
1 Definitions and interpretation

- 1.1 Unless otherwise stated, the following terms used in this Agreement have the meaning ascribed to them in this clause:
- (a) **\$** means Australian dollars;
 - (b) **Agreement** means this agreement between NU Energy and the Purchaser;
 - (c) **Australian Government** means the Federal Department of Environment, Water Heritage and the Arts, the Australian Greenhouse Office, the Office of Renewable Energy Regulator or any equivalent Australian Government Department;
 - (d) **Progress Payments** means the monetary amounts described in the Progress Payments Schedule;
 - (e) **Business Day** means a day on which banks are open for general banking business in Victoria (not being a Saturday, Sunday or public holiday in Victoria);
 - (f) **Business Hours** means the between the hours of 8.30am and 5.00pm on a Business Day;
 - (g) **Completion Certificate** means the certificate described in clause 7;
 - (h) **Completion Period** means the period from the date of this Agreement to the estimated date of completion of the installation of the Goods described at Reference Schedule Item 6;
 - (i) **Final Amount** means the monetary amount set out at Reference Schedule Item 5 as amended under this Agreement to include any additional installation costs;
 - (j) **Financing Undertakings Schedule**, if applicable to this Agreement, means the Schedule of that name at the back of this Agreement;
 - (k) **force majeure** means anything beyond the control of a Party or in consequence of which a Party is hindered in performing its obligations and includes strike; trade disputes; fire; accidents; supply, import or export delays; and adverse weather conditions;
 - (l) **Goods** means the system described at Reference Schedule Item 1;
 - (m) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;
 - (n) **Nominated Output** means the expected output for the solar panel comprised within the Goods as nominated by the manufacturer;
 - (o) **Notice** means a notice which is in accordance with clauses 14.4 and 14.5;
 - (p) **Sale Price** means the monetary amount set out at Reference Schedule Item 3 as may be adjusted under this Agreement;
 - (q) **Payment Schedule** means the arrangements for the payments by the Purchaser to NU Energy set out in clause 3.1;
 - (r) **Premises** means the premises where the Goods are to be installed as described at Reference Schedule Item 2;
 - (s) **Progress Payments Schedule**, if applicable to this Agreement, means the Schedule of that name at the back of this Agreement;
 - (t) **Reference Schedule** means the Schedule of that name at the front of this Agreement;
 - (u) **Renewable Energy Certificate** 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; and
 - (v) **Security Amount** is the monetary amount set out at Reference Schedule Item 4.
- 1.2 In this Agreement unless otherwise stated or inconsistent with the context:
- (a) headings are part of this Agreement but if there is any conflict or inconsistency between a heading and other text of this Agreement then the heading does not alter the meaning of the other text;
 - (b) singular words include the plural and plural words include the singular;
 - (c) words of one gender include each other gender;
 - (d) words indicating a person include a company, a corporation or an incorporated association and any other legal entity, and a partnership or other association;
 - (e) cognate words and expressions and grammatical variations of words and expressions which are defined have corresponding meanings;
 - (f) a reference to an Act, or other legislation, includes regulations, or other subordinate legislation, and includes all amendments and substituted legislation from time to time;
 - (g) a reference to a Party includes the successors and assigns of that party but this does not permit an assignment except in accordance with the terms of this Agreement;
 - (h) if a Party includes more than one person then each person is both jointly and severally liable for the performance of this Agreement and for all payments by that Party; and
 - (i) this Agreement includes all schedules, attachments and addendums referred to within this Agreement.

2 Obligations of the Parties

- 2.1 NU Energy will:
- (a) supply the Goods to the Purchaser; and
 - (b) install the Goods at the Premises.
- 2.2 The Purchaser will:
- (a) pay NU Energy the Sale Price as per the Payment Schedule;
 - (b) assign to NU Energy all of the Purchaser's rights to receive all Renewable Energy Certificates that arise by reason of the supply and/or installation of the Goods at the Premises, or otherwise; and
 - (c) properly and accurately complete all documentation necessary for NU Energy to effect the assignment referred to in clause 2.2(b) and for NU Energy to receive any Commonwealth or State or Territory benefit in connection with the supply and/or installation of the Goods at the Premises.

