

NU ENERGY SOLAR POWER AGREEMENT

TERMS AND CONDITIONS

(Australia-wide)

NUE Pty Limited ABN 81 107 122 154
Current as at 21 April 2010

1 Meaning of words in this document

- (a) **\$** means Australian dollars;
- (b) **Agreement** means the executed Signing Page that incorporates these Terms and Conditions;
- (c) **Australian Government** means the Federal Department of Environment Water, Heritage and the Arts, the Australian Greenhouse Office, the Office of the Renewable Energy Regulator, or any equivalent Australian Government Department;
- (d) **business day** means a day on which banks are open for general banking business in Your State or Territory (not being a Saturday, Sunday or public holiday in that State or Territory);
- (e) **Energy Trading Certificates** means any energy certificates that arise by reason of the supply of the Goods under Australian Federal, State or Territory law, including but not limited to all Renewable Energy Certificates;
- (f) **force majeure** means anything beyond Our control or in consequence of which We are hindered in performing Our obligations and includes strike, trade disputes, fire, accidents and supply, import or export delays and adverse weather conditions;
- (g) **Goods** means the system as set out in the Quote;
- (h) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.
- (i) **Nominated Output** means the expected output for the solar panel as nominated by the manufacturer;
- (j) **Notice** means a notice which is in accordance with clauses 14.5 and 14.6;
- (k) **Payment Amount** is the monetary amount described in clause 6.1 as amended under this Agreement to include any Relevant Charges, and does not include the Part Payment Amount;
- (l) **Photovoltaic Rebate Program** has the same meaning as in the *Renewable Energy (Electricity) Regulations 2001*.
- (m) **Part Payment Amount** is the monetary amount described in clause 6.1 and set out in the Signing Page, and if not set out there then as set out in the Quote;
- (n) **Premises** means Your principal place of residence or commercial or other premises;
- (o) **Program** means the Solar Homes and Communities Plan, the Renewable Remote Power Generation Program and the National Schools Solar Program, each of which is defined in the *Renewable Energy (Electricity) Regulations 2001*.
- (p) **Quote** means the quotation described in clause 6.1;
- (q) **Relevant Charges** means the total monetary amount notified to You under clause 5.6.
- (r) **Renewable Energy Certificates** has the same meaning as in the *Renewable Energy (Electricity) Act 2000* (C'th) and includes any other certificate, right or entitlement of a similar nature which arises under legislation;
- (s) **Signing Page** means the document executed by You that indicates that You have read and agree to be bound by these Terms and Conditions;
- (t) **Small Generation Unit** has the same meaning as in the *Renewable Energy (Electricity) Regulations 2001*.
- (u) **Solar Credits Amount** means any additional amount that may become payable under clause 15;
- (v) **Solar Credits Discount** means the discount offered by Us to You on the basis of the Warranties given under clause 15 and on the basis that the supply and installation under this Agreement is eligible for the multiplier for Renewable Energy Certificates for Small Generation Units under regulation 20AA of the *Renewable Energy (Electricity) Regulations 2001*;
- (w) **Us/We** means NUE Pty Limited and **Our** has the corresponding meaning;
- (x) **You** means the person who enters into this Agreement with Us and **Your** has the corresponding meaning.
- (y) Each of **Zones 1, 2, 3 and 4** has the same meaning as in the *Renewable Energy (Electricity) Regulations 2001* (C'th) as amended from time to time (presently set out at: www.comlaw.gov.au) respectively.

2 What constitutes the Agreement

The entire Agreement between You and Us for the supply, installation and purchase of the Goods is constituted by the Agreement.

3 When the Agreement is formed

The Agreement exists between You and Us once We receive the Part Payment Amount and You properly execute the Signing Page. Payment of the Part Payment Amount is evidence of Your agreement to be bound by the Agreement.

4 What each party agrees to do

- 4.1 We agree to supply the Goods at the Premises in consideration for You:
- paying to Us the Part Payment Amount and the Payment Amount and any Solar Credits Amount applicable;
 - assigning to Us all Your rights to receive all Energy Trading Certificates that arise in connection with the entry into this Agreement including by reason of the supply and/or installation of the Goods at the Premises; and
 - properly and accurately completing all documentation necessary for Us to effect the assignment referred to in clause 4.1(b) and for Us to receive the benefit of any Commonwealth or State or Territory rebate in connection with the supply and/or installation of the Goods at the Premises.
- 4.2 You authorise Us to use the Part Payment Amount for the procurement of the Goods.

