

**ZEN ENERGY SYSTEMS NEW ZEALAND LIMITED  
TERMS AND CONDITIONS**

**1. GENERAL**

- 1.1. These terms and conditions (*Terms*) apply to the supply of Goods and provisions of Services described in the Quotation by ZEN Energy Systems New Zealand Limited (we or us) to you upon acceptance by you of the Quotation.
- 1.2. Each Quotation together with these Terms shall form an agreement between us and you.

**2. DEFINITIONS**

- 2.1. In this agreement, unless the context requires otherwise:
  - Goods* means goods, accessories, components and/or materials supplied by us to you as part of the Works.
  - Location* means the site at which the Works are carried out for you.
  - Manufacturer's Warranty* means the warranty supplied by the manufacturer of the Goods.
  - Price* means the price for the Works specified in the Quotation (subject to any Variation).
  - Practical Completion* means the date that we notify you the Works are completed regarding the conclusion of the physical installation and not beholden to the independent timings of an electrical Record of Inspection or meter swap.
  - Related Work* means any work or other trades that are outside the scope of the Works.
  - Services* means the services provided by us to you as part of the Works.
  - Quotation* means the document outlining the provision of the Works and the Price as accepted by you.
  - Variation* means a change in the Quotation including the specifications, scope, time of supply, Price or scale of the Works.
  - Working day* means any day of the week other than a Saturday, Sunday, public holiday, any applicable regional holiday in which the Location is situated, and the period of 24 December to 5 January, both days inclusive;
  - Workmanship* means the performance of the Services in a proper and competent manner with reasonable care and skill.
  - Works* means the Goods and Services to be delivered by us as set out in the Quotation.

**3. QUOTATION AND VARIATIONS**

- 3.1. Our Quotation shall be valid for the period set out in the Quotation. If you do not accept a Quotation within that period, it will expire. The Quotation takes effect on the date that it is accepted by you.
- 3.2. We may alter, amend or withdraw any Quotation prior to acceptance by you.
- 3.3. We may issue a Variation where:
  - (a) any plans, specifications or information provided by you and relied upon by us prove to be inaccurate or unreliable;
  - (b) we inspect the Location and find that remedial work is required before the Works can be installed;
  - (c) there is an increase in the cost of the Goods or Services included in the Quotation where such increase is beyond our control; or
  - (d) conditions outside our control cause delays to either the commencement or completion of the Works.
- 3.4. You may initiate a Variation as follows:
  - (a) you must submit a written request to us outlining the requested Variation; and
  - (b) we must notify you in writing advising of any changes arising from the proposed Variation (including timing).
- 3.5. If you accept a Variation under clause 3.3 or 3.4, the Quotation will be deemed to have been amended. If you do not accept a Variation under clause 3.3 we may terminate the agreement.

**4. YOUR OBLIGATIONS**

- 4.1. You agree to:
  - (a) obtain and pay for any third party consents and approvals required for us to perform the Works;
  - (b) carry out any preliminary or preparatory work agreed with us, and notify us when the Location is ready for us prior to the date you and we have agreed that the Works will begin;
  - (c) ensure the Location complies with all necessary bylaws and restrictions and is structurally sound to enable the Works to be installed;
  - (d) provide us, our employees and contractors with unrestricted access to the Location and ensure it remains in a state and condition that is safe;
  - (e) notify us of all applicable health and safety policies affecting the Location; and
  - (f) not cause any disruption or obstruction to the Works and to follow any reasonable instructions provided by us about the Works.
- 4.2. If you fail to carry out or perform any of your obligations pursuant to this clause 4 (or the Location is not ready for us to start work on the agreed date) then, we may carry out those obligations on your behalf and recover the costs from you, and charge you for costs we incur as a result of the delay (including for Goods that have been supplied by us).
- 4.3. Where you request any Related Work to be carried out, we will use our reasonable endeavours to source suppliers and/or contractors (*Third Party*) to carry out the Related Work, but you are responsible for commissioning, controlling, and paying for such work and we shall have no liability to you in relation to the Related Works or that Third Party.

## **5. THE WORKS**

- 5.1. We will use reasonable efforts to:
- (a) commence the Works on the date we agree with you;
  - (b) complete the Works within the time period set out in the Quotation; and
  - (c) ensure the Works comply with the health and safety policies notified to us in relation to the Location.
- 5.2. We may use subcontractors to perform the Works.
- 5.3. We will comply with all applicable laws in relation to the delivery of the Works.