3 Payment amounts and schedule

- 3.1 The Purchaser agrees to pay NU Energy the Sale Price according to the following Payment Schedule:
- (a) the Purchaser will pay NU Energy the Security Amount at the time of the execution of this Agreement by the Parties;
 - (b) if applicable (see the Progress Payments Schedule), the Purchaser will pay NU Energy the Progress Payments as per the requirements of the Progress Payments Schedule; and
 - (c) the Purchaser will pay NU Energy the Final Amount within 7 days of receipt of the Completion Certificate from NU Energy.

4 Site inspection, representations and adjustments to the Sale Price

- 4.1 Both parties acknowledge that in calculating the Sale Price NU Energy has relied on:
- (a) a preliminary site inspection of the Premises conducted by NU Energy prior to the execution of this Agreement;
 - (b) representations by the Purchaser in relation to the ownership and title of the Premises, the nature of the Premises and the eligibility of the Purchaser for certain discounts, government offers, and rebates, as contained in this Agreement and in any communication by the Purchaser prior to the date of this Agreement; and
 - (c) the Purchaser's representation and warranty, constituted by its execution of this Agreement, that to the best of the Purchaser's knowledge and belief, having made due enquiry, there is no asbestos, asbestos fibres or asbestos related products either at the Premises or likely to be disturbed by the installation of the Goods at the Premises.
- 4.2 Despite clause 4.1, the Purchaser acknowledges that NU Energy may conduct further site inspections in order to confirm the Purchaser's representations and to prepare for the installation of the Goods at the Premises, and in that regard:
- (a) the Purchaser grants permission to NU Energy and its employees, contractors and/or agents to enter the Premises where the Goods are proposed to be installed and commissioned at any reasonable time during Business Hours provided that NU Energy has given notice of the site inspection at least 3 days prior to the date of the site inspection; and
 - (b) the Purchaser agrees to ensure that a representative of the Purchaser will be present at the Premises for all such site inspections
- 4.3 It is the Purchaser's obligation to ensure that the Purchaser's representations referred to in clause 4.1(b)-(c) are correct.
- 4.4 Any site inspection(s) by NU Energy do not relieve the Purchaser of its obligation to ensure that the Purchaser's representations referred to in clause 4.1(b)-(c) are correct.
- 4.5 The Purchaser acknowledges that NU Energy may determine that additional installation charges may be applicable if at the time of installation of the Goods at the Premises any changes have occurred at the Premises since the site inspection or if any of the Purchaser's representations referred to in clause 4.1(b)-(c) are incorrect and, because of those changes or that incorrectness the installation cost is increased.
- 4.6 If NU Energy determines that additional installation charges are applicable under clause 4.4:
- (a) NU Energy must provide Notice to the Purchaser of the additional installation costs; and
 - (b) the Sale Price and the Final Amount will be adjusted by increasing them by the amount of the additional installation costs.

5 Assignment of Renewable Energy Certificates to NU Energy

- 5.1 If clause 5.2 does not apply:
- (a) upon entering into this Agreement, the Purchaser unconditionally undertakes to assign and is deemed to have assigned to NU Energy any rights to or rights to create Renewable Energy Certificates that may exist or arise in relation to the Goods;
 - (b) the Purchaser agrees that valuable consideration in the form of a point-of-sale discount has been provided to the Purchaser by NU Energy in exchange for the Purchaser assigning to NU Energy the rights to or rights to create Renewable Energy Certificates;

Nu Energy Commercial Terms & Conditions

- (c) the Purchaser irrevocably agrees to complete and execute for the benefit of NU Energy any documents, contracts, or papers reasonably necessary to give effect to the assignment referred to in clause 5.1(a); and
 - (d) the Purchaser unconditionally undertakes not to otherwise deal with Renewable Energy Certificates or a right relating to Renewable Energy 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.
- 5.2 At the time of entry into this Agreement, the Purchaser may elect to retain any right or rights to create Renewable Energy Certificates referred to in clause 5.1 by providing NU Energy with notice in writing and the Parties agree in writing to amend the Sale Price and Final Amount to include the market value of the rights on the date of entry into this Agreement, as determined by NU Energy.
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6 Solar Credits Discount

