

ZEN Energy – Terms & Conditions of Contract (South Australia)

1. **(Agreement)** The Contract governs the agreement between ZEN and the Customer in respect of the Works. The Customer will receive a signed copy of this Contract as soon as is reasonably practicable after it is signed by both parties, together with a copy of the *Form 1 – Your Building Contract: Your Rights and Obligations*.
2. **(Works)** ZEN agrees to undertake the Works at the Property on the terms and conditions of this Contract.
3. **(Sub-contracting)** ZEN may sub-contract any of our obligations under this Agreement to a third party, provided that:
 - a) if ZEN sub-contracts any obligations, ZEN will:
 - i. ensure the relevant sub-contractor performs all sub-contracted obligations in accordance with the applicable requirements of the Contract;
 - ii. continue to be liable to the Customer for the performance of ZEN's obligations under this agreement, even though ZEN has sub-contracted one or more of those obligations; and
 - iii. be liable to the Customer for the acts and omissions of ZEN's sub-contractors, as if these acts and omissions were ZEN's own; and
 - b) ZEN's obligations in relation to the design or provision of the Works can only be sub-contracted to a CEC-Accredited Installer.
4. **(Cooling off)** If the Contract Price is \$12,000 or more, the Customer may elect not to proceed with this Contract by giving written notice to ZEN:
 - a) within five (5) Business Days of both parties signing this Contract; or
 - b) at any time before the completion of the Works if ZEN has not complied with the requirements of Division 1 or Division 3 of the Building Work Contractors Act 1995 (SA) in relation to this Contract.

If such notice is given to ZEN, 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 the Customer will pay on demand by ZEN such part of the Contract Price for Works actually completed prior to receipt of the notice and not previously paid for by the Customer.
5. **(Other approvals)** The performance of obligations under this Contract (except for clause 8 and the requirement for the Customer to pay the Deposit specified in clause 12 and the Balance specified in clause 13) is subject to the Customer obtaining any council, network utility, or other approvals as may be required in respect of the Works. ZEN does not guarantee, warrant or make any representation as to whether any approvals will be required and, if so, whether they will be obtained. The Customer acknowledges and agrees that it is responsible for all costs and expenses in obtaining other approvals. Where required approvals are not obtained 14 days prior to scheduled installation date, ZEN may defer the scheduled installation on up to two (2) occasions to allow additional time for the Customer to obtain the required approvals. Where the Customer is unable to obtain the required approvals after two (2) deferrals of the 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 Customer any deposit paid by the Customer 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 Customer has received a benefit.
6. **(Interaction with Network Utility)** The Network Utility is responsible for all matters associated with metering and the Customer's connection to the electricity grid. While ZEN will assist the Customer with and facilitate their interaction with the relevant Network Utility, ZEN is neither an agent for the Customer or for the Network Utility.
7. **(Small-Scale Technology Certificates – "STCS")** The Customer 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 Customer acknowledges and agrees that the Contract Price has been calculated on the basis that the STCS, rebates and other financial benefits set out in the Quotation 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 Contract Price in the Quotation, then the Customer 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.
8. **(Access to Property)** The Customer grants ZEN permission to enter and remain at the Property, and to have ZEN's sub-contractors enter and remain at the Property, to:
 - a) conduct one or more site inspections, if ZEN thinks this is necessary; and
 - b) provide the Works to the Customer,

at any reasonable time, provided ZEN gives the Customer at least 3 Business Days' notice of the proposed access time. The Customer or their authorised representative must be present at the Property for any site inspection and for the provision of the Works.

The Customer must:

 - c) ensure that ZEN and ZEN's sub-contractors have convenient, unobstructed and safe access to all parts of the Property necessary to conduct any required site inspections or to deliver and provide the Works; and
 - d) ensure the Property, including its roof, supporting structures and electrical wiring, are sound and able to accommodate the Works.
9. **(Access to Online System Monitoring)** Where the system allows access to the Online System Monitoring and the Customer wishes to establish this, it is the responsibility of the Customer to have and maintain a compatible internet connection for such access to occur.
10. **(Quotation variation)** The Customer acknowledges and agrees that ZEN has agreed to undertake the Works on the Property on the basis of information provided by the Customer to ZEN (as outlined in the Quotation), and a review of publicly available aerial photography for the Property. If and to the extent that ZEN discovers after commencement of the Works circumstances that were not readily apparent from the information provided by the Customer to ZEN, or from the review of publicly available aerial photography for 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), and other matters relating to the Property that may impact on the completion of the Works or the performance of the completed Works, the Customer agrees that ZEN will be entitled to revise its Quotation for the Works and/or will address such matters at the Customer's own expense as ZEN reasonably requires in order for ZEN to complete the Works and/or be satisfied that the performance of the completed Works at the time of such completion will not be adversely affected. If the Customer does not wish to address the circumstances identified or ZEN determines that such circumstances cannot be rectified or addressed to ZEN's satisfaction by a variation to the Works and the Quotation, 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, 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.
11. **(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;

ZEN Energy – Terms & Conditions of Contract (South Australia)

- 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.

