



Code of Conduct for Retail Electricity Sales

Updated August 2018

INTRODUCTION

Purpose

The purpose of this Code is to specify standards and conditions for the marketing of energy including dispute and complaint resolution. Nothing in this Code will prevent or limit retail participants from continuing to fully compete with one another in the ordinary course of business.

The **Code** applies to:

- **retail participants;**
- all domestic **consumers of energy;**
- for electricity purposes, small business **consumers**, who consume less than 100MWh of electricity per year; and
- for gas purposes, small business **consumers**, who consume less than 1000GJ of natural gas or LPG per year.

Objectives

The **Code** will:

- protect **consumers** and promote **consumer** confidence in the retail **energy** industry by identifying high standards of behaviour for **marketing energy;**
- promote honesty, fairness and disclosure of information to **consumers;**
- reinforce that energy retail **contracts** are made with informed customer consent.

Voluntary Code

Adherence to this **Code** is by voluntary participation of **retail participants**. The **Code** is not enforceable by any industry, statutory or regulatory body. If and when any **retail participant** no longer wishes to be bound by the Code it shall give notice (in writing or email) to the other **retail participants** and to the Administrator, and it shall no longer be a **retail participant** for the purposes of this Code effective immediately on receipt by the other **retail participants** and the **Administrator** or whenever stated in the notice (whichever is the later).

Relevant Legislation & Law

This **Code** supplements and shall not limit any rights a **consumer** or a **retail participant** may have under the **relevant legislation** or any other legislation or at law, and does not affect any rights a **consumer** or a **retail participant** may have to seek redress through the court system, tribunal or other public or private dispute resolution mechanism.

Commencement

This **Code**, which will take effect from 1 September 2018, replaces the 22 October 2010 version of this Code.

Amendment to this Code

This **Code** may be amended by the agreement of 80% of the **retail participants**. For the purposes of this provision a parent company and its subsidiaries count as a single **retail participant**.

The **Code** will not be amended until **retail participants** have had a reasonable opportunity to make representations on any proposed amendments and those representations have been considered by the **retail participants**. All such representations shall be provided in writing to the **Administrator** who will circulate them to the **retail participants** as a group for consideration. Following this consideration, if the retail participants agree to amend this **Code**, then the **Administrator** shall incorporate the amendment into the **Code** and circulate the revised **Code** to the **retail participants**.

Administrator

The **Administrator** will be responsible for the administration of this **Code**. This will include keeping the list of **retail participants** updated to reflect those **retail participants** which agree to be bound by the **Code**, circulating proposed amendments to the **Code** to the **retail participants** and, where amendments are agreed, updating the **Code** to reflect them and providing the updated **Code** to the **retail participants**.

The **Administrator's** reasonable costs of administering the **Code** will be shared equally between the **retail participants**. The Administrator will invoice the retail participants monthly where reasonable fees are incurred.

The **Administrator's** contact details are as follows:

ERANZ
PO Box 25596, Featherston Street
Wellington 6146

info@eranz.org.nz

The **Administrator** may be changed by the agreement of 80% of the **retail participants**. For the purposes of this provision a parent company and its subsidiaries count as a single **retail participant**.

1 Marketing Representatives - Training

Retailers shall provide initial and ongoing training of *marketing representatives* to ensure all representatives understand and comply with this **Code** and maintain their understanding and compliance. In their training *retailers* will provide information on and examples of:

- the principles of *consumer* protection laws, including the relevant sections of the *relevant legislation*;
- what is misleading and deceptive conduct, unsubstantiated and false representations, and unfair trading practices (including what is coercion and harassment).