## **6. CHARGES AND PAYMENT**

- 6.1. The Price payable by you for the Works will be set out in the Quotation, subject to any Variation. Unless otherwise stated, the price in the Quotation is exclusive of GST.
- 6.2. Unless otherwise agreed the Price is payable in staged payments on or before the 3<sup>rd</sup> day following invoice or payment claim as follows:
- (a) a deposit of 30% of the Price at the time of your acceptance of the Quotation which you acknowledge is non-refundable up to \$2,000;
  - (b) 40% of the Price is payable when we confirm the installation date; and
  - (c) the balance of the Price on Practical Completion as stated in item 2.1.
- 6.3. All payments are to be made in full without setoff or deduction.
- 6.4. If you fail to make payment by the due date:
- (a) Interest may be charged on the amount outstanding at the rate of 5% above our bank's current overdraft rate from the due date until payment is made;
  - (b) You will be liable for all costs and expenses of recovery including debt collection agency fees, and legal costs on a solicitor/client basis; and
  - (c) We may withhold delivery or suspend the Works and any start, delivery or completion dates shall be extended accordingly.

## **7. DELIVERY, RISK AND INSURANCE**

- 7.1. We shall deliver Goods to the Location.
- 7.2. Irrespective of whether ownership and title in the Goods remains vested in us, risk in the Goods shall pass to you upon delivery at the Location. You are responsible for all insurance of all Goods from the time of delivery.

## **8. TITLE AND SECURITY**

- 8.1. Ownership and title in the Goods, or any proceeds from on-sale of the Goods, shall not pass to you until you have paid us in full for all amounts due under this agreement.
- 8.2. You acknowledge that until payment in full has been made to us for the Works:
- (a) we have a Purchase Money Security Interest (as that term is defined in the Personal Properties Securities Act 1999 (PPSA)) in the Goods;
  - (b) even where the Goods are attached, fixed or incorporated into any of your property, the Goods will be deemed to be personal property, as if not so attached, fixed or incorporated for the purposes of the PPSA;
  - (c) if you on-sell the Goods prior to payment to us, you will pay the proceeds derived from that on-sale into a separate account for the benefit and as trustee for us so that those proceeds remain identifiable in connection with that on-sale and the Goods;
  - (d) you irrevocably grant us the right at any reasonable time if you default or we believe a default is likely, to enter upon the Location and/or any premises where the Goods are located to remove and repossess the Goods, without notice and without liability whatsoever to you, or to any person claiming through you; and
  - (e) you will do all things, sign all documents and pay on demand all of our costs required to register, perfect or enforce this security interest.
- 8.3. You waive any right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest under the PPSA.
- 8.4. Nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA shall apply to this agreement nor shall your rights as a debtor in sections 116, 119, 120(2), 121, 125-127, 129 and 132 of the PPSA apply to this agreement.

## **9. WARRANTIES**

- 9.1. Subject to clause 9.2 and clause 13 and any disclaimers set out in the Quotation, we warrant that the Works will substantially conform to the Quotation on completion of the steps set out in clause 9.6.
- 9.2. Where the Goods are subject to a Manufacturer's Warranty:
- (a) we will pass on the benefit of that Manufacturer's Warranty to you, without being directly liable to you under that warranty and pending suitable replacements being made available by said Manufacturer ; and
  - (b) you acknowledge that you must comply with the terms and conditions of the Manufacturer's Warranty relating to the use and maintenance of the Goods, including the maintenance of a stable Wi-Fi or internet connection for your solar system to enable ongoing monitoring, firmware updates, remote diagnostics, and support. Failure to maintain connectivity may limit our ability, or the manufacturer's ability, to provide maintenance, resolve issues, or uphold warranty obligations.
- 9.3. We will repair or make good any defects in our, and our subcontractors', Workmanship (*Workmanship Warranty*) arising within 12 months following Practical Completion (*Warranty Period*). Our Workmanship Warranty is subject to the following:
- (a) the Workmanship Warranty does not apply to Goods covered by a Manufacturer's Warranty;
  - (b) our liability under the Workmanship Warranty will be limited to the labour value of the Workmanship;
  - (c) our Workmanship Warranty does not cover any occurrence which would normally be covered by public liability or any other insurance;