5 Site inspection and installation charges

- 5.1 We will rely on Your representations in answer to Our questions concerning the nature of the Premises and Your eligibility for certain discounts, government offers, and rebates in calculating the Payment Amount.
- 5.2 Despite clause 5.1, We may conduct a site inspection of the Premises in order to confirm Your representations, and in that regard:
- You grant permission to Us and Our employees, contractors and/or agents to enter the Premises where the Goods are proposed to be installed and commissioned, at any reasonable time; and
 - You agree to ensure that You are present at the property for such site inspection, installation and/or commissioning, when and as reasonably required by Us or Our employees, agents and contractors.
- 5.3 Our inspection does not relieve You of Your responsibility to ensure that Your representations referred to in clause 5.1 are correct.
- 5.4 You acknowledge that We may determine that additional installation charges may be applicable if, because of the special nature of the Premises, the physical installation of the

Goods presents Us with complexities or difficulties, or if, at the time of installation of the Goods at the Premises, any changes have occurred at the Premises since the site inspection or that are contrary to Your representations referred to in clause 5.1 that in our sole and absolute discretion increase the installation cost.

- 5.5 The additional installation charges referred to in clause 5.4 include, but are not limited to, the general nature of the charges in the Table below, and will depend on the conditions of the Premises.

Description	1.52 KW system	2 KW system	3 KW system
Tile roof	\$198 (incl. GST)	\$264 (incl. GST)	\$396 (incl. GST)
Build frame (including labour) on flat metal roof	\$415 (incl. GST)	\$550 (incl. GST)	\$825 (incl. GST)
Double storey dwelling	\$200 (incl. GST)	\$200 (incl. GST)	\$200 (incl. GST)
Split array – due to building space on the roof	\$300 (incl. GST) per split	\$300 (incl. GST) per split	\$300 (incl. GST) per split
Horizontal fixing of array	\$450 (incl. GST)	\$600 (incl. GST)	\$900 (incl. GST)
Lifting and access equipment	Price on Application	Price on Application	Price on Application
Heritage overlay - cost of moving inverter	\$200-\$250 (incl. GST)	\$200-\$250 (incl. GST)	\$200-\$250 (incl. GST)
Cathedral Ceilings	\$300 (incl. GST)	\$300 (incl. GST)	\$300 (incl. GST)
Travel charge (for Premises located more than 125 km and less than 250 km from the General Post Office in Sydney, Wollongong, Newcastle, Brisbane, Melbourne, Geelong, Hobart, Launceston, Adelaide, Perth, or Canberra)	\$220 (incl. GST)	\$220 (incl. GST)	\$220 (incl. GST)
Travel charge (for Premises located more than 250 km from the General Post Office in Sydney, Wollongong, Newcastle, Brisbane, Melbourne, Geelong, Hobart, Launceston, Adelaide, Perth, or Canberra)	Price on Application	Price on Application	Price on Application

- 5.6 If We determine that Relevant Charges may be applicable under clause 5.4 We will advise You of the amended Payment Amount that includes Relevant Charges by Notice in writing, and You may either proceed by paying the amended Payment Amount, or You may cancel the Agreement by Notice in writing to Us within 5 days from the date You receive Notice of the amended Payment Amount from Us before installation commences.