To the extent that it is relevant to the job or tasks undertaken by *marketing representatives*, *retailers* will ensure training (ie giving information and examples about) to *marketing representatives* covers the following:

- the arrangements for competition in the energy industry in New Zealand (and that training enables *marketing representatives* to explain this clearly to *consumers*);
- a *consumer's* right to freely choose a *retailer*;
- product knowledge, including:
 - o tariffs, billing procedures, payment options, discounts;
 - o eligibility requirements for the Low Fixed Charge Tariff Option;
 - o knowledge of policies for vulnerable consumers and medically dependent consumers; and
 - o knowledge of, and the ability to accurately quote and compare, competing retailers' tariffs, billing procedures, payment options, discounts, and where price or other comparisons are being made between retailers;
- basic contractual rights, and the meaning and importance of a *consumer's explicit informed consent* to a *contract*; and
- the terms and requirements of this **Code**.

2 Contact with Consumers

2.1 Personal contact

At all times when undertaking any *marketing*, a *marketing representative* must identify himself or herself to *consumers*. Identification involves the *marketing representative* using best endeavours to provide *consumers* with:

- the *marketing representative's* name;
- any relevant identification number if requested by the *consumer*;
- the name of the *retailer* on whose behalf the *marketing* is being undertaken and contact details for the *retailer*;
- sufficient contact details to enable the *consumer* to contact the *retailer*; and
- information as to the purpose of the *marketing* contact.

Where *marketing* is conducted in person to a residential customer, the *marketing representative* must wear an identification badge showing the *marketing representative's* photograph, name and the name of the retailer on whose behalf the *marketing* is being undertaken.

2.2 Telephone contact

Marketing representatives carrying out **marketing** to **consumers** using a telephone must:

- a) provide to the **consumer** with whom they are speaking at the earliest reasonable opportunity:
 - the first name and on request the operator identification number (if any) of the **marketing representative** making the telephone call;
 - the name of the **retailer** on whose behalf the call is being made;
 - the purpose of the telephone call; and
- b) on request, provide the name of the field or telesales agency, if any, that the **marketing representative** is employed by.

2.3 No contact lists

Retailers must keep records of **consumers** who have requested that they not be contacted for **marketing** purposes at all or in a specified medium. Each no contact list must contain the name, address and contact number of each relevant **consumer** and the **marketing** media to which the no contact request relates.

Retailers must not contact a **consumer** for the purpose of **marketing** in the medium specified on the no contact list maintained by the **retailer** in respect of that **consumer** for a minimum period of two years (or for any longer period required by law) after the **consumer** is first recorded on the no contact list.

Retailers and their marketing representatives must not solicit households with 'do not knock' displayed on any type of signage, including stickers or any other material.

2.4 Visit records

To enable the identification of **marketing representatives** and to assist in dealing with enquiries and complaints, **retailers** will ensure that **marketing** records are maintained detailing the following information about personal visits made by **marketing representatives** to **consumers**:

- the premises visited at which contact with a **consumer** was made;
- the dates and times of such visits including the time at which the visit concluded; and
- the names of **marketing representatives** conducting **marketing** at the relevant time and place.

2.5 Telephone records

To enable the identification of **marketing representatives** and to assist in dealing with consumer enquiries and complaints, **retailers** must maintain **marketing** records which include the following information about telephone contacts made by **marketing representatives** with **consumers**:

- where the **marketing representative** initiates the call to the **consumer**, the telephone number called;
- the time and dates of calls; and
- the names of the relevant **marketing representatives** at each relevant time.

3 Information

3.1 Clear language

Information that this **Code** requires to be provided to **consumers** shall be designed to be readily understood by **consumers**.

3.2 Conduct

Marketing representatives must comply, and **retailers** must ensure that **marketing representatives** comply, with all **relevant legislation**, including without limitation the following:

- (a) prohibitions on misleading & deceptive conduct, unsubstantiated or false representations and unfair trading practices; or
- (b) prohibitions on undue pressure, harassment or coercion; or
- (c) the requirement that marketing material is accurate, complete and not misleading, including where price comparisons are made by one **retailer** with the prices offered by other **retailers**.

