

## Terms and Conditions of Trade Retail Solar Systems

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### 1. INTRODUCTION

- 1.1 This Agreement is between:
- (a) **Energus Pty Ltd A.C.N 1 689 852 88** referred to as “we” or “us”; and
  - (b) the customer named in the Proposal, referred to as “you”.
- 1.2 This Agreement is made up of:
- (a) these Terms and Conditions; and
  - (b) the Proposal that we have sent to you.
- 1.3 The Agreement covers:
- (a) your purchase from us of the solar photovoltaic system and other equipment, referred to as the "System" and described in the Proposal attached to this Agreement; and
  - (b) delivery and installation of the System at your Premises.
- 1.4 This Agreement starts when you accept our offer set out in the Proposal, which you can do by:
- (a) signing and posting or delivering the Proposal to our address as set out in the Proposal;
  - (b) emailing your acceptance of the Proposal and these Terms and Conditions to our email address as set out in the Proposal
- 1.5 However, your purchase of the System will not become final until all of the following conditions have been satisfied:
- (a) you have paid us the Deposit; and
  - (b) your electricity distributor (the company that actually delivers electricity to the Premises) has granted Grid Connection Approval.
- 1.6 This Agreement ends when we have finished installing and commissioning the System, unless we or you end it earlier in accordance with its terms.
- 1.7 If we have delivered and installed the System, then after the Agreement ends the guarantees and related terms in clause 11 will continue for the Guarantee Period.
- 1.8 In addition to this Agreement, various laws and codes, including the Australian Consumer Law and the CEC Solar Retailer Code of Conduct also contain rules applicable to the sale and installation of solar photovoltaic systems, and we will



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comply with these rules in selling you the System and installing it at the Premises.

### **Capitalised terms have special definitions**

- 1.9 Capitalised terms used in the Agreement have the meanings given to them in clause 18.

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## **2. SALE OF THE SYSTEM**

- 2.1 Provided the conditions in clause 1.5 have been satisfied, we agree to sell, and you agree to purchase, the System on the terms of this Agreement.

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## **3. PAYMENT**

- 3.1 You must pay us the Deposit at the same time as you accept our offer set out in the Proposal.
- 3.2 You must pay us the Balance at the same time as we deliver the System to the Premises.
- 3.3 Title in the System passes to you on payment of the Balance, provided you have already paid the Deposit and all other amounts you owe us.
- 3.4 Payments under this Agreement can be made by bank cheque, , credit card (with a 2% surcharge) or direct deposit.
- 3.5 You will be taken to have made payment on the date on which we receive your payment as cleared funds in our bank account.

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## **4. REFUNDS**

- 4.1 If you have paid us money under this Agreement, but the Agreement ends for any of the following reasons before we install the System at your Premises, then when the Agreement ends we will promptly refund all of the money you have paid:

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- (a) if we have not delivered and installed the System at the Premises within 4 weeks after the original Target Date, and you choose to end the Agreement under clause 7.9;
- (b) if we give you notice of a price increase under clause 5, and you choose to end the Agreement in accordance with clause 5.3 rather than accept the price increase; or
- (c) Grid Connection Approval is refused.

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## 5. PRICE INCREASES

- 5.1 Subject to clause 5.2, we can increase the price of:
- (a) the System or any part of it;
  - (b) the installation of the System; or
  - (c) any other item specified in the Proposal,
- to cover any new or increased cost in selling and installing the System under this Agreement.
- 5.2 We can only increase prices under clause 5.1 if:
- (a) it is reasonable to do so;
  - (b) we are not prohibited by law from doing so; and
  - (c) we give you written notice of the increase at least one week before the Target Date set out in the Proposal, or, if we have notified you of a new Target Date under clause 7.8, that new Target Date.
- 5.3 If we give you notice of a price increase and you prefer to end this Agreement rather than accept the price increase, you can end the Agreement in accordance with clause 5.4 and, if you do, we will give you any refund required under clause 4.1(b).
- 5.4 You can end this Agreement under clause 5.3 by calling us on our telephone number as set out in the Proposal; or giving us written notice of this, by post or email, before the Target Date set out in the Proposal, or, if we have notified you of a new Target Date under clause 7.8, that new Target Date.
- 5.5 If we send you notice of a price increase and you do not end this Agreement under clause 5.3 by the relevant date, you will be taken to have agreed to the price increase.



