



# GOODS AND SERVICES TERMS AND CONDITIONS

## 1. EXPLANATION OF TERMS

*Agreement* – has the meaning given in clause 2.1.

*Authorised Persons* – means any representative, associate, officer, employee, agent or subcontractor of Energy Matters.

*Deposit* – has the meaning given in clause 7.1(a).

*EM Premium Products* – include those Goods promoted on our website at [www.energymatters.com.au/home-solar-power/quote.php](http://www.energymatters.com.au/home-solar-power/quote.php).

*EM Performance Products* – include those Goods promoted on our website at [www.energymatters.com.au/home-solar-power/quote.php](http://www.energymatters.com.au/home-solar-power/quote.php).

*EM Basics Products* – include those Goods promoted on our website at [www.energymatters.com.au/home-solar-power/quote.php](http://www.energymatters.com.au/home-solar-power/quote.php).

*EM SOLARPLAN* – means a payment plan facilitated by an EM SOLARPLAN Provider and offered by Energy Matters in relation to the purchase of the Goods and Services.

*EM SOLARPLAN Provider* – means Certegy Ezi-Pay Pty Ltd (ABN 28 129 228 986).

*Energy Matters* – means Energy Matters Pty Ltd ACN 118 108 044 and any of its related entities.

*Goods* - means any or all of the products supplied by or on behalf of Energy Matters.

*Purchase Price* has the meaning given in clause 5.1.

*Premises* – the site at which the Goods are to be installed.

*Quote* - means the quote for the Goods and Services provided by Energy Matters, which incorporates by reference these Terms and Conditions.

*Services* – means any or all of the installation services conducted by or on behalf of Energy Matters.

*Terms and Conditions* – refers to the terms and conditions set out below, and those incorporated by reference, which apply to each Agreement for the supply of Goods and Services by Energy Matters to you.

## 2. FORMATION OF AGREEMENT

2.1 An agreement for the supply and purchase of Goods and Services (**Agreement**) will be formed on the basis of the Quote and these Terms and Conditions upon:

- (a) You paying the required Deposit for the Goods and Services; and
- (b) Your acceptance of the Quote or of these Terms and Conditions.

Current as at 18 May 2011



- 2.2 The Agreement may only be amended in writing, signed by you and by Energy Matters.
- 2.3 If you successfully apply for EM SOLARPLAN, the EM SOLARPLAN Provider's terms and conditions available online at <http://www.energymatters.com.au/terms/em-solarplan-terms.php> will also apply to your purchase of the Goods and Services.
- 2.4 If you successfully apply for EM SOLARPLAN, you acknowledge and agree that clauses 7 and 8 of these Terms and Conditions will not form part of the Agreement and that Energy Matters' specific terms and conditions which apply to purchases of Goods and Services through EM SOLARPLAN (which can be accessed by [clicking here](#)) will form part of the Agreement.

### 3. WARRANTIES AND ACKNOWLEDGEMENTS BY YOU

- 3.1 You:
  - (a) warrant that you have read and understood the Quote and these Terms and Conditions;
  - (b) warrant that all information you have provided to Energy Matters in relation to your purchase of the Goods and Services is true and accurate and you acknowledge and agree that Energy Matters has relied on that information in providing the Quote and supplying the Goods and Services;
  - (c) warrant that you have read our Data Disclaimer, which may be accessed by [clicking here](#);
  - (d) acknowledge and agree that the performance of the Goods may be affected by the actions of third parties and environmental conditions at the Premises including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Goods and the location of surrounding structures and flora;
  - (e) acknowledge and agree that the information and data relating to the performance of the Goods is approximate and will vary depending on the specific conditions at the Premises and you agree not to make any claim against Energy Matters regarding any of these issues as a result;
  - (f) warrant that all existing electrical and plumbing infrastructure and installations at the Premises (**Existing Systems**) comply with all laws, safety standards, Acts, rules, regulations and codes and the requirements and directions of any relevant Commonwealth, State and Local Government departments and other bodies (**Laws**);
  - (g) acknowledge and agree that if the Existing Systems are not compliant with all Laws, you may be required to repair or replace those parts of the Existing Systems that are non-compliant at your own expense prior to the installation of the Goods and you accept responsibility for any damage caused to the Goods as a result;
  - (h) acknowledge and agree that all descriptive specifications, illustrations, drawings, data dimensions and weights provided by Energy Matters to you, or otherwise contained in fact sheets, price lists and other advertising material of Energy Matters, are approximate only, unless stated otherwise;