12. **(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.

13. **(Price increases)** ZEN may increase the price of any part of the Works to cover any new or increased cost of selling and providing the Works under this Agreement. However, ZEN can only increase prices under this clause if:

- a) it is reasonable to do so;
- b) ZEN is not prohibited by law from doing so; and
- c) ZEN gives the Customer written notice of the increase at least 5 Business Days before the scheduled installation date.

If ZEN gives the Customer notice of a price increase and the Customer prefers to end this Agreement rather than accept the price increase, 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 price increase 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 price increase and the Customer does not end this Agreement, the Customer will be taken to have agreed to the price increase.

14. **(Deposit)** Subject to clause 16, the Customer must pay the Deposit in the amount set out under the "Quote Acceptance" section of the Quotation with respect to the Works. ZEN is not obliged to order any materials or conduct any actions under this Contract until the Deposit is received by ZEN.

15. **(Balance)** Subject to clause 16, the Customer must pay the Balance of the Contract Price at the times and in the amounts set out under the "Quote Acceptance" section of the Quotation with respect to the Works.

16. **(Insurance)** If the Contract Price is \$12,000 or more and the Works require Council approval, before commencement of the Works and as a condition for demanding and receiving any part of the Contract Price, ZEN is required to:

- a) obtain the building indemnity insurance required by the Relevant State Building Legislation in relation to the Works; and
- b) provide the Customer with a certificate for such insurance.

17. **(No guarantee or warranty for feed in tariff or rebates)** ZEN does not guarantee or warrant that the Customer will be entitled to or eligible for any feed in tariff, rebate, discount or similar financial benefit from any government authority or commercial third party, or that any such benefit will be maintained. The Customer must make its own enquiries as to the availability of, and eligibility for, such financial benefits.

18. **(Changes in governmental taxes or charges)** In the event that, after the execution of this Contract, any change is made to government taxes or charges levied by any relevant government authority which will have the effect of increasing the cost to ZEN of undertaking the Works, the Customer agrees that the Contract Price will be increased by the amount by which the cost is to increase.

19. **(Customer default and termination)** If the Customer breaches this Contract:

- a) by failing to make any payment due to ZEN under this Contract, and such payment remains outstanding for at least 5 Business Days, ZEN may terminate the Contract by written notice to the Customer.
- b) other than by failing to make a payment due to ZEN under this Contract (including without limitation by failing to complete any required pre-commencement works specified in the Quotation within 14 days of the scheduled installation date, 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.

20. **(Debt recovery costs)** 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.

21. **(Risk and title to the Works)** Risk in the Works passes to the Customer upon delivery to the Property. Ownership of the Works will remain with ZEN until all amounts owing by the Customer to ZEN on any account whatsoever have been paid. Until ownership has passed to the Customer, 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, the following words have the meaning given to them in the PPSA: account, register, registration, security interest and verification statement.

22. **(ZEN Installation Warranty)** ZEN warrants that our workmanship, and the workmanship of our sub-contractors, in undertaking the installation activity associated with the Works will be free from fault or defect for a period of 5 years commencing on the date the Works are installed (**ZEN Warranty Period**), and ZEN will rectify any such default or defect notified to ZEN within the Warranty Period, within a reasonable timeframe at no cost to the Customer. However, the ZEN Installation Warranty will not apply where:

ZEN Energy – Terms & Conditions of Contract (South Australia)

