

ZEN Energy Systems Terms & Conditions of Contract - QLD

1. **(Agreement)** This Contract governs the agreement between ZEN and the Homeowner in respect of the Works.
 - a) ZEN agrees to provide a signed copy of this Contract as soon as is reasonably practicable (but within 5 days) after this Contract is signed by both parties,
2. **(Works)** ZEN agrees to undertake the Works in relation to the Property on the terms and conditions of this Contract.
3. **(Small-Scale Technology Certificates)** The Homeowner assigns all rights it has to create STCS to ZEN and authorises ZEN to create, apply and retain STCS and all financial benefits or value attributable to them. The Homeowner acknowledges and agrees that the Total Amount Payable has been calculated on the basis that the STCS, rebates and other financial benefits set out in the Order and Method Payment Form in relation to the Works that may be retained by ZEN as a result of the assignment of such rights to ZEN under this clause are approved by the Clean Energy Regulator. If for any reason ZEN determines that the STCS, rebates or other financial benefits are not, or will not be, available to ZEN as anticipated by ZEN in calculating the Total Amount Payable in the Order and Method Payment Form, then the Homeowner agrees to pay an additional amount to ZEN equal to the value of such benefits that are not, or will not be, available to ZEN.
4. **(Payment)** Subject to clause 5, the Homeowner must pay the Contract Price at the times and in the amounts set out under the "Payment" section of the **Order and Method Payment Form** with respect to the Works.
5. **(Third party finance)** If the Homeowner has elected to obtain finance with respect to this Contract, the Homeowner acknowledges and agrees that:
 - a) ZEN is not a finance provider and will not be providing finance to the Homeowner;
 - b) an application for finance to a third party finance provider is required;
 - c) the Homeowner's decision to enter into any Contract with any third party finance provider is made on the basis of the Homeowner's own financial assessment and calculations, together with any independent financial advice the Homeowner may have elected to obtain;
 - d) the decision to enter into any finance contract was not made in reliance on any statement or representations made by ZEN, its employees, agents, officers or contractors;
 - e) ZEN has not considered and does not consider the Homeowner's personal or financial or other circumstances, and makes no recommendation as to whether any finance to be provided by any third party finance provider is appropriate to, or suitable for, the Homeowner;
 - f) the performance of obligations under this Contract (except for the Homeowner's obligation to pay any deposit required by clause 4) is subject to finance approval by the relevant third party finance provider;
 - g) if the relevant third party finance provider accepts the Homeowner's application the Homeowner will be required to enter into a finance contract with the relevant third party finance provider; and
 - h) ZEN makes no representations and warranties about any finance contract with the relevant third party finance provider or the Homeowner's ability to service the debt under any such contract.
 - i) in the event that the Homeowner's finance application is declined, and the customer chooses not to proceed with a direct purchase from ZEN, then ZEN will refund all monies paid to ZEN by the Homeowner. ZEN may retain out of the monies paid to ZEN the amount of any reasonable out of pocket expenses incurred by ZEN in respect to but not limited to application and administration costs.
 - j) where the Homeowner's application is not approved for the full amount the Homeowner is responsible to pay to ZEN any additional monies associated with this Contract.
6. **(Council approval)** The performance of obligations under this Contract (except for clause 3 and the requirement of the Homeowner to pay the deposit specified in clause 4) is subject to the Homeowner obtaining council approval and such other approvals as may be required in respect of the Works. ZEN does not guarantee, warrant or make any representation that council or other approvals will be obtained. The Homeowner must make its own enquiries as to such approvals. The Homeowner acknowledges and agrees that it is responsible for all costs and expenses in obtaining council and other approvals. Where required council approval is not obtained 14 days prior to scheduled installation date, either party may terminate this Contract by giving written notice to the other party. Where this Contract is terminated in accordance with this clause, ZEN shall refund to the Homeowner any deposit paid by the Homeowner under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed or for which the Homeowner has received a benefit.
7. **(Cooling off)**
 - a) The Homeowner may withdraw from the Contract within the times noted below:
 - (i) within 5 business days after the day on which the Homeowner receives from ZEN a copy of both the signed Contract, including any plans and specifications, and the QBCC Consumer Building Guide; or
 - (ii) if the Contract is given to the Homeowner separately from the Consumer Building Guide, then within 5 business days after the day on which the Homeowner receives the second document.
 - b) Further, if the ZEN fails to give both the above documents to the Homeowner within 5 business days of the parties entering the Contract then, in addition, the Owner may withdraw at any time up until 5 business days after the day on which the Homeowner receives those documents in accordance with Clause 7(a) (i) or (ii) above.
 - c) If the Homeowner wishes to withdraw relying on any of these circumstances, the Homeowner must give ZEN a written notice stating that the Homeowner withdraws from the Contract under section 35 of Schedule 1B of the QBCC Act.
 - d) If the Homeowner withdraws from the Contract pursuant to this clause, the Homeowner must pay to ZEN the amount of \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred by ZEN before the Homeowner withdrew from the Contract. If the Homeowner has already paid more than this amount at the time they withdraw, ZEN must promptly refund the excess.

