

ZEN Energy System Terms and Conditions – Business Services

1. **(Agreement)** This Contract governs the agreement between ZEN and the Customer in respect of the Works. This Contract, including specifically the Quote is open for acceptance for a period of 30 days from the date specified in the Quote, which acceptance is evidenced by ZEN receiving from the Customer:

- a. its unconditional signed Contract; and
- b. the deposit specified in the Quote.

The Customer agrees to be bound by this Contract, which becomes binding on the Customer when ZEN receives the unconditional signed Contract. Until accepted by the Customer in accordance with this clause, ZEN may withdraw or vary the Contract, including the Contract Price.

2. **(Works)** ZEN agrees to undertake the Works in relation to the Property on the terms and conditions of this Contract. The Customer agrees that, unless specifically indicated in the Quote, the Works do not include:

- a. the undertaking of any civil works, and that any required civil works are to be undertaken by the Customer at its own costs; and
- b. the sourcing or provision of specialised equipment that may be required in undertaking the Works as a result of the location or characteristics of the Property (such as additional lifting, hauling, crane, scissor lifts or cherry pickers), and that the hire or use of such equipment is to be provided by the Customer at its own costs.

3. **(Small-Scale Technology Certificates)** The Customer assigns all rights it has to create Small-Scale Technology Certificates to ZEN and authorises ZEN to create, apply and retain Small-Scale Technology Certificates and all financial benefits or value attributable to them. The Customer acknowledges and agrees that the portion of the Contract Price payable in cash has been calculated on the basis that the Small-Scale Technology Certificates, rebates and other financial benefits as set out in the Quote that may be retained by ZEN as a result of the assignment of such rights to ZEN under this clause are approved by the Office of Renewable Energy Regulator. If for any reason ZEN determines that the Small-Scale Technology Certificates, rebates or other financial benefits are not, or will not be, available to ZEN as anticipated by ZEN when calculating the portion of the Contract Price payable in cash in the Quote, then the Customer agrees that the portion of the Contract Price payable in cash will be increased and the Customer must pay an additional amount to reflect the value of such benefits that are not, or will not be, available to ZEN.

4. **(Insurance)** ZEN will obtain such insurance and on such terms as it determines is reasonably necessary for the undertaking of the Works.

5. **(Payment)** The Customer must pay the Contract Price at the times and in the amounts set out in the Quote, without the need for ZEN to raise any claim or demand. The Customer's order will not be scheduled for installation until the required deposit is paid. Notwithstanding any disputes in relation to this Contract, the Customer must pay ZEN the Contract Price in full in accordance with the Quote. If and to the extent that the dispute is resolved and there has been an overpayment, ZEN will refund such overpayment within 10 Business Days of the resolution of the dispute.

6. **(Financial Information)** The Customer agrees that its decision to enter into this Contract is made on the basis of its own financial assessment and calculations, together with any independent financial advice it elected to obtain. The Customer further agrees that this decision was not made in reliance on any statement or representations made by ZEN, its employees, agents, officers or contractors, as to any financial return in relation to the System. Any financial information provided by ZEN to the Customer, including but not limited to investment analysis or references to payback and income generation, are provided as a guide only and do not form part of the terms of this Contract. The Customer is aware that laws are subject to change, including but not limited to laws governing feed-in tariffs and government rebates or financial incentives in relation to solar power, which may have financial implications for the Customer and may affect the basis upon which the Customer chose to enter into this Contract. The Customer agrees that any decision to enter into this Contract based on such financial incentives available at the time of entering into this Contract, is made at its own risk. The Customer agrees that ZEN is not and will not be liable or responsible for any subsequent change in the financial circumstances of the Customer or any financial incentives.

7. **(Customer credit assessment)** The Customer consents to ZEN, directly or through third parties, making any inquiries ZEN considers reasonably desirable or necessary to prove the Customer's identity or creditworthiness (including without limitation ordering a credit report, performing other credit checks and verifying the information the Customer provides to ZEN against third party databases). The Customer agrees to provide all assistance and information as may be required by ZEN to enable ZEN to make such inquiries, including without limitation signing relevant credit check applications or forms.

8. **(Council approval)** The performance of obligations under this Contract (except for the requirement of the Customer to pay the deposit specified in the Quote) is subject to the Customer obtaining council approval and such other approvals as may be required in respect of the Works. Where council approval is not obtained within 60 days of the date of this Contract, either party may terminate this Contract by giving written notice to the other party. Where this Contract is terminated in accordance with this clause, the Customer will pay on demand by ZEN the amount of any reasonable costs incurred by ZEN in respect of this Contract and the Works.