- 6.1 Unless otherwise stated, capitalised terms in this clause 6 have the following meaning:
- (a) **Photovoltaic Rebate Program** has the same meaning as in the *Renewable Energy (Electricity) Regulations 2001*.
 - (b) **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*.
 - (c) **Small Generation Unit** has the same meaning as in the *Renewable Energy (Electricity) Regulations 2001*.
 - (d) **Solar Credits Amount** means any additional amount that may become payable under this clause 6;
 - (e) **Solar Credits Discount** means the discount offered by NU Energy to the Purchaser on the basis of the Warranties given under this clause 6 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*; and
 - (f) **Warranties** means the warranties referred to in clause 6.4.
- 6.2 The Purchaser acknowledges that the Sale Price has been calculated on the basis that the Solar Credits Discount applies to the supply and installation of the Goods.
- 6.3 Unless otherwise agreed by the Parties in writing, by executing this Agreement the Purchaser is taken to have accepted the Solar Credits Discount and to be bound by this clause 6.
- 6.4 The Purchaser undertakes, warrants and represents that, as at the date of this Agreement and continuing until the installation of the Goods at the Premises is completed and the Purchaser has complied with its obligations under clause 2.2:
- (a) no person, including the Purchaser, has received pre-approval or approval for financial assistance, nor is there any funding agreement in force, under any Program, in relation to the Goods;
 - (b) no person, including the Purchaser, has 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.
- 6.5 If, as a result of a breach of any of the Warranties, the Solar Credits Discount does not apply to the supply and installation of the Goods:
- (a) the Sale Price and Final Amount will be increased by the value of the Solar Credits Discount as determined by NU Energy, and NU Energy will provide the Purchaser with Notice in writing of the amount of the increase, being the Solar Credits Amount, and the amended Sale Price and amended Final Amount; and
 - (b) If installation of the Goods has been completed and the Purchaser has paid NU Energy the Sale Price before the value of the Solar Credits Discount is added back, the Purchaser must pay to NU Energy the Solar Credits Amount within 7 days of receiving Notice of the Solar Credits Amount from NU Energy.
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7 Completion

- 7.1 Subject to any event of force majeure, NU Energy will endeavour to complete the installation of the Goods at the Premises before the end of the Completion Period.
- 7.2 On completion of the installation of the Goods at the Premises, NU Energy will provide the Purchaser with a Completion Certificate that confirms that the Goods have been installed and are operational.
- 7.3 A Completion Certificate will not constitute a confirmation that the Goods have been connected to the power grid (see clause 12).
- 7.4 NU Energy shall not be liable to the Purchaser to make good any damage or loss whether arising directly or indirectly out of the failure to complete the installation of the Goods before the end of the Completion Period.
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8 Termination

- 8.1 Unless otherwise provided in this Agreement, if a Party breaches a term of this Agreement and that breach is a type of breach that is capable of being remedied, the other Party may send the breaching Party a Notice that sets out the details of breach and demands that the breaching Party remedy the breach within 14 days of the Notice.
- 8.2 A Party may immediately terminate this Agreement by Notice if:
- (a) the breach committed by the other Party under clause 8.1 is not remedied by that other Party within 14 days of the Notice; or