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- e) The Homeowner may not withdraw from the Contract under section 35 of Schedule 1B of the QBCC Act if:
- (i) the Homeowner and ZEN had entered a previous Contract in substantially the same terms and relating to the same home or land; or
 - (ii) the Owner received formal legal advice about the Contract before entering into the Contract; or
 - (iii) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.
 - (iv) If a withdrawal notice is given to ZEN the Homeowner will pay, upon demand being made by ZEN, such part of the Contract Price for Works actually completed prior to receipt of the notice and not yet paid for by the Homeowner.
8. **(Commencement and completion)** Subject to payment being made in accordance with this Contract and the Homeowner completing at its cost any required pre commencement works specified in the Order and Method Payment Form, ZEN will do everything that is reasonably possible to ensure that the installation of the system shall commence within 60 days of the date of this Contract and subject to unforeseen circumstances arising, anticipates that the Works shall be completed within 14 days of commencement of installation. For the purpose of the QBCC Act's requirements for contract, the aforementioned provides the method of how the date for commencement and completion is to be calculated. ZEN shall advise the Homeowner of any anticipated delay upon such delay becoming apparent to ZEN. In the event that the Works are not completed by the date provided for by this clause 8, the Homeowner acknowledges that it shall not be entitled to any damages (liquidated or otherwise) in respect of such delay.
9. **(Homeowner default and termination)** If the Homeowner breaches this Contract, including without limitation by failing to make a payment in accordance with clause 4, failing to complete any Homeowner required pre-commencement works specified in the Order and Method Payment Form within a reasonable time determined by ZEN, or denies ZEN access to the Property in order to carry out the Works, ZEN may issue a written notice to the Homeowner 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 Homeowner. Termination of this Contract by ZEN is without prejudice to any rights that ZEN may have in respect of this Contract. The Homeowner 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 Homeowner.
10. **(Plans and Specifications)** All plans and specifications annexed to or accompanying these terms and conditions, including any variations to such plans and specifications, form part of this Contract.
11. **(Variations)** Variations to this Contract, including variations to any plans and specifications annexed to these terms and conditions, may only be made with the written agreement of ZEN and the Homeowner.
12. **(Homeowner responsibility for condition of, and maintenance of, roof)** The Homeowner warrants that the installation location, such as, but not limited to, the Homeowner's roof, is suitable to accommodate the works and will be maintained in such a condition for the life of the system. ZEN is not liable for any losses, damages or costs associated with not complying with this clause.
13. **(Changes in governmental taxes or charges)** ZEN may vary the Contract Price to reflect any unforeseeable cost increases in providing the Works that result from any change to governmental taxes or charges that come into force after the execution of this Contract. In such circumstances, the Homeowner agrees that the Contract Price may be increased to reflect the relevant cost increase.
14. **(Performance of system)** The Homeowner acknowledges and accepts that the performance of the goods supplied by ZEN is contingent upon a clear view of the sun and correct elevation. It is the responsibility of the Homeowner to ensure that shading of the goods is, and continues to be, minimised (including, if necessary, the removal or pruning of any shade causing trees or vegetation). Specifically, the Homeowner acknowledges and accepts that if the elevation is outside of the optimum 30° pitch, facing due North, there will be a reduced energy yield.
15. **(Homeowner to rectify or address circumstances discovered after commencement)** The Homeowner acknowledges and agrees that ZEN has agreed to undertake the Works on the Property on the basis of a visual inspection carried out by its staff. If and to the extent that ZEN discovers after commencement of the Works circumstances that were not readily apparent in the visual inspection of the Property, including without limitation circumstances relating to structural integrity, hidden defects, electrical wiring or cabling, gas or water pressure, status or mounting of consumption meters (including without limitation the presence of any asbestos), shading or elevation and other matters relating to the Property that may impact on the completion of the Works or the performance of the completed Works, the Homeowner agrees that it is responsible at its 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. In such circumstances, the Homeowner must, within 10 Business Days of ZEN notifying the Homeowner of such matters :
- a) rectify or address such matters at its own cost; or
 - b) request that ZEN rectify or address such matters at the cost of the Homeowner and in such circumstances, the Homeowner agrees to execute a variation to this Contract relating to such additional work.
- If the Homeowner fails to comply with its obligations under this clause 15, or ZEN determines that 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 Homeowner and refund within 14 days all monies paid by the Homeowner to ZEN under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed or for which the Homeowner has received a benefit.
16. **(Risk and title to goods)** Risk in the goods passes to the Homeowner upon delivery to the Property. Ownership of the goods will remain with ZEN until all amounts owing by the Homeowner to ZEN on any account whatsoever (**Amounts Owing**) have been paid. Until the Amounts Owing have been paid, the Homeowner holds the goods as trustee and agent for ZEN. If the Homeowner 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 Homeowner consents to ZEN effecting a registration on the PPSA register (in any manner ZEN considers appropriate) and the Homeowner agrees to provide all assistance reasonably required by ZEN. The Homeowner waives the right to receive notice of a verification statement in relation to any registration on the register. For the purposes of this clause 16, the following words have the meaning given to them in the PPSA: account, register, registration, security interest and verification statement.

