

ZEN Energy Systems Terms & Conditions of Contract - NSW

1. **(Agreement)** This Contract governs the agreement between ZEN and the Homeowner in respect of the Works. Upon request the Homeowner is entitled to receive a signed copy of this Contract within 5 Business 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. **(Insurance)** If the Contract Price is more than \$20,000, before commencement of the Works and before demanding or receiving any part of the Contract Price, ZEN will:
 - a. obtain the home warranty insurance required by the Relevant State Building Legislation in relation to the Works; and
 - b. provide the Homeowner with a certificate for such insurance.
5. **(Payment)** Subject to clause 4 and clause 6, 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. The amount of deposit specified in the "Payment" section of the Order and Method Payment Form with respect to the Works is subject to the following:
 - a. if the Contract Price is more than \$20,000, then the deposit shall be 5% of the Contract Price; or
 - b. if the Contract Price is \$20,000 or less then the deposit shall be 10% of the Contract Price.

WARNING: The Contract Price and the Total Amount Payable are not fixed and may be increased under this Contract in the following circumstances:

 - a. **the non availability to ZEN of all or part of the STCS factored into the Contract Price (refer clause 3);**
 - b. **changes in governmental taxes, charges, fees, levies, rebates or other financial benefits (refer clause 18);**
 - c. **unforeseen circumstances that were not readily apparent in the visual inspection of the Property (refer clause 20).**
6. **(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 5) 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.
7. **(Council approval)** The performance of obligations under this Contract (except for clause 4 and the requirement of the Homeowner to pay the deposit specified in clause 5) 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 their 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 council approval is not obtained within 14 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, ZEN shall refund to the Homeowner any deposit paid by the Homeowner under this Contract.
8. **(Cooling off)** If the Contract Price is greater than \$20,000, the Homeowner may elect not to proceed with this Contract:
 - a. **within five (5) Business Days of receiving a signed copy of this Contract; or**
 - b. **if the Homeowner has not been given a signed copy of this Contract within five (5) Business Days of the Contract being signed, then within five (5) Business Days of becoming aware of the entitlement to receive a signed copy of this Contract.**

In order to give effect to the decision not to proceed, the Homeowner must give a written notice of rescission to ZEN personally, by leaving at ZEN's address or by registered post to ZEN. If such notice is given to ZEN:

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- a. ZEN may retain out of any money paid to ZEN the amount of any reasonable out of pocket expenses incurred by ZEN in respect of this Contract prior to receipt of the notice ; and
 - b. the Homeowner will pay on demand by ZEN such part of the Contract Price for Works actually completed prior to receipt of the notice and not paid for by the Homeowner.
9. **(Commencement of installation)** 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 use its best endeavours 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. 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, the Homeowner acknowledges that it shall not be entitled to any damages (liquidated or otherwise) in respect of such delay.
10. **(Homeowner default and termination)** If the Homeowner breaches this Contract, including without limitation by 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 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.
11. **(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.
12. **(Compliance with Code)** Subject to clause 13, all Works completed by ZEN will comply with the Building Code of Australia to the extent required under the *Environmental Planning and Assessment Act 1979* (NSW) (including any regulation or other instrument made under that Act), all other relevant codes, standards or specifications that the Works are required to comply with under any applicable law and the conditions of any relevant development consent or complying development certificate.
13. **(ZEN liability for non-compliance with Code limited)** Without affecting clause 27 ZEN's liability for a failure to comply with clause 12 is limited if such failure relates solely to:
- a. a design or specification prepared by or on behalf of the Homeowner (but not by or on behalf of ZEN); or
 - b. a design or specification required by the Homeowner, if ZEN has advised the Homeowner in writing that the design or specification contravenes clause 12.
14. **(Variations)** Variations to this Contract (other than changes to the Contract Price under clauses 3, 18 and 20), 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.
15. **(Panel Type Variation)** ZEN may install a photovoltaic panel at the Property that is different to that which is referred to in the Customer's Quotation to assist ZEN and the Customer with any procurement issues or technology changes that occur between the date that the Contract is signed and the scheduled installation date. However, ZEN can only install a different photovoltaic panel under this clause if:
- a) the panel is approved by the Clean Energy Council;
 - b) the panel is defined as a Tier 1 solar panel, in circumstances where the Quotation referred to a Tier 1 solar panel;
 - c) the panel is of an equivalent or better specification than that which is referred to in the Quotation. An equivalent panel is defined to be a panel that is has an equal or greater wattage, an equal or longer materials and workmanship warranty, and an equal or better performance warranty; and
 - d) ZEN gives the Customer written notice of the change at least 5 Business Days before the scheduled installation date
- If ZEN gives the Customer notice of a panel change and the Customer prefers to end this Agreement rather than accept the panel change, the Customer can end the Agreement and, if the Customer does, ZEN will refund all monies paid by the Customer to ZEN under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed and/or for which the Customer has received a benefit. The Customer can end this Agreement due to a notice of a panel change by giving ZEN written notice to this effect at least 3 Business Days before the scheduled installation date. If ZEN sends the Customer a notice of a panel change and the Customer does not end this Agreement, the Customer will be taken to have agreed to the panel change.
16. **(Panel Quantity Variation)** ZEN may install a quantity of photovoltaic panels at the Property that is different to that which is referred to in the Customer's Quotation to assist ZEN and the Customer with any procurement issues or technology changes that occur between the date that the Contract is signed and the scheduled installation date. However, ZEN can only install a different quantity of photovoltaic panel under this clause if:
- a) the total direct current kilowatt (kW) capacity all solar panels installed at the Property is equal to or greater than the kilowatt capacity referred to in the Quotation; and
 - b) ZEN gives the Customer written notice of the change at least 5 Business Days before the scheduled installation date
- If ZEN gives the Customer notice of a panel quantity variation and the Customer prefers to end this Agreement rather than accept the panel quantity variation, the Customer can end the Agreement and, if the Customer does, ZEN will refund all monies paid by the Customer to ZEN under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed and/or for which the Customer has received a benefit. The Customer can end this Agreement due to a notice of a panel quantity variation by giving ZEN written notice to this effect at least 3 Business Days before the scheduled installation date. If ZEN sends the Customer a notice of a panel quantity variation and the Customer does not end this Agreement, the Customer will be taken to have agreed to the panel quantity variation.
17. **(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.
18. **(Changes in government taxes, charges or fees)** ZEN may vary the Contract Price to reflect any unforeseeable cost increases in providing the Works that result from any change to