Nu Energy Commercial Terms & Conditions

- (b) the breach committed by the other Party under clause 8.1 is not a type of breach that is capable of being remedied.
- 8.3 If the Agreement is terminated by NU Energy under clause 8.2, NU Energy may, at NU Energy's election:
- (a) enter the Premises and remove the Goods, in which case:
 - (1) NU Energy may retain all monetary amounts already paid to NU Energy by the Purchaser up to the value of NU Energy's damages resulting from the termination of this Agreement and return the remainder to the Purchaser; and
 - (2) if the value of NU Energy's damages resulting from the termination of this Agreement are greater than the monetary amounts retained by NU Energy under clause 8.3(a)(1), NU Energy will be entitled to sue the Purchaser for damages.
 - (b) not remove the Goods from the Premises, in which case NU Energy may retain all monetary amounts already paid to NU Energy by the Purchaser and at NU Energy's election:
 - (1) demand immediate payment of the remainder of the Sale Price by the Purchaser, in which case the Purchaser must pay that amount to NU Energy within 7 days of the demand; or
 - (2) sue the Purchaser for damages.
- 8.4 If the Agreement is terminated by the Purchaser under clause 8.2:
- (a) NU Energy will return to the Purchaser all monetary amounts already paid to NU Energy under the Agreement within 30 days of the termination of the Agreement; and
 - (b) NU Energy may enter the Premises and remove the Goods during business hours on giving Notice of its intention to do so.
- 8.5 If the Purchaser retains any of the Goods under the clause 8, all of NU Energy's ongoing obligations under this Agreement relating to the quality, operation and/or performance of the Goods, including but not limited to the warranties provided under clause 10.1, will not apply to the Goods.
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9 Installation

- 9.1 The Purchaser grants permission, and all necessary and reasonable access, to NU Energy and its employees, contractors and/or agents to enter the Premises to install the Goods during Business Hours.
- 9.2 The Purchaser will ensure that it has a representative present at the Premises for the installation and/or commissioning of the Goods, when and as reasonably required by NU Energy or its employees, contractors and/or agents.
- 9.3 NU Energy will be responsible to ensure that it or its contractors hold and maintain all necessary licences and accreditations in order to install the Goods at the Premises.
- 9.4 The Purchaser will be responsible to ensure that it obtains all necessary permits and approvals in the nature of planning, development and building permits and approvals in order for NU Energy to install the Goods at the Premises.
- 9.5 If a Party identifies or becomes aware of asbestos, asbestos fibres or any asbestos related substances at the Premises, that Party must immediately inform the other Party, and:
- (a) NU Energy will immediately cease any and all work at the Premises, including but not limited to the installation of the Goods;
 - (b) the Purchaser must engage, or cause to be engaged, a certified specialist contractor authorised by the relevant regulatory authority in the State or Territory where the Premises is located ("the Certified Specialist Contractor") to undertake the assessment and removal of the asbestos, asbestos fibres and/or any asbestos related substances at the Premises pursuant to the removal and certification requirements of the State or Territory;
 - (c) the Purchaser will provide NU Energy with a certified copy of a clearance certificate issued by a competent person, who is independent from the Certified Specialist Contractor, in accordance with Part 11 of the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos 2nd Edition 2005; and
 - (d) NU Energy will recommence work at the Premises, including but not limited to the installation of the Goods, only after it has received a properly completed clearance certificate under clause 9.5(c) and NU Energy is satisfied, in its absolute discretion, that it is safe for NU Energy to recommence the work at the Premises.
- 9.6 The Completion Period will be extended by a reasonable period of not less than the period taken to satisfy clauses 9.5(a)-(d).
- 9.7 The Purchaser acknowledges that NU Energy does not agree to undertake the works set out in clauses 9.5(a)-(b) and is not a party to any agreement with the Certified Specialist Contractor, or any other person, which may be entered into for that purpose.
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10 Warranty applicable to the Goods

- 10.1 Subject to mandatory warranties imposed by law, NU Energy will, at its absolute discretion, either repair or replace (at NU Energy's option) the Goods if they fail, or the part of the Goods that NU Energy consider has failed, only in the following cases:

Nu Energy Commercial Terms & Conditions

- (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 NU Energy in writing within 10 years of the date this 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 NU Energy in writing within 25 years of the date this 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 NU Energy in writing within 5 years of the date this 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 NU Energy in writing within 5 years of the date this Agreement comes into effect; and
- (e) cases 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 NU Energy in writing within 12 months of installation.