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17. **(Access to ZEN Energy Manager)** Where the system allows access to the ZEN Energy Manager that access will be free for the first twelve months. Following this initial period the customer will be advised if a fee is to be paid for such access and how much that fee will be and to whom the Homeowner will be liable, if they choose to continue with such access. It is the responsibility of the Homeowner to have a compatible internet connection for access to the ZEN Energy Manager.
18. **(Make good of loss or damage)** ZEN will make good any loss or damage to the Homeowner's property directly caused by ZEN, such obligations to be reduced to the extent that the Homeowner's acts or omissions, or any pre-existing condition, fault or defect relating to the Property (including without limitation circumstances relating to structural integrity, hidden defects, electrical wiring or cabling, gas or water pressure and status or mounting of consumption meters) contributed to such loss or damage.
19. **(Access to Property)** The Homeowner must allow ZEN access to the Property so that ZEN can undertake the Works.
20. **(Homeowner in Attendance)** The Homeowner agrees to be in attendance for the duration of the installation. If for any reason the Homeowner is not in attendance ZEN will not be held liable for any inaccuracies with the installation. Should the installation not proceed on the scheduled date and time for any reason ZEN excludes liability for any claims, losses, damages and costs incurred by the Homeowner for the installation not taking place as planned.
21. **(Warranties)** ZEN hereby states and acknowledges each of the warranties which apply to the Works by reason of the QBCC Act. Accordingly, ZEN warrants, subject to any available exceptions or limitations in the QBCC Act, that:
 - (a) the Works will be carried out:
 - (i) with reasonable diligence;
 - (ii) in an appropriate and skilful way;
 - (iii) with reasonable care and skill;
 - (iv) in accordance with the plans and specifications;
 - (v) in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975*;
 - (b) all materials to be supplied by ZEN for use in the Works:
 - (i) will be good and, having regard to the specifications, instructions and recommendations of manufacturers or suppliers of such materials (or in the absence of such things) generally accepted practices or standards applied in the building industry for the materials,
 - (ii) suitable for the purpose for which they are used and unless otherwise stated in this Contract, will be new;
 - (c) if plans and specifications form part of the Contract, then ZEN warrants the subject work will be carried out in accordance with the plans and specifications;
 - (d) if the Contract provides for a provisional sum or prime cost item, ZEN warrants the provisional sum or prime cost item has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).

