

# GOODS AND SERVICES TERMS AND CONDITIONS

## **IMPORTANT NOTICE**

You may cancel this Agreement without reason by notifying us within 10 business days from and including the day after you entered into this Agreement.

## **1. EXPLANATION OF TERMS**

*Agreement* has the meaning given in clause 2.1.

*Australian Consumer Law or ACL* means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010*.

*Deposit* means the amount specified as the deposit (which may be \$0) in the Quote.

*Cooling Off Period* has the meaning given in clause 7.2.

*Energy Matters Payment Plan* means a payment plan facilitated by the Energy Matters Payment Plan Provider and offered by us in relation to the purchase of the Goods and Services.

*Energy Matters Payment Plan Provider* means Certegy Ezi-Pay Pty Ltd (ABN 28 129 228 986).

*Energy Matters, we or us* means Energy Matters Pty Ltd ACN 118 108 044 and any of our representatives, associates, officers, employees, agents, subcontractors or related entities.

*Installation Warranty* means the warranty given by us in relation to our installation services (which can be accessed by [clicking here](#)).

*Goods* means any or all of the products supplied by us or on our behalf.

*Purchase Price* has the meaning given in clause 3.1.

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

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

*Services* means any or all of the installation services conducted by us or on our behalf.

*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 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 Deposit for the Goods and Services; and
- (b) your acceptance of the Quote or of these Terms and Conditions.

2.2 The Agreement may only be amended in writing, signed by you and by us.

2.3 If you successfully apply for Energy Matters Payment Plan, you acknowledge and agree that clauses 3 and 12 of these Terms and Conditions will not form part of the Agreement and that our specific terms and conditions which apply to purchases of Goods and Services through Energy Matters Payment Plan (which can be accessed by [clicking here](#)) will form part of the Agreement.

## **3. PURCHASE PRICE**

3.1 The purchase price for the Goods and Services is the price set out in the Quote (**Purchase Price**). Unless otherwise expressly stated in the Quote, the Purchase Price is inclusive of GST.

- 3.2 We will not vary the Purchase Price unless:
- (a) the information provided by you and relied on by us in determining the Purchase Price was incorrect; or
  - (b) due to access constraints, specialist equipment is required for us to perform the Services.
- 3.3 If we need to vary the Purchase Price because the information provided by you was incorrect we will advise you of the variation as soon as possible. You may either accept the varied Purchase Price or cancel the Agreement. If you cancel the Agreement clause 7 will apply.
- 3.4 If we determine that, due to access constraints, specialist equipment such as a cherry picker or scissor lift will be required for us to perform the Services we will advise you of the additional costs, which we estimate to be approximately \$1,000 per day. You may either accept the additional costs or cancel the Agreement. If you cancel the Agreement we will refund in full all amounts paid by you up to and including the date of cancellation.

#### **4. WORKS NOT FORMING PART OF THE AGREEMENT**

- 4.1 Electricity meter changeovers, switchboard upgrades and any trenching works associated with the Goods and Services **do not form part of the Agreement**. These services will not be performed by us. You will be billed separately for these services by the third parties who perform these services.
- 4.2 If the existing electrical infrastructure at the Premises, or the surfaces or structures on which the Goods are to be installed, do not comply with all relevant legal requirements (including all relevant codes and regulations) you may be required to repair, replace or improve, at your own expense, those parts that are non-compliant prior to the installation of the Goods.
- 4.3 Your obligation to pay the Purchase Price is not affected by any delay by a third party in performing any service or works referred to in this clause 4.