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## 6. APPROVALS

### Grid Connection Approval

- 6.1 We will apply for Grid Connection Approval on your behalf. In doing this, we will:
- (a) make the application as soon as possible;
  - (b) keep you updated on the progress of the application;
  - (c) respond, within a reasonable timeframe, to any information or other requests from the distributor; and
  - (d) promptly give you notice of the outcome of the application.
- 6.2 Your purchase of the System is subject to Grid Connection Approval being granted.
- 6.3 If Grid Connection Approval is refused, then this Agreement will end and we will give you any refund required under clause 4.1(c).
- 6.4 You are responsible for applying for and obtaining any other approvals, permits or consents required in respect of the installation of the System at the Premises.
- 6.5 You must apply for these approvals, permits and consents as soon as possible, and sign any documents and take all actions Energius require in order to install the System and arrange for connection to the electricity grid and apply for government rebates.
- 6.6 The sale and installation of the System, and your and our other obligations under this Agreement, are not dependent on and will not be affected by whether and when you obtain these approvals, permits and consents.
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## 7. DELIVERY AND INSTALLATION

### Delivery, Risk and Ownership

- 7.1 Provided the conditions in clause 1.5 have been satisfied, we must, or must procure, the delivery of the System to the Premises.
- 7.2 The risk of loss or theft of, or damage to, the System passes to you on delivery of the System to the Premises.
- 7.3 Ownership of the System passes to you after paid the Amount Payable in full to Energius, and completed any documents or taken any actions that Energius requires of you in this Agreement.
- 7.4 Title will pass to you free of all encumbrances and third part interests.

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#### Installation

7.5 Provided you have paid the Balance, we must install, or must procure the installation of, the System at the Premises, in accordance with the Proposal.

#### Target Date

7.6 We will use reasonable endeavors to deliver and install the System at the Premises on the Target Date.

7.7 You agree, however, that:

- (a) the Target Date is only a target and not a strict deadline; and
- (b) we will not be liable to you if we fail to deliver and install the System at the Premises by the Target Date.

7.8 We will notify you if we do not think we can deliver and install the System at the Premises by the Target Date, and give you a new Target Date.

7.9 If we have not delivered and installed the System at the Premises within 4 weeks after the original Target Date, you can end this Agreement and, if you do, we will give you any refund required under clause 4.1(a).

#### Installation requirements

7.10 We (if we install the System) or our contractor (if we procure a contractor to install the System) must:

- (a) be a CEC-Accredited Installer; and
- (b) install the System in accordance with the Clean Energy Council Design and Install Guidelines and all other requirements applicable to CEC-Accredited Installers.

7.11 After installation of the System, we will give you any certificate or similar document regarding the electrical safety of the System which is required by law.

7.12 We will take every reasonable precaution in installing the System at the Premises. However, we will not be liable in respect of:

- (a) the structural integrity of the roof;
- (b) the roof's ability to carry the weight of the System;
- (c) any effect installation of the System has on any roof manufacturer's warranty; or
- (d) any damage to the roof or Premises which is not due to our negligence or breach of this Agreement. You acknowledge that some damage may be unavoidable while carrying out the installation, especially with tiled roofs. If you supply spare roof tiles, our installer will repair any tiles that we crack in the process of installation, and carry out any other minor damage repairs caused by us – but we cannot take responsibility for pre-existing damage or faults. Any claim for damage caused by us must be

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made to us by phone or in writing within 3 months of the installation date in order for us to consider the claim.

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## 8. ACCESSING THE PREMISES

- 8.1 You grant us permission to enter and remain at the Premises, and to have our contractors enter and remain at the Premises, to:
- (a) *conduct one or more site inspections, if we think this is necessary; and*
  - (b) *deliver and install the System,*
- at any reasonable time, provided we give you at least 3 Business Days' notice of the proposed access time.
- 8.2 You or your representative must be present at the Premises for any site inspection and for the delivery and installation of the System.
- 8.3 You must:
- (a) ensure we and our contractors have convenient and safe access to all parts of the Premises necessary to conduct any required site inspections or to deliver and install the System;
  - (b) not hinder or obstruct this access; and
  - (c) ensure the Premises, including its roof and supporting structures are structurally sound, comply with current building regulations, and able to accommodate installation of the System; and
  - (d) ensure the electrical systems on the Premises complies with all relevant electricity standards and regulations and is safe to connect to the System. Should we need to rectify any elements of your electrical system in order to certify the System compliant with regulations, we will notify you in advance and any costs incurred will be to your account.

