

## GOODS AND SERVICES TERMS AND CONDITIONS

### IMPORTANT NOTICE TO THE CONSUMER

You have a right to cancel the Agreement within 10 business days from and including the day after you entered into the Agreement.

Details about your additional rights to cancel the Agreement are set out in the 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*.

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

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

*Energy Matters, we or us* means Flextronics Australia Pty Ltd ACN 614 405 828 (trading as Energy Matters).

*Energy Matters' System Warranty* means the warranty given by us in relation to the Goods and Services.

*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.

*Privacy Policy* means our privacy policy which is available at [www.energymatters.com.au/terms](http://www.energymatters.com.au/terms).

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

*'Save As You Go Solar'* means finance or a payment plan provided by a third party provider in relation to the purchase of the Goods and Services.

*Services* means any or all of the installation services.

*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 your acceptance of the Quote and/or of these Terms and Conditions.
- 2.2 The Agreement may be varied by us in accordance with these Terms and Conditions or by each party's agreement in writing.
- 2.3 Under the Agreement, we agree to comply with the Clean Energy Council Solar PV Retailer Code of Conduct.

### 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 The Purchase Price is dependent upon our quality assurance processes and an inspection of your Premises (which inspection may occur on the scheduled installation date).
- 3.3 If, as a result of our quality assurance processes or the inspection of your Premises we need to vary the Purchase Price we will advise you of the variation and you may either accept the varied Purchase Price or cancel the Agreement. If you cancel the Agreement clause 7 will apply.
- 3.4 Where you fail to provide information to us that we have advised you is required by us, within the limit limits required by us, we may in our absolute discretion arrange for an accredited contractor to attend the



Premises prior to the scheduled installation date to carry out an inspection in order to obtain the required information. If such an inspection is carried out then you will be required to pay a separate fee of \$140 for the inspection, which will be payable on the day of the inspection.

- 3.5 If it is determined that, due to access constraints, specialist equipment such as a cherry picker or scissor lift will be required for a contractor 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 clause 7 will apply.

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

- 4.1 Unless expressly stated otherwise in the Quote, electricity meter changeovers, meterboard upgrades, trenching works and electrical inspections associated with the Goods and Services **do not form part of the Agreement**. These services will not be performed by us or on our behalf. You will be billed separately for these services by the third parties who perform these services.
- 4.2 Unless expressly stated otherwise in the Quote, switchboard upgrades do not form part of the Agreement. You may either arrange for a third party to perform this service or you may ask us to arrange the performance of this service for you. You will be billed separately for this service by any third party who performs this service. **This fee is not included in the Purchase Price.**
- 4.3 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.
- 4.4 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 Subject to clause 5.6, 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 no later than 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 3.5 (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 3.5 (if applicable).
- 5.4 If you fail to pay the Purchase Price when due, or if any purported payment 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% 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;
  - (b) lodge a default on your credit history file;
  - (c) engage a debt collection agency to pursue the outstanding debt on our behalf, as well as any other costs, expenses or losses incurred by us as a result of your failure to pay (including the costs of the debt collection agency); and/or
  - (d) commence legal proceedings in order to recover any debt owed by you and our fees and expenses in bringing legal proceedings against you, including administration and legal fees on a solicitor/client basis.
- 5.6 If you apply for 'Save As You Go Solar', you acknowledge and agree that:



- (a) all information you provide in relation to your application is true and accurate and that the 'Save As You Go Solar' provider will rely on that information in offering you 'Save As You Go Solar'; and
- (b) if for any reason you do not enter into a legally binding agreement with the 'Save As You Go Solar' provider or if any reason any such agreement is cancelled or otherwise not proceeded with or is brought to an end then:
  - (i) you remain liable to pay to Energy Matters the full cost of any Goods and Services provided; and
  - (ii) the Agreement alone, and not any terms and conditions of the 'Save As You Go Solar' provider, will apply to the Goods and Services.

