

Nu Energy Solar Power System Purchase Agreement

Terms and Conditions

Australia-wide

NUE Pty Limited ABN 81 107 122 154

Effective 22 December 2011

1 Meaning of capitalised terms in this Agreement

- (a) **Actual Output** means the electrical output of a solar panel as installed on the Premises.
- (b) **Additional Installation Costs** has the meaning given in clause 9.2.
- (c) **Agreement** means these Terms and Conditions, the executed Signing Page and, if applicable, the Quote.
- (d) **Balance** means the balance of the Purchase Price specified for the Goods in the Signing Page or, if not set out there, then as specified in the Quote, as adjusted under clause 8.3.
- (e) **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).
- (f) **Claim** has the meaning given in clause 11.2.
- (g) **Clean Energy Council Guidelines** means the Grid-Connected PV Systems System Design Guidelines for Accredited Designers and other standards or guidelines relevant to the installation and commissioning of photovoltaic systems, as amended from time to time.
- (h) **Deposit** means the deposit specified for the Goods in the Signing Page or, if not set out there, then as specified in the Quote.
- (i) **Goods** means the solar system described in the Signing Page or, if not set out there, then as described in the Quote.
- (j) **Government Rebate** means any Commonwealth, State or Territory rebate or other benefit in relation to the Goods.
- (k) **Nominated Output** means the expected output for the solar panel as nominated by the manufacturer.
- (l) **Notice** has the meaning given in clause 16.1.
- (m) **Premises** means your principal place of residence or other premises designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat), as specified in the Site Assessment Questionnaire.
- (n) **Purchase Price** means the purchase price specified for the Goods in the Signing Page or, if not set out there, then as specified in the Quote, being the sum of the Deposit and the Balance, as adjusted under clause 8.3.
- (o) **Quote** means the quotation provided to you by our assessor during a site inspection of the Premises, which will remain valid for 21 days after it is provided to you by our assessor.
- (p) **Signing Page** means the signing page signed by you that indicates that you have read and agree to be bound by these Terms and Conditions.
- (q) **Site Assessment Questionnaire** means the site assessment questionnaire completed by you and delivered to us.
- (r) **Small Generation Unit** has the meaning given in section 5 of the Renewable Energy(Electricity) Act 2000 (Cth)).
- (s) **Solar Credits Discount** has the meaning given in clause 10.1.
- (t) **STC** means a small-scale technology certificate created under the Renewable Energy (Electricity) Act 2000 (Cth) or any other certificate, right or entitlement of a similar nature which arises under any law in relation to the supply or installation of a device that generates electricity whose energy source is solar.
- (u) **Zones 1, Zone 2, Zone 3 and Zone 4** each has the meaning given in Part 1 of Schedule 5 of the Renewable Energy (Electricity) Regulations 2001 (Cth) and a list of postcodes which lie in each zone is available at <http://www.orer.gov.au/publications/pubs/ sgu-postcode-zones-1010.pdf>

2 Interpretation

- (a) A reference to you or your is to the person who enters into this Agreement with us.
- (b) A reference to we, us or our is to NUE Pty Limited (ABN 81 107 122 154).
- (c) A reference to dollars or \$ is to Australian currency.

- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

3 When this Agreement starts

This Agreement starts:

- (a) when you complete, sign and deliver to us the completed Site Assessment Questionnaire, and the Signing Page; or
- (b) if, after you have completed the steps in paragraph (a), we conduct a site inspection of the Premises, when you complete, sign and deliver to us a signed copy of the Quote.

4 Cooling Off Period

You may terminate this Agreement by notice in writing to us during the cooling off period specified in the Signing Page. If you terminate this Agreement under this clause 4, we will refund any amounts you have paid under this Agreement within 90 days after termination.

5 Supply and Purchase of Goods

We must supply, and you must purchase, the Goods on and subject to the terms of this Agreement.

6 Access to the Premises, site inspection and installation

- 6.1** You grant and must ensure that any third party, including a lessee of the Premises, grants us (and our employees, contractors and agents) permission to enter the Premises should we conduct a site inspection and to install and/or commission the Goods, at any reasonable time provided we give you reasonable notice of the proposed site inspection or installation and commissioning of the Goods.
- 6.2** You must be present at the Premises for the site inspection, installation and/or commissioning of the Goods, when and as reasonably required by us (or our employees, agents or contractors).
- 6.3** We must take reasonable care to ensure that the Goods are installed and/or commissioned:
 - (a) by competent, trained and insured installers; and
 - (b) subject to clause 6.4, in accordance with the Clean Energy Council Guidelines.
- 6.4** If you are not satisfied with the location for installation of the Goods that we select in accordance with the guidelines and standards referred to in clause 6.3, you may do either of the following:
 - (a) You may request us to install the Goods at a different location at the Premises. We may agree to or refuse your request at our discretion and, if we agree to your request, must notify you in writing of any increase in the Purchase Price resulting from the installation of the Goods at the different location at the Premises.
 - (b) You may terminate this Agreement by notice in writing to us, but only if we have not commenced installing the Goods. If you terminate this Agreement under this paragraph (b), any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.5.
- 6.5** You acknowledge and accept that the Actual Output of any solar panel installed as part of the Goods may differ from the Nominated Output if the Goods are installed in conditions which are different from the conditions under which the manufacturer assessed the Nominated Output.