- (d) our Workmanship Warranty does not apply where alterations or repairs are made by you or any third party to the Works without our knowledge and prior written consent;
  - (e) the benefit of our Workmanship Warranty is not assignable by you to any other person;
  - (f) our Workmanship Warranty does not apply for so long as you owe us any money;
  - (g) our Workmanship Warranty does not cover any loss or damage caused by the matters listed in clause 13.2;
  - (h) we are not liable to carry out any remedial work under the Workmanship Warranty unless we receive written notice from you of the claim within 7 days after discovery of the defect and within the Warranty Period.
- 9.4. Nothing in clause 9.3 shall affect our obligation to remedy any defective works within 1 year of Practical Completion in accordance with s362Q Building Act 2004.
- 9.5. Where the Consumer Guarantees Act 1993 (CGA) applies to the supply of the Goods or the Services, you may have additional rights under the CGA.
- 9.6. You acknowledge and agree that the solar power unit and system will not be functional or switched on and you will not receive the full use and benefit of the Works until an independent electrical inspector has issued a record of inspection. If you attempt to turn the unit and system on before these steps are complete, you may damage the Works and void the Workmanship Warranty and Manufacturer's Warranty.

## **10. RIGHTS OF TERMINATION**

- 10.1. Either party may terminate this agreement by written notice if the other party:
- (a) materially breaches any of its obligations and, either, if capable of remedy, does not remedy that breach within 14 days of receiving written notice from the non-breaching party or is not capable of remedy;
  - (b) commits an act of bankruptcy or insolvency, makes any assignment or compromise with creditors, goes into liquidation or has a receiver, voluntary administrator; or similar appointed.
- 10.2. Termination of this agreement will not prejudice or affect the rights, remedies and claims of either party to the other.

## **11. PAYMENTS DUE ON UPON TERMINATION**

- 11.1. Upon termination of this agreement, you will be liable to pay us for the value of that part of the completed Works delivered and performed as at the date of termination.
- 11.2. Upon termination due to your default, you will also be liable to pay us for any reasonable costs that we have incurred due to early termination.
- 11.3. Even if this agreement is terminated before we start the Works, we may retain a portion of the deposit to reimburse us for our costs incurred prior to the date of termination.

## **12. INTELLECTUAL PROPERTY & PROMOTIONAL USE**

- 12.1. All of the trademarks, patents, copyright, designs, drawings, "know-how", confidential information or other intellectual property rights in respect of the Goods and the Works (collectively *Intellectual Property*) remain our property despite the sale of the Goods and the provision of the Works to you. You may not use, copy, reproduce, distribute, modify, publish, post or transmit the Intellectual Property in any way without our prior written consent.
- 12.2. You permit us to attach such reasonable signage as we may wish at the Location to identify that we are carrying out the Works.
- 12.3. Unless otherwise stated, you agree that we may use designs, drawings and photographic images of the Works on social media and our website in promotion of our business.
- 12.4. This clause 12 survives termination of this agreement.

## **13. LIMITATION OF LIABILITY**

- 13.1. Except to the extent prohibited by law, the warranties provided in clauses 9.1 to 9.3 replace all other representations, guarantees or warranties (statutory, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose) and all such representations, guarantees and warranties are specifically excluded.
- 13.2. To the maximum extent permitted by law, under no circumstances will any guarantee or warranty express or implied relating to the Goods and/or any Works extend to or include nor will we be liable (whether vicariously or otherwise) under the law of tort, contract or otherwise for:
- (a) any representations made by us regarding the amount of electricity the installed solar system will generate or the savings you will make;
  - (b) any loss, damage or defect not covered by the Manufacturer's Warranty;
  - (c) any loss, damage or defect occurring after the expiry of the Warranty Period;
  - (d) any loss or damage caused by non-adherence to the installation and/or operating instructions and/or guidelines for the Goods and/or Services supplied from time to time by the manufacturer of the Goods;
  - (e) any loss or damage caused by us altering the Location due to structural, electrical, safety or other concerns at the Location;
  - (f) any loss or damage caused by us failing to recognise the possible presence of asbestos in any roof cladding, soffit, eaves, gables or interior ceilings;
  - (g) any loss or damage caused to decramastic or tin roofing tiles;
  - (h) any loss or damage caused by the acts or omissions of you or any third party;
  - (i) any loss or damage caused by a contractor and/or supplier carrying out any Related Work;
  - (j) any loss or damage arising from having repairs or alterations carried out to any Works by any person other than us or our sub-contractors;
  - (k) any loss or damage arising from the termination of this agreement; or
  - (l) any loss or damage caused as a result of you prematurely turning on the solar unit and/or system as set out in clause 9.6
  - (m) any loss or lack of performance as a result of poor grid power quality outside of the limits of the NZ Electrical safety standards