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## 9. SYSTEM MAINTENANCE

- 9.1 We must provide you with the Maintenance Documents.
- 9.2 It is your responsibility to maintain the System in accordance with these documents.



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## 10. SYSTEM PERFORMANCE AND STCS

### Site-Specific Performance Estimate

10.1 We have calculated the Site-Specific Performance Estimate for the System and your Premises in accordance with the CEC System Design Guidelines.

### STC Incentive

10.2 We have calculated the STC Incentive based on:

- (a) the maximum quantity of STCs that can be created in respect of the System under law, taking into account the Site-Specific Performance Estimate; and
- (b) the monetary value of that quantity of STCs, and
- (c) deducted the STC Incentive from the Total Price.

### Assignment of STCs to us

- 10.3 You hereby assign to us all of your existing and future rights, title and interest in and to all STCs created or able to be created in respect of the System.
- 10.4 You must do anything we reasonably request of you for the purpose of perfecting, confirming or evidencing this assignment, including providing information and executing documents.
- 10.5 You warrant to us, when you accept the offer set out in the Proposal and again on installation of the System, that you have not previously created, or assigned the right to create, any STCs in respect of the System or any other solar photovoltaic generating unit at the Premises.

### Charging you the STC Incentive

- 10.6 If you do anything that:
- (a) obstructs or avoids the assignment under clause 10.3;
  - (b) reduces the maximum quantity of STCs that can be created in respect of the System; or
  - (c) renders the System ineligible for the creation of STCs,
- then we can increase the Total Price by the amount of the STC Incentive, and you must pay us the STC Incentive within 10 Business Days of us invoicing you for it.
- 10.7 Clause 5 does not apply to any increase of the Total Price increases under clause 10.6, and you cannot end the Agreement as a result of a price increase, or refuse to accept it.



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## 11. SYSTEM WARRANTY

- 11.1 Subject to clause 12 we warrant that our workmanship, and the workmanship of our contractors, in installing the System; and the operation and performance of the System will be free from fault or defect for a period of 5 years commencing on the date the System is installed (Warranty Period), and we will repair any such default or defect notified to us within the Warranty Period, including by replacing all or part of the System where necessary, within a reasonable timeframe at no cost to you.
- 11.2 The full Warranty terms and conditions are available on our website on <http://www.energius.com.au/> - we will email or post you a copy on request.

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## 12. EXCLUSIONS OF WARRANTY AND LIABILITY

- 12.1 Energus will provide 5 years retailer warranty on the operation and performance of the whole solar system including workmanship and products.
- 12.2 Reasonable access to the site;
- (a) If fault is detected you must allow Energus representative access to the system in a timely manner. If site access is restricted Energus will not be liable for performance during this time.
- 12.3 Maintain Original installation conditions
- (a) You must take all actions reasonably required to prevent buildings, structures, trees or other vegetation from overshadowing or obstructing sunlight to the system, including enforcing any rights you may have under property and planning laws.
- 12.4 Solar system error notification
- (a) You are required to periodically check your system monitoring software or inverter display to ensure that the system is in working order.
- (b) If you failure to notify Energus about a problem with your system the performance guarantee from the time of the failure to the time of notification may be wavered
- 12.5 Exclusion
- (a) Performance guarantees will be suspended and or made void if system is affected by
- (i) any malicious damage, damage caused by abuse, neglect or accident;
- (ii) any damage caused by vermin, animals or pests;
- (b) any "Force Majeure", e.g. Lightning, hail, storm or flood damage, and damage normally covered by a householders property insurance.
- (c) The System performance is subject to many variables including weather and local climate conditions



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12.6 Forced System Shut down:

- (a) If the electricity network is down (i.e. blackouts or extended grid failure) Energius Performance Guarantee will be suspended during this period.
- (b) If electricity is disconnected from your property (i.e. terminated by retailer or during construction at the property) Energius Performance Guarantee will be suspended during this period.
- (c) If system is disconnected or relocated at your request.