7 Dates for Supply of the Goods

- 7.1** You acknowledge and agree that any times, dates or periods we quote for the supply and installation of the Goods are estimates only and we are not obliged to supply and install the Goods within those times, dates or periods.
- 7.2** We will not be liable for any damage or loss resulting from any delay in the supply and installation of the Goods, unless the delay is a direct result of our negligence or a failure by us to take reasonable due care.

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7.3 We will use reasonable endeavours to install the Goods in a timely manner having regard to any applicable legislative requirements that apply with respect to the start of work and estimate that we will install the Goods within 120 days of:

(a) if there is no site inspection of the Premises, the later of us:

- (i) receiving the Deposit; and
- (ii) receiving the completed Site Assessment Questionnaire, and the Signing Page executed by you; or

(b) if there is a site inspection of the Premises, the later of us:

- (i) receiving the Deposit;
- (ii) receiving the Signing Page executed by you; and
- (iii) providing a Quote.

We will use reasonable endeavours to notify you if the Goods cannot be delivered within this period.

7.4 If you:

- (a) receive notification from us under clause 7.3; or
- (b) otherwise become aware that the Goods cannot be delivered within the 120 day period in clause 7.3, you may terminate this Agreement by notice in writing to us (given, in respect of paragraph (a), within 5 days after you receive our notice) but only if we have not commenced installing the Goods. If you terminate this Agreement under this clause 7.4, any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.6.

8 Price and Payment

8.1 You must pay us:

- (a) the Deposit when you complete and sign the Signing Page; and
- (b) the Balance on the date we install the Goods at the Premises, (together, the Purchase Price).

8.2 We may use the Deposit to procure the Goods from our suppliers.

8.3 We may increase the Purchase Price by notice to you in accordance with clause 6.4(a), 9.3, or 10.3. If we increase the Purchase Price after the date for payment of the Balance in clause

8.1(b), you must pay us the amount of the increase in the Purchase Price within 14 Business Days after receipt of our notice of the increase.

8.4 We may increase the Purchase Price by notice to you in response to regulatory changes prior to the installation of the Goods. If we increase the Purchase Price under this clause 8.4 you may, at your option, accept the new Purchase Price in which case this Agreement will continue, or terminate this Agreement. If you terminate this Agreement under this clause 8.4, any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.6.

8.5 Subject to clause 8.7, you may make a payment under this Agreement by bank cheque, money order, cash, debit card, credit card or direct deposit. The date you are taken to have made the payment for the purposes of this Agreement will be the date we receive the amount of the payment as cleared funds in our account.

8.6 If your debit card or credit card is declined by your financial institution, or if your cheque is not honoured on presentation, we may, at our discretion, accept an alternative method of payment from you. If we so request, you must pay us the amount of any charges incurred by us as a result of your card being declined or your cheque not being honoured.

8.7 We may refuse to accept a payment made by bank cheque, credit card or debit card.

8.8 If you do not pay any amount by the due date under this Agreement:

- (a) interest will accrue at the rate of 12% on that amount calculated daily from (and including) the date on which the amount becomes due and payable to the date the amount is paid in full; and
- (b) at our request, you must pay us the amount of any reasonable costs incurred by us in pursuing payment of the unpaid amount (such as the costs of debt collectors retained by us).

9 Additional Installation Costs

9.1 If you completed a Site Assessment Questionnaire in relation to the Premises upon entering into this Agreement, you acknowledge that we have relied upon your responses in the Site Assessment Questionnaire concerning the nature of the Premises in calculating the Purchase Price.

9.2 Upon conducting a site inspection or entering the Premises to install and commission the Goods under clause 6, we may identify additional costs involved in installing the Goods (Additional Installation Costs) if:

- (a) the nature of the Premises is different from that described in your responses to the Site Assessment Questionnaire;
- (b) due to the special nature of the Premises, the installation presents us with complexities or difficulties; or
- (c) changes occur to the Premises after you complete the Site Assessment Questionnaire or we complete the site inspection.