- a) the fault or defect is not notified to ZEN within the Warranty Period; or
 - b) the fault or defect is a result of:
 - i. something done by the Customer or someone else, and not ZEN or ZEN's sub-contractors; or
 - ii. something beyond human control that occurred after installation, e.g., an extreme weather event;
 - iii. the Works being misused, abused, neglected or damaged after installation;
 - iv. the Works being repaired modified, reinstalled or repositioned by anyone other than a service technician approved by ZEN in writing.
23. **(Other Warranties)** The ZEN Installation Warranty is additional to any other guarantees or warranties the Customer may receive directly from the manufacturers of the components of the Works. Such other guarantees and warranties may not provide full cover for costs of labour, travel and delivery. During the ZEN Warranty Period, ZEN will provide reasonable assistance to the Customer in making any guarantee or warranty claim to the manufacturer/s of any components of the Works, including liaising with the manufacturer.
24. **(Performance of system)** The Customer acknowledges and accepts that the performance of the system supplied by ZEN will be determined in material part by the solar and shading profile of the installation site and the agreed elevation and orientation of the solar panels and ZEN neither warrants nor guarantees the energy yield of the system or its performance more generally. The Customer acknowledges and accepts that:
- a) shading on the solar panels, their elevation otherwise than at the optimum 30° pitch, and their orientation otherwise than facing due North will give rise to a reduced energy yield in comparison with the maximum yield that could otherwise be achieved by the system; and,
 - b) the energy yield of the system as presented in the Quotation is an estimate only, and that a range of additional factors outside of ZEN's control including, without limitation, actual sunlight hours, panel soiling, additional shading (particularly by proximate multi-storey developments) and the like may result in a lesser yield actually being achieved.
25. **(Damage to the Property)** ZEN will take every reasonable precaution in conducting the Works at the Property. ZEN will not be liable in respect of:
- a) the structural integrity of the Property;
 - b) the roof's ability to carry the weight of the Works;
 - c) any effect the Works have on any roof manufacturer's warranty;
 - d) any damage to the roof or Property which is not due to ZEN's negligence or breach of this Agreement; or
 - e) any pre-existing condition, fault or defect relating to the Property (including without limitation circumstances related to structural integrity, hidden defects, electrical wiring or cabling, gas or water pressure and the status or mounting of consumption meters).
26. **(Exclusion of liability)** Other than as expressly provided for in clauses 20 and 23, ZEN excludes all liability for any claims, expenses, losses, damages and costs (including in particular any incidental, special and /or consequential damages or loss of profits) made, suffered or incurred by the Customer resulting (either directly or indirectly) in connection with the Works, the system or its performance to the fullest extent permitted by law.
27. **(Notices)** Any notice under this Agreement must be in writing and signed by the sender or by an authorised representative of the sender and sent to or left at the postal or email address of the addressee. If the delivery or receipt of a notice occurs on a day which is not a Business Day or at a time after 5.00pm in the place of receipt, it is regarded as having been received at 9.00am on the following Business Day.
28. **(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 in an effort to negotiate a resolution of the dispute on terms consistent with the provisions of this Contract. 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.
29. **(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 the Contract and will not affect the continued operation of the remaining provisions of this Contract.
30. **(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 that State.
31. **(Entire Agreement)** The Contract sets out the entire agreement between the parties.
32. **(Variations)** Variations to any part of the 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 Customer.

Definitions

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

Balance means the Contract Price less any Deposit received by ZEN for the Works;

Business Day means any day except a Saturday or a Sunday or other public holiday in the state in which the Property is located;

CEC-Accredited Installer means an installer of solar photovoltaic systems accredited in this capacity by the Clean Energy Council under the Clean Energy Council Code of Conduct and Accreditation Terms and Conditions;

Contract means these terms and conditions and the Quotation 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 as the total amount payable in the Quotation for the Works, subject to any adjustment of this amount in accordance with clauses 10, 11 or 16;

Customer means the person named in and to whom, the Quotation is addressed;

Deposit means the amount specified as such in the Quotation;

Network Utility means the party (or parties) responsible for supplying and managing electricity infrastructure (including but not limited to the poles, wires, and electricity meter/s) to the Property.

Quotation means the quotation or such other form provided with these terms and conditions, outlining the product/s being offered to the Customer by ZEN, and the proposed total price for those product/s;

Online System Monitoring means an internet-based platform that allows for monitoring of the energy yield of the system and/or any technical issues associated with the system;

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

Property means the property located at the installation address specified in the Quotation;

ZEN Energy – Terms & Conditions of Contract (South Australia)

Relevant State Building Legislation means the Building Work Contractors Act 1995 (SA) and the Building Work Contractors Regulations 2011 (SA) as they may be amended ;

Small-Scale Technology Certificates or STCS means a small-scale technology certificate created under the *Renewable Energy (Electricity) Act 2000* (Cth), evidencing the amount of renewable electricity that may be produced or displaced by the system supplied and installed by ZEN pursuant to the Contract, and which are eligible to be sold for a financial benefit;

Works means the supply of the system selected by the Customer and any associated components or parts as described in the Quotation, 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 Building Licence Number BLD232191.