The voice recording confirming your decision to switch to Liberty Power ("Voice Authorization"), or the signed Energy Services Enrollment Agreement ("Written Authorization"), along with these Customer Terms and Conditions and the Liberty Power Plan Description are your full Agreement ("Agreement") to buy electricity from Liberty Power. They take the place of any and all prior Agreements or oral or written information about your Liberty Power energy supply. Please keep this Agreement for your records. The Plan Description is included in your Liberty Power Welcome Kit and has important information about your Account.

**Rate:** This is a full requirements Agreement. You agree to pay the Rate stated in the Voice or Written Authorization applied to total usage per Account as reported by the Utility each month. For purposes of this Agreement, Rate means the energy price, including congestion, capacity, network transmission, ancillary services, losses, Auction Revenue Rights ("ARR"), Renewable Portfolio Standards (RPS) compliance costs, generation and any other miscellaneous charges (including, but not limited to, ISO/RTO or PUC fees). The Price does not include taxes, regulated charges from the Utility, including, but not limited to, Utility delivery and distribution charges, customer account fees or other Utility transition charges.

**Right of Rescission:** You can rescind (cancel without ETF) this Agreement within three (3) business days from the date of its receipt, by providing written Notice to the Utility or us that you wish to rescind your choice of Liberty Power as your electric energy supplier. You may also call us at 866-769-3799 (866-POWER-99) toll free during normal business operational hours, or fax us a detailed written request to cancel at 877-772-2354.

**Billing:** Liberty Power will bill you monthly for electricity supply based on your electricity usage as reported to us by the Local Distribution Utility ("Utility"). You will be billed under one of these billing options: (1) a line item on a consolidated Utility bill; or (2) as a direct bill from Liberty Power for the electricity supply only, with the delivery charges invoiced separately by the Utility. You will be sent a monthly invoice which is payable by check, credit or debit card or Electronic Funds Transfer ("EFT") by the due date on the invoice.

**Payment Instructions for Direct Billed Accounts:** Bills are due and payable by the stated due date on the invoice and will be subject to a finance charge for any late payment (at the lesser of 1.5% per month of the outstanding balance or the maximum rate permitted by applicable law) and collection fees, including reasonable attorneys' fees and court costs. A fee of \$30 per transaction will be assessed due to insufficient funds for any method of payment. All direct payments should be sent to Liberty Power, 14154 Collections Center Drive, Chicago, IL 60693.

**Collection of Past Due Charges:** Liberty Power will pass through to you all charges related to the collection of past due invoices, including, but not limited to, collection agency fees, legal and court fees, and Account termination fees. Liberty Power reserves the right to apply any deposit to balances owed at the time your Account is placed in a collections status.

**Term and Automatic Renewal:** The term of this Agreement is as stated in the Voice or Written Authorization. You will receive a

reminder Notice of your upcoming Term expiration between fifty-two (52) and ninety (90) days in advance of expiration and a second options Notice at least forty-five (45) days in advance. If you do not cancel service or renew on a new Liberty Power plan at the end of your Term, service will automatically continue with Liberty Power on a Default Variable rate which will renew monthly unless you or Liberty Power cancel, upon thirty (30) days written Notice, or as otherwise applicable in this Agreement. The Terms and Conditions applicable to the Liberty Power Rollover Variable Plan will be made available to you via mail or Web site (www.libertypowercorp.com) approximately ninety (90) days prior to the end of the Term. Cancellation must be in writing and mailed to Liberty Power Customer Care Team at 1901 W. Cypress Creek Rd., Suite 600, Ft. Lauderdale, FL 33309.

**Credit/Security Deposit:** In completing this Agreement, you authorize credit-reporting agencies to provide Liberty Power with any information it may have on you or your business. Liberty Power may require a security deposit to initiate service, depending on credit or payment history. Any deposit requirement will be sent to you in writing. Deposits held more than thirty (30) days will accrue interest, at the Wall Street Journal Prime Rate, from the date of receipt.