12.7 Limitation of Liability.

- (a) Energius will not be liable or pay compensation for the value of power forgone during System failure for any reason.
- (b) Energius does not make any representations or warranties to you in regards to your retail electricity contract or tariff. You should contact your provider to ensure the value of the tariff and that it is correctly applied by the retailer.

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## 13. COMPLAINTS

### Making a complaint

13.1 If you have a complaint relating to the System, its installation or this Agreement generally, you can make a complaint to us by:

- (a) calling us on our telephone number as set out in the Proposal; or
- (b) giving us written notice of this, by post or email.

13.2 We will handle your complaint in accordance with our Complaints and Disputes Handling Procedure, which is available on our website on [www.energius.com.au](http://www.energius.com.au)

13.3 This Procedure complies with the CEC Solar Retailer Code of Conduct, and with the Australian Standard on Complaints Handling AS ISO 10002-2006.

### If you are still not satisfied

13.4 If you are not satisfied with the outcome of your complaint, you can refer the complaint to with the relevant Fair Trading or Consumer Affairs office in your state or territory, as follows:



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ACT: Office of Regulatory Services Phone: (02) 6207 3000	NSW Fair Trading Phone: 13 32 20	NT Consumer Affairs Phone: 1800 019 319
QLD Office of Fair Trading Phone: 13 74 68	SA Consumer and Business Services Phone: 13 18 82	TAS Consumer Affairs & Fair Trading Phone: 1300 654 499
VIC Consumer Affairs Phone: 1300 558 181	WA Consumer Protection Phone: 1300 304 054	

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## 14. PRIVACY

- 14.1 We will comply with all relevant privacy legislation in relation to your personal information.
- 14.2 Our full Privacy Policy is available on our website on [www.energius.com.au](http://www.energius.com.au) or we will post or email a copy to you on request.
- 14.3 If you have any questions in relation to privacy, you can contact us by:
- (a) calling us on our telephone number as set out in the Proposal; or
  - (b) giving us written notice of this, by post or email.

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## 15. WHAT HAPPENS IF YOU DEFAULT UNDER THIS AGREEMENT

- 15.1 If you fail to pay any amount when due; or fail to perform your obligations in clause 8, then we may we may suspend our performance of this Agreement with immediate effect, and will give you a notice asking you to make the required payment or perform the required obligation.
- 15.2 If you fail to make the required payment or perform the required obligation within one week after the date of our notice, then we may end this Agreement immediately by notice to you.
- 15.3 If we end this Agreement under clause 15.2, you must pay us any costs that we incur as a result of ending the Agreement, and any costs we have already incurred in respect of the delivery or installation of the System, as well as our legal costs incurred in recovery of the unpaid amounts. Energius may use your Deposit or any other money received from you to offset any costs incurred by them to date in connection with your System.

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## 16. GST

16.1 All amounts specified in the Proposal are inclusive of GST.

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## 17. GENERAL

### Notices

- 17.1 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 address of the addressee in the Schedule or, if the addressee has previously notified the sender in writing of an alternative address for notices, that alternative address.
- 17.2 If the delivery or receipt of a notice occurs on a day which is not a Business Day or at a time after 5.00 pm in the place of receipt, it is regarded as having been received at 9.00am on the following Business Day.

### Assignment and novation of the Agreement

17.3 Neither party can assign its rights or novate its obligations under this Agreement without the other party's prior written consent, not to be unreasonably withheld or delayed.

### Sub-contracting

- 17.4 We may sub-contract any of our obligations under this Agreement to a third party, provided that if we sub-contract any obligations:
- (i) we will ensure the relevant sub-contractor is suitable and performs all sub-contracted obligations in accordance with the requirements of this Agreement;
  - (ii) we will continue to be liable to you for the performance of our obligations under this Agreement, even though we have sub-contracted one or more of those obligations; and
  - (iii) we will be liable to you for the acts and omissions of our sub-contractors, as if these acts and omissions were our own; and
  - (iv) our obligations in relation to the design or installation of the System can only be sub-contracted to a CEC-Accredited Installer.