3.3 Pre-contractual information

A **retailer** or **marketing representative** must provide the following information to a **consumer** before entering into a **contract**:

- a) the legal name of the **retailer**;
- b) if the **retailer** is offering a fixed price or tariff to the **consumer** under the **contract**, that fixed price or tariff, including details of all costs and GST (if any, whether inclusive or exclusive);
- c) if the **retailer** is offering a variable price to the **consumer** under the **contract**, information that explains the basis on which the **consumer** will be charged. To the extent that this information includes a price, or cost with a \$ amount, that price or cost should clearly state whether GST is inclusive or exclusive;
- d) a schedule of the **retailer's** charges or fees that apply in limited situations to the **consumer** (e.g. disconnections), including details of all costs and GST (if any, whether inclusive or exclusive), or details of where the **consumer** can view the **retailer's** applicable fees and charges;
- e) the term of the **contract**, where the **contract** is for a **fixed term**;
- f) any conditions of the **contract** that differ from the **retailer's** standard terms and conditions for the relevant category of **consumer**;
- g) a copy of the retailer's standard terms and conditions, or details of where the consumer can view the retailer's standard terms and conditions;
- h) any rights the **consumer** has to cancel the **contract** (to the extent that these are not set out in the **retailer's** standard terms and conditions), the charges if any that would apply on cancellation (or cancellation before a particular date), and the circumstances where these charges would apply.

For the avoidance of doubt and notwithstanding clause 3.3(h) the **retailer** or their **marketing representative** must, before an **uninvited direct sale agreement** is entered into, orally inform the **consumer** that they have a right to cancel the agreement within **5 business days** of receiving a written copy of the agreement, and how the **consumer** can cancel the agreement.

3.4 Cooling off and cancellation

- a) Unless the **consumer** has a longer cancellation period under the **relevant legislation**, a **consumer** may cancel a **contract** within the **cooling off period** (if a **cooling off period** is legally required);
- b) A **consumer** may cancel a **contract** by giving verbal or written notice to the **retailer**;
- c) A **consumer** may verbally authorise a **losing retailer** to act as its agent to provide notice of cancellation to the **gaining retailer**;
- d) If a **cooling off period** is legally required, a **retailer** and a **consumer** must not enter into a **related contract or instrument** unless the **related contract or instrument** provides that, if the **contract** is cancelled during the **cooling off period**, the **related contract or instrument** is deemed to be void;
- e) If a **cooling off period** is legally required and a **contract** is cancelled during the **cooling-off period**:
 - the **contract** is deemed to have been rescinded by mutual consent;
 - any **related contract or instrument** is void; and
- f) The **retailer** may charge for any goods or services supplied under the **contract** during the **cooling off period** to a supply address for which the **retailer** is **responsible**.

3.5 Contract information

Uninvited direct sales (for example some outbound telephone sales and door to door)

- a) Where the **retailer** and **consumer** enter into an **uninvited direct sale agreement**:
 - i. The **retailer** or the **marketing representative** will provide to the **consumer** orally the pre-contractual information contained in clause 3.3 before entering into any **contract**, and will gain the consumer's explicit informed consent to enter into the contract;
 - ii. In the case of an **uninvited direct sale agreement** entered into over the telephone, the **retailer** will complete an audio recording to evidence the completion of the requirements of clause 3.5(a)(i), and will digitally store such recordings for one year, or as otherwise required by the **relevant legislation** or any other applicable law;
 - iii. The **retailer** must give the **consumer** a copy of the agreement at the time the agreement is entered into or, in the case of an agreement entered into over the telephone, within 5 **business days** after the date on which the agreement was entered into including:

on the front page of the **contract**:

- the name, street address, telephone number, and email address of the **retailer**;
- the name and street address of the **consumer**;
- a description of the goods or services being supplied; and
- a summary of the **consumer's** rights to cancel the **contract** under section 36M(1) of the Fair Trading Act 1986,

and within the contract (but not necessarily on the front page):

