

NUE PTY LIMITED – SOLAR OFFER

TERMS AND CONDITIONS APPLICABLE TO SUPPLY AND INSTALLATION APRIL 2009

1 Meaning of words in this document

- (a) **Agreement** means an agreement executed by You that incorporates these Terms and Conditions;
- (b) **Australian Government** means the Federal Department of Environment and Water Resources, Australian Greenhouse Office, or any equivalent Australian Government Department;
- (c) **Deposit** is the deposit referred to in clause 10;
- (d) **\$** means Australian dollars;
- (e) **force majeure** means anything beyond our control or in consequence of which We are hindered in performing our obligations and includes strike, trade disputes, fire, accidents and supply, import or export delays;
- (f) **Goods** means the system as set out in the *Residential Application for Pre-Approval* executed by You and by Us;
- (g) **Guidelines** means the *Solar Homes and Communities Plan – Guidelines for Residential Applicants*, a copy of which is available at <http://www.environment.gov.au/settlements/renewable/pv/index.html>, or upon request from the Department of Environment, Water, Heritage and the Arts;
- (h) **notification of pre-approval** means the notification of the same description referred to in the Guidelines;
- (i) **Premises** means your principal place of residence as defined in the Guidelines;
- (j) **Program Manager** has the same meaning as in the Guidelines;
- (k) **Rebate** means “the rebate for new systems” as defined in the Guidelines;
- (l) **Renewable Energy Certificates** has the same meaning as in the *Renewable Energy (Electricity) Act 2000 (C’th)* and includes any other certificate, right or entitlement of a similar nature which arises under legislation;

- (m) **Residential Application for Pre-Approval** means the application of the same description as referred to in the Guidelines;
- (n) **Residential Installation Report** means the report of the same description as referred to in the Guidelines;
- (o) **Terms and Conditions** means these terms and conditions;
- (p) **Us/We** means NUE Pty Limited; and
- (q) **You** means the person eligible to receive the Rebate, being the person who enters into an Agreement with Us.

2 What is in the Agreement

The entire agreement between You and Us for the supply and installation of Goods is:

- (a) these Terms and Conditions;
- (b) this Agreement document as agreed by You and Us;
- (c) the completed and executed Residential Application for Pre-Approval that relates to the Premises; and
- (d) any documents referred to and/or attached to the Residential Application for Pre-Approval that relates to the Premises.

3 When the Agreement is formed

The Agreement exists between You and Us once We receive and accept all of the complete and executed documents outlined in clause 2 of these Terms and Conditions.

4 What You agree to do and what We agree to do

4.1 We agree to supply and install the Goods at the Premises:

- (a) following receipt by Us of the original notification of pre-approval from You as issued by the Program Manager as set out in the Guidelines;

- (b) in consideration for You undertaking to fully and correctly complete the Residential Installation Report, including irrevocably directing that the Rebate is to be paid to Us; and
- (c) You unconditionally undertaking to assign to Us all Renewable Energy Certificates.

4.2 In the event that pre-approval is not granted by the Program Manager:

- (a) the Agreement will not proceed; and
- (b) We will refund to You the full amount of the Deposit within 90 days after receipt by Us of written notification from the Program Manager that pre-approval has not been granted.

5 Assignment of Renewable Energy Certificates to Us

- 5.1 Upon entering into the Agreement, You unconditionally undertake to assign and are deemed to have assigned to Us any rights to or rights to create Renewable Energy Certificates that may arise in relation to the Goods.
- 5.2 You agree to complete and execute for the benefit of NU Energy any documents, contracts, or papers reasonably necessary to give effect to this assignment.
- 5.3 You unconditionally undertake not to otherwise deal with Renewable Energy Certificates or a right relating to Renewable Energy Certificates that may arise by reason of the installation of the Goods at the Premises.

6 Importance of the Rebate

- 6.1 You understand and agree that it is your responsibility to ensure that You are eligible to receive the Rebate.
- 6.2 You represent to Us that:
 - (a) You are eligible for the Rebate within the meaning of the Guidelines;

- (b) the Premises are located within 80 kilometres of a General Post Office in New South Wales, Victoria, Queensland, Tasmania, South Australia or the Australian Capital Territory.