10.2 Except as provided in this 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. Without limitation, NU Energy will not be liable under any circumstances for:

- (a) any special, indirect or consequential loss or damage, that is, loss or damage beyond a normal measure of loss or damage;
- (b) any loss of profits, anticipated or otherwise;
- (c) any loss in revenue, gain or benefit, including that available under a feed In tariff or equivalent scheme;
- (d) any loss of business opportunity;
- (e) any costs arising from failure of the Goods;
- (f) any damage, direct or indirect, to equipment, appliances or data, and the like, arising from the operation of the Goods;
- (g) any structural damage arising from the installation and operation of the Goods; or
- (h) any damage to business goodwill arising from the installation and operation of the Goods.

10.3 The Parties acknowledge and agree that if a court determines that the liability exclusions described in clause 10.2 (a)-(h) are invalid for any reason, that NU Energy's total liability for the circumstances described in clause 10.2 (a)-(h) will not exceed an amount of five times the Sale Price.

10.4 The Purchaser acknowledges that any undertaking, representation or claim in this Agreement or otherwise regarding the operation, fitness for purpose, or merchantable quality of the Goods only applies when the Goods are operating under ideal conditions as defined by the manufacturer of the Goods.

10.5 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 the Purchaser or any person;
- (c) non-observance with use and maintenance instructions;
- (d) repair, modification or repositioning by anyone other than a service technician approved by NU Energy in writing;
- (e) power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of NU Energy's control; or
- (f) the type or serial number of any part of the Goods being altered, removed or made illegible.

10.6 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, title and insurance

11.1 Risk in the Goods passes to the Purchaser by reason of and at the time of delivery of the Goods to the Premises.

11.2 NU Energy must obtain and maintain insurance in relation to damage, loss or theft of the Goods until risk passes to the Purchaser under clause 11.1.

11.3 The Purchaser must obtain and maintain insurance in relation to damage, loss or theft of the Goods at least until title has passed to the Purchaser under clause 11.4.

11.4 Title to the Goods passes to the Purchaser on completion of the installation of the Goods, the completion of the documents required for the assignment of all Renewable Energy Certificates to NU Energy, the provision of the Completion Certificate to the Purchaser by NU Energy and payment in full of the Sale Price to NU Energy.

12 Power grid connection and meter installation

12.1 The Purchaser acknowledges that although NU Energy may assist in arranging for the Goods to be connected to the main grid and for installation of the meter at the Premises, NU Energy does not agree to undertake that connection and installation under this Agreement and is not a party to any agreement between the Purchaser and the Purchaser's electricity retailer and/or distributor, which may be entered into for that purpose.

Nu Energy Commercial Terms & Conditions

12.2 The costs and risks of that connection and installation under clause 12.1 are not included in any way in this Agreement.

13 Goods and Services Tax ("GST")

13.1 In this clause 13, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

13.2 If a Party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, and that amount is not expressed to be GST-inclusive, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

13.3 If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.2.

13.4 A Party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

14 General

14.1 This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and sets out the only conduct relied on by the Parties. Without detracting from clause 4.1(b)-(c), this Agreement supersedes all prior representations, agreements, statements and understandings by the Parties, whether verbal or in writing.

14.2 Failure by either Party to insist on strict performance of any term, warranty or condition of this Agreement will not be taken as a waiver of it or of any rights the Party 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 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.

14.5 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 Business 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 the Party affected by the force majeure event 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.

14.7 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.

14.8 This Agreement is subject to the NU Energy Privacy Policy, available at www.nuenergy.com.au.

14.9 This Agreement is deemed to be made in the State of Victoria and is to be construed in accordance with the laws of Victoria, Australia and the Parties submit to the exclusive jurisdiction of the Courts of the State of Victoria in relation to any dispute under or about this Agreement.

14.10 The Parties 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 the other Party without that other Party's prior written consent.

14.11 The Parties may not assign their rights and obligations under this Agreement without prior written approval from the other Party.

14.12 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.

14.13 Interest will accrue at the rate of 12% calculated daily on any amount outstanding under this Agreement from time to time.

14.14 The Progress Payments Schedule only has force under this Agreement if both Parties have signed the Progress Payments Schedule. The Financing Undertakings Schedule only has force under this Agreement if both Parties have signed the Financing Undertakings Schedule.