- the date of the **contract** and expected commencement date and the term of the **contract** (where the **contract** is for a fixed term);
- the total price payable, and any other consideration to be given, under the **contract** (or if this is not ascertainable at the time the **contract** is entered into, the method by which the total price or consideration will be calculated must be disclosed in the **contract**);
- if the **retailer** is offering a fixed price or tariff to the **consumer** under the **contract**, that fixed price or tariff, including details of all costs and GST (if any, whether inclusive or exclusive);
- if the **retailer** is offering a variable price to the **consumer** under the **contract**, information that explains the basis on which the **consumer** will be charged. To the extent that this information includes a price, or cost with a \$ amount, that price or cost should clearly state whether GST is inclusive or exclusive;
- a schedule of the **retailer's** charges or fees that apply in limited situations to the **consumer** (e.g. disconnections), including details of all costs and GST (if any, whether inclusive or exclusive), or

- details of where the **consumer** can view the **retailer's** applicable fees and charges;
- any conditions of the **contract** that differ from the **retailer's** standard terms and conditions for the relevant category of **consumer**;
- where the **consumer** can view the **retailer's** standard terms and conditions and any other applicable fees and charges; and
- the charges if any that would apply on cancellation, and the circumstances where these charges would apply.

Electronic commerce

- b) In the case of **contracts** formed through electronic commerce, the **retailer** shall:
- i. have online processes to ensure the **consumer** has received the information required by clause 3.3 of the **Code**, or could have obtained that information from the **retailer's** electronic commerce vehicle, in each case prior to entering into the **contract**; and
 - ii. supply such information required by clause 3.5(a)(iii) to the **consumer** (provided that there are no specific front page requirements), to the extent that it was not readily available to the **consumer** from the **retailer's** electronic commerce vehicle, within **5 business days** after a **retailer** receives notice of a completed switch from the Registry in respect of a **contract**;

Enforceability

- c) Any **uninvited direct sale agreement** will not be binding on the **consumer** unless:
- the **retailer** or their **marketing representative** has complied with the last paragraph of clause 3.3 and with clause 3.5(a), and
 - the time during which the **consumer** may cancel the agreement (**5 business days** from receipt of a copy of the agreement) has expired.

Other agreements

- d) Any agreement between a **retailer** and a **consumer** that is not an **uninvited direct sale agreement** will contain all of the information in clause 3.5(a)(iii) except for information about cancellation rights for **uninvited direct sale agreements**.

4 Consumer Consent

4.1 Consumer transfer

- a) A **retailer** shall not transfer a **consumer** to itself from another **retailer** without first obtaining that **consumer's explicit informed consent** to such transfer.
- b) A **losing retailer** which has lost a **consumer** to a **gaining retailer** shall not cancel or withdraw that consumer's switch to the **gaining retailer** without first obtaining that **consumer's explicit informed consent** for such cancellation or withdrawal of the switch.

4.2 Sales to minors and "authorised" consumers

The **retailer** will take reasonable steps to conduct **contract** negotiations with a person who has the authority to enter into a **contract** for electricity supplied to the actual site.

Where it is shown that an adult was resident at the site, the onus will be upon the **retailer** to prove that a minor was the appropriate authorised **consumer** to enter into a **contract**.

5 Commencement of Retail Service

A *retailer* will advise the *consumer* at the time of entering into the *contract* of the expected date of when the *retailer* will be responsible for *energy* retail service to the supply address.

6 Marketing and Consumer Information

Retailers shall not represent that they are conducting market research when a purpose of the contact with the *consumer* is an attempt to encourage the customer to enter into a *contract* with the *retailer*. For clarity, it is acknowledged that win-back calls that attempt to establish why a *consumer* has switched or cancelled a switch are not prohibited by this paragraph.

7 Complaint and Dispute Resolution

7.1 Disputes or complaints arising from consumers

Retailers shall resolve disputes and complaints arising from *consumers* in accordance with their own internal disputes procedures and, where appropriate, the rules of any approved or regulated dispute resolution scheme.