**Dispute Resolution:** Liberty Power's Customer Care Team is available at 866-769-3799 to help with any questions or concerns regarding your Account(s). Our representatives are committed to resourcefully finding resolution; however, if the dispute cannot be settled within 120 days of receipt of written notification, either party may present the dispute to a venue of competent jurisdiction for review such as small claims court, mediation, arbitration, etc. You may also contact the Pennsylvania Public Utility Commission ("PUC") Utility Choice Hotline at 1-888-537-7431 or write to the PUC at PO Box 3265, Harrisburg, PA 17105-3265.

**Termination of Service:** Liberty Power may terminate service for any Event of Default that you incur. You will then receive electricity supply from the Utility or will be given the opportunity to choose a different electricity provider, based on the rules of the local Utility. You will be responsible to pay for electricity consumed before service was terminated, as well as any applicable Early Termination Fee ("ETF") as described below.

You may terminate this Agreement by giving Liberty Power at least forty-five (45) days written Notice. Your termination of this Agreement prior to the expiration of the Term constitutes an Event of Default and will result in an ETF.

Liberty Power calculates the ETF using a formula based on the amount of usage remaining in the Agreement ("Remaining Quantity" based on historical usage) times the Rate in this Agreement ("Agreement Rate") minus the current Market Price ("Market Price") per kWh, which in no event will be less than \$0.007 per kWh.

**Remaining Quantity X the greater of:**

- (a) **(Agreement Rate) – (Market Price)**
- or
- (b) **(\$0.007)**

(NOT APPLICABLE TO RESIDENTIAL SERVICE)

The Early Termination Fee will be waived if you provide satisfactory documentation to us demonstrating that you have moved or the business has been closed, moved or sold.

**Account Drops:** If you decide to drop one or more of the Accounts from this Agreement, you will be liable to Liberty Power for an Account Drop Fee for each Account dropped. The Account Drop Fee will be calculated in the same way as the Early Termination Fee and prorated according to the usage applicable to the Account(s) dropped.

**Meter Equipment:** Liberty Power does not take ownership of your existing metering equipment. While you have an electricity Agreement with Liberty Power, we have the right to install new metering equipment, at Liberty Power's expense.

**Disconnection of Service:** Only the local Utility has the ability to disconnect your service. Failure to make full payment of the charges due will be grounds for disconnection based on Pennsylvania law.

**Events of Default:** A Customer Event of Default means: (a) your failure to make, when due, any payment required by this Agreement; or (b) the failure to take electric supply when delivered under terms of this Agreement unless remedied within ten (10) Business Days following written Notice; or (c) the significant downgrading of your credit rating since the Effective Date of this Agreement; or (d) tampering or disconnecting of your electric meter which may cause or may reasonably be expected to cause an inaccurate reading or no reading of the usage data provided by the meter; or (e) a breach of any material provisions in this Agreement.

A Liberty Power Event of Default means the failure to fulfill the material obligations of this Agreement with regard to Rate, Term, and the supply of agreed usage volume if not remedied within ten (10) business days after giving Notice.

An Event of Default is applicable to either party who files a petition for bankruptcy, or other action under any bankruptcy or similar law for the protection of creditor, if the petition or other action is not withdrawn or dismissed within twenty (20) business days of its filing.

**Remedies for Customer Event of Default:** In the event of a Customer Event of Default, Liberty Power has the right to terminate this Agreement in accordance with the Termination of Service provision. In place of termination, we may require an additional deposit from you or request advance payment of an amount up to the average historical consumption for the last three (3) month period.

**Material Misrepresentation:** This Agreement may be terminated in accordance with the Termination of Service Provision in the event you make a Material Misrepresentation in order to induce us to enter into this Agreement. For purposes of this Agreement, a Material Misrepresentation is any fact provided by you, that we relied upon in agreeing to the Rate, Term or service in this Agreement, and the fact is later found to be false, and which if known to be false, that we would not have entered into this Agreement, or would have entered into this Agreement under different Rate, Term or other service conditions.