## 6. INSTALLATION

- 6.1 We will endeavour to arrange the installation of the Goods at the Premises by our contractor within 4 to 6 weeks after approval to connect the Goods to the electricity network has been communicated to us by the third party responsible for issuing such approval. We will advise you if for any reason we will be unable to meet this timeframe.
- 6.2 The Purchase Price includes connection of the Goods to a switchboard which is located in the building onto which the Goods are to be installed. You or your representative must be at the Premises on the scheduled installation date to give the contractor clear directions for the positioning of the Goods and to resolve any issues that might arise.
- 6.3 If you or your representative is not at the Premises on the scheduled installation date then:
  - (a) the contractor may perform the Services, using their reasonable judgement and experience in determining where to position the Goods. In such circumstances you will not have any claim in relation to how the contractor has positioned the Goods at the Premises; or
  - (b) we may arrange with you to have the Services performed on a different date, in which case all reasonable amounts incurred by us and the contractor in preparing for the original scheduled installation date will be due and payable by you. We may, in our absolute discretion, withhold these amounts from any amounts paid by you to us up to the time of cancellation or, where you have provided your credit card details to us, charge these amounts to your credit card and by accepting these Terms and Conditions you authorise us to do so; or
  - (c) we may 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.  
Cancellation by you
- 7.2 You may cancel the Agreement 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 also cancel the Agreement in accordance with clause 3.3 or clause 3.5 and we will refund in full all amounts paid by you up to and including the date of cancellation.  
Cancellation by us
- 7.4 We may cancel the Agreement if we are of the opinion that, due to conditions at the Premises, the Services cannot be performed safely or cannot be performed for the Purchase Price. If we cancel the Agreement in circumstances where we would have been able to determine the conditions at the Premises had you provided information that we informed you was required by us within the time limits required by us, we will refund in full all amounts paid by you up to and including the date of cancellation but a \$500 cancellation fee will be due and payable by you to us, We may, in our absolute discretion, withhold the \$500 cancellation fee from your refund or, where you have provided your credit card details to us, charge this fee to your credit card and by accepting these Terms and Conditions you authorise us to do so. This clause 7.4 will apply regardless of the fact that we did not exercise our discretion to carry out a site inspection pursuant to clause 3.4.
- 7.5 We may cancel the Agreement in accordance with clause 6.3(c) if you or your representative is not at the Premises on the scheduled installation date. If we cancel the Agreement in these circumstances all reasonable amounts incurred by us and the contractor in preparing for your installation will be due and payable by you to us. We may, in our absolute discretion, withhold these amounts from any amounts paid

by you to us up to the time of cancellation or, where you have provided your credit card details to us, charge these amounts to your credit card and by accepting these Terms and Conditions you authorise us to do so.

- 7.6 We may cancel the Agreement if, through no fault of ours, you are unable or unwilling to proceed with the installation of the Goods for a period of more than 3 months after the date on which the Agreement was formed, unless that period has been extended by mutual agreement. 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 but a \$250 cancellation fee will be due and payable by you to us. We may, in our absolute discretion, withhold the \$250 cancellation fee from your refund or, where you have provided your credit card details to us, charge this fee to your credit card and by accepting these Terms and Conditions you authorise us to do so.

#### Consequences of cancellation

- 7.7 If you cancel the Agreement in circumstances other than those set out in clauses 7.1, 7.2 or 7.3:
- (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 a \$250 cancellation fee will be due and payable by you to us. We may, in our absolute discretion, withhold the \$250 cancellation fee from your refund or, where you have provided your credit card details to us, charge this fee to your credit card and by accepting these Terms and Conditions you authorise us to do so; or
  - (b) if you cancel 5 business days or less before the scheduled installation date, subject to sub-clause (c), we will refund in full all amounts paid by you up to and including the date of cancellation but a \$500 cancellation fee will be due and payable by you to us. We may, in our absolute discretion, withhold the \$500 cancellation fee from your refund or, where you have provided your credit card details to us, charge this fee to your credit card and by accepting these Terms and Conditions you authorise us to do so; or
  - (c) if you cancel within 48 hours of your scheduled installation date all reasonable amounts incurred by us in preparing for your installation will be due and payable by you to us. We may, in our absolute discretion, withhold these amounts from any amounts paid by you to us up to the time of cancellation or, where you have provided your credit card details to us, charge these amounts to your credit card and by accepting these Terms and Conditions you authorise us to do so.
- 7.8 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.
- 7.9 We will refund any amounts due to you in accordance with this clause 7 within 30 days of the date of cancellation.

## **8. FEED IN TARIFFS, GOVERNMENT REBATES AND STCS**

- 8.1 You may be entitled to receive a feed in tariff from your electricity retailer in relation to electricity produced by the Goods which is fed back into the electricity network. Any information provided by us regarding the applicability of any feed in tariffs is based on our understanding of your current situation and based on the current information that has been provided to us by electricity retailers and State governments. We strongly recommend that you personally contact your electricity retailer for advice about the exact feed in tariffs that might apply to your situation.
- 8.2 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.
- 8.3 If the Purchase Price incorporates a point of sale discount on the basis that:
- (a) you will assign some or all of your rights to create STCs 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.
- 8.4 You agree to take whatever action we may reasonably require in order for the assignment referred to in clause 8.3(a) to take effect or for us to obtain payment of the grant, rebate or other benefit referred to in clause 8.3(b).
- 8.5 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, for any reason outside our control:



(a) you have not received the payment of any grant, rebate or benefit incorporated in the Purchase Price;  
or

(b) we are not able to create the number of STCs anticipated in the Quote,

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 (or the balance which remains outstanding) to us within 7 days of us notifying you of the additional amount being payable.