- 13.3. The exclusions and the limitations contained in clause 13.1 and 13.2 do not apply to rights granted to you under the CGA, unless you are acquiring the Goods or Services for the purposes of a business in which case the provisions contained in the CGA shall not apply.
- 13.4. We shall not be liable to you if we are unable to perform any obligation due to any act of god, fire, flood, drought, storm or other natural disaster, war, terrorism, lockout, strike, manufacturing delay, or other event beyond our control and we shall be entitled to delay performance of all or any part of the Works until such event or events have ceased or remedied.
- 13.5. Under no circumstances shall we be liable to you for any loss of profits or savings or any indirect, special, incidental or consequential loss or damage, however caused, arising out of or in connection with the performance or non-performance by us of any obligations under this agreement.
- 13.6. Notwithstanding any other provision of this agreement if for any reason we become liable for loss or damage that would have otherwise been excluded then our maximum aggregate liability to you arising out of any claim will be limited to the price of the affected Goods or Services but in any event not exceeding the Price for the Works.

#### **14. DISPUTES**

- 14.1. Except as set out in clause 14.5, no party to this agreement shall begin any court proceedings relating to any dispute arising out of this agreement unless that party has complied with the following paragraphs of this clause.
- 14.2. Any party who claims that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- 14.3. On receipt of the notice by the other party, the parties to this agreement must:
  - (a) use their best efforts to resolve any dispute through good faith negotiations;
  - (b) if the dispute is not resolved within 7 days of receiving the notice, refer the dispute to mediation.
- 14.4. The mediation shall be conducted in terms of the Resolution Institute Standard Mediation Agreement and the mediation shall be conducted by a mediator and at a fee agreed by the parties, failing agreement between the parties, the mediator shall be selected, and the mediator's fee shall be decided by the Chair for the time being of Resolution Institute.
- 14.5. Nothing in this clause 14 limits any right the parties may have to refer a dispute to adjudication under the CCA.

#### **15. CONSTRUCTION CONTRACTS ACT 2002**

- 15.1. We may exercise all or any powers available to us under the Construction Contracts Act 2002 (CCA) including suspension of work, adjudication and seeking charging orders.
- 15.2. We may serve you with Payment Claims under the CCA irrespective of the payment method selected for this agreement. If this occurs, we will provide you with information which sets out your rights and obligations under the CCA.

#### **16. MISCELLANEOUS**

- 16.1. You authorise us to collect, retain and use any information about you for the purpose of assessing your creditworthiness, or marketing any products or services provided by us to you. You authorise us to disclose any information obtained to any person for these purposes.
- 16.2. If any provision of this agreement shall be invalid, void, illegal or unenforceable that provision shall be severed but will not affect validity, existence, legality and enforceability of the remaining provisions.
- 16.3. A party's delay or failure to enforce any provision of this agreement shall not be treated as a waiver of that provision, nor shall it affect its right to subsequently enforce that provision.
- 16.4. We may subcontract the Services provided that we shall not be relieved from any liability or obligation under this agreement by so doing.
- 16.5. We may assign our rights under this agreement. You shall not assign all or any of its rights or obligations under this agreement without our written consent.
- 16.6. All notices under this agreement must be in writing and either delivered by hand or sent by email or post to a contact address that has been provided by the other party. A notice is deemed received, if personally delivered, when delivered, if posted, 5 days after posting and if emailed, when the email is sent provided the sender does not receive any error message relating to the sending of that email and receives confirmation that the email was delivered (by automated delivery receipt or otherwise).
- 16.7. No variation of the Quotation or this agreement shall be binding on us unless it is in writing and signed by our authorised representative.
- 16.8. This agreement contains all terms of the arrangement between the parties and supersedes and extinguishes all prior agreements, discussions and representations between the parties concerning its subject.