7.2 Disputes or complaints arising from retail participants

Retail participants may attempt to resolve disputes and complaints arising from the *marketing* of other *retail participants* between themselves in the first instance, in accordance with this clause 8.2 of the *Code*.

7.2.1 Resolution Process

Where a *retail participant* (Retailer 1) wishes to raise a complaint or dispute relating to the *marketing* of another *retail participant* (Retailer 2) in accordance with this *Code* it shall, in the first instance:

- a) Investigate, via its resolutions function, and confirm the known/ascertainable facts of the case, including a log of all known contact with the customer by itself, and Retailer 2.
- b) Where the complaint involves alleged intimidatory or unlawful behaviour (other than misleading information or misrepresentation), or the complaint is the latest in a series of complaints on the part of Retailer 2 or its *marketing representatives*, Retailer 1 shall immediately escalate the complaint to a designated senior management representative of Retailer 2. Escalation shall be managed in accordance with the process detailed in Appendix A and Appendix B.
- c) Where the complaint does not involve alleged intimidatory or illegal behaviour, or the complaint is not the latest in a series of complaints, but instead concerns alleged misleading information or misrepresentation or a breach of this Code on the part of Retailer 2 or its *marketing representatives*, Retailer 1 shall forward the complaint to the manager of the resolutions team at Retailer 2. The complaint shall be forwarded either in the template format described in Template 1 of Appendix C, or in a format otherwise agreed between the parties but containing the same factual components. The complaint will be resolved in accordance with Appendix A. Where the complaint remains unresolved, it will be escalated to a designated senior management representative of Retailer 2, and managed in accordance with Appendix B.

- d) Where the complaint is about a cancelled switch transaction or a switch transaction that has allegedly been completed without permission:
 - i. Where there is no allegation of a misleading act or misrepresentation, the Switching Manager of Retailer 1 will forward details of the issue to the Switching Manager of Retailer 2, in the format prescribed by Template 2 (Appendix C). Retailer 2 will respond within 5 working days, or in exceptional circumstances will respond within 24 hours if so requested by Retailer 1.
 - ii. Where a misleading act or misrepresentation is alleged the complaint will be simultaneously referred to the Resolutions Manager of Retailer 2, who will respond within 10 working days in accordance with Appendix A.

7.2.2 Unresolved Complaints

Where any complaint or dispute remains unresolved it shall be escalated to a designated senior management representative, and be managed in accordance with Appendix B.

7.2.3 Complaints database

In order to facilitate the resolution process in clause 8.2.1, the **Administrator** shall maintain an up to date database of the key contact persons for each **retail participant** and promptly provide this information to retail participants when requested.

Retail participants shall confirm their key contact person details with the **Administrator** no less than annually.

8 Definitions

In this Code:

Administrator means the **Administrator** referred to at page 3 of this **Code**.

business day has the same meaning as 'working day' in the Interpretation Act 1999.

Code means this Code of Conduct for Marketing Retail Energy.

competent in terms of **explicit informed consent** means:

- (a) in order for a **customer** to be competent to give consent, the **customer** must be capable of understanding issues, forming views based on reasoned judgement and communicating their decision; and
- (b) in order for a person to be competent to give consent on behalf of another, the person must have legal authority to do so.

A minor will generally be assumed not to be competent to provide consent to a contract unless the relevant **retailer** can establish that the preconditions to the validity of such a contract are satisfied.

Retailers may presume that adults are **competent** unless the **retailer** becomes aware of information which shows otherwise.

consumer means consumers of less than 100 MWh per year electricity or less than 1,000 gigajoules per year natural gas or LPG, and includes prospective purchasers of less than 100 MWh per year electricity or less than 1,000 gigajoules per year gas, and includes individuals and bodies corporate.

contract means an agreement for the supply of energy between a retailer and a consumer.

cooling-off period in respect of a **contract** means the period commencing with the **relevant** date and ending **5 business days** later, or any greater period within which the **consumer** has a right to cancel the contract under the **relevant legislation**.

energy means electricity or gas or LPG or any combination of electricity and gas and LPG.

