

## NU ENERGY SOLAR HOT WATER AND HEAT PUMP AGREEMENT

### TERMS AND CONDITIONS APPLICABLE TO SUPPLY IN NEW SOUTH WALES

NUE Pty Limited ABN 81 107 122 154

Current as at 22 April 2010

#### 1 Meaning of words in this document

- (a) \$ means Australian dollars;
- (b) **Agreement** means these Terms and Conditions
- (c) **Australian Government** means the Federal Department of Environment and Water Resources, Australian Greenhouse Office, or any equivalent Australian Government Department;
- (d) **Commonwealth Guidelines** means the guidelines scheduled to be released on 1 June 2010, as described at web address <http://www.environment.gov.au/energyefficiency/solarhotwater/index.html>;
- (e) **Commonwealth Rebate** means the solar hot water and heat pump rebate as described at web address <http://www.environment.gov.au/energyefficiency/solarhotwater/index.html>;
- (f) **Energy Trading Certificates** means any energy certificates that arise by reason of the supply of the Goods under Australian Federal or State law, including but not limited to all Renewable Energy Certificates.
- (g) **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;
- (h) **Goods** means the system as set out in the Quote;
- (i) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.
- (j) **Part Payment Amount** is defined in clause 3.
- (k) **Payment Amount** is the monetary amount of referred to in clause 5.1 as amended under this Agreement, less the Part Payment Amount already paid.
- (l) **Premises** means Your principal place of residence as defined in the Commonwealth Guidelines;
- (m) **Quote** means the quotation described in clause 5.1.
- (n) **Rebate** means "the Solar Hot Water Rebate" as defined in the Commonwealth Guidelines;
- (o) **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;
- (p) **Terms and Conditions** means these terms and conditions;
- (q) **Us/We** means NUE Pty Limited and Our has the corresponding meaning; and
- (r) **You** means the person who enters into this agreement with the Agreement with Us, and Your has the corresponding meaning.

#### 2 What constitutes the Agreement

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

#### 3 When the Agreement is formed

The Agreement exists between You and Us once We receive Your payment of \$200, being the Part Payment Amount. This must be paid by You at the time of the site inspection. Payment of the Part Payment Amount is evidence of Your agreement to be bound by these Terms and Conditions. The Part Payment Amount will not be more than 10% of the Payment Amount.

#### 4 What each party agrees to do

We agree to supply the Goods at the Premises in consideration for You:

- (a) paying to Us the Payment Amount;
- (b) assigning to Us all Your rights to receive all Energy Trading Certificates that arise in connection with the entry into this Agreement or by reason of the installation of the Goods at the Premises;
- (c) properly and accurately completing all documentation necessary for Us to effect the assignment referred to in clause 4(b) and to receive the benefit of any Commonwealth, New South Wales or other rebate.

#### 5 Site Inspection and Payment

- 5.1 The Payment Amount is not known until the site inspection is held. At the time of the site inspection of the Premises:
  - (a) We will provide You with a quotation for the full price of the installation being the Payment Amount, including additional costs resulting from the special nature of the Premises;
  - (b) You will pay Us the Part Payment Amount by way of acceptance of the Quote.
- 5.2 You agree to pay Us the Payment Amount as set out in the Quote on or before the day of installation of the Goods at the Premises.
- 5.3 You agree that the Payment Amount is provided on the basis of Our assessment of the Premises at the time of the site inspection, and may be subject to changes at the time of installation of the Goods at the Premises if any changes occurred at the Premises that in our sole and absolute discretion increase the installation cost.
- 5.4 If the Payment Amount is amended pursuant to clause 5.3 We will advise You of the amended Payment Amount, and You may either proceed by paying the amended Payment Amount prior to installation of the Goods which will not be less than 5 clear days later.

- 5.5 All amounts payable under this Agreement may be made by credit card, bank cheque, money order or direct deposit, and will be accepted as made when We receive cleared funds.
- 5.6 The Payment Amount is subject to increase in accordance with clause 5.3.
- 5.7 Interest will accrue at the rate of 12% calculated daily on any amount outstanding under this Agreement from time to time.

#### 6 Assignment of Energy Trading Certificates to Us

- 6.1 If clause 6.2 does not apply:
  - (a) 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 arise in relation to the Goods;
  - (b) 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. The amount of the discount is the market value of the rights on the date of the site inspection as determined by Us;
  - (c) 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
  - (d) You unconditionally undertake not to otherwise deal with Energy Trading Certificates or a right relating to Energy Trading Certificates that may arise in relation to the Goods, including but not limited to the installation of the Goods at the Premises.
- 6.2 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 6.1 by providing Us with:
  - (a) notice in writing; and
  - (b) a payment in the amount of the market value of the rights on the date of entry into this Agreement, as determined by Us.