### Amendment of the Agreement

17.5 This Agreement can only be amended in writing signed by both parties.



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### Waivers

17.6 A waiver in connection with this Agreement is not valid or binding on the party granting that waiver unless made in writing by that party.

### Severance

17.7 Any term of this Agreement which is or becomes invalid or unenforceable does not render the other terms of the Agreement invalid or unenforceable.

### Governing law of the Agreement and submission to jurisdiction

17.8 The laws of New South Wales govern this Agreement, and each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

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## 18. MEANING OF CAPITALISED TERMS IN THIS AGREEMENT

- Agreement means the signed Proposal and these Energius Retail Terms and Conditions of Trade
- Australian Consumer Law means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- Balance means the amount specified as such in the Proposal, subject to any adjustment of this amount in accordance with clause 5.1 or 10.6.
- Business Day means a day which is not a Saturday, Sunday or public holiday in the State or Territory in which the Premises are 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.
- CEC System Design Guidelines means the Clean Energy Council System Design Guidelines for Accredited Designers.
- Deposit means the amount specified as such in the Proposal, subject to any adjustment of this amount in accordance with clause 5.1 or 10.6.
- Grid Connection Approval means approval from your electricity distributor for the connection of the System to the electricity grid at the Premises.
- GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Guarantee Period has the meaning given to it in clause 11.1

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- Maintenance Documents means the System maintenance documents listed in Attachment 2 to this Agreement.
- Premises mean the premises at the address specified in the Proposal.
- Privacy Act means the *Privacy Act 1988* (Cth).
- Proposal means the document titled as such which forms part of this Agreement and is attached to the Terms and Conditions.
- Site-Specific Performance Estimate means our site-specific estimate of the average daily energy yield of the System for each month, in kWh, as set out in the Proposal.
- STC means a small-scale technology certificate created under the *Renewable Energy (Electricity) Act 2000* (Cth).
- STC Incentive means the amount specified as such in the Proposal.
- System means the solar photovoltaic system and other equipment we are to deliver and install at the Premises under this Agreement, as described in the Proposal.
- Target Date means the date specified as such in the Proposal, subject to any variation of that date in accordance with clause 7.8.
- Total Price means the amount specified as such in the Proposal.

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## 19. AN APPROVED RETAILER TO THE SOLAR RETAILER CODE OF CONDUCT

Energus have signed and must comply with the Clean Energy Council Code of Conduct, binding us to the highest professional and technical standards in the solar industry. You can download a copy of the Code [here](#), or if you request one, we will send you a hard copy.

Energus are compliant with and agree to adhere to the code. We are committed to developing and conducting our business in line with best practices and interacting with consumers in a professional and ethical manner.

A regularly updated list of current approved retailer to the Code is available online for consumers at [www.solaraccreditation.com.au/retailers/approved-solar-retailers](http://www.solaraccreditation.com.au/retailers/approved-solar-retailers)

## 20. TERM OF USE CEC SOLAR PV SALE AND INSTALLATION AGREEMENT

- Energus has used and applied CEC Solar PV Sale and Installation Agreement.
- The Clean Energy Council Limited (CEC) owns all intellectual property rights in the Solar PV Sale and Installation Agreement.
- Energus must not remove these terms of use or any copyright statement from the Agreement.
- The Agreement must only be used by a party designated by the CEC as an “Approved Retailer” for the Agreement.
- Energus is only permitted to use the Agreement as the basis for creating an agreement between Energus and its end customers for the sale and installation of solar PV equipment (Permitted Purpose).
- Energus may tailor the Agreement for the Permitted Purpose. Use of the Agreement for any other purpose is prohibited.
- Energus must not make claims of any nature in relation to its association with the CEC, including that it is accredited, approved or endorsed by the CEC, or that it is compliant with the Solar Retailer Code of Conduct, as a result of being granted a license to use this Agreement.
- In using the Agreement, Energus accepts full responsibility for:  
Obtaining expert advice for Energus use of the Agreement;  
Compliance with all applicable laws relating to use of the Agreement and its subject-matter; and  
Reflecting Energus requirements in the Agreement.