6.3 We have no obligation to supply and install the Goods if You are not eligible as set out in this paragraph.

7 Residential Installation Report

7.1 You unconditionally undertake to complete the Residential Installation Report immediately upon request by Us, which You must complete so as to make the Rebate payable to Us.

7.2 You further agree to complete and execute any additional documents, contracts or papers reasonably necessary to ensure that the Rebate is paid to Us.

8 Site inspection

8.1 We will rely on your representations, that the Premises are suitable for the installation of the Goods, in completing and executing the System designer's certificate in the Residential Application for Pre-Approval.

8.2 Despite clause 8.1, We will conduct a site inspection of the Premises in order to confirm your representations, and in that regard:

- (a) You grant permission to Us and our employees, contractors and/or agents to enter the Premises where the Goods are proposed to be installed and commissioned, at any reasonable time; and

- (b) You agree to ensure that You are present at the property for such site inspection, installation and/or commissioning, when and as reasonably required by Us or our employees, agents and contractors

8.3 Our inspection does not relieve You of your responsibility to ensure that your representations about suitability are correct.

9 Guidelines

9.1 You agree that You have read and understood the Guidelines.

10 Payment and refund of Deposit

10.1 This Agreement will not come into effect unless, at the time of executing the Agreement, You provide Us with a deposit in the amount of \$2,500.

10.2 The Deposit must be provided to Us in that amount in one of the following ways:

- (a) a full and complete credit card (MasterCard or Visa) authorisation;
- (b) a debit card authorisation;
- (c) cheque.

10.3 If your credit card or debit card is declined by your financial institution, or if your cheque is not honoured on presentation, We may, in our absolute discretion, decide to accept an alternative method of payment from You.

10.4 We may decline to accept payment from You by credit card or debit for any reason, and We are not required to give reasons.

10.5 We will refund to You the full amount of the Deposit within 60 days after the last of the following things occurs:

- (a) completion of the installation of the Goods; and
- (b) full and proper completion by You of the Residential Installation Report, which specifies that the Rebate must be paid to Us.

11 Cancellation of the Agreement

- 11.1 We may cancel the Agreement at any time, and if We do so We will refund to You the full amount of the Deposit within 90 days after the cancellation unless otherwise stated in this document or in the Terms and Conditions.
- 11.2 We cannot cancel the Agreement after the time that installation of the Goods has commenced except under 14.2.
- 11.3 If We cancel the Agreement as a direct result of a failure by You to comply with the Agreement, We will refund the remainder of the Deposit to You within 90 days after the date of cancellation of the Agreement.
- 11.4 Not used.
- 11.5 Subject to clause 11.7, if You cancel the Agreement at any time, We will:
- (a) retain \$500 of the Deposit; and
 - (b) refund the remainder of the Deposit to You within 90 days after the date of cancellation of the Agreement.
- 11.6 You cannot cancel the Agreement after the time of the site inspection at the Premises, except as permitted in clause 12.3.
- 11.7 If You cancel the Agreement as permitted under clause 12.4, We will refund the remainder of the Deposit to You within 90 days after the date of cancellation of the Agreement.

12 Additional costs – non standard installations

- 12.1 You acknowledge that We may determine that installation charges may be applicable if, because of the special nature of the Premises, the physical installation of the Goods presents Us with substantial complexities or difficulties.
- 12.2 If, after the time of the site-inspection, We determine that such charges would need to be paid by You to Us, We will notify You of the amount of those charges.

12.3 The charges referred to in clause 12.2 include, but are no limited to, the charges in Table 1.

Tile roof	\$120
Build frame (including labour) on flat metal roof	\$275
Double storey dwelling	\$200
Split array – due to building space on the roof	\$300
Horizontal fixing of array	\$300
Lifting and access equipment	Price on Application
Heritage overlay – cost of moving inverter	\$200-\$250

12.4 If You do not agree to pay the installation charges you may cancel the Agreement, but this must be done in writing and within 5 days after We advise You of the charges.

