

MIDSTREAM ELECTRICAL SUPPLIES (PTY) LTD

CREDIT CONTROL AND METERING BY-LAWS

TABLE OF CONTENTS

1. DEFINITIONS
2. GENERAL PROVISIONS
 - 2.1 Notices and documents
 - 2.2 Compliance with notices
 - 2.3 Authentication of documents
 - 2.4 Full and final settlement of an amount
 - 2.5 Interest on overdue accounts
 - 2.6 Prima Facie Evidence
3. TARIFFS AND FEES
 - 3.1 Copy of tariffs and fees
 - 3.2 Availability charges and other fixed charges
 - 3.3 Deposits
4. POWER OF MES TO RECOVER COSTS
 - 4.1 Payment of charges
 - 4.2 Dishonored payments
 - 4.3 Legal Fees
 - 4.4 Cost to remind debtors of arrears
 - 4.5 Disconnection fees
 - 4.6 Accounts
5. SERVICE AGREEMENT
6. ARREARS COLLECTION
 - 6.1 Credit Control Policy
 - 6.2 Power to restrict or disconnect supply of utility services
 - 6.3 Power of Entry and Inspection (Right of access to property)
 - 6.4 Reconnection of utility services
7. RELAXATION, WAIVER AND DIFFERENTIATION
8. REPORTING OF DEFAULTERS
9. REPEAL OF THE CREDIT CONTROL BY-LAWS OF MES
10. OFFENCES
11. NON-LIABILITY OF THE SERVICE AUTHORITY AND MES
12. METERING
13. ACCURACY OF METER
14. READING OF METERS
15. CALCULATION OF ESTIMATED ACCOUNT
16. CONFLICTION BY-LAWS

1. DEFINITIONS

For the purpose of these by-laws, unless the context indicates otherwise –

"Apparatus" includes a building, structure, pipe, pump, wire, cable, meter, machine or any fitting.

"Billing" means proper formal notification (invoicing) on a statement to each customer of amounts levied for utility services and the net accumulated balance of the account.

"Conventional meter" means a meter in respect of which an account is issued subsequent to the consumption.

"Credit Control" means all the functions relating to the collection of monies owed by users of utility services.

"Customer Management" means the focusing on the client's needs in a responsive and proactive way to encourage payment, thereby limiting the need for enforcement.

"Customer" means any occupier of any premises to which MES has agreed to supply or is actually supplying utility services, or if there is no occupier, then the owner of the premises.

"**Defaulter**" means those persons owing MES in respect of service charges for a period of more than 45 (forty-five) days from date of account.

"**Duly authorised official / officer**" means a person appointed by MES to manage, *inter alia*, MES's financial administration and debt collection of MES's debtors.

"**Interest**" calculated at a rate determined by MES on all service levies in arrears.

"**MES**" means Midstream Electrical Supplies (Pty) Ltd (nr 2003/018629/07) which may, for the purposes of these Conditions, also be the service authority;

"**MES Account**" shall include levies or charges in respect of the following utility services:

- (a) Electricity consumption
- (b) Water consumption
- (c) Gas consumption
- (d) Sewerage services
- (e) Warm water consumption
- (f) Standby generator
- (g) Interest.

"**Occupier**" means any a person who occupies any premises or part thereof, without regard to the title under which he or she occupies.

"**Owner**", in relation to immovable property, means the person registered in the office of the Registrar of Deeds as the owner of the property and includes-

(a) in the case of leased immovable property -

- (i) the lessee in whose name the lease is registered in the office of the Registrar of Deeds;
- (ii) the lessee if the immovable property is leased for a period of not less than ten years, whether or not the lease is registered in the office of the Registrar of Deeds; or
- (iii) the occupier if the immovable property is beneficially occupied under a servitude or right analogous to servitude;

(b) in the case of -

(i) a deceased owner or an insolvent owner who has assigned his or her estate for the benefit of his or her creditors, has been placed under curatorship by order of court or is a company being wound up or under Judicial management, the person in whom the administration of the property is vested as executor, administrator, trustee, assignee, curator, liquidator or Judicial manager, as the case may be; or

(ii) an owner who is absent from the Republic of South Africa or whose address is unknown to MES, the person who as agent or otherwise receives or is entitled to receive the rent in respect of the property; and