9.3 If we identify any Additional Installation Costs, we may increase the Purchase Price by the amount of those Additional Installation Costs by notice to you. The Additional Installation Costs will include (but are not limited to) the charges set out in the schedule to these Terms and Conditions.

9.4 If we notify you under clause 9.3, you may terminate this Agreement by notice in writing to us within 5 days unless you have accepted the increase in the Purchase Price during that period. If you terminate this Agreement under this clause 9.4:

- (a) in circumstances where you could reasonably have been expected to identify that the Additional Installation Cost would apply to the installation of the Goods at the Premises, any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.5; or
- (b) in circumstances where you could not have been reasonably expected to identify that the Additional Installation Cost would apply to the installation of the Goods at the Premises, any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.6.

10 Solar Credits Discount and Customer Warranty

10.1 You acknowledge that, in calculating the Deposit, Balance and Purchase Price set out in the Signing Page or, if applicable, the Quote, we have deducted an amount (Solar Credits Discount) on the basis that:

- (a) you will be entitled to create STCs in relation to the installation of the Goods and to receive Government Rebates;
- (b) the number of STCs that may be created in relation to the installation of the Goods will be multiplied by the multiplier for certificates for Small Generation Units specified in regulation 20AA of the Renewable Energy (Electricity) Regulations 2001 (Cth) for the relevant period; and
- (c) you will assign your rights to create STCs and to receive Government Rebates to us.

10.2 You must ensure that:

- (a) there is no pre-approval or funding agreement in force in respect of the Goods under the Solar Homes and Communities Plan, the Renewable Remote Power Generation Program or the National Solar Schools Program, as defined in regulation 20AA of the Renewable Energy (Electricity) Regulations 2001 (Cth);
- (b) financial assistance has not been approved or provided under any of the programs or plans referred to in paragraph (a), or under the Photovoltaic Rebate Program, as defined in regulation 20AA of the Renewable Energy (Electricity) Regulations 2001 (Cth), in respect of any other Small Generation Unit at the Premises; and
- (c) the Goods will be the first Small Generation Unit installed at the Premises.

10.3 If, in breach of any subparagraph in clause 10.1 or 10.2 the Solar Credits Discount does not apply to the supply and installation of the Goods, we may increase the Purchase Price by the amount of the Solar Credits Discount, by notice in writing to you.

11 Warranty applicable to the Goods

11.1 We will, at our option, repair or replace the Goods or the relevant part of the Goods in the following circumstances:

- (a) if the Actual Output of any solar panel installed as part of the Goods is less than 90% of Nominated Output, but only where we are notified within 10 years of the date of this Agreement;
- (b) if the Actual Output of any solar panel installed as part of the Goods is less than 80% of Nominated Output, but only where we are notified within 25 years of the date of this Agreement;
- (c) if the inverter installed as part of the Goods fails as a result of a defect in materials or workmanship, but only where the failure arises and is notified to us within 5 years of the date of this Agreement or, if the inverter is an Aersosharp inverter, within 10 years of the date of this Agreement; and

(d) if the Goods fail as a result of a failure in workmanship in the installation of the Goods, but only where the failure arises and is notified to us within 12 months of installation.

11.2 If you make a warranty claim under clause 11.1 related to an issue with the performance or installation of the Goods (the Claim), you must meet the following conditions:

- (a) You must produce the original invoice or other proof of purchase document disclosing the purchase date;
- (b) You must make the Claim within the warranty periods listed under clause 11.1(a) to 11.1(d), where applicable;
- (c) All costs of installation, cartage, freight, travelling expenses, hiring tools and insurance are paid by the customer;
- (d) The Goods have not been misused, adjusted or serviced by anyone other than a service technician approved by us in writing; and
- (e) The Goods have been installed correctly and used in accordance with the manufacturer's use and maintenance instructions supplied with the Goods.

11.3 We offer the warranty provided in clause 11.1 to you in addition to all other rights and remedies that you may have under law in relation to the Goods to which the warranty relates. **11.4** Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

11.5 The warranty provided in clause 11.1 does not apply:

- (a) if the Goods have been:
 - (i) misused, abused, neglected or involved in an accident;
 - (ii) maintained other than in accordance with our or the manufacturer's use and maintenance instructions;
 - (iii) repaired, modified, reinstalled or repositioned by anyone other than a service technician approved by us in writing; or
 - (iv) subjected to power failure, power surge, lightning, flood, fire, accidental breakage or other events beyond our control; or
- (b) if the type or serial number of any part of the Goods has been altered, removed or made illegible.