- (i) acknowledge and agree that Energy Matters may, in its absolute discretion, substitute or use alternative goods to the Goods referred to in the Quote provided that such goods are of equal or better quality than the Goods referred to in the Quote; and
  - (j) warrant that you have obtained all necessary approvals or permits from the relevant authority(s) relating to the installation of the Goods and the performance of the Services.
  - (k) warrant that you are 18 years old or over prior to purchasing the Goods.
- 3.2 You acknowledge and agree that Energy Matters will make every attempt to install the Goods in the optimum position available at the Premises. You will be required to indicate a clear preference for the position of the Goods prior to or on the day of installation. You must be present at the Premises on the day of installation so you can give clear directions to Energy Matters and its Authorised Persons. You acknowledge that any failure to provide such directions will result in Energy Matters and its Authorised Persons using their reasonable judgment in completing the Services and that, in such circumstances, you will not have any claim against Energy Matters with respect to Energy Matters and its Authorised Persons exercising their discretion.
- 3.3 In the event you are not at the Premises on the day of installation and Energy Matters and its Authorised Persons are prevented from completing the installation of the Goods and Services, you may be charged a fee in accordance with clause 10.5.

#### **4. ELECTRICITY METER CHANGEOVERS, SWITCHBOARD UPGRADES AND ELECTRICAL INSPECTIONS**

- 4.1 You acknowledge and agree that electricity meter changeovers and switchboard upgrades associated with the Goods and Services do not form part of the Agreement and that these services will not be performed by Energy Matters and that you will be billed separately for these services by the third parties who perform these services.
- 4.2 You further acknowledge and agree that an electrical inspection in relation to the installation of the Goods at your Premises may be required prior to your solar system becoming operational and that you may be responsible for the cost of that inspection.
- 4.3 Your obligation to make a payment under clause 7 is not affected by any delay by a third party in performing any electricity meter changeover, switchboard upgrade or electrical inspection.

#### **5. PURCHASE PRICE**

- 5.1 Subject to clause 5.2, the purchase price for the Goods and Services is the price set out in the Quote (**Purchase Price**).
- 5.2 Subject to your cancellation rights set out in clause 10.2, Energy Matters may add any additional fees and charges to the Purchase Price that are necessary for and



are related to the installation of your Goods at your Premises. It is not possible for Energy Matters to determine what these fees and charges are (if any) until an Authorised Person inspects the Premises. Energy Matters will advise you of any additional fees and charges associated with your installation prior to commencing the installation, either during a pre-installation site inspection (if one is conducted) or on the day of your installation (if a pre-installation site inspection is not conducted). You will need to pay these fees and charges on the day of installation by either paying in cash, by cheque, by credit card or by direct debit, if you proceed with the installation.

- 5.3 Unless otherwise expressly stated in the Quote, the Purchase Price is inclusive of GST.

## 6. GOVERNMENT REBATES AND STCS

- 6.1 You may be entitled to receive a grant, rebate or other benefit from the Commonwealth or State Government or to create Small-scale Technology Certificates (**STCs**) as a result of the purchase or installation of the Goods. However, Energy Matters does not warrant that you will necessarily receive any grant, rebate or other benefit or be entitled to create STCs.
- 6.2 If the Purchase Price incorporates a point of sale discount on the basis that Energy Matters will receive payment of the grant, rebate or other benefit, you authorise Energy Matters to apply for that grant, rebate or other benefit in your name and to receive payment of that grant, rebate or benefit on your behalf. You agree to sign such relevant documents as Energy Matters may reasonably require, and to take whatever other action Energy Matters may reasonably require, in order for Energy Matters to obtain payment of that grant, rebate or other benefit.
- 6.3 Energy Matters will use its reasonable endeavours to assist you:
- a) to apply for and receive any grant, rebate or other benefit; and/or
  - b) to assign to Energy Matters your right to create any STCs;
- that you may be entitled to or eligible to create as a result of the installation of the Goods. However, if within 60 days of the installation of the Goods, Energy Matters:
- i) has not received the payment of any grant, rebate or benefit incorporated in the Purchase Price; or
  - ii) is not able to create the number of STCs anticipated in the Quote;
- as a result of your system being ineligible for that grant, rebate, benefit or being ineligible to create the number of STCs anticipated in the Quote for any reason outside of Energy Matters' control, you must pay the amount of that grant, rebate or benefit or the amount equal to the value of the point of sale discount given to you for those STCs (or the balance which remains outstanding) to Energy Matters within 7 days of Energy Matters notifying you of the additional amount being payable.
- 6.4 You acknowledge that the Commonwealth or State Governments may, at any time, make legislative changes which may affect your eligibility of or your entitlement to any incentives, subsidies, grants, rebates, STCs or other benefits. Energy Matters will not be liable to you in the event that such legislative changes occur and you expressly exclude Energy Matters from any such liability.
- 6.5 If the Purchase Price incorporates a point of sale discount on the basis that you will assign any STCs you are eligible to create to Energy Matters, the Purchase Price is



conditional on you assigning to Energy Matters your rights to create STCs by completing the assignment form provided by Energy Matters.