9. **(Cooling off)** The Customer agrees that it is not entitled to any cooling off right with respect to this Contract.

10. **(Customer to safely store goods before commencement)** If any goods forming part of the Works have been delivered to the Property before the commencement of the Works or the installation of the System, the Customer agrees to store such goods in a safe, protected and secure location pending undertaking of the Works. The Customer acknowledges and agrees that it is liable and responsible to ZEN with respect to such goods, including any damage or theft of such goods, while on the Property. The Customer further agrees that it will, if required by ZEN, obtain sufficient insurance cover with respect to such goods for the relevant period.

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11. **(Safety and circumstances relating to Property)** It is the Customer's responsibility to ensure that the Property, including specifically the areas required to be accessed to undertake the Works, is safe and suitable for the undertaking of the Works. The Customer represents and warrants that the Customer has advised ZEN of all relevant circumstances regarding the Property and the areas required to be accessed to undertake the Works, and agrees to inform and keep informed ZEN of all relevant environmental concerns, hazards, on-site protection, occupational health and safety requirements and other safety matters in relation to the Property during the undertaking of the Works and any maintenance after completion of the Works. The Customer agrees that ZEN is not obliged to commence the Works or any work until such time as ZEN is satisfied that the Property and the relevant areas to undertake the Works are safe and suitable for undertaking the Works or work. The Customer agrees that if and to the extent ZEN determines the Customer has failed to advise ZEN of all relevant circumstances regarding the Property or has otherwise failed to comply with this clause, the Contract Price may be revised by ZEN to take into account any additional costs of undertaking the Works as a result of such failure.
12. **(Commencement and completion)** ZEN shall use its best endeavours to complete the Works within the period specified in item 6 of the Quote. If no commencement or completion date is specified ZEN will, subject to payment being made in accordance with this Contract, use its best endeavours to ensure that the Works shall commence as soon as practicable and shall use its best endeavours to complete the Works within a reasonable period from commencement. ZEN shall advise the Customer of any anticipated delay upon such delay becoming apparent to ZEN. The Customer acknowledges that it shall not be entitled to any damages (liquidated or otherwise) in respect of any delay in completion of the Works. The Customer agrees that if and to the extent ZEN determines any delays in undertaking the Works are caused by the Customer, ZEN is entitled to charge and the Customer is liable to pay, for downtime for ZEN personnel at hourly rates advised by ZEN.
13. **(Customer default and termination)** If the Customer breaches this Contract, including without limitation failing to make a payment in accordance with clause 5, or denies ZEN access to the Property in order to carry out the Works, ZEN may issue a written notice to the Customer to remedy the default within 10 Business Days of receipt of that notice. If the default is not remedied within 10 Business Days of receipt of such notice, ZEN may terminate this Contract by further written notice to the Customer. Termination of this Contract by ZEN is without prejudice to any rights that ZEN may have in respect of this Contract. The Customer shall be liable for any debt recovery costs (including legal fees on a full indemnity basis) incurred by ZEN in collecting the Contract Price or any part of the Contract Price from the Customer.
14. **(System Specifications)** Any plans and specifications or scope of works annexed to or accompanying these terms and conditions, including any variations to them form part of this Contract. The Customer acknowledges and agrees that the System as specified in the Quote and any annexed plans and specifications or scope of works have been designed by ZEN based on the Customer's responses in the Quote Supporting Documentation. The Customer represents and warrants that the responses in the Quote Supporting Documentation are complete, correct and accurate, and agrees that the System as designed and based on those responses are, and will be appropriate and sufficient for the Customer's requirements. If the Customer changes its consumption habits (whether over time or from a seasonal or ad hoc basis) or if there are otherwise changes from the responses provided in the Quote Supporting Documentation, the Customer acknowledges that the System may no longer be appropriate or sufficient for the Customer's requirements. The Customer agrees that any expansion of output will mean a variation to the System which will result in additional costs to the Customer to be advised by ZEN. The Customer further agrees that the System has been designed by ZEN based on soil conditions, Property characteristics, load, output and other requirements as advised by the Customer in the Quote Supporting Documentation. ZEN may consult with the Customer in relation to such information provided by the Customer but is not obliged to conduct its own verification or testing of such information supplied by the Customer. ZEN is not responsible or liable for any discrepancy in the actual performance of the System and the Customer's expected performance of the System if and to the extent ZEN determines such discrepancy was due to information provided by the Customer being incorrect, inaccurate or inadequate, or if the Customer changes its consumption habits from those set out in the Quote Supporting Documentation.
15. **(Compliance with applicable legislation, codes or standards)** In undertaking the Works, ZEN agrees to comply with all applicable and mandatory provisions of relevant legislation, building codes, rules and standards. The Customer agrees that ZEN is not liable or responsible for any non-compliance with such legislation, codes, rules or standards if such non-compliance was as a result of:
- a design, specification or element of the System having been prepared, provided or implemented as directed by the Customer; or
 - any Customer Provided Parts being incorporated in undertaking the Works or part of the System,
- and will indemnify ZEN with respect to any actions, claims, costs, damages, expenses or losses incurred or suffered by ZEN as a result of such non-compliance.
16. **(Variations)** Variations to this Contract (other than the Contract Price), including variations to any plans and specifications or scope of works, may only be made with the written agreement of ZEN and the Customer. The Contract Price or the portion of the Contract Price payable in cash may be varied only by agreement in writing of the parties, except where:
- some or all of the Small-Scale Technology Certificates factored in the calculation of the Contract Price are not available to ZEN for any reason (clause 3); or
 - changes in government taxes, charges, fees, levies, rebates or other financial benefits that come into force or effect after the date of this Contract that result in a change in cost in undertaking the Works or the financial benefit that the Customer may receive; or

