



## Energy Buster Pty Ltd – Residential Terms & Conditions of Trade

### 1 Definitions

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- 1.1 **Energy Buster** shall mean Energy Buster Pty Ltd ABN 58 633 218, its successors and assigns or any person acting on behalf of and with the authority of Energy Buster Pty Ltd.
- 1.2 **Customer** shall mean the customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Energy Buster to the Customer.
- 1.3 **Cooling Off Period** means 10 business days from the day after the Customer received this agreement.
- 1.4 **Goods** shall mean all goods supplied by energy Buster to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Energy Buster to the Customer.
- 1.5 **GST** means goods and services tax under the GST Law.
- 1.6 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.7 **GST Law** has the same meaning as in the GST Act.
- 1.8 **PPS Act** means the Personal Property Securities Act 2009 (Cth).
- 1.9 **Price** shall mean the Price payable for the Goods and Services as agreed between energy Buster and the Customer in accordance with clause 6 of this agreement.
- 1.10 **Services** shall mean all services supplied by Energy Buster to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.11 **Site-Specific Design** means a full site-specific system design for the Customer's premises.
- 1.12 **Tax** means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

### 2 The Australian Consumer Law and Competition and Consumer Act 2010

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- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law (**ACL**) as located in Schedule 2 of the Competition and Consumer Act 2010 (CCA), except to the extent permitted by law.

### 3 Acceptance

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- 3.1 Any instructions received by Energy Buster from the Customer for the supply of Goods (including a purchase/sales order) and/or the Customer's acceptance of Goods supplied by Energy Buster shall constitute acceptance of the terms and conditions contained herein. These terms and conditions shall be incorporated into every order of the Customer.
- 3.2 The Customer acknowledges that these terms and conditions are meant to be read in conjunction with the terms and conditions supplied by a utilities operator such as SA Power networks (<https://www.sapowernetworks.com.au/data/3027/model-standing-offer-terms-conditions-for-basic-connection-services-for-retailer-customers-who-are-small-generators-3602/>) in relation to the installation of a Small Embedded Generator (**SEG**) (where a SEG is supplied as part of, or in conjunction with, any works provided under this agreement). Under those terms and conditions the Customer is required (to ensure the SEG remains safe and functional) to regularly have the SEG inspected and maintained as specified in those terms and conditions. Whilst inspection and/or maintenance of the SEG is the Customer's sole responsibility to arrange, Energy Buster can provide such services at its usual rates if requested.
- 3.3 Where the Customer is two or more persons, each person is bound jointly and severally.

- 3.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended by written agreement signed by the parties.
- 3.5 The Customer shall give Energy Buster not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, or business practice). The Customer shall be liable for any loss incurred by energy Buster as a result of the Customer's failure to comply with this clause.
- 3.6 Energy Buster may at its discretion use or recommend contracted installers to install the Goods and/or Services.
- 3.7 Energy Buster will notify the Customer's electricity distributor/retailer of the installation. The electricity distributor/retailer may then require the replacement of the Customer's existing power meter, the cost of which shall be the Customer's responsibility and is not included in any pricing specified under this agreement.
- 3.8 Where the Customer is a tenant (and therefore not the owner of the land and premises where Goods are to be installed) then the Customer warrants that the Customer has obtained the full consent of the owner for Energy Buster to install the Goods on the owner's land and premises and perform any related Services. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for all works provided under this agreement and to indemnify Energy Buster against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Goods and the provision of any related Services by Energy Buster except where such claim has arisen because of the negligence of Energy Buster when installing the Goods.
- 3.9 The Customer agrees that they shall upon request from Energy Buster provide evidence that:
- they are the owner of the land and premises upon which the works are to be undertaken; or
  - where they are a tenant, that they have the consent of the owner for the Goods to be installed on the land and premises upon which the works are to be undertaken and to perform any related Services,
- in which case Energy Buster will not be required to provide the Goods until such time as satisfactory evidence is provided.
- 3.10 Energy Buster reserves the right to substitute comparable or better components that comprise the Goods. In all such cases Energy Buster will notify the Customer in advance of any such substitution and will receive approval from the Customer before doing so.
- 3.11 None of Energy Buster's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Energy Buster management in writing nor is Energy Buster bound by any such unauthorised statements.
- 3.12 An agreement will be deemed to have been made between the parties on these Ts&Cs upon
- The Customer signing and submitting the order form, either electronically or in hard copy.
  - The Customer paying the deposit.
  - The Customer advising Energy Buster either verbally or in writing to proceed with the contract.

### 4 Site-Specific Design

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- 4.1 Energy Buster will provide the Customer with a Site-Specific Design.
- 4.2 The Site-Specific Design will include the proposed roof plan (which may be a sketch or diagram), orientation and tilt, expected efficiency losses due to shading, and the estimated energy yield (i.e. average daily performance estimate in kilowatt hours for each month of solar generation).
- 4.3 The performance estimate in the Site-Specific Design will be based on data obtained from the Clean Energy Council's System Design Guidelines for Accredited Designs or other reputable sources.