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governmental taxes, charges, fees, levies, rebates or other financial benefits 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.

19. **(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.

20. **(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, 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, ZEN may elect to either:

- a. rectify or address such matters at the cost of the Homeowner, and in such circumstances the Homeowner agrees that the Contract Price may be increased to reflect the cost to ZEN of rectifying or addressing such matters; or
- b. request that the Homeowner rectify or address such matters at the cost of the Homeowner 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 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.

21. **(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 21, the following words have the meaning given to them in the PPSA: account, register, registration, security interest and verification statement.

22. **(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 compatible internet connection for access to the ZEN Energy Manager.

23. **(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 contributed to such loss or damage.

24. **(Access to Property)** The Homeowner must allow ZEN access to the Property so that ZEN can undertake the Works.

25. **(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.

26. **(Warranties)** ZEN warrants that:

- a. the Works will be performed in a proper and workmanlike manner and in accordance with any plans and specifications annexed to or accompanying these terms and conditions;
- b. all materials supplied by ZEN will be good, new and, subject to clause 19, suitable for the purpose for which they are used;
- c. the Works will be carried out in accordance with, and will comply with, all relevant laws and legal requirements, including without limitation the Relevant State Building Legislation;
- d. the Works will be carried out with due diligence and within the time provided for under this Contract;
- e. if the Works consist of the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Works will result, to the extent of the Works conducted, in a dwelling that is reasonably fit for occupation as a dwelling;
- f. if the Contract states, or the Homeowner expressly makes known to ZEN, the particular purpose for which the Works are required or the result that the Homeowner desires the Works to achieve, so as to show that the Homeowner relies on ZEN's skill and judgement, the Works and any materials used in carrying out the Works will be reasonably fit for the specified purpose or result.

27. **(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.

28. **(Exclusion of liability)** To the fullest extent permitted by law, and subject to clause 23 of this Contract, ZEN excludes all liability for any claims, expenses, losses, damages and costs (including any incidental, special and /or consequential damages or loss of

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profits) made, suffered or incurred by the Homeowner resulting (either directly or indirectly) in connection with the Works.

29. **(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 as fair and reasonable timeframe.
30. **(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, 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.
31. **(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. If such a resolution is not achieved, the aggrieved party may notify the Relevant State Authority that a building dispute exists and seek that authority's assistance to resolve 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.
32. **(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.
33. **(Governing Law)** This Contract shall be governed by the laws of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.
34. **(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;

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;

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;

Relevant State Authority means the Office of Fair Trading New South Wales;

Relevant State Building Legislation means the *Home Building Act 1989* (NSW) and the *Home Building Regulation 2004* (NSW);

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 & Energy) Pty Ltd ABN 82 110 224 005 of TAFE SA Building, Level 2, 1284 South Road, Clovelly Park, SA, 5042

Checklist for Homeowner

Before signing this legally binding Contract, you must consider the following questions:

| | | |
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| 1. | Does ZEN hold a current contractor licence? | Yes No |
| 2. | Does the licence cover the type of work in the contract? | Yes No |
| 3. | Is the name and number on ZEN's licence the same as on the contract? | Yes No |
| 4. | Is the work to be undertaken covered in the contract, plans or specifications? | Yes No |
| 5. | Does the contract clearly state a contract price or contain a warning that the contract price is not known? | Yes No |
| 6. | If the contract price may be varied, is there a warning and an explanation about how it may be varied? | Yes No |
| 7. | Are you aware of the cooling off provisions of the contract? | Yes No |
| 8. | Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less, or 5% for work costing more than \$20,000. | Yes No |
| 9. | Is the procedure for variations understood? | Yes No |
| 10. | Are you aware of who is to obtain any council or other approvals for the work? | Yes No |
| 11. | Do you understand that ZEN must have a policy of home warranty insurance under the Home Building Act 1989 and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$20,000? | Yes No |
| 12. | Has ZEN given you a document that explains the operation of the Home Building Act 1989 and the procedures for the resolution of contract and insurance disputes? | Yes No |

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Note: This checklist does not form part of this Contract

Execution

Warning: If you have answered “no” to any question in the checklist above, you should not sign this Contract.

| | |
|---|--|
| <p>I/we have read and understood the terms and conditions relating to this Contract;</p> <p>I/we understand my/our cooling off rights;</p> <p>I/we have received a copy of the <i>Consumer Building Guide</i> and have read and understood it;</p> <p>I/we have answered “yes” to all items on the checklist above</p> <p>Note. Where the Homeowner is a company or partnership or the contract is to be signed by an authorised agent of the Homeowner, the capacity of the person signing the Contract, eg director, must be inserted.</p> | |
| Homeowner Signature: | |
| Name and capacity: | |
| Homeowner Signature: | |
| Name and capacity: | |
| ZEN Authorised Representative Signature: | |
| DATED | |

Both parties must initial all documents annexed to this Contract and any amendments or deletions to this Contract.