(c) if MES is unable to determine who the owner is, the person who is the beneficial user of the property, which person is deemed to be the owner to the exclusion of the person in whom is vested the legal title to the property;

"**Point of supply**" means the point determined by the engineer at which utility services are supplied to any premises by MES

"**Premises**" any land or any building or structure above or below ground and includes any vehicle, aircraft, vessel or any other movable structure;

"**Service authority**" means MES;

"**Tariff**" means MES's tariff of charges for the supply of services;

"**Utility Services**" those services on the MES account for which payments is required, which include but not limited to:

- (a) Electricity consumption
- (b) Water consumption
- (c) Gas consumption
- (d) Sewerage services
- (e) Warm water consumption
- (f) Standby generator
- (g) Services to common areas

Headings and titles

The headings and titles in these Conditions do not affect the interpretation of the Conditions.

2. GENERAL PROVISIONS

2.1 Notices and Documents

- (a) A notice or document issued by MES in terms of these by-laws shall be deemed to be duly issued if it is signed by an officer authorized by MES.
- (b) If a notice is to be served on a person in terms of these by-laws, such service shall be effected by:
- (i) delivering the notice to him or her personally or to his or her duly authorised agent;
 - (ii) by delivering the notice at his or her residence or place of employment to a person apparently not less than sixteen years of age and apparently residing or employed there;
 - (c) if he or she has nominated an address for legal purposes, by delivering the notice to such an address;
 - (d) registered or certified post addressed to his or her last known address;
 - (e) in the event of a body corporate, by delivering it at the registered office or the business premises of such body corporate;
 - (f) if service cannot be effected in terms of paragraphs (b) to (e) by affixing it to the principal door of entry to the premises, or placing it to a conspicuous place on the land to which it relates.

2.2 Compliance with notices

Any person on whom a notice duly issued or given under these Conditions is served must, within the time specified in the notice, comply with the terms of the notice.

2.3 Authentication of documents

- (a) Every order, notice or other document requiring authentication by MES shall be sufficiently authenticated, if signed by the Financial Manager or by a duly authorized officer of MES; such authority being conferred by resolution of MES or by a by-law or regulation.
- (b) Delivery of a copy shall be deemed to be delivery of the original.

2.4 Full and final settlement of an amount

- (a) MES shall be at liberty to appropriate monies received in respect of any of its utility services it deems fit.
- (b) Where the exact amount due and payable to MES has not been paid in full, any lesser amount tendered to and accepted by any MES employee shall not be deemed to be in final settlement of such an amount.
- (c) The provisions in 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.

2.5 Interest on overdue accounts

MES may charge interest on overdue accounts at a rate determined from time to time by MES.

2.6 Prima Facie Evidence

A certificate reflecting the amount due and payable to MES, under the hand of the Financial Manager, or suitably qualified person authorized by the Financial Manager, shall upon mere production thereof be accepted by any court of law as prima facie evidence of the indebtedness.

3. TARIFFS AND FEES

3.1 Copy of tariffs and fees

Copies of the schedule of charges and fees may be obtained at the offices of MES during office hours at the prescribed fee.

3.2 Availability charges and other fixed charges

Availability charges as determined from time to time by MES agreed upon between MES and the HOA.

3.3 Deposits

MES reserves the right to require that the consumer deposit a sum of money in payment of any charges that are due or may become due to MES. The deposit must not be regarded as payment or part-payment for any accounts due for the supply of utility services or for the purpose of obtaining a discount provided for in any tariff referred to in these terms and conditions. On cessation of the supply of utility services, the amount of the deposit, free of interest, less any payments due to MES, must be refunded to the consumer. The amount of the deposit is determined by MES from time to time and may be increased if necessary.

4. POWER OF MES TO RECOVER COSTS

4.1 Payment of charges

(1) The consumer is liable for all utility services supplied, whether metered or unmetered, to his or her premises at the prescribed tariff, a copy of which is obtainable from MES during normal office hours at the prescribed fee.

(2) MES must render an account for the amount payable on a regular basis to the consumer. MES must provide on the account all information (meter readings, dates, etc) on which the account is based.

(3) All accounts are deemed payable on or before the due date reflected on the account and, on the consumer's failure to pay, MES must notify the consumer and eventually disconnect the supply of utility services to the premises of the consumer. The account as issued is considered the first notification of the amount payable.