13 Warranties by You

13.1 You agree that any and all representations and information provided by You to Us, are true and accurate.

13.2 You acknowledge that We rely on the accuracy of your representations and the information You give to Us in entering into the Agreement.

13.3 The representations You provide to Us include but are not limited to:

- (a) your eligibility for the Rebate;
- (b) the eligibility of the Premises for the Rebate; and
- (c) your description of the Premises;

13.4 The information You provide to Us includes but is not limited to:

- (a) information provided by You in the Residential Application for Pre-Approval; and
- (b) information provided by You in the Residential Installation Report.

13.5 You understand that under the Guidelines there are requirements on householders with respect to the Goods at the Premises, and You warrant and represent that You will observe all such obligations.

14 What if Rebate is not paid, or not paid in full

14.1 We assume that the Government will not revoke a person's eligibility for the Rebate after it has given You notification of pre-approval under the Guidelines, but We cannot warrant that. The Agreement is intended to protect You from any change to the Rebate, because it does not proceed if pre-approval is not obtained by You.

14.2 However, You agree that if the Guidelines (and the scheme described by them) is or are changed, amended or revoked by the Government at any time, then we will discuss the matter with you and may, if we determine that it is appropriate or necessary to do, cancel the Agreement and if We do so We will refund to You the full amount of the Deposit within 90 days after the cancellation.

14.3 You agree that under the Guidelines the Program Manager has the sole and absolute discretion whether You are eligible for the Rebate.

15 Installation

15.1 We take care to ensure that the Goods are installed by competent, trained and insured installers.

- 15.2 All care is taken by Us in selecting installers of the Goods, but no responsibility is taken for any loss, cost or damage incurred by reason of any act or omission of the installer.

16 Warranty applicable to the Goods

- 16.1 We warrant the Goods in accordance with the warranty requirements presently set out in the Guidelines.
- 16.2 Without detracting from clause 16.1, and subject to mandatory warranties imposed by law, at our option We will repair or replace the Goods, or the part of the Goods that we consider, at our absolute discretion, fail as described below only in the following cases:
- (a) cases in which any solar panel installed as part of the Goods fails to perform to at least 90% of nominated output, but only where the failure arises and is notified to Us within 10 years of the date the Agreement comes into effect;
 - (b) cases in which any solar panel installed as part of the Goods fails to perform to at least 80% of nominated output, but only where the failure arises and is notified to Us within 25 years of the date the Agreement comes into effect,
 - (c) cases in which any solar panels installed as part of the Goods fail as a result of defects in materials or workmanship, but only where the failure arises and is notified to Us within 5 years of the date the Agreement comes into effect,
 - (d) cases in which the inverter installed as part of the Goods fails as a result of defects in materials or workmanship, but only where the failure arises and is notified to Us within 5 years of the date the Agreement comes into effect, and
 - (e) cases in which the Goods fails as a result of failures in workmanship in the installation of the Goods, but only where the failure arises and is notified to Us within 12 months of installation.
- 16.3 Except as provided in these Terms and Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the extent permitted by law. We will have no

responsibility or liability for any damage or injury to persons or property, for economic loss, or for any other loss resulting from any cause whatsoever arising out of or related to the Goods, including but not limited to, any defects in the Goods, or from the use or installation of the Goods.

- 16.4 The warranties provided in clause 16.2 will not apply to any Goods that have been subjected to:
- (a) misuse, abuse, neglect or accident
 - (b) alternation, improper alteration or person reinstallation by You or any other person
 - (c) non-observance with use and maintenance instructions
 - (d) repair, modification or repositioning service technician approved by Us by anyone other than an approved in writing
 - (e) power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of Our control
 - (f) the type or serial number of any part of the Goods being altered, removed or made illegible.
- 16.5 The warranties in clause 16.2 do not cover any transportation charge, customs clearance or any other costs associated with the return of the Goods to the manufacturer, or for reshipment of any repaired or replaced Goods, or any costs associated with the installation, removal or reinstallation of the Goods, or replaced or repaired Goods.