6 Security and Payment

- 6.1 At the time of the formation of the Agreement We will provide You with a quotation that includes the amount that must be paid by You in order to secure the supply of the Goods, being the Part Payment Amount, plus the price of the installation, being the Payment Amount, which you acknowledge does not include any Relevant Charges.
- 6.2 Without detracting from clause 5, You acknowledge that the Payment Amount is calculated by Us on the basis of Your eligibility for certain discounts, government offers, rebates as set out in the Quote, and that We may change the Payment Amount as a result of changes to these discounts, offers or rebates, including if clause 15.4 applies. For example, the Commonwealth Government might change the eligibility for certain Energy Trading Certificates, and that may result in You not being eligible to receive Energy Trading Certificates in the expected quantity, or at all.
- 6.3 You agree to pay Us the Part Payment Amount at the time of the formation of this Agreement. The Part Payment Amount will not be more than 10% of the Payment Amount.
- 6.4 You agree to pay Us the Payment Amount on or before the day of installation of the Goods at the Premises by way of acceptance of the Quote.
- 6.5 Subject to clause 6.7, all amounts payable under this Agreement may be made by bank cheque, money order, cash, debit card, credit card or direct deposit, and will be accepted as made when We receive cleared funds.
- 6.6 If Your debit card or credit card is declined by Your financial institution, or if Your cheque is not honoured on presentation, We may, in Our absolute discretion, decide to accept an alternative method of payment from You and may collect from You payment of any bank charges that We must pay as a result.
- 6.7 We may decline to accept payment from You by cheque, credit card or debit card for any reason, and We are not required to give reasons.

7 Assignment of Energy Trading Certificates to Us

- 7.1 If clause 7.2 does not apply:
- upon entering into the Agreement, You unconditionally undertake to assign and are deemed to have assigned to Us any rights to or rights to create Energy Trading Certificates that may exist or arise in relation to the Goods;
 - You agree that valuable consideration in the form of a point-of-sale discount has been provided to You by Us in exchange for You assigning to Us the rights to or rights to create Energy Trading Certificates;
 - You irrevocably agree to complete and execute for the benefit of NU Energy any documents, contracts, or papers reasonably necessary to give effect to this assignment; and
 - You unconditionally undertake not to otherwise deal with Energy Trading Certificates or a right relating to Energy Trading Certificates that may exist or arise in relation to the Goods, including but not limited to the supply and installation of the Goods at the Premises.
- 7.2 At the time of entry into this Agreement, You may elect to retain any right or rights to create Energy Trading Certificates referred to in clause 7.1 by providing Us with notice in writing and We will amend the Payment Amount to include the market value of the rights on the date of entry into this Agreement, as determined by Us, and We will provide You with Notice in writing of the amended Payment Amount.

8 Cancellation

- 8.1 We may cancel the Agreement at any time if We consider that You fail to comply with this Agreement.
- 8.2 If We cancel the Agreement because We consider that You have failed to comply with this Agreement, You will have to pay any associated costs (including, but not limited to, legal costs on a solicitor and own client basis) and costs associated with delivery or the partial installation of the Goods if relevant, and We may set-off any amount owed by You to Us against the Part Payment Amount to the extent allowed by law.
- 8.3 Subject to clause 8.2, if the Agreement is cancelled under clause 8.1 We will return to You the Part Payment Amount within 90 days of the cancellation of the Agreement.
- 8.4 If You cancel the Agreement under clauses 5.6 or 15.4, We will:

- (a) retain \$250 of the Part Payment Amount; and
(b) refund the remainder of the Part Payment Amount, if any, to You within 90 days after the date of the cancellation of the Agreement.
- 8.5 You may not cancel, or otherwise terminate the Agreement or revoke any authority given under it after we certify that the installation of the Goods has commenced.

9 Installation

- 9.1 We take care to ensure that the Goods are installed by competent, trained and insured installers.
- 9.2 All care is taken by Us in selecting installers of the Goods, but no responsibility is taken for any loss, cost or damage incurred by reason of any act or omission of the installer.
- 9.3 You grant permission, and all necessary and reasonable access, to Us and Our employees, contractors and/or agents to enter the Premises to install the Goods at any reasonable time.
- 9.4 You agree to ensure that You are present at the Premises for the installation and/or commissioning of the Goods, when and as reasonably required by Us or Our employees, contractors and/or agents.