#### **5. PAYMENT OF THE PURCHASE PRICE**

- 5.1 You are required to pay the Purchase Price as follows:
- (a) the amount of the Deposit (if any) on the day you commit to purchase; and
  - (b) the balance (being the Purchase Price less the Deposit) in full on or before the day of installation.
- 5.2 Where you have elected to pay the balance of the Purchase Price using credit card you authorise us to charge your credit card for the full amount owing for the Goods and Services including any additional costs referred to in clause 3.4 (if applicable).
- 5.3 Unless specified otherwise in your Quote, you will be charged a 2% surcharge in the event you pay the balance of the Purchase Price (or any part thereof) by credit card and/or any costs referred to in clause 3.4 (if applicable).
- 5.4 If you fail to pay the Purchase Price when due, or if any cheque provided by you is not honoured, you must pay on demand any costs, expenses or losses which have been, or are likely to be, incurred by us as a result, including costs associated with the collection of any outstanding amounts (including the costs of any debt collection agency) and any cheque dishonour fees.
- 5.5 If you fail to pay the Purchase Price when due you acknowledge and agree that we may (without prejudice to any other rights or remedies that we may have):
- (a) charge interest on the overdue amount at a rate equal to the rate specified in the *Penalty Interest Rates Act 1983 (Vic)* plus 2% per month which will be calculated on a day by day basis from the date the amount was due until the date the overdue amount is paid in full; and/or
  - (b) lodge a default on your credit history file.

#### **6. INSTALLATION**

- 6.1 We will make every attempt to install the Goods in the optimum position at the Premises. You or your representative must be at the Premises on the scheduled installation date to give us clear directions for the positioning of the Goods.

- 6.2 If you or your representative is not at the Premises on the scheduled installation date then we may, in our absolute discretion:
- (a) perform the Services, using our reasonable judgement and experience in determining where to position the Goods. In such circumstances you will not have any claim against us in relation to how we have positioned the Goods at the Premises; or
  - (b) arrange with you to have the Services performed on a different date; or
  - (c) cancel the Agreement, in which case clause 7.5 will apply.

## 7. CANCELLATION

- 7.1 Either party may cancel the Agreement if the other party materially breaches the terms of the Agreement.
- 7.2 You may cancel the Agreement without reason by notifying us within 10 business days from and including the day after you entered into the Agreement (**Cooling Off Period**). If you cancel the Agreement during the Cooling Off Period we will refund in full all amounts paid by you up to and including the date of cancellation.
- 7.3 You may cancel the Agreement in accordance with clause 3.3 or clause 3.4.
- 7.4 We may cancel the Agreement if we are of the opinion that, due to conditions at the Premises, we cannot perform the Services safely or we cannot perform them for the Purchase Price. If we cancel the Agreement in these circumstances we will refund in full all amounts paid by you up to and including the date of cancellation.
- 7.5 We may cancel the Agreement in accordance with clause 6.2(c) if you or your representative are not at the Premises on the scheduled installation date. If we cancel the Agreement in these circumstances we may withhold all amounts paid by you up to and including the date of cancellation.
- 7.6 If you cancel the Agreement in the circumstances set out in clause 3.3 or in circumstances other than those contemplated by this clause 7:
- (a) if you cancel more than 5 business days before the scheduled installation date, we will refund in full all amounts paid by you up to and including the date of cancellation but we may withhold a \$250 administration fee from your refund; or
  - (b) if you cancel 5 business days or less before the scheduled installation date, we may withhold all amounts paid by you up to and including the date of cancellation.
- 7.7 If you choose to cancel the Agreement pursuant to this clause 7, you must notify us of your decision to cancel the Agreement before the Goods have been installed in order for the cancellation to take effect.
- 7.8 We will refund any amounts due to you in accordance with this clause 7 within 30 days of the date of cancellation.

## 8. GOVERNMENT REBATES AND STCS

- 8.1 You may be entitled to receive a grant, rebate or other benefit from a government or to create Small-scale Technology Certificates (**STCs**) as a result of the purchase or installation of the Goods. We do not warrant that you will receive any grant, rebate or other benefit or be entitled to create STCs.
- 8.2 If the Purchase Price incorporates a point of sale discount on the basis that:
- (a) you will assign any STCs you are eligible to create to us, the Purchase Price is conditional on you assigning to us your rights to create those STCs;
  - (b) we will receive payment of a grant, rebate or other benefit, you authorise us 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.
- 8.3 You agree to take whatever action we may reasonably require in order for the assignment referred to in clause 8.2(a) to take effect or for us to obtain payment of the grant, rebate or other benefit referred to in clause 8.2(b).
- 8.4 We will use our reasonable endeavours to assist you to assign to us your right to create any STCs or to apply for and receive any grant, rebate or other benefit 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, we:

- (a) have not received the payment of any grant, rebate or benefit incorporated in the Purchase Price; or
- (b) are not able to create the number of STCs anticipated in the Quote,

as a result of your system being ineligible for any reason outside of our 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 us within 7 days of us notifying you of the additional amount being payable.