- 6.6 While Energy Matters will use its reasonable endeavours to assist you to apply for and receive any grant, rebate or other benefit offered by the Commonwealth or State Government you acknowledge that, in certain circumstances, the Commonwealth or State Government may require you to repay the grant, rebate or other benefit. Except where Energy Matters has breached its obligations under these Terms and Conditions, Energy Matters will have no responsibility to you in the event that you are required by the Commonwealth or State Government to repay the grant, rebate or other benefit.

## 7. PAYMENT OF THE PURCHASE PRICE

- 7.1 Subject to the remainder of this clause 7, you must pay the Purchase Price as follows:
- (a) the amount of the deposit specified in the Quote (**Deposit**) on the day you commit to purchase; and
  - (b) the balance (being the Purchase Price less the Deposit) in full in advance of the day of installation of the Goods.
- 7.2 Where payment of the balance of the Purchase Price is made prior to installation, proof of payment will need to be provided to the Authorised Person on the day of installation.
- 7.3 You will need to pay any fees and charges referred to in clause 5.2 on the day of installation, if you proceed with the installation.
- 7.4 Where you have elected to pay the balance of the Purchase Price using credit card by providing your credit card details over the phone, through the Energy Matters' website or by other means, you authorise Energy Matters to charge your credit card for the full amount owing for the Goods and Services, including any costs and charges referred to in clause 5.2. Unless specified otherwise in your Quote, you acknowledge and agree that you will be charged a 2% surcharge in the event you pay the Purchase Price (or any part thereof) and/or any charges referred to in clause 5.2 when you use your credit card unless specified otherwise.
- 7.5 If you fail to pay the Purchase Price in full on or before the times specified in clause 7.1, you must pay Energy Matters on demand any costs, expenses or losses which have been, or are likely to be, incurred by Energy Matters as a result of that failure including costs associated with the collection of any outstanding amounts and agree that Energy Matters may (without prejudice to any other rights or remedies that it may have) charge interest on the overdue amount at a rate equal to the rate specified in the *Penalty Interest Rates Act 1983 (Vic)* plus 2%.

## 8. RISK AND OWNERSHIP OF GOODS

- 8.1 Risk of loss or damage to the Goods passes to you on delivery, which will occur on the earliest of the following events:
- (a) you taking possession of the Goods;
  - (b) completion of the loading of the Goods onto a transportation vehicle provided by you; or
  - (c) installation of the Goods by Energy Matters at the Premises.



8.2 Ownership of, and title to, the Goods passes to you only upon payment in full by you of the Purchase Price and any other amounts due by you to Energy Matters.

8.3 Until payment of the Purchase Price in full:

- (a) Energy Matters retains full legal title to the Goods;
- (b) if the Goods are in your possession, you will hold the Goods as bailee for Energy Matters and must store the Goods so that they are clearly identifiable as the property of Energy Matters;
- (c) Energy Matters may call for, and recover possession of, the Goods at any time;
- (d) you grant to Energy Matters and any of its Authorised Persons a non-exclusive licence to enter onto the Premises in order to remove the Goods; and
- (e) if you do not comply with a request by Energy Matters to remove (if installed) and deliver the Goods to Energy Matters, then Energy Matters may remove and recover the Goods as a licensee and without liability for trespass, using whatever force may reasonably be necessary.

## **9. RIGHT OF ENTRY**

9.1 Energy Matters may use any Authorised Person to provide the Goods and Services.

9.2 You grant to each Authorised Person a licence to enter the Premises for the purposes of:

- (a) installing the Goods;
- (b) inspecting the Goods;
- (c) conducting repairs or maintenance to the Goods;
- (d) removing the Goods and any equipment; and
- (e) any other activities ancillary to, or necessary to facilitate, the above activities.

## **10. CANCELLATION**

10.1 You or Energy Matters may cancel the Agreement if the other party materially breaches the terms of the Agreement.

10.2 If you are advised either during a pre-installation site inspection (if one is conducted) or on the day of your installation (if a pre-installation site inspection is not conducted) that additional fees and charges are necessary to install your Goods, you may cancel the Agreement immediately or no later than 2 business days after receiving such advice and Energy Matters will refund your Deposit. However, if Energy Matters could have verified that additional fees and charges would be necessary to install your Goods had you provided accurate and/or complete information to Energy Matters prior to the day of installation, then Energy Matters may withhold a \$250 administration fee from your Deposit refund.