energy contract means an **electricity contract** or a **gas contract** or an **LPG contract** and may include a dual fuel contract.

explicit informed consent means consent given:

- (a) by the consumer directly to the **retailer** or the **marketing representative**:
 - (i) in writing or by electronic communication assented to by the **consumer**; or
 - (ii) orally;
- (b) only after the **retailer** or the **retailer's marketing representative** has clearly, fully and adequately disclosed all matters relevant to the consent of the consumer set out in this Code in clause 3.3; and
- (c) by a person who appears **competent** to do so in the reasonable opinion of the **retailer** or the **retailer's marketing representative**.

fixed term means a contract term that has a known duration or which can only be terminated by more than 3 months notice.

gaining retailer means a **retailer** that enters into a **contract** with a **consumer** that holds an existing **contract** with an alternate **retailer** and where the **consumer** intends to cancel that existing **contract** in favour of the gaining **retailer**

losing retailer means a **retailer** that holds an existing **contract** with a **consumer** where the **consumer** intends to cancel that existing **contract** in favour of the **gaining retailer**

marketing means activity for the purpose of promoting or selling energy, and includes advertising, sales promotion, face to face meetings, phone calls, public relations and negotiations which may or do lead to a **contract** being made between the **retailer** and the **consumer** for the supply of electricity, gas or LPG.

marketing representative includes an employee, agent, representative, **contractor** or person acting on behalf of a **retailer**, who is engaged in marketing and or selling the **retailer's contracts**.

related contract or instrument in relation to a **contract** means any other contract or instrument that is collateral or related to the **contract**.

relevant date in respect of a **contract** means:

- (a) the date on which the **consumer** and the **retailer** agree to enter into the **contract**; or
- (b) if the **consumer's explicit informed consent** is required before the **contract** can commence to be effective, the date on which the **explicit informed consent** is given.

relevant legislation means the Fair Trading Act 1986, the Consumer Guarantees Act 1993, the Privacy Act 1993, and the Commerce Act 1986.

responsible in respect of a **retailer** and a **supply address** means the **retailer** is responsible for the **energy** supplied at the **supply address** for the purposes of settlement of a relevant wholesale **energy** market.

retailer means retailers of **energy**.

retail participants means **retailers**, as listed on the list of **retail participants** maintained by the **Administrator**, that have agreed to abide by the Code.