11.6 To the maximum extent permitted by law, unless expressly provided in this Agreement, all implied terms, conditions, warranties and any other additional obligations are excluded from this Agreement. If any legislation implies into this Agreement any term, condition, warranty or additional obligation that cannot be lawfully excluded, then that term, condition, warranty or additional obligation will be included in this Agreement only to the extent required by the relevant legislation, but each party's liability in respect of any breach of that term, condition, warranty or additional obligation will be limited to the maximum extent (if any) permitted by that legislation.

11.7 If the reason that the Goods fail to perform to the levels set out in clauses 11.1(a) and 11.1(b) is that conditions at the Premises are different from the conditions under which the manufacturer assessed the Nominated Output, then the Nominated Output for the purposes of clauses 11.1(a) and 11.1(b) will be adjusted downwards by a factor which reflects those differences.

11.8 If:

- (a) you make a Claim under clause 11.1; and
- (b) we incur costs in assessing the Claim; and
- (c) we, in our reasonable opinion, determine that the Claim is not covered by the warranty outlined in clause 11.1 (whether or not as a result of one of the events detailed in clause 11.5.); then we reserve the right to seek reimbursement for any out of pocket expenses incurred by us and to charge a fee of \$82.50 per hour (including GST) spent by us in assessing the Claim. Any amounts due from you to us under this clause 11.8 will be payable within 7 days of us issuing an invoice.

11.9 If you wish to make a Claim under this clause 11, you should:

- (a) Contact: Ph: 1300 768 225 Fax: 03 8678 1390;
- (b) Visit the Nu Energy website for details: www.nuenergy.com.au

12 Risk and Title

12.1 The risk of loss of, or damage to, the Goods passes to you on delivery of the Goods to the Premises.

12.2 Property in the Goods will not pass to you until you pay us the Purchase Price.

13 Breach and Termination

13.1 We may terminate this Agreement immediately by notice in writing to you if you:

(a) fail to pay any amount when due in accordance with this Agreement; and

(b) fail to comply with clause 10.1(c) or clause 10.2.

13.2 We may terminate this Agreement at any time before installation of the Goods has commenced by giving you 10 Business Days notice in writing. Subject to clause 13.1, if we have begun installing the Goods, we may not terminate this Agreement.

13.3 You may terminate this Agreement at any time before installation of the Goods has commenced by giving us 10 Business Days notice in writing. If we have begun installing the Goods, you cannot terminate this Agreement.

13.4 If at the date that you give us notice of termination pursuant to clause 13.3, your rights to a refund of any amounts paid to us under this Agreement will be determined as follows:

- (a) if we have scheduled a date for installation of the Goods and notified you of that date, clause 13.5 will apply; or
- (b) if we have not scheduled a date for installation of the Goods or not notified you of that date, clause 13.6 will apply.

13.5 Subject to clause 13.7, if you terminate this Agreement under clauses 6.4(b) or 9.4(a), or under clause 13.4(a) we:

- (a) will retain the Deposit, up to a maximum of \$250; and
- (b) must refund any other amounts paid by you within 90 days after the date of termination of this Agreement.

13.6 Subject to clause 13.7, if you terminate this Agreement under clauses 7.4, 8.4, 9.4(b) or 13.4(b), or if we terminate this Agreement under clause 13.2, we will refund any amounts paid by you within 60 days after the date of termination of this Agreement.

13.7 If we terminate this Agreement under clause 13.1, or you terminate this Agreement under clause 13.3, you must pay any costs reasonably incurred by us as a result of the termination of this Agreement, including any costs reasonably incurred in respect of the delivery or partial installation of the Goods. We may retain any amount paid to us under this Agreement to the extent necessary to cover such costs and to the extent allowed by law. We will return any amount that remains after deducting our costs to you within 90 days of termination of this Agreement.

13.8 For the avoidance of doubt, nothing in this Agreement affects your rights to terminate this Agreement in the event that you reject the Goods under section 259 of the Australian Consumer Law.

14 Power Grid Connection, Meter Installation and Feed-In Tariffs

14.1 After installation of the Goods, you will need to arrange with your electricity retailer and pay for the Goods to be connected to the main grid with a smart meter at the Premises. 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, the agreement to undertake that connection and installation is an agreement between you and your electricity retailer or distributor.

14.2 This Agreement does not impose any obligations on either party in respect of the performance of or payment for the connection and installation referred to in clause 14.1.

14.3 We provide no guarantee that you will be accepted into any Australian State or Territory feed-in tariff scheme or that you will receive feed-in tariffs and recommend that you make independent enquiries in relation to your eligibility for, and the operation of, any feed-in tariff scheme.