(4) An error or omission on any account from MES or failure by MES to render an account does not relieve the consumer of the obligation to pay the amount due for utility services supplied to the premises. The onus is on the consumer to ensure that the account rendered is in accordance with the prescribed tariff of charges for utility services supplied to the premises.

(5) Where a duly authorised official has visited the premises to disconnect or audit the supply for the purposes of subsections (1) and (3), the official may not be obstructed or prevented from effecting the disconnection or audit. The prescribed fee must be paid by the consumer for each visit necessary for the purpose of the disconnection or audit.

(6) After a consumer's utility services supply has been disconnected owing to non-payment of an account or owing to a contravention of any provision of these Conditions or any other related conditions, the consumer must pay the prescribed fees and any amounts due before a reconnection can be made.

(7) If a person uses utility services without entering into an agreement with MES, he or she is liable for the cost of the utility services used. This cost must be determined according to the appropriate tariff and the consumption since the last account in accordance with the latest agreement applicable to the premises.

4.2 Dishonored payments

Where any payment made to MES is later dishonoured by the bank, MES may levy such costs and administration fees against an account of the defaulting debtor in terms of the Council's tariff provisions.

4.3 Legal Fees

All legal costs, including attorney-and-own-client costs incurred in the recovery of amounts in arrears shall be levied against the arrears account of the debtor.

4.4 Cost to remind debtors of arrears

For any action taken in demanding payment from the debtor or reminding the debtor, by means of telephone, fax, email, letter or otherwise, that his/her payments are due, a penalty fee may be levied against the account of the debtor in terms of MES's tariff provisions.

4.5 Disconnection fees

Where any service is disconnected as a result of non-compliance with these by-laws by the customer, MES shall be entitled to levy and recover the standard disconnection fee as determined by MES from time to time from the user of the utility services.

4.6 Accounts

MES may –

- (a) consolidate any separate accounts of persons liable for payments to MES;
- (b) credit any unspecified payment by such a person against any account of that person; and
- (c) implement any of the debt collection and credit control measures provided for in these by-laws in relation to any arrears on any of the accounts of such a person.

5. SERVICE AGREEMENT

5.1 No supply of utility services shall be given unless and until application has been made and a service agreement, in MES's prescribed form has been entered into and a deposit as determined by MES from time to time, has been paid in full.

5.2 Termination of the utility services agreement must be in writing to the other party of the intention to do so.

6. ARREARS COLLECTION

6.1 Credit Control Policy

The Council shall have a written policy on credit control and debt collection which provides for:

- (a) credit control procedures and mechanisms
- (b) debt collection procedures and mechanisms
- (c) provision for indigent debtors that is consistent with its tariff policies and any national policy on indigents
- (d) interest on arrears
- (e) extensions of time for payment of accounts

- (f) termination of utility services or the restriction of the provision of utility services when payments are in arrears
- (g) in determining its policy MES may differentiate between categories of persons, clients, debtors and owners as it may deem appropriate.

6.2 Power to restrict or disconnect supply of utility services

- (a) MES may, restrict or disconnect the supply of water, gas and electricity, or discontinue any other service to any premises whenever a user of any service:
 - (i) fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any amount for utility services;
 - (ii) fails to comply with a condition of supply imposed by MES;
 - (iii) obstructs the efficient supply of electricity, water, gas or any other utility services to another customer;
 - (iv) supplies such service to a customer who is not entitled thereto or permits such service to continue;
 - (v) causes a situation which in the opinion of MES is dangerous or a contravention of relevant legislation;
 - (vi) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act no 24 of 1936;
 - (vii) If an administration order is granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944) in respect of such user,
- (b) MES shall reconnect and or restore full levels of supply of any of the restricted or discontinued utility services only after the full amount outstanding and due, including the costs of such disconnection and reconnection, if any, have been paid in full or any other condition or conditions of MES's Credit Control Policy as it may deem fit have been complied with.
- (c) The right of MES to restrict water to any premises or customer shall be subject to the provisions of section 4 of the Water Services Act, 108 of 1997.
- (d) The right to restrict, disconnect or terminate service due to non-payment for any other service or assessment rate shall be in respect of any service rendered by MES, and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into agreement for supply of utility services with MES and the owner are different entities or persons, as the case may be.