#### 7 Commonwealth Guidelines

You acknowledge that:

- (a) the Commonwealth Guidelines will not be released until after 1 June 2010;
- (b) We provide no guarantee of Your eligibility for the Commonwealth Rebate as Your eligibility may be affected by the terms of the Commonwealth Guidelines; and
- (c) We have recommended that You make Your own enquiries as to Your eligibility for the Commonwealth Rebate.

#### 8 Applying for and receiving the Commonwealth Rebate

- 8.1 Subject to clause 8.2, You agree that it is Your responsibility to do all things necessary in order for You to receive the Commonwealth Rebate.
- 8.2 We undertake to complete the necessary sections of the relevant application form as required by the Commonwealth Guidelines should You ask Us to do so.

#### 9 Cancellation

- 9.1 We may cancel the Agreement if We consider that You fail to comply with the Terms and Conditions.
- 9.2 You may not cancel, or otherwise terminate the Agreement or revoke any authority given under it, otherwise than in accordance with clause 5.4.
- 9.3 If We cancel the Agreement because We consider that You have failed to comply with the Terms and Conditions, 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.

#### 10 Installation

- 10.1 We take care to ensure that the Goods are installed by competent, trained and insured installers.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 We will endeavour but do not promise to ensure that installation is completed within 4 weeks from the date of this Agreement.

#### 11 Warranty applicable to the Goods

- 11.1 Subject to mandatory warranties imposed by law, at our option We will repair or replace the Goods, or the part of the Goods that We consider, at our absolute discretion, fail as described below only in the case in which the Goods fail 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 by Us under this Agreement, limited to repairs effected at the Premises.
- 11.2 Except as provided in these Terms and Conditions, 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. Where required by law to do so, at our option We will repair or replace the Goods, or the part of the Goods that We consider, at our absolute discretion, fail.

- 11.3 All warranties We provide in clause 11 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 of use and maintenance instructions
  - (d) repair, modification or repositioning by anyone other than an approved service technician approved by Us in writing
  - (e) power failure, power surge, lightening, 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.
- 11.4 The warranties We provide are personal to You and the benefit of them cannot be assigned or transferred.
- 11.5 You will receive the following warranties directly from our suppliers ("Supplier Warranties"), on the terms and conditions set out in their documentation which will be provided to You upon installation or earlier by request:
- (a) Defects in materials or workmanship of the Goods except as described below: 7 years from the date of installation by Us;
  - (b) Defects in materials or workmanship of parts connected to and forming part of the Goods such as valves, elements and thermostats: 2 years from the date of installation by Us;
  - (c) Defects in materials or workmanship of the heat exchanger in any gas booster constituting part of the Goods: 10 years from the date of installation by Us,
  - (d) Defects in parts and labour in respect of any gas booster constituting part of the Goods: 3 years from the date of installation by Us,

provided that You notify our supplier of Your claim within the periods outlined in sub-clauses (a)-(c) above.

## 12 Risk and title

- 12.1 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.
- 12.2 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, New South Wales or other rebate, and payment in full of the Payment Amount to Us.

## 13 Availability and supply of the Goods

- 13.1 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.
- 13.2 You expressly acknowledge that our agreement to supply and install the Goods in consideration of the payment of the Price to Us has been determined on the basis of bulk orders being made by multiple customers.
- 13.3 You expressly acknowledge that We will not commence shipments before receiving minimum bulk orders of the Goods, and that this could cause some delay.
- 13.4 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.
- 13.5 Any times or periods quoted for supply and installation of the Goods are estimates only, involving no contractual obligation.
- 13.6 We shall not be liable to make good any damage or loss whether arising directly or indirectly out of the delay in supply installation.
- 13.7 Time will not be of the essence for any supply and installation.
- 13.8 You represent that the Premises is Your principal place of residence as defined in the Commonwealth Guidelines.

## 14 General

- 14.1 Any oral representation, warranty or promise whatsoever (other than those contained in these Terms and Conditions) 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 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.
- 14.3 No waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- 14.4 Any notice to be given by a party under these Terms 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.
- 14.5 Any notice given under these Terms 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.

- 14.6 In the event of a "force majeure" event We shall 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 any contract, including liability for damage whether specified or otherwise, shall be modified or adjusted accordingly.
- 14.7 Any clause or part clause of these Terms and Conditions 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 these Terms and Conditions.
- 14.8 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.
- 14.9 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.
- 14.10 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.
- 14.11 The parties can amend these Terms and Conditions or any contract incorporating these Terms and Conditions 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 (including but not limited to the release of the Commonwealth Guidelines) by giving you written notice of the amendments to the Agreement. Any variation of 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.
- 14.12 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.
- 14.13 It is Your responsibility to determine whether you require any approvals from any governmental authority for the installation of the Goods.