- 8.5 You acknowledge that a government may, at any time, make legislative changes which may affect your eligibility for, or entitlement to, any incentives, subsidies, grants, rebates, STCs or other benefits. We will not be liable to you in the event that such legislative changes occur and you expressly exclude us from any such liability.
- 8.6 You acknowledge that in certain circumstances a government may require you to repay a grant, rebate or other benefit. Except where we have breached our obligations to you, we will have no responsibility to you in the event that you are required by a government to repay a grant, rebate or other benefit.

## 9. WARRANTIES

### 9.1 Warranties

Subject to clause 10:

- (a) Goods manufactured by us are subject to the warranties set out in the documentation provided or made available to you at the time of installation;
- (b) Goods manufactured by other parties may come with a guarantee or warranty from the manufacturer. Any such guarantees or warranties will be set out:
  - (i) in the documentation provided or made available to you at the time of installation; or
  - (iii) at our website available at [www.energymatters.com.au](http://www.energymatters.com.au);
- (c) the Services are warranted on the terms of the Installation Warranty (which can be accessed by [clicking here](#)).

### 9.2 Transferability of Goods warranties

Goods warranties can only be transferred by the original purchaser of the applicable Goods where the manufacturer of those Goods provides so under the terms of their warranty.

### 9.3 Transferability of the Installation Warranty

The Installation Warranty is transferable by the original purchaser of the Services to any subsequent purchaser of the Premises at which the Services were provided.

### 9.4 Service calls

We will carry out service calls on the following conditions:

- (a) you must give us 48 hours' minimum notice of any non-emergency service call after which we will arrange a time and date for a service call;
- (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 \$180.00 per hour plus the cost of all parts and 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 we carry out a service call for a problem with the Goods and Services which is covered by a warranty or a consumer guarantee under the ACL, you will not be charged the service charges referred to in clause 9.4(c);
- (e) where we carry out a service call which is not covered by a warranty or a consumer guarantee under the ACL, or where there is otherwise no problem with the Goods or Services, you will be charged the service charges referred to in clause 9.4(c).

## 10. AUSTRALIAN CONSUMER LAW GUARANTEES AND REMEDIES

- 10.1 In addition to the warranties described in clause 9.1, our Goods (whether manufactured by us or by another party) and Services also come with guarantees that cannot be excluded under the ACL.
- 10.2 In the case of a problem with any Goods which is not defined as a 'major failure' under the ACL and which is capable of being remedied, you are not entitled to reject the Goods or to ask for a refund. However, you may ask us to remedy the failure, in which case we may choose to provide a refund, replace the Goods or repair the Goods or pay you the reasonable cost of having the Goods repaired or replaced.
- 10.3 In the case of a problem with any Goods which is defined as a 'major failure' under the ACL or which is not capable of being remedied, you are entitled to:
- (a) reject the Goods and get a refund;
  - (b) reject the Goods and get an identical replacement or Goods of similar value if reasonably available; or
  - (c) keep the Goods and get compensation for the reduction in value of the Goods caused by the problem.
- 10.4 In the case of a problem with any Services which is not defined as a 'major failure' under the ACL and which is capable of being remedied, you must provide us with an opportunity to remedy the problem free of charge within a reasonable time.
- 10.5 In the case of a problem with any Services which is defined as a 'major failure' under the ACL or which is not capable of being remedied, you are entitled to:
- (a) cancel the Agreement and get a refund; or
  - (b) get compensation for the difference in value of the Services delivered and what was paid for by you.
- 10.6 You are also entitled to compensation for any reasonably foreseeable loss or damage resulting from:
- (a) a failure by us to provide the Services as required by the Agreement;
  - (b) the Goods not being in accordance with the Agreement; and/or
  - (c) the Services or Goods failing to meet any consumer guarantee under the ACL.
- 10.7 We will not be liable to you for any personal injury or any loss or damage of any kind that was not reasonably foreseeable or that could not have been expected to result from the circumstances set out in clauses 10.6(a) to (c).