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- c. unforeseen circumstances are discovered after commencement of the Works (clause 19); or
 - d. where the Customer requires the Works to be undertaken out of normal business hours or on non Business Days; or
 - e. where there is a change in the specifications or design of the System or Works after commencement of the Works;
- in which case ZEN may increase the Contract Price and/or the portion of the Contract Price payable in cash to take into account the relevant circumstance described above by notice to the Customer and the Customer is liable to pay such increase in Contract Price and/or the portion of the Contract Price payable in cash.
17. **(Performance of System)** The Customer acknowledges and accepts that the performance of the System and goods supplied by ZEN is contingent upon a clear view of the sun and correct elevation. It is the responsibility of the Customer to ensure that shading of the System and the goods is, and continues to be, minimised (including, if necessary, the removal or pruning of any shade causing trees). Specifically, the Customer acknowledges and accepts that if the elevation is outside of the optimum 30° pitch, there will be a reduced energy yield. The Customer acknowledges and agrees that the performance of any communications components of the System is dependent on the availability and performance of the applicable general telecommunications network and that ZEN is not responsible to the Customer for the performance of the communications components of the System if and to the extent there is a loss, interruption, decreased bandwidth or speed or other change or variation of the applicable general telecommunications network. The Customer further acknowledges and agrees that the performance of the System is dependent on whether or not the responses in the Quote Supporting Documentation correctly reflect the actual load or output requirements and actual consumption by the Customer.
18. **(Customer Provided Parts)** If the Customer provides any Customer Provided Parts to be incorporated into the Works or System and ZEN agrees to incorporate them into the Works or System, then:
- a. ZEN is not liable or responsible for any defects, faults or performance issues with respect to the System that ZEN determines were caused by the Customer Provided Parts, or any costs, expenses or damages that the Customer incurs or suffers that ZEN determines were incurred as a result of the Customer Provided Parts; and
 - b. the Customer is solely responsible for the maintenance and repairs of such Customer Provided Parts.
19. **(Customer to rectify or address circumstances discovered after commencement)** The Customer acknowledges and agrees that ZEN has agreed to undertake the Works on the basis of information provided by the Customer including without limitation the Quote Supporting Documentation. If and to the extent that ZEN discovers after commencement of the Works circumstances that were not advised by the Customer, including without limitation circumstances relating to the location of the site, Property or areas to be accessed, structural integrity, hidden defects, electrical wiring or cabling, status or mounting of consumption meters (including without limitation the presence of any asbestos), shading, elevation, and other matters that may impact on the undertaking or completion of the Works or the performance of the System, ZEN may elect to either:
- a. rectify or address such matters at the cost of the Customer after advising the Customer in writing of the costs that will result in an increase of the Contract Price; or
 - b. request that the Customer, at the Customer's cost, to rectify or address such matters as ZEN reasonably requires in order for ZEN to complete the Works or for ZEN to be satisfied that the performance of the completed Works will not be affected.
- If ZEN determines such circumstances have not been, or cannot be rectified or addressed to ZEN's satisfaction, then ZEN may terminate this Contract by written notice to the Customer and refund within 14 days all monies paid by the Customer to ZEN under this Contract, except that ZEN may retain any monies that ZEN determines as payment for the part of the Works that have been completed or that the Customer has received the benefit as at termination.
20. **(Risk and title to goods)** Risk in the goods passes to the Customer upon delivery to the Property. Ownership of the goods will remain with ZEN until all amounts owing by the Customer to ZEN on any account whatsoever (**Amounts Owing**) have been paid. Until the Amounts Owing have been paid, the Customer holds the goods as trustee and agent for ZEN. If the Customer fails to comply with this Contract in relation to payment or otherwise then ZEN may enter the Property and seize possession of the goods and retain, sell or otherwise dispose of such goods. The Customer consents to ZEN effecting a registration on the PPSA register (in any manner ZEN considers appropriate) and the Customer agrees to provide all assistance reasonably required by ZEN. The Customer waives the right to receive notice of a verification statement in relation to any registration on the register. For the purposes of this clause 20, the following words have the meaning given to them in the PPSA: account, register, registration, security interest and verification statement.
21. **(Make good of loss or damage)** Subject to clauses 27 and 28, ZEN will make good any loss or damage to the Customer's property ZEN identifies as directly caused by ZEN, such obligations to be reduced to the extent that the Customer's acts or omissions contributed to such loss or damage.
22. **(Access to Property)** The Customer must allow ZEN access to the Property so that ZEN can undertake the Works. During and after undertaking of the Works, the Customer agrees to keep the area surrounding the System appropriately fenced with prominent appropriate warnings and signage as directed by ZEN, so that access to the System is only available to authorised persons.
23. **(Maintenance of System)** ZEN agrees to provide scheduled maintenance at its cost on the System in accordance with its scheduled maintenance policy as provided to the Customer. The Customer agrees to undertake the routine maintenance tasks advised by ZEN with respect to the System, including without limitation regular cleaning of the panels and maintenance of any generator connected to the System. The Customer agrees that any unscheduled maintenance or support call outs will be at ZEN's costs except where ZEN