10.3 You cannot cancel the Agreement under clause 10.2 on the day of installation if you were advised during a pre-installation site inspection carried out prior to the date of installation that additional fees and charges would be necessary to install your Goods.

10.4 Subject to clause 10.5, if:



- (a) we believe the installation of your Goods is unsafe or is unsuitable for your Premises; or
- (b) for any reason within your control the Premises are not ready for the installation to take place,

we may cancel the Agreement and we will refund your Deposit as at the date of cancellation in order for the cancellation to take effect.

10.5 If we could have determined that:

- (a) the installation of your Goods would be unsafe or unsuitable for your Premises; or
- (b) the Premises would not be ready for the installation to take place for a reason within your control (including due to your failure to be present at the Premises on the day on installation),

had you provided accurate information to us prior to the day of installation, then we will withhold a \$250 administration fee from your Deposit refund.

10.6 If you request a cancellation of the Agreement in circumstances other than those contemplated by the preceding clauses:

- (a) if your request is made more than 5 business days before the scheduled installation date for your Goods, Energy Matters may charge you a \$250 administration fee and refund the balance of the Deposit to you; or
- (b) if your request is made 5 business days or less before the scheduled installation date for your Goods, Energy Matters may withhold your entire Deposit.

10.7 If you chose to cancel the Agreement pursuant to this clause 10, you must notify Energy Matters of your decision to cancel the Agreement before the Goods have been installed in order for the cancellation to take effect.

## 11. INSOLVENCY

If you become, or resolve or take any steps to be declared, insolvent or bankrupt, or have a receiver, administrator, liquidator, trustee or similar official appointed then:

- (a) you must notify Energy Matters immediately;
- (b) all amounts outstanding by you to Energy Matters immediately become due and payable; and
- (c) your right to possession of any Goods supplied by Energy Matters which have not been paid in full by you ceases and Energy Matters will be entitled to recover possession of those Goods under clause 8.3.

## 12. WARRANTIES

12.1 Goods under warranty

Subject to clause 13:

- (a) Goods manufactured by Energy Matters (such as the frames on which solar panels are mounted) are subject to the warranties set out in Quote or in the documentation provided at the time of installation;



- (b) Goods manufactured by parties other than Energy Matters are subject to the manufacturer's warranties which are set out in either:
  - (i) the Quote; or
  - (ii) documentation provided at the time of installation; or
  - (iii) our website available at [www.energymatters.com.au](http://www.energymatters.com.au);
- (c) in relation to Goods manufactured by parties other than Energy Matters, Energy Matters reserves the right to refer warranty claims directly to the manufacturer if outside the scope of reasonable service or installation work;
- (d) notification of defects must be made in writing to Energy Matters within the specified warranty period to our postal address; and
- (e) no warranties in relation to any Goods are of any effect until Energy Matters has received all amounts owing in relation to the Goods and Services and title to the Goods has passed to you.

## 12.2 Services under warranty

Subject to clause 13:

- (a) Services undertaken by Energy Matters are warranted against faulty workmanship from the date of installation as follows:
  - (i) for a period of 25 years where *EM Premium Products* are installed;
  - (ii) for a period of 15 years where *EM Performance Products* are installed;
  - (iii) for a period of 12 months where *EM Basics Products* are installed; and
  - (iv) for a period of 15 years where any *EM Performance Products* are installed regardless if one or more *EM Premium Products* are installed as well; and
  - (v) for a period of 12 months where any *EM Basics Products* are installed regardless if one or more *EM Premium or EM Performance Products* are installed as well.
- (b) no warranties in relation to any Services are of any effect until Energy Matters has received all amounts owing in relation to the Goods and Services and title to the Goods to which the Services relate has passed to you.

## 12.3 Service calls

Energy Matters will carry out service calls in relation to Goods and Services, subject to the following:

- (a) you must give Energy Matters 48 hours' minimum notice of any non-emergency service call after which Energy Matters or its Authorised Persons will arrange a time and date for a service call subject to availability;
- (b) service calls will generally be carried out during normal working hours only (9.30am – 4.00pm Monday to Friday);
- (c) a minimum service charge of \$150.00 plus all travel and transport costs is payable for all service calls. For service calls after hours, an additional service charge of not less than \$100 applies.
- (d) where Energy Matters or its Authorised Person carries out a service call which is covered by warranty Energy Matters will refund the service charge to you;





- (d) where Energy Matters or its Authorised Person carries out a service call which is covered by warranty but there is actually no problem with the Goods or Services, Energy Matters will not refund the service charge to you;
- (e) where Energy Matters or its Authorised Person carries out a service call which is not covered by warranty, Energy Matters will not refund the service charge to you; and
- (e) where Energy Matters or its Authorised Person carries out a service call which relates to a problem with Goods that are manufactured by a third party, Energy Matters will refund the service call charge to you once Energy Matters has been reimbursed its costs by the manufacturer of those Goods.