6.3 Power of Entry and Inspection (Right of access to property)

- (a) A duly authorized representative of the Council may for any purpose related to the implementation or enforcement of these by-laws, at all reasonable times or in an emergency at any time, enter premises, request information and carry out such inspection and examination as he or she may deem necessary, and for purposes of installing or repairing any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.
- (b) If the Council considers it necessary that work be performed to enable an officer to perform a function referred to in (a) above properly and effectively, it may-
 - (i) by written notice require the owner or occupier of the premises at his or her own expense to do specified work within a specified period; or
 - (ii) if in its opinion the situation is a matter of urgency, without prior notice do such work or cause it to be done at the expense of the owner.
- (c) If the work referred to in (b) above is carried out for the sole purpose of establishing whether a contravention of these by-laws has been committed and no such contravention has taken place, the Council shall bear the expense connected therewith together with that of restoring the premises to their former condition.

6.4 Reconnection of utility services

MES shall authorize the reconnection of utility services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to MES's Credit Control Policy.

7. RELAXATION, WAIVER AND DIFFERENTIATION

- 7.1** MES may differentiate between different users of utility services, customers, debtors, services, service standards and other matters.
- 7.2** MES may, in a specific instance and for a particular owner or customer, relax or waive in writing the requirements of a provision of these by-laws.
- 7.3** Any such differentiation or relaxation shall be upon such conditions as it may deem fit to impose, if it is of the opinion that the application or operation of that provision in that instance would be unreasonable.

8. REPORTING OF DEFAULTERS

MES may in its discretion through a duly delegated officer report such persons that owe MES monies to bodies that collate and retain such information. The information that would be included in such a report shall be the available personal information of the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal person.

9. REPEAL OF THE CREDIT CONTROL BY-LAWS OF MES

The provisions of any by-law relating to the control of credit by MES are hereby repealed insofar as they relate to matters provided for in these by-laws; provided that such provisions shall be deemed not to have been repealed in respect of any such by-law which has not been repealed and which is not repugnant to these by-laws on the basis as determined by the relevant by-laws.

10. OFFENCES

10.1 A person who –

- (a) fails to give the access required by an officer in terms of these by-laws;
- (b) obstructs or hinders an officer in the exercise of his or her powers or performance of functions or duties under these by-laws;
- (c) uses or interferes with the equipment of MES or consumption of utility services supplied;
- (d) tampers or breaks any seal on a meter or on any equipment belonging to MES, or for any reason as determined by MES that causes a meter not to properly register the service used, shall be charged for usage, estimated by MES based on average usage;
- (e) fails or refuses to give an officer such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;
- (f) contravenes or fails to comply with a provision of these by-laws;
- (g) fails to comply with the terms of a notice served upon him or her in terms of these by-laws; shall be guilty of an offence and liable upon conviction to a period not exceeding six months of community service or a fine not exceeding R20,000, or a combination of the aforementioned.

11. NON-LIABILITY OF THE SERVICE AUTHORITY AND MES

The service authority and MES are not liable for any loss or damage, direct or consequential, suffered or sustained by a consumer as a result of or arising from the cessation, interruption or discontinuance of the supply of utility services, unless the loss or damage is caused by negligence on the part of the service authority or MES.

12. METERING

- (1) MES must, at the consumer's cost in the form of a direct charge or prescribed fee, provide, install and maintain appropriately rated metering equipment at the point of metering for measuring the electricity consumed. Such metering equipment remains the property of MES.
- (2) The electricity used by a consumer during a metering period must be determined by the reading of the appropriate meter or meters that are supplied and installed by MES and read at the beginning and end of the period. If a meter cannot be read or if metering equipment is found to be defective, the consumption must be estimated.
- (3) Where the electricity used by a consumer is charged at different tariffs, the consumption must be metered for each tariff. Adequate metering equipment must be installed on application by and for the account of the consumer.
- (4) The engineer reserves the right to meter the supply to blocks of shops and flats, tenement houses and similar buildings for the buildings as a whole, or for individual units, or for groups of units.
- (5) No alterations or additions or electrical connections of any description may be made on the supply side of the meter by the consumer.

