

Nu Energy Solar Water Heater 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) **Additional Installation Costs** has the meaning given in clause 9.1.
- (b) **Agreement** means these Terms and Conditions, together with either the Site Assessment Form or the Written Quote and Signing Page.
- (c) **Balance** means the balance of the Purchase Price specified for the Goods in clause 8.1(b), as adjusted under clause 8.3.
- (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) **Claim** has the meaning given in clause 11.4.
- (f) **Deposit** means the deposit specified for the Goods in clause 8.1(a).
- (g) **Goods** means the solar water heater system described in the Site Assessment Form or the Written Quote.
- (h) **Government SWH Rebate** means any Commonwealth, State or Territory rebate or other benefit (other than Victorian Energy Efficiency Certificates and STCs) in relation to the Goods.
- (i) **Notice** has the meaning given in clause 15.1.
- (j) **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 Form or Written Quote.
- (k) **Purchase Price** has the meaning given in clause 8.1, being the sum of the Deposit and the Balance, as adjusted under clause 8.3.
- (l) **SWH Rebate Discount** has the meaning given in clause 10.3.
- (m) **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.
- (n) **Site Assessment Form** means the "Nu Energy Solar Hot Water Assessment Form" provided to you during a site inspection of the Premises which must be signed by you. The quoted amount on the Site Assessment Form is only valid for acceptance by you for 21 days from the date of site inspection.
- (o) **Site Assessment Questionnaire** means the site assessment questionnaire completed by you and delivered to us.
- (p) **Solar Water Heater** has the meaning given in section 5 of the *Renewable Energy (Electricity) Act 2000* (Cth).
- (q) **STC** means a small-scale technology certificate created under the *Renewable Energy (Electricity) Act 2000* (Cth) in relation to the installation of a Solar Water Heater 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 heats water using solar energy.
- (r) **STC Discount** has the meaning given in clause 10.1.
- (s) **VEEC or Victorian Energy Efficiency Certificate** means an energy efficiency certificate created under the *Victorian Energy Efficiency Target Act 2007* (Vic).
- (t) **VEEC Discount** has the meaning given in clause 10.5.
- (u) **Written Quote** means the quote generated by our sales staff based on your answers to a Site Assessment Questionnaire for the Premises.

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) of 39 Colemans Road, Carrum Downs VIC 3201.
- (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 when you complete, sign and deliver to us the signed Agreement.

4 Cooling off period

You may terminate this Agreement by notice in writing to us during the cooling off period. The cooling off period is 5 days and commences on the day we receive the signed Agreement from you. 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 for the purpose of conducting 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 by competent, trained and insured installers.
- 6.4 If you are not satisfied with the location for installation of the Goods that we select in accordance with any applicable guidelines and standards, 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.

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.
- 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 50 days of the later of:
 - (a) receiving the Deposit; and
 - (b) receiving the signed Agreement from you.

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We will use reasonable endeavours to notify you if the Goods cannot be delivered within the 50 day 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 50 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 sign the Agreement; 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), 9.2, 10.2, 10.4 or 10.6. 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 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 that could not have been reasonably identified by us during a site inspection; or
- (c) changes occur to the Premises after the date of site inspection.

9.2 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.

9.3 If we notify you under clause 9.2, 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 9.3 any amounts you have paid as at the date of termination will be dealt with in accordance with clause 13.6.

10 Discounts, rebates and customer warranties

10.1 You acknowledge that, in calculating the Deposit, Balance and Purchase Price, we may have deducted an amount (**STC Discount**) on the basis that:

- (a) you will be entitled to create STCs in relation to the installation of the Goods;
- (b) you will assign your rights to create such STCs to us; and
- (c) you will do everything required by any law to enable us to create such STCs.

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

10.3 You acknowledge that, in calculating the Deposit, Balance and Purchase Price, we may have deducted an amount (**SWH Rebate Discount**) on the basis that:

- (a) you will be entitled to receive certain Government SWH Rebates that we are entitled to apply for on your behalf; and
- (b) you will assign your rights to receive Government SWH Rebates to us.

10.4 If we have deducted the SWH Rebate Discount and, in breach of any subparagraph in clause 10.3 the SWH Rebate Discount does not apply to the supply and installation of the Goods, we may increase the Purchase Price by the amount of the SWH Rebate Discount, by notice in writing to you.

10.5 You acknowledge that, in calculating the Deposit, Balance and Purchase Price, we may have deducted an amount (**VEEC Discount**) on the basis that:

- (a) you will be entitled to create Victorian Energy Efficiency Certificates in relation to the installation of the Goods; and
- (b) you will assign your rights to create Victorian Energy Efficiency Certificates to us.

10.6 If we have deducted the VEEC Discount and, in breach of any subparagraph in clause 10.5 the VEEC Discount does not apply to the supply and installation of the Goods, we may increase the Purchase Price by the amount of the VEEC Discount, by notice in writing to you.