#### 12.4 Ownership of warranties

All warranties are applicable to the original purchaser only and are not transferrable unless stated otherwise in the Agreement, the documentation provided at the time of installation or the warranties available on our website (builder's supply to home owner excluded).

### 13. EXCLUSIONS AND LIMITATION OF LIABILITY

#### 13.1 The warranties set out in clause 12 will no longer be valid if:

- (a) anyone other than an Energy Matters' installer, contractor or other Energy Matters' Authorised Person works on (including repairing or altering) the Goods at any time;
- (b) you fail to comply with all reasonable instructions of Energy Matters (whether written or verbal) in relation to the Goods; or
- (c) you fail to return any Goods to us for inspection at your cost, where required by us.

#### 13.2 The warranties set out in clause 12 do not cover:

- (a) repaired breaks or any joins to sensor wire or any damage caused to sensor wire;
- (b) your existing electrical installation, wiring or fuse box;
- (c) normal fair wear and tear;
- (d) any malicious damage or abuse;
- (e) damage caused by vermin, animals or pests;
- (f) corrosion, oxidization, discolouration by mould, or the like;
- (g) damage caused by 'acts of God', improper voltage or power surges, accidents or other acts beyond Energy Matters' reasonable control;
- (h) any damage to your property caused by the Goods failing or breaking;
- (i) any alterations to your property which are a necessary consequence of the provision of the Services; or
- (j) any indirect, special, incidental or consequential damages including, without limitation, loss of profit or revenues and downtime costs, sustained by you in connection with the Services or in connection with the Goods failing or breaking.

#### 13.3 The liability of Energy Matters is limited to:



- (a) in the case of Goods, replacing the Goods, repairing the Goods or payment for the cost of replacing or repairing the Goods; and
  - (b) in the case of Services, re-supplying the Services, having the Services re-supplied or payment for the cost of having the Services re-supplied.
- 13.4 To the extent permitted by law, Energy Matters will not be liable for any personal injury or any indirect, special, incidental or consequential damages including, without limitation, loss of profit or revenues and downtime costs, suffered by you arising from:
- (a) any use of, or incidental to, the Goods or any failure of the Goods to operate; or
  - (b) the provision of, or failure to provide, or faulty provision of, any Services.
- 13.5 If the Goods, or any component part of the Goods, is manufactured by a third party or supplied to Energy Matters by a third party (including, for the avoidance of doubt, all solar panels, hot water systems, inverters and batteries) any warranty offered by Energy Matters in relation to the Goods or component part of the Goods will be limited to Energy Matters' right of redress (if any) against the manufacturer or supplier of the Goods.

#### **14. PRIVACY POLICY**

- 14.1 We view protection of users' privacy as a very important community principle and we clearly understand that your information is one of our most important assets. Therefore, we only use your information as described in our Privacy Policy.
- 14.2 Our current Privacy Policy is available by [clicking here](#).
- 14.3 You acknowledge that the Privacy Policy forms part of, and is incorporated into, these Terms and Conditions and acceptance of these Terms and Conditions is acceptance of the Privacy Policy.
- 14.4 If you object to your information being transferred or used in the way set out in the Privacy Policy, please do not purchase our Goods and/or Services.

#### **15. INTELLECTUAL PROPERTY**

- 15.1 You acknowledge and agree that you do not own (and that any agreement between us in relation to the Goods and Services does not transfer ownership of) any intellectual property rights (including, without limitation, copyright, trademarks, registered designs, patents and know-how) in or in connection with or relating to the Goods or Services.
- 15.2 You must not alter, remove or in any way tamper with any of the intellectual property rights of Energy Matters.
- 15.3 Any software supplied by Energy Matters may be used by you only on the equipment configuration specified by Energy Matters.

#### **16. LAWS AND WAIVER**

- 16.1 The Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria. You and Energy Matters agree to submit to the exclusive jurisdiction of the courts of the State of Victoria.



- 16.2 If any provision(s) of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable it may be severed and the remaining terms or parts will continue in full force and effect.
- 16.3 Any failure of a party to exercise or enforce any provisions of, or any rights it may have under, the Agreement shall not constitute a waiver of such right or provision unless such waiver is acknowledged and agreed to by the other party in writing.