10 Warranty applicable to the Goods

- 10.1 Subject to mandatory warranties imposed by law, We will, at Our absolute discretion, either repair or replace (at Our option) the Goods if they fail, or the part of the Goods that We consider has failed only in the following cases:
- (a) cases in which any solar panel installed as part of the Goods fails to perform to at least 90% of Nominated Output, but only where the failure arises and is notified to Us within 10 years of the date the Agreement comes into effect;
- (b) cases in which any solar panel installed as part of the Goods fails to perform to at least 80% of Nominated Output, but only where the failure arises and is notified to Us within 25 years of the date the Agreement comes into effect;
- (c) cases in which any solar panels installed as part of the Goods fail as a result of defects in materials or workmanship, but only where the failure arises and is notified to Us within 5 years of the date the Agreement comes into effect;
- (d) cases in which the inverter installed as part of the Goods fails as a result of defects in materials or workmanship, but only where the failure arises and is notified to Us within 5 years of the date the Agreement comes into effect; and
- (e) cases in which the Goods fails as a result of failures in workmanship in the installation of the Goods, but only where the failure arises and is notified to Us within 12 months of installation.
- 10.2 Except as provided in the Agreement, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the extent permitted by law. We will have no responsibility or liability for any damage or injury to persons or property, for economic loss, or for any other loss resulting from any cause whatsoever arising out of or related to the Goods, including but not limited to, any defects in the Goods, or from the use or installation of the Goods.
- 10.3 The warranties provided in clause 10.1 will not apply to any Goods that have been subjected to:
- (a) misuse, abuse, neglect or accident;
- (b) alteration, improper alteration or reinstallation by You or any other person;
- (c) non-observance with use and maintenance instructions;
- (d) repair, modification or repositioning by anyone other than a service technician approved by Us in writing;
- (e) power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of Our control;
- (f) the type or serial number of any part of the Goods being altered, removed or made illegible.
- 10.4 If the Goods are installed in conditions which are different to the conditions under which the manufacturer assessed the Nominated Output, then the Nominated Output for the purposes of clauses 10.1(a) and 10.1(b) will be adjusted downwards by a factor which reflects those differences.

11 Risk and title

- 11.1 Risk in the Goods passes to You by reason of delivery of the Goods to the Premises or the presence of the Goods at the Premises.
- 11.2 Title to the Goods passes to You on completion of the installation of the Goods, the completion of the documents required for the assignment of all Energy Trading Certificates to Us and the completion of all documentation required for the payment to Us of any Commonwealth or any State or Territory rebate, and payment in full of the Payment Amount and any Solar Credits Amount to Us.

12 Availability and supply of the Goods

- 12.1 If at the time of the Agreement, the Goods are not available they will be supplied by Us when available, and We will not be liable to You to make good any damage or loss whether arising directly or indirectly as a result of any ensuing delay in the supply and installation of the Goods.
- 12.2 You expressly acknowledge that Our agreement to supply and install the Goods in consideration of the payment of the Payment Amount and any Solar Credits Amount to Us has been determined on the basis of bulk orders being made by multiple customers.
- 12.3 You expressly acknowledge that We may not commence shipments before receiving minimum bulk orders of the Goods, and that this could cause some delay.
- 12.4 You further acknowledge that delays may be caused as a result of the time which may be taken by Us or Our contractors in performing site assessment.
- 12.5 Time will not be of the essence for any supply and installation, and any times or periods quoted for supply and installation of the Goods are estimates only, imposing no contractual obligation.
- 12.6 We shall not be liable to You to make good any damage or loss whether arising directly or indirectly out of the delay in supply and installation.

13 Power grid connection, meter installation and feed-in tariffs

- 13.1 You acknowledge that although We may assist in arranging for the Goods to be connected to the main grid and for installation of the meter at the Premises, the agreement to undertake that connection and installation is an agreement between You and Your electricity retailer and/or distributor.
- 13.2 The costs and risks of that connection and installation are not included in any way in this Agreement.

13.3 You acknowledge that We have:

- (a) provided no guarantee that You will be accepted into any State or Territory feed-in tariff scheme or that You will receive feed-in tariffs; and
(b) recommended that You make independent enquiries in relation to Your eligibility for, and the operation of, any feed-in tariff schemes.