13. ACCURACY OF METERING

- (1) A meter must be presumed conclusively to be registering accurately if its error, when tested in the manner prescribed in subsection (5), is found to be within the limits of error laid down. If any of the seals of the meter are found to be broken, the meter is deemed to have been tampered with.
- (2) MES has the right to test its metering equipment. If it is established by a test or otherwise that the metering equipment is defective, MES must, in accordance with the provisions of subsection (6) adjust the account rendered.
- (3) The consumer is entitled to have the metering equipment, which is sealed according to MES's standards, tested by MES on payment of the prescribed fee to MES. If the metering equipment is found not to comply with the system accuracy requirements, an adjustment in accordance with the provisions of subsections (2) and (6) must be made and the fee must be refunded.
- (4) In case of a dispute, the consumer has the right at his or her own cost to have the metering equipment in dispute tested by an independent testing authority accredited by the South African Accreditation System, and the result of the test is final and binding on both parties, and the cost of the testing is non-refundable.
- (5) When an adjustment is made to the electricity consumption registered on a meter in terms of subsection (2) or (3), the adjustment must be based either on the percentage error of the meter as determined by the test referred to in subsection (4) or on a calculation by the engineer from consumption data in his or her possession. Where applicable and where possible,

due allowance must be made for seasonal or other variations that may affect the consumption.

(7) When an adjustment contemplated in subsection (5) is made, the adjustment may not apply to a period exceeding three years preceding the date on which the metering equipment was found to be inaccurate.

(8)(a) Prior to MES making any upward adjustment to an account in terms of subsection (5), the engineer must —

- (i) notify the consumer in writing of the monetary value of the adjustment to be made and the reasons for the adjustment;
- (ii) in the notice, provide sufficient particulars to enable the consumer to submit representations on the adjustment; and
- (iii) in the notice, call on the consumer to provide the engineer with reasons, if any, in writing why the consumer's account should not be adjusted as notified, and these reasons must be submitted to the engineer within 21 days or within a longer period that the engineer may permit.

(b) The engineer must consider any reasons provided by the consumer in terms of subsection (8)(a) and must, if satisfied that a valid case exists, adjust the account accordingly.

(c) Should the consumer fail to make any representations during the prescribed period or should the engineer not be satisfied that a case exists for the variation of the account, MES is entitled to adjust the account as notified in terms of subsection (8)(a)(i).

14. READING OF METERS

(1) Unless otherwise prescribed, meters must be read at fixed cycles of approximately one month, and the fixed or minimum charges due in terms of the tariff must be assessed accordingly. MES is not obliged to effect any adjustments to the charges.

(2) If for any reason the meter cannot be read, MES may render an estimated account. The consumption must be adjusted in a subsequent account according to the consumption actually used.

(3) When a consumer vacates a property and a final reading is not available, MES must make an estimation of the consumption and render the final account accordingly.

(4) If a special reading of the meter is desired by a consumer, the consumer may obtain the reading from MES on payment of the prescribed fee.

(5) If any calculation, reading or metering error is discovered in respect of any account rendered to a consumer, MES must correct the error in subsequent accounts. In respect of any such corrected accounts -

(a) the correction must apply only to accounts for a period of three years preceding the date on which the error in the accounts was discovered;

(b) the amount of the corrected accounts must be free of interest up to the date on which the correction is found to be necessary; and

(c) the amount of the corrected accounts must be based on the actual tariffs applicable during the period in question.

(6) No person may influence or try to influence or interfere with the metering process.

15. CALCULATION OF ESTIMATED ACCOUNT

(1) Where a meter is found to have ceased registering correctly, MES must repair or replace the meter as soon as possible.

(2) Where a meter has been replaced or repaired in accordance with subsection (1), MES must estimate the quantity of consumption that is to be paid for by the consumer, unless it can be proved to the satisfaction of the engineer that a lesser or greater quantity has been consumed. MES's estimate must be for the period from the date of the last reading of the meter prior to the meter's repair or replacement and must be based on the following:

(a) The average monthly consumption on the premises served by the meter during the three months prior to the last registration;

(b) the consumption on the premises for the corresponding months of the previous year; or

(c) the average monthly consumption on the premises served by the meter over a period of three successive months after the repair or replacement of the meter.

16. CONFLICTION BY-LAWS

If there is any conflict between these by-laws and any other by-laws of MES these bylaws will prevail.