17 Power grid connection and meter installation

- 17.1 You acknowledge that although We may assist in arranging for the Goods to be connected to the main grid and for installation of the meter at the Premises, the agreement to undertake that connection and installation is an agreement between You and your electricity retailer and/or distributor.
- 17.2 The costs and risks of that connection and installation are not included in any way in the Agreement between You and Us. (At the time of preparation of these

terms and conditions, it is our understanding that the average market cost of that connection and installation is approximately \$450 including GST).

18 Not used

19 Risk and title

- 19.1 Risk and title in the Goods does not pass to You by reason of delivery of the Goods to the Premises or the presence of the Goods at the Premises.
- 19.2 Risk and title in the Goods passes to You on completion of the installation of the Goods and completion of the Residential Installation Report.

20 Availability and supply of the Goods

- 20.1 If at the time of receipt by Us of the original notification of pre-approval from You, the Goods are not available they will be supplied by Us when available, and We will not be liable to You to make good any damage or loss whether arising directly or indirectly as a result of any ensuing delay in the supply and installation of the Goods.
- 20.2 You expressly acknowledge that our agreement to supply and install the Goods in consideration of the payment of the present amount of the Rebate to Us has been determined on the basis of bulk orders being made by multiple customers.
- 20.3 You expressly acknowledge that We will not commence shipments before receiving minimum bulk orders of the Goods, and that this could cause some delay.
- 20.4 You further acknowledge that delays may be caused as a result of the time which may be taken:
- (a) by the Australian Government in considering the Residential Application for Pre-Approval;
 - (b) by Us or our contractors in performing site assessment.

- 20.5 Any times or periods quoted for supply and installation of the Goods are estimates only, involving no contractual obligation.
- 20.6 We shall not be liable to the You to make good any damage or loss whether arising directly or indirectly out of the delay in supply installation.
- 20.7 Time will not be of the essence for any supply and installation.

21 General

- 21.1 Any oral representation, warranty or promise whatsoever (other than those contained in these Terms and Conditions) made by any employee, contractor or agent of ours to You does not form any part of the Agreement nor the consideration for or basis of any collateral contract.
- 21.2 Failure by Us to insist on strict performance of any term, warranty or condition of the Agreement will not be taken as a waiver of it or of any rights We may have.
- 21.3 No waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- 21.4 Any notice to be given by a party under these Terms must be in writing and may be given to the other party by hand delivery, prepaid post, or facsimile addressed to the other party at its last known address or facsimile number or as specified by the other party.
- 21.5 Any notice given under these Terms is deemed to have been received by the person to whom it was sent:
- (a) in the case of hand delivery, upon delivery;
 - (b) in the case of prepaid post, three days after dispatch; and
 - (c) in the case of facsimile, upon completion of successful transmission.
- 21.6 In the event of a “force majeure” event We shall be entitled either to rescind the Agreement (without being liable for damages) or to extend the time for performance by a reasonable period of not less than the duration of such event,

and all liability under any contract, including liability for damage whether specified or otherwise, shall be modified or adjusted accordingly.

- 21.7 Any clause or part clause of these Terms and Conditions which is illegal, void or unenforceable, will be ineffective to the extent only of such illegality, voidness or unenforceability, without invalidating the remaining clauses of these Terms and Conditions.
- 21.8 The Agreement is deemed to be made in the State of Victoria and is to be construed in accordance with the laws of Victoria, Australia.
- 21.9 You must not use or deal with any intellectual property (including, but not limited to, copyright, including copyright in the Agreement, patents and trademarks) owned or licensed by Us without our prior written consent.
- 21.10 The parties can amend these Terms and Conditions or any contract incorporating these Terms and Conditions only by a written agreement of the parties that identifies itself as such an amendment.
- 21.11 These Terms and Conditions supersede all previous terms and override any terms and conditions used by You, including but not limited to any copy, whether in electronic or paper form, of the Outline of Supply and Installation Arrangements.

Customer Acceptance

I hereby declare that I have read and understood the terms and conditions and agree that by signing below I acknowledge acceptance and agreement with these terms and conditions.

Signed:.....

Name:.....

Date:.....