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determines any defect, fault or cause of the call out was due to or in relation to any Customer Provided Parts or component or part that was not supplied by ZEN in undertaking the Works, or where there was a breach of this Contract by the Customer, or where ZEN's liability or responsibility is otherwise excluded under this Contract.

24. **(Warranties)** ZEN warrants that the Works will be performed:

- a. in a proper and workmanlike manner;
- b. in accordance with any plans and specifications or scope of works annexed to or accompanying these terms and conditions (and as varied in accordance with this Contract) and based on the Quote Supporting Documentation; and
- c. all goods and materials supplied by ZEN will be new and in good working order.

To the maximum extent permitted by law, ZEN excludes all other warranties or guarantees whether express or implied.

25. **(Fault reporting and emergency procedures)** If the Customer discovers an alleged defect or fault with the System, the Customer agrees to comply with the fault reporting process provided by ZEN. The Customer agrees to familiarise itself with the emergency procedures advised by ZEN, including specifically the use of the emergency cut-off switch, and to comply with such procedures in the event of an emergency in operating the System.

26. **(Customer not to undertake unauthorised repairs or modifications)** The Customer agrees not to undertake or cause to be undertaken any repairs or modifications to the System unless they have been authorised in writing by ZEN and are performed by service providers approved by ZEN to have the requisite skill, knowledge and experience so as to ensure that the quality and integrity of the System is maintained. The Customer agrees that failure to comply with this clause will release ZEN from all liability and responsibility for any defect or fault in relation to the Works and the System.

27. **(Exclusion of liability)** To the maximum extent permitted by law ZEN excludes all liability for any claims, expenses, losses, damages and costs (including any incidental, special and /or consequential damages or loss of profits) made, suffered or incurred by the Customer:

- a. as a result of a Force Majeure Event;
- b. as a result of any delays in undertaking the Works for any reason;
- c. as a result of any damage to the System from third parties or external factors, including without limitation from vandalism, unauthorised access, unauthorised repairs or maintenance, livestock, rodents and insects;
- d. as a result of any information in the Quote Supporting Documentation being incorrect, inaccurate or inadequate, or if the Customer's actual consumption habits are different than as set out in the Quote Supporting Documentation; or
- e. otherwise in connection with the undertaking of the Works by ZEN, notwithstanding any negligence by ZEN, its officers, employees, contractors, servants or agents.