15 GST

15.1 If GST is payable on a supply made under this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply (the GST Amount). This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or if we specify a single 'all-inclusive' price.

15.2 Where any indemnity or reimbursement under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement in relation to the relevant cost, expense or other liability.

15.3 Words used in this clause that have a specific meaning in the GST law (as defined in the A New Tax System (Goods and

Services Tax) Act 1999 (Cth)) have the same meaning in this clause.

16 Notices

16.1 Any notice, demand, consent or other communication (a Notice) to be given by a party under this Agreement (unless it is given or made under clause 16.2):

- (a) must be in writing and signed by the sender or a person duly authorised by the sender; and
- (b) must be addressed and delivered to the intended recipient at the address or fax number last notified by the intended recipient to the sender; and
- (c) subject to clause 16.3, will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business days after the date of posting (if posted to an address in the same country) or seven Business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error.

16.2 Any Notice:

- (a) may be sent by email instead if:
 - (i) where the Customer is the recipient, the Customer has agreed to receive Notices by email;
 - (ii) the Notice is signed by a person authorised by the sender; and
 - (iii) the Notice is sent to the email address last notified by the intended recipient to the sender; and
- (b) subject to clause 16.3, will be taken to be duly given or made on the first to occur of:
 - (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
 - (ii) the time that the Notice enters an information system which is under the control of the recipient or the recipient's email service provider; and
 - (iii) the time that the Notice is first opened or read by the recipient or an employee or officer of the recipient.

16.3 If delivery or receipt of a Notice under this clause 16 occurs on a day that is not a Business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next Business day in that place

17 General

17.1 This Agreement, any Site Assessment Questionnaire completed by you and any plans and specifications prepared under this Agreement but only to the extent expressly incorporated or referenced in this Agreement constitute the entire agreement

between the parties with respect to their subject matter. They set out the only conduct relied on by the parties and supersede all prior agreements and understandings between the parties in connection with their subject matter.

- 17.2** A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 17.3** If any act of God, strike, war or other event occurs that is beyond our reasonable control and prevents us from performing our obligations under this Agreement, we may extend the time for performance of those obligations by a reasonable period, or terminate this Agreement, by notice in writing to you and we will not be liable for any resulting delay in supplying, or failure to perform our obligations under this Agreement.
- 17.4** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction.
- 17.5** This Agreement is subject to the Nu Energy Privacy Policy, available at www.nuenergy.com.au.
- 17.6** This Agreement is governed by the laws of Victoria. In relation to it and related non contractual matters each party irrevocably submits to the non exclusive jurisdiction of courts with jurisdiction there.
- 17.7** You must not use or deal with any intellectual property (including copyright, copyright in this Agreement, patents and trademarks) owned or licensed by us without our prior written consent.
- 17.8** You cannot assign, charge, encumber or otherwise deal with any of your rights or obligations under this Agreement, or attempt or purport to do so, without our prior written consent.
- 17.9** This Agreement may be amended only by another agreement executed by both parties. However we may amend this Agreement unilaterally in response to regulatory changes, but only to the extent necessary to comply with such regulatory changes. Any amendment of this Agreement under this clause 17.9 will be taken to form part of this Agreement.
- 17.10** You are responsible for, and bear any and all risks and costs associated with, determining whether you require any approvals whatsoever from any third party (including but not limited to approvals from any governmental authority, local council, tenant or lessor) for the installation of the Goods.

Schedule – Additional Installation Costs (including GST)

Description	1.5 kW system	2 kW system	3 kW system
Flat Roof Tilt frame (including labour)	\$715	\$850	\$1125
Double Storey dwelling	\$200	\$250	\$300
Cathedral Ceiling	\$300		
Lifting and Access equipment	Price on Application		
Horizontal Array fixing	\$450	\$600	\$900
Heritage Overlay (Cost of moving inverter)	\$250		
Travel Charge (per km for Premises located more than 80km from the General Post Office in Sydney, Wollongong, Newcastle, Dubbo, Brisbane, Melbourne, Geelong, Hobart, Adelaide, Perth, or Canberra)	Price on Application at \$2.00 per km		
Freight Charge (for Premises located more than 80km from the General Post Office in Sydney, Wollongong, Newcastle, Dubbo, Brisbane, Melbourne, Geelong, Hobart, , Adelaide, Perth, or Canberra)	\$100	\$125	\$150
Meter Link (QLD Only)	Single Phase \$150 Two Phase \$200 Three Phase \$250		
Permit Application (SA Flat Roof frame)	Price on Application		
Main Switch Install & Reconfiguration	Price on Application		
Install Variations	Price on Application		