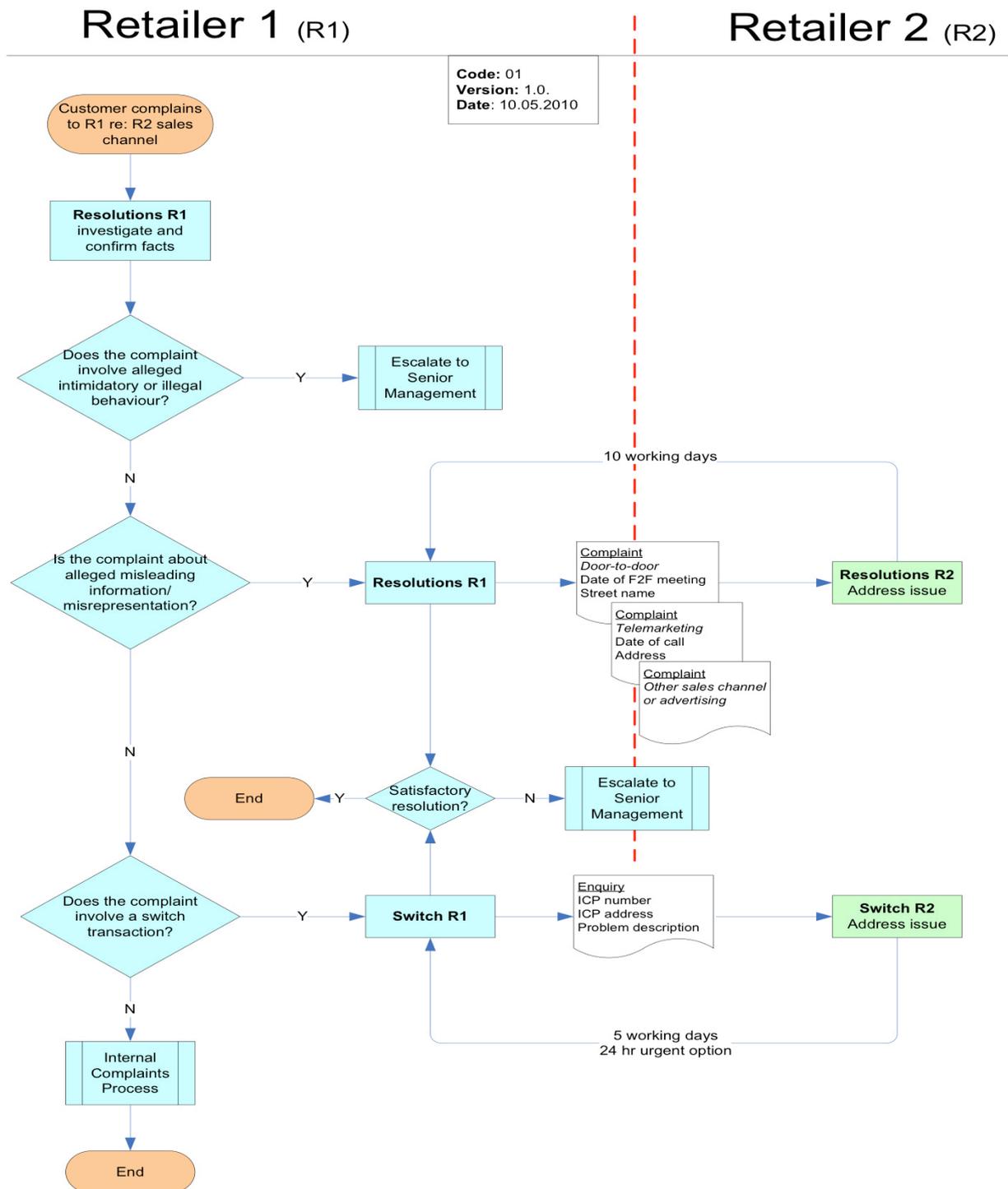
supply address includes:

- a) for electricity, the relevant market connection point (ICP) in respect of that supply address; and
- b) for gas or reticulated LPG, the point where gas leaves the distribution system before being supplied to a **consumer**, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied;
- c) for bottled LPG, the physical address to which bottled LPG is delivered by the **retailer**;
- d) **supply point** means the point where gas or electricity leaves the distribution system before being supplied to the **consumer**, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