8.6 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.

8.7 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) the Goods and Services are warranted on the terms of Energy Matters' System Warranty;
- (b) the Goods may also come with manufacturers' warranties, the details of which are in the documentation made available to you at the time of installation. By entering into the Agreement, you authorise us to act on your behalf, including by providing your personal information to the manufacturer as and when necessary, to register or activate any such warranties.

### 9.2 Transferability of Energy Matters' System Warranty

Energy Matters' System Warranty is transferable by the original purchaser of the Goods and Services to any subsequent purchaser of the Premises at which the Goods remain installed.

### 9.3 Transferability of manufacturer warranties

Goods warranties provided by a manufacturer 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.

### 9.4 Service calls

Service calls will be carried out 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 a service call is carried out 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 a service call is carried out 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 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.2 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.
- 10.3 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 are entitled to have the goods repaired or replaced. In such circumstances we may, at our option, choose to:
- (a) provide a refund;
  - (b) replace the Goods or to repair the Goods; or
  - (c) pay you the reasonable cost of having the Goods repaired or replaced.
- 10.4 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.
- 10.5 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.
- 10.6 You are also entitled to compensation for any reasonably foreseeable loss or damage resulting from:
- (a) a failure 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. SUBSTITUTION POLICY

If, for any reason, we are unable to supply any items you have ordered, we reserve the right to supply a substitute product of similar specification and value with your prior written agreement.

## 12. 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, accurate and complete and you acknowledge that we have relied on that information in providing the Quote and in supplying the Goods and Services;
- (c) acknowledge that it is your responsibility to determine what approvals or permits are required from relevant authority(s) in relation to the installation of the Goods and the performance of the Services at the Premises;
- (d) warrant that you have obtained all necessary approvals or permits from relevant authority(s) in relation to the installation of the Goods and the performance of the Services at the Premises;
- (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 will be 18 years old or over prior to purchasing the Goods;
- (h) acknowledge that, if you are purchasing monitoring as part of the Goods and Services, it is your responsibility to provide a stable and compatible internet connection to enable monitoring to take place; and



- (i) acknowledge that your Distributed Network Service Provider (**DNSP**) has a responsibility to provide the Premises with a voltage within regulated limits and to put measures in place to avoid unstable grid voltage and if the DNSP does not do so then there is a risk that your inverter may trip. If this occurs you acknowledge that it is your responsibility to contact your DNSP and it is the responsibility of your DNSP to resolve this issue.

### 13. RISK AND OWNERSHIP OF GOODS

- 13.1 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.
- 13.2 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.
- 13.3 Ownership of, and title to, the Goods passes to you only upon payment in full by you or on your behalf of the Purchase Price and any other amounts owed by you.
- 13.4 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; and
  - (c) you grant to us a non-exclusive licence to enter onto the Premises in order to remove the Goods.

### 14. RIGHT OF ENTRY

You grant us and our contractors 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.

### 15. 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 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 13.

### 16. PERSONAL PROPERTY SECURITIES ACT 2009

- 16.1 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.
- 16.2 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.
- 16.3 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.

## 17. PRIVACY POLICY

- 17.1 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.
- 17.2 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.
- 17.3 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.

## 18. LAWS AND WAIVER

- 18.1 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.
- 18.2 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.
- 18.3 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.

## 19. BATTERY PURCHASES

- 19.1 Any recommendation we have made regarding battery size has been based on the information you have provided to us about your electricity consumption. Should your electricity consumption change the performance of your battery may be affected.
- 19.2 We have recommended a solar system size which should generate sufficient power to recharge your battery, based on the information you have provided to us about your electricity consumption. Should your electricity consumption change the performance of your battery may be affected.
- 19.3 Any backup functionality of your battery will be limited to the available stored capacity within your battery at the time that backup power is required. The amount of power available will vary based on a range of factors, including the time of the power outage, the weather conditions in the days preceding the outage and the age of the battery.
- 19.4 Battery backup functionality must not be relied upon to power any critical equipment or processes, such as life sustaining critical loads, medical equipment or high current consumption devices. We do not accept any responsibility or liability for any loss or damage suffered by you as a result of you so relying on any battery backup functionality.
- 19.5 You acknowledge that your battery warranty requires you to maintain a constant stable and compatible internet connection and that it is your responsibility to do so.