28. **(Limitation of liability)** To the maximum extent permitted by law, if and to the extent that ZEN's liability to the Customer is

not or cannot be excluded, ZEN's liability is limited (at the option of ZEN) to:

- a. in the case of services supplied or offered by ZEN (i), the supply of the services again, or (ii) the payment of the cost of having the services provided again; and
- b. in the case of goods supplied by ZEN, (i) the replacement of the goods or the supply of equivalent goods, or (ii) the repair of such goods, or (iii) the payment of the cost of replacing the goods or acquiring equivalent goods, or (iv) the payment of having the cost of having the goods repaired.

The Customer specifically agrees that ZEN is not liable for costs or expenses that the Customer may incur from any alleged defect or fault of the System, including without limitation as a result of hiring or acquiring any replacement or temporary generator or obtaining alternative sources of energy in the interim. If the Customer elects to undertake any interim repairs, hire other generators or does any action not directed by ZEN with respect to the alleged defect or fault of the System, the Customer is solely responsible for any costs, expenses or damages that result from such action.

29. **(Indemnity)** The Customer indemnifies ZEN, its officers, employees, contractors, servants or agents against all claims, expenses, losses, damages and costs (including any incidental, special and /or consequential damages or loss of profits) that may be suffered or incurred by any of them resulting out of or in connection with a breach of this Contract by the Customer.

30. **(Dispute Resolution)** If the Customer or ZEN considers that a dispute has arisen in relation to any matter governed by this Contract, that party must give the other party written notice outlining the basis of the dispute. The parties must then meet or appoint a third party to assist in the resolution of the dispute. If such a resolution is not achieved within 30 Business Days of the written notice, the aggrieved party may seek resolution of the dispute via other means, including making an application to the courts. Notwithstanding the existence of a dispute, the Customer must still comply with its obligations to pay ZEN in accordance with the terms of this Contract.

31. **(Intellectual Property)** ZEN grants to the Customer a non-exclusive, non-assignable, royalty-free, limited licence terminable at any time by ZEN, to use such of ZEN's intellectual property in and to the Works and the System as determined by ZEN for the sole purpose of enabling the Customer to enjoy the benefits of the System as intended under this Contract. The Customer agrees that all intellectual property in and to the Works or the System, including without limitation any System plans, drawings, specifications or scope of works annexed to or accompanying these terms and conditions and any variations to them, remains with ZEN and that other than the limited licence described in this clause the Customer does not have any rights or licence to, or to use any or part of, such intellectual property, nor to receive any transfer or assignment of such intellectual property.

32. **(Subcontracting)** The Customer agrees that ZEN is entitled to subcontract some or all of its obligations under this Contract

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to any person at any time on such terms as ZEN determines without seeking the Customer's consent.

33. **(Severability)** If and to the extent any provision or part of a provision is illegal or enforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
34. **(Governing Law)** This Contract shall be governed by the laws of South Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of South Australia.
35. **(Entire Agreement)** This Contract sets out the entire agreement between the parties.

Definitions

The terms set out below shall have the following meanings when used throughout this Contract:

Business Day means any day except a Saturday or a Sunday or other public holiday in the state of South Australia;

Contract means these terms and conditions and the Quote attached to these terms and conditions and includes any plans, specifications or scope of works and other documents annexed to or accompanying these terms and conditions;

Contract Price means the amount specified as the total contract price in item 5 of the Quote;

Customer means the person named in item 2 of the Quote;

Customer Provided Parts means any components, parts or equipment that the Customer has requested ZEN to incorporate into the Works or the System, including without limitation generators and related parts or systems;

Force Majeure Event means an event beyond the control of the parties and that could not be avoided by the exercise of due care and diligence, including without limitation acts of God, inclement weather, government actions, industrial actions, acts of terrorism or war;

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it;

Property means the property located at the address specified at item 3 of the Quote;

Quote means the quote attached to these terms and conditions and any special conditions contained in such quote;

Quote Supporting Documentation means the documents provided by ZEN to the Customer and completed by the Customer to enable ZEN to design the System, including without limitation a questionnaire, load chart, output requirement specifications information and related correspondence in relation to the design and requirements for the System;

Small-Scale Technology Certificates means certificates evidencing the amount of renewable electricity that may be produced or displaced by the system supplied and installed by ZEN pursuant to this Contract, that are eligible to be sold for a financial benefit;

System the solar energy system installed as part of undertaking the Works;

Works means the supply of the goods and the provision of the services described in item 4 of the Quote;

ZEN means the contractor named in item 1 of the Quote.

Execution

<input type="checkbox"/> I/we have read and understood the terms and conditions relating to this Contract;	
Signature:	
Name:	
Capacity:	
Date:	
ZEN Authorised Representative Signature:	
Date:	