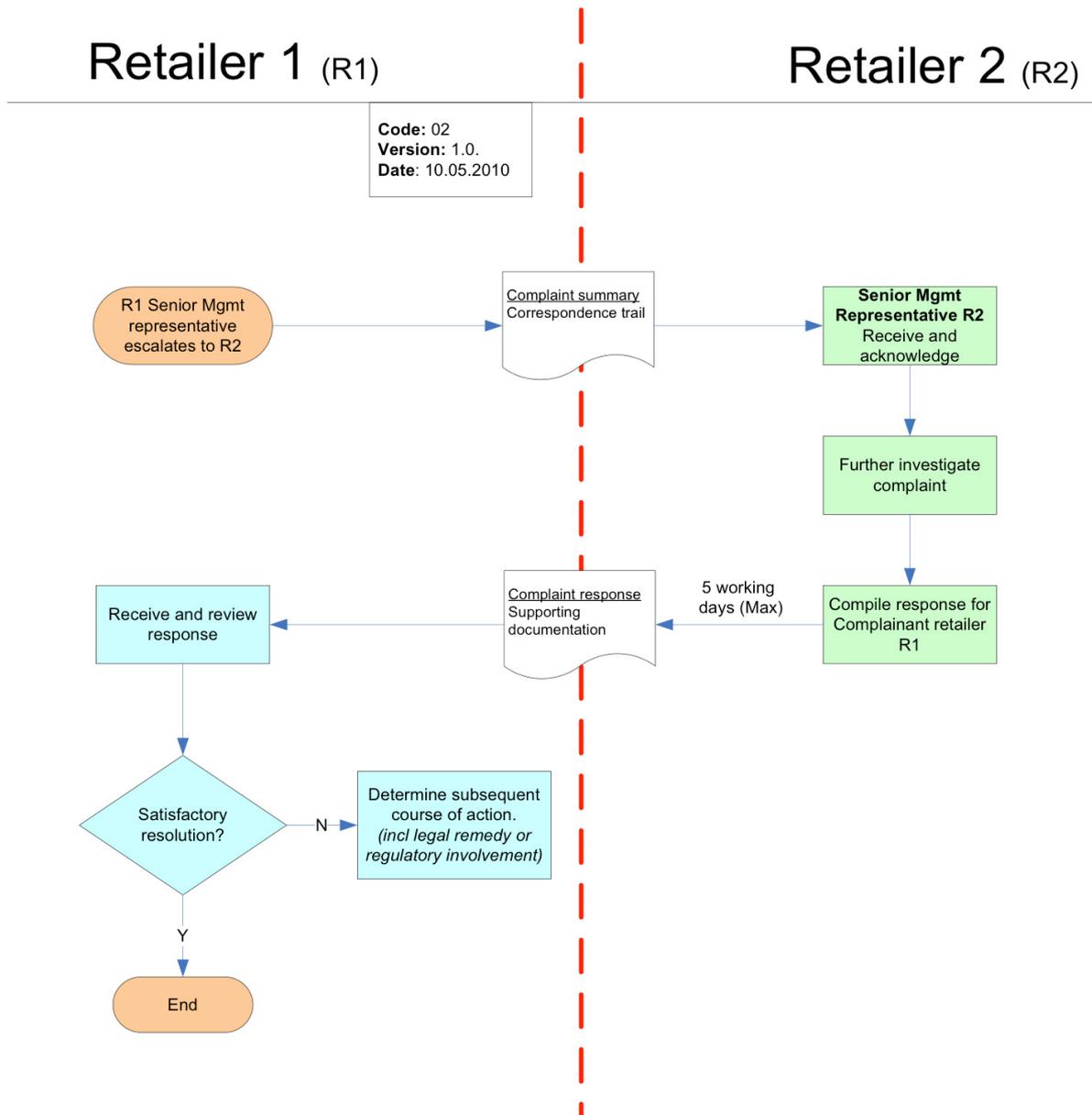
tariff means a price or combination of prices, including fixed and variable prices, for the supply or sale of **energy**.

uninvited direct sale agreement has the meaning in section 36K of the Fair Trading Act 1986.

Appendix A



Appendix B



Appendix C

Template 1 – Marketing Complaint

Essential information to expedite an investigation and satisfactory response into marketing complaints involving misleading information and/or misrepresentation would include the following:

Sent: Date
To: Resolutions Manager R2
From: Resolutions Manager R1

Subject: Marketing Complaint

This complaint relates to sales or advertising activity involving misleading information and/or misrepresentation.

Complaint type

Face to face sales Phone sales Advertising

Date of occurrence:

ICP number:

Customer name:

Address:

Details of the complaint:

[Full description, including results of the complainant's pre-investigation, dates of contact and related documentation]

Template 2 – Switch Enquiry

Essential information to expedite an investigation and satisfactory response into sales channel complaints involving switch anomalies would include the following:

Sent: Date
To: Switch Manager R2
From: Switch Manager R1

Subject: Sales Channel Switch Enquiry

5 working day response, or urgent 24 hour response, required?:

ICP number:

ICP Address:

Problem description:

[Full description, including results of the complainant's pre-investigation, dates of contact and related documentation]