14 General

- 14.1 This Agreement constitutes the entire agreement between us. Any oral representation, warranty or promise whatsoever (other than those contained in this Agreement) made by any employee, contractor or agent of Ours to You does not form any part of the Agreement nor the consideration for or basis of any collateral contract.
- 14.2 Without limiting clause 14.1, You acknowledge that any information or representation provided by Us or by any employee, contractor or agent of Ours in relation to any renewable energy feed-in tariff or other government program, whether provided before or after the formation of the Agreement are based on information obtained from government sources and are subject to change. We recommend that You make Your own enquiries in relation to all relevant renewable energy feed-in tariff or other government program.
- 14.3 Failure by Us to insist on strict performance of any term, warranty or condition of the Agreement will not be taken as a waiver of it or of any rights We may have.
- 14.4 No waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- 14.5 Any notice to be given by a party under this Agreement must be in writing and may be given to the other party by hand delivery, prepaid post, or facsimile addressed to the other party at its last known address or facsimile number or as specified by the other party.
- 14.6 Any notice given under this Agreement is deemed to have been received by the person to whom it was sent:
- (a) in the case of hand delivery, upon delivery;
- (b) in the case of prepaid post, three days after dispatch; and
(c) in the case of facsimile, upon completion of successful transmission.
- 14.7 In the event of a "force majeure" event We will be entitled either to rescind the Agreement (without being liable for damages) or to extend the time for performance by a reasonable period of not less than the duration of such event, and all liability under this Agreement, including liability for damage whether specified or otherwise, shall be modified or adjusted accordingly.
- 14.8 Any clause or part clause of this Agreement which is illegal, void or unenforceable, will be ineffective to the extent only of such illegality, voidness or unenforceability, without invalidating the remaining clauses of this Agreement.
- 14.9 This Agreement is subject to the NU Energy Privacy Policy, available at www.nuenergy.com.au.
- 14.10 The Agreement is deemed to be made in the State of Victoria and is to be construed in accordance with the laws of Victoria, Australia.
- 14.11 You must not use or deal with any intellectual property (including, but not limited to, copyright, including copyright in the Agreement, patents and trademarks) owned or licensed by Us without Our prior written consent.
- 14.12 We may assign Our rights and obligations under this Agreement at any time without notice to You, but You may not assign Your rights and obligations under this Agreement.
- 14.13 The parties can amend this Agreement or any contract incorporating this Agreement only by a written agreement of the parties that identifies itself as such an amendment. However We can amend this Agreement unilaterally in response to regulatory changes. Any variation of the these Terms and conditions or any plans and specifications to be done under the contract (including variations) are taken to form part of these Terms and Conditions.
- 14.14 If We have omitted or do omit to state that a particular advertised cost, amount payable, or quotation of any kind is inclusive of GST, or if it is expressed to be exclusive of GST, then it does not include GST and that will be added automatically to that cost, amount payable or quotation and You must reimburse Us on demand.
- 14.15 Interest will accrue at the rate of 12% calculated daily on any amount outstanding under this Agreement from time to time.
- 14.16 It is Your responsibility to determine whether you require any approvals from any governmental authority for the installation of the Goods.

15 Solar Credits Discount and customer warranty

- 15.1 The Quote is given on the basis that the Solar Credits Discount applies to the supply and installation of the Goods.
- 15.2 If clause 7.2 does not apply, You will be taken to have accepted the Solar Credits Discount and to be bound by this clause 15 if You accept the Quote.
- 15.3 You undertake and warrant that, as at the date of this Agreement and continuing until installation of the Goods is completed and You have complied with Your obligations summarised in clause 4.1:
- (a) You (and no other person or entity) have not received pre-approval or approval for financial assistance, nor is there any funding agreement in force, under any Program, in relation to the Goods; and
(b) You (and no other person or entity) have not applied for, received or had approved any financial assistance under any Program or under the Photovoltaic Rebate Program in respect of any Small Generation Unit including but not limited to the Goods at the Premises; and
(c) The Goods will constitute the first Small Generation Unit installed at the Premises, (collectively 'Warranties').
- 15.4 If, in breach of any of the Warranties, the Solar Credits Discount does not apply to the supply and installation of the Goods:
- (a) The Payment Amount is increased by the value of the Solar Credits Discount as determined by Us, and We will provide You with Notice in writing of the amount of the increase, being the Solar Credits Amount, and the amended Payment Amount;
- (b) If installation has not taken place, then You must pay Us the Solar Credits Amount on demand, failing which we may cancel this Agreement under clause 8.1.
- (c) If installation of the Goods has been completed and You have paid Us the Payment Amount before You were notified of the Solar Credits Amount, You must immediately pay to Us the Solar Credits Amount, failing which We may enter the Premises and remove the Goods during business hours on giving written notice of Our intention to do so, or so that We may recover the value of the Solar Credits Amount from You as a debt immediately due and payable, at Our sole option.