the warranty set out in clause 21 (b) herein shall not apply in respect of such materials specified or nominated or directed to be used by the Homeowner or an architect or consultant appointed by the Homeowner where there are no reasonable grounds for ZEN not using the materials or the Homeowner insists on the materials being used despite Zen providing the Homeowner with written advice to the contrary

 - (i) To the extent that this Contract provides for a provisional sum or prime cost item, such item has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).
22. **(Limitation of liability)** To the fullest extent permitted by law, ZEN's liability to the Homeowner 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.
23. **(Exclusion of liability)** To the fullest extent permitted by law, and subject to clause 17 of this Contract, ZEN excludes all liability for any claims, expenses, losses, damages and costs (including any incidental, special and /or consequential damages including accommodation costs loss of rent, electricity costs, loss of use or loss of profits) made, suffered or incurred by the Homeowner resulting (either directly or indirectly) in connection with the Works.
24. **(No compensation for system failure)** ZEN cannot be held liable for any losses, actual or presumed, incurred by the Homeowner as a result of system failure. All failures should be reported immediately to ZEN and ZEN will address such failures in a fair and reasonable timeframe.
25. **(No guarantee or warranty for feed in tariff or rebates)** ZEN does not guarantee or warrant that the Homeowner will be entitled to or eligible for any feed in tariff, rebate (such as solar hot water or other rebates), discount or similar financial benefit, or that any such benefit will be maintained. The Homeowner must make its own enquiries as to the availability of, and eligibility for, such financial benefits.
26. **(Dispute Resolution)** If the Homeowner 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.. Notwithstanding the existence of a dispute, the Homeowner must still comply with its obligations to pay ZEN in accordance with the terms of this Contract.
27. **(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.

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28. **(Governing Law)** This Contract shall be governed by the laws of Queensland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland.
29. **(Goods and Services Tax)** The Contract Price and all pricing, consideration and other amounts otherwise payable under this Contract shall be exclusive of GST.
30. **(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 in which the Property is located;

Clean Energy Regulator means the independent statutory authority established by the *Clean Energy Regulator Act 2011* (Cth) or any similar authority which supersedes it.

Contract means these terms and conditions and the Order and Method Payment Form attached to these terms and conditions and includes any plans, specifications and other documents annexed to or accompanying these terms and conditions;

Contract Price means the amount specified for the Works, before any stated discounts and STCS;

Finance – the credit provider is a third party Solar Financial Solutions Pty Ltd ABN 43 138 457 762;

Homeowner means the person named in and to whom, the Order and Method Payment Form is addressed;

Order and Method Payment Form means the order and method payment, quotation or such other form attached to these terms and conditions;

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 in the "Quotation" section of the Order and Method Payment Form;

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld);

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

Total Amount Payable means the amount specified for the Works, after any stated discounts and STCS;

Works means the supply of the system selected by the Homeowner and any associated components or parts as described in the Order and Payment Form, and the provision of the services necessary to install them;

ZEN means ZEN Technologies (Power and Energy) Pty Ltd ABN 82 110 224 005 of TAFE SA Tonsley, Level 2, 1284 South Road Clovelly Park SA 5042

<input type="checkbox"/> I/we have read and understood the terms and conditions relating to this Contract;	
<input type="checkbox"/> I/we understand my/our cooling off rights;	
Homeowner Signature:	
Name and capacity:	
Dated:	
Homeowner Signature:	

Name and capacity:	
Dated:	
Number of panels to be installed:	
Total Contract Price (inc GST and after RECS*):	
ZEN Authorised Representative Signature:	
DATED:	