10.7 Subject to clause 10.7, you agree that, should you be entitled to apply for any Government SWH Rebate that we are not entitled to apply for on your behalf, it is your responsibility to do all things reasonably necessary in order for you to apply for any such Government SWH Rebate.

10.8 We undertake to provide any information reasonably necessary for you to apply for any Government SWH Rebate described in clause 10.7.

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 a controller, tank, elements, internal components of the collector, thermostat or valves 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 1 year of the date of this Agreement;
- (b) if a circulation pump 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 2 years of the date of this Agreement if the Premises are in South Australia or Queensland and 1 year if the Premises are in New South Wales, Victoria or Tasmania;
- (c) if a gas booster 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 3 years of the date of this Agreement;
- (d) if the frame of the thermal collectors 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;

- (e) if a thermal collector or gas booster heat exchanger 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 10 years of the date of this Agreement;
- (f) if a flat roof frame 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 25 years of the date of this Agreement; and
- (g) 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 The warranties provided in clause 11.1 do not apply:
- (a) if the Goods have been:
- misused, abused, neglected or involved in an accident;
 - maintained other than in accordance with our or the manufacturer's use and maintenance instructions;
 - repaired, modified, reinstalled or repositioned by anyone other than a service technician approved by us in writing; or
 - 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.
- 11.3 To make a claim under clause 11.1, contact us in writing at 39 Colemans Road, Carrum Downs, Victoria, 3201 or by telephone on 1300 768 225. Upon receipt of your claim, we will provide further instructions about how you can claim the warranty.
- 11.4 If:
- you make a warranty claim under clause 11.1 related to an issue with the performance or installation of the Goods (**the Claim**); and
 - we incur costs in assessing the Claim; and
 - we, in our reasonable opinion, determine that the Claim is not covered by the warranties outlined in clause 11.1 (whether or not as a result of one of the events detailed in clause 11.2);
- 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 11.3 will be payable by you within 7 days of us issuing an invoice.
- 11.5 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. The warranty in this clause 11 is offered in addition to any other rights and remedies you may have under law which we cannot exclude.
- 11.6 Subject to clause 11.5, to the maximum extent permitted by law, 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. Our liability under this Agreement is limited to the remedies available under this clause 11 and we will not be liable for any consequential loss.
- ## 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 commit a material breach of this Agreement. For the purposes of this clause 13.1, a 'material breach' includes:
- a failure to pay any amount when due in accordance with this Agreement; and
 - a breach of clause 10.1(b), 10.3(b) or 10.5(b).
- 13.2 We may terminate this Agreement at any time before installation of the Goods has commenced by giving you 21 Business Days notice in writing. If we have begun installing the Goods, we may not terminate this Agreement subject to clause 13.1.
- 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 scheduled a date for installation of the Goods and notified you of that date, clause 13.5 will apply. If we have begun installing the Goods, you cannot terminate this Agreement.
- 13.4 If we terminate this Agreement under clause 13.1, or you terminate this Agreement under clause 13.3, you must pay any costs incurred by us as a result of the termination of this Agreement and any costs 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 permitted by law. We must return any amount that remains after deducting our costs to you within 90 days of termination of this Agreement.
- 13.5 If you terminate this Agreement under clauses 6.4(b) or 13.3 after we have notified you of a scheduled date for installation of the Goods we:
- will retain the Deposit, up to a maximum of \$250; and
 - must refund any other amounts paid by you within 90 days after the date of termination of this Agreement.
- 13.6 If you terminate this Agreement under clauses 7.4, 8.4 or 9.3, 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.
- ## 14 GST
- 14.1 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.
- 14.2 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
- 14.3 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 14.
- ## 15 Notices
- 15.1 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 15.2):
- must be in writing and signed by the sender or a person duly authorised by the sender; and
 - 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
 - subject to clause 15.3, will be taken to be duly given or made:
 - in the case of delivery in person, when delivered;
 - 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
 - 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.
- 15.2 Any Notice:
- may be sent by email instead if:
 - 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 15.3, 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.
- 15.3 If delivery or receipt of a Notice under this clause 15 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.

16 General

- 16.1 This Agreement, any Site Assessment Form or Written Quote and Signing Page completed by you and any plans and specifications prepared under this Agreement but only to the extent these are 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.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 This Agreement is subject to the Nu Energy Privacy Policy, available at www.nuenergy.com.au.
- 16.6 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.
- 16.7 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.
- 16.8 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.
- 16.9 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 16.9 will be taken to form part of this Agreement.
- 16.10 You are responsible for, and bear any and all risks and costs associated with, determining whether you require any approvals whatsoever including but not limited to approval from any governmental authority for the installation of the Goods.