**Electric Emergencies and Power Quality:** The Utility will continue to operate the electric transmission lines and be responsible for power outages and quality. You will hold Liberty Power harmless in the event of a loss of power caused by any entity other than Liberty Power. If you have an electrical emergency, power outage, or reduction in power quality, contact the Utility at its emergency number on your invoice.

**Material Change:** Except as provided in the Change in Law provision below, Liberty Power will provide you with forty-five (45) calendar days advance written Notice of any Material Change in the Customer Terms and Condition, either in your invoice or in a separate mailing. The changes will become effective on the date stated in the Notice unless you cancel your Agreement. You may cancel the Agreement no later than ten (10) calendar days before the effective date of the Material Change.

**Governing law:** This Agreement and the rights and duties of both parties are governed by the laws of the state of Pennsylvania.

**Change in Law:** If there is a change in law, regulation, or any fees or costs imposed by a governmental authority or the regional Independent System Operator ("ISO") ("Change in Law") and the change causes Liberty Power to incur operating or other costs or expenses related to the services in this Agreement, in order to maintain the same level and quantity of delivery of electric energy, these costs will be added to your invoice as a pass-through charge and you agree to pay the pass-through charge. This provision shall also apply to any increased costs associated with the Utility changing to a new ISO with a different costing structure.

**Notices:** All Notices and correspondence will be in writing and delivered to you and Liberty Power, as applicable, by regular mail, courier, electronic mail, or facsimile. Notice will be effective upon receipt by the person to whom it is addressed.

**Assignment:** Assignment of this Agreement, without the prior written consent of the other party, is limited to the following: (a) Liberty Power may assign Accounts, revenues and proceeds, or grant a lien against them, to credit providers. These credit providers may directly enforce Liberty Power's rights under this Agreement and may, upon foreclosure, assign Liberty Power's rights under this Agreement; and (b) Liberty Power may also assign its rights and obligations under this Agreement to service providers for services such as invoicing and power scheduling; and (c) you will have the right to assign this Agreement to an entity controlled by, controlling, or under common control with, Customer.

**Force Majeure:** Force Majeure means an event or circumstance not reasonably within the control of, or due to the negligence of, Liberty Power, including without limitation acts of God, accidents, strikes, labor disputes, required maintenance work, inability to access the Utility system, nonperformance of the Utility, cuts to service lines, or Changes in Laws, rules, regulations, practices or procedures of any governmental authority or any other cause beyond the reasonable control of Liberty Power. Liberty Power will endeavor in a commercially reasonable manner to provide service, but cannot guarantee a continuous supply of electrical energy. Force Majeure events may result in interruptions in service. Please be aware that Liberty Power does not produce, transmit or distribute electricity and will not be liable for any damages for interruptions in service.

**Indemnity:** Each party to this Agreement shall indemnify, defend and hold harmless the other from and against any claims arising from or out of any event, circumstance, act or incident that the indemnifying party caused due to its negligence, willful misconduct, strict liability, or any action or inaction which gives rise to any liability.

**Representations and Warranties:** The electricity supplied by Liberty Power under this Agreement will be purchased from a variety of sources. Liberty Power makes no representations or warranties other than those expressly stated in this Agreement. Liberty Power expressly disclaims all other warranties, express or implied, including warranties of merchantability, conformity to models or samples, and fitness for a particular purpose.

**Limitations of Liability:** Liability for damages not related to Force Majeure will be limited to direct actual damages. Neither party will be liable to the other for consequential, incidental, punitive, exemplary or indirect damages, including lost profits or penalties of any nature, which are hereby waived, whether or not there was actual knowledge of such possible damages, or if such damages could have been reasonably foreseen. These limitations apply without regard to the cause or responsibility of any liability or damage.

**Service Interruption:** Liberty Power is not liable for any damages due to an interruption in service caused by acts of any governmental authority, or any ISO, or Changes in Laws, rules, regulations, practices or procedures of any such entity.