## 11. WARRANTIES AND ACKNOWLEDGEMENTS BY YOU

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 us is true and accurate and you acknowledge that we have relied on that information in providing the Quote and in supplying the Goods and Services;
- (c) warrant that you have read and accept our Data Disclaimer (which can be accessed by [clicking here](#));
- (d) acknowledge that the performance of the Goods may be affected by the actions of third parties, the positioning of the Goods on the Premises and by environmental conditions (including the number of hours of sunlight, cloud cover, weather patterns and the location of surrounding structures and flora);
- (e) acknowledge that all descriptive specifications, illustrations, drawings and data dimensions provided by us to you, or otherwise contained in our fact sheets, price lists and other advertising material, are approximate only;

- (f) agree that we may 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;
- (g) 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; and
- (h) warrant that you will be 18 years old or over prior to purchasing the Goods.

## **12. RISK AND OWNERSHIP OF GOODS**

- 12.1 Risk of loss or damage to the Goods will pass to you upon installation of the Goods at the Premises or when you otherwise take possession of the Goods.
- 12.2 You remain liable to pay for the Goods notwithstanding any loss, damage or deterioration to the Goods which occurs after risk in the Goods passes to you.
- 12.3 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 owed by you.
- 12.4 Until payment in full by you of the Purchase Price and any other amounts owed by you:
  - (a) if the Goods are in your possession, you will hold the Goods as our trustee and you must store the Goods so that they are clearly identifiable as our property;
  - (b) we may call for, and recover possession of, the Goods at any time;
  - (c) you grant to us a non-exclusive licence to enter onto the Premises in order to remove the Goods;
  - (d) if you do not comply with our request to remove and deliver the Goods to us, then we may remove and recover the Goods as a licensee and without liability for trespass; and
  - (e) we will not be responsible for any damage reasonably caused in the course of removing the Goods.

## **13. RIGHT OF ENTRY**

You grant us 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.

## **14. 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 us immediately;
- (b) all amounts outstanding by immediately become due and payable; and
- (c) your right to possession of any Goods which have not been paid in full by you ceases and we will be entitled to recover possession of those Goods under clause 12.

## **15. PERSONAL PROPERTY SECURITIES ACT 2009**

- 15.1 For the purposes of this clause 15 "PPSA" means the *Personal Property Securities Act 2009* (Cth) and all regulations made under that Act. All references to "sections" in this clause 15 are to sections of that Act.
- 15.2 You acknowledge and agree that:
  - (a) the Agreement constitutes a security agreement for the purposes of PPSA; and

- (b) by accepting these Terms and Conditions you grant a security interest (by virtue of the retention of title provisions of these Terms and Conditions) to us in all Goods and Services previously supplied to you by us (if any) and all Goods and Services that will be supplied in the future to you by us during the continuation of our relationship.
- 15.3 You undertake to:
- (a) sign any further documents and provide any further information (which information you warrant to be complete, accurate and up to date in all respects) which we may reasonably require to enable registration a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA;
  - (b) not register a financing change statement or make an amendment demand in relation to any security interest created by the Agreement without our prior written consent;
  - (c) give us at least 14 days' prior written notice of any proposed changes to your details; and
  - (d) pay all costs incurred by us in registering and maintaining a financing statement (including registering a financing change statement) on the Personal Property Securities Register and/or enforcing or attempting to enforce the security interest created by the Agreement.
- 15.4 You agree that nothing in sections 130 or 143 of the PPSA will apply to the Agreement or the security under the Agreement.
- 15.5 You agree to waive any rights you may have under sections 95, 123, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
- 15.6 You agree that immediately on request by us you will procure from any person considered by us to be relevant to our security position such agreement and waivers as we may at any time reasonably require.

## 16. PRIVACY POLICY

- 16.1 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.
- 16.2 Our current Privacy Policy may be accessed by [clicking here](#).
- 16.3 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.
- 16.4 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.

## 17. LAWS AND WAIVER

- 17.1 The Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria. The parties agree to submit to the exclusive jurisdiction of the courts of the State of Victoria.
- 17.2 If any provision 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.
- 17.3 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.