- 4.4 Energy Buster may provide the Site-Specific Design as a deliverable of the agreement, in which case:
- (a) Energy Buster will provide the Customer with the Site-Specific Design prior to the expiry of any Cooling Off Period;
  - (b) Energy Buster will provide the Customer with a generic outline of the likely system performance estimate before providing the Site-Specific Design (to allow the Customer to make an informed purchase decision); and
  - (c) upon receiving the Site-Specific Design, the Customer may terminate this agreement for a full refund if the Customer does not consent to, or agree with, the Site-Specific Design.
- 4.5 Once installed, Energy Buster will advise the Customer how to monitor the performance of their system. This will be done via demonstration on site. If the Customer provides access to their Wi-Fi network we will connect their system to the inverter manufacturer's web-based cloud monitoring tool and show them how to access this. If any access fees apply these are the responsibility of the Customer. In the event the Customer does not have Wi-Fi, we will show them how to access the inverter from any Wi-Fi enabled device, and/or the inverter screen if the model has one.

## 5 Approvals

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- 5.1 The Customer authorises Energy Buster to apply in the Customer's name for any approvals required to connect the SEG to the network.
- 5.2 The Customer agrees to sign any necessary documents, provide any necessary information and take any necessary action Energy Buster may require, to enable Energy Buster to obtain such approvals.
- 5.3 Energy Buster is not responsible for any failure to obtain any approvals relating to the network connection.
- 5.4 If Energy Buster applies to connect the SEG to the network on behalf of the Customer, then the Customer is entitled to a full refund if the SEG application is rejected.
- 5.5 If the Customer takes responsibility for connecting the SEG to the network (rather than Energy Buster) and:
- (a) the application is rejected; and
  - (b) this agreement has already been signed,
- then the Customer will be entitled to a refund of all money paid under the agreement less Energy Buster's reasonable expenses incurred up to the date of termination, and Energy Buster will have the option to terminate this agreement immediately upon issuing the partial refund.

## 6 Price and payment

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- 6.1 Energy Buster's quoted Price shall be binding upon Energy Buster provided that the Customer accepts Energy Buster's quotation in writing within fourteen (14) days.
- 6.2 At Energy Buster's sole discretion a deposit may be required on placement of the order, in which case Energy Buster will not be required to provide the Goods until such time as the deposit is paid.
- 6.3 Energy Buster reserves the right to change the Price:
- (a) in the event of a variation to Energy Buster's quotation when requested by the Customer (including, but not limited to, variations as a result of changes to quantities or the specifications contained in any order);
  - (b) where due to changes in Taxes, fluctuation in exchange rates, insurance or freight costs, or increases in the cost to Energy Buster of labour and materials;
  - (c) where there is any change to any monies available to the Customer from Australian Federal, State or Local Government rebates or incentives; or
  - (d) in the event Energy Buster will incur additional costs due to unforeseen circumstances that are only revealed once Energy Buster has commenced installation of the Goods, for example:
    - (i) fees for meter exchange or reconfiguration;
    - (ii) damage on meter panels;
    - (iii) changing dedicated off-peak control devices;

- (iv) asbestos removal;
- (v) unsafe conditions;
- (vi) any other conditions or circumstances set out in the quote or any other documentation that Energy Buster provides the Customer.

- 6.4 If the Price has been varied due to any of the conditions outlined in clause 6.3, the Customer has the right to terminate this agreement without penalty, however, the Customer must pay Energy Buster for all Services and Goods supplied prior to termination.
- 6.5 Energy Buster will issue the Customer with an invoice on completion of the Services.
- 6.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other documentation supplied by Energy Buster to the Customer. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Energy Buster.
- 6.8 Energy Buster will issue the Customer with a receipt upon payment.
- 6.9 GST and other taxes and duties that may be applicable shall be included in the Price.

## 7 Delivery of goods

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- 7.1 Delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at Energy Buster's address; or
  - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Energy Buster or Energy Buster's nominated carrier).
- 7.2 Energy Buster may deliver the Goods in separate instalments.
- 7.3 The installation completion date will be put back and the building period extended by whatever time is reasonable in the event that Energy Buster claims an extension of time where installation is delayed by an event beyond Energy Buster's reasonable control, including but not limited to:
- (a) any failure by the Customer to:
    - (i) make instruction to Energy Buster; or
    - (ii) ensure that any works or materials being provided or
    - (iii) provide clear access to all areas of the installation site; or
    - (iv) authorise any variations in a timely manner;
  - (b) a request by the Customer that the works be delayed;
  - (c) Energy Buster does not receive instructions or details in time to undertake the works;
  - (d) where the state or nature of the Customer's premises results in unanticipated installation factors or requires additional equipment necessary to install the Goods;
  - (e) any legal action undertaken by neighbours or other third parties;
  - (f) the delay in receipt of materials from third party suppliers;
  - (g) shortage of qualified installers;
  - (h) the delay in any local body or authority in giving any approvals required to complete the works;
  - (i) bad weather;
  - (j) any act of God;
  - (k) sickness or accidents;
  - (l) civil unrest; or a strike or lockout; or
  - (m) vandalism or theft.
- 7.4 In the event that completion of the works is delayed under clause 7.3(a), 7.3(b), 7.3(c) then Energy Buster shall be entitled to claim and the Customer will pay for any loss or expense incurred by such delay.
- 7.5 The failure of Energy Buster to deliver shall not entitle either party to treat this agreement as repudiated.
- 7.6 For the sake of clarity any period or date for the delivery of the Goods stated by Energy Buster is intended as an estimate only and shall not be deemed a contractual commitment. Energy Buster will use its reasonable endeavours to meet any estimated dates for the



delivery and installation of Goods, however, Energy Buster shall not be liable for any losses or damages whatsoever where Energy Buster fails to deliver or install the Goods (or any of them) promptly or at all, where this is due to circumstances beyond the control of Energy Buster.

## 8 Risk

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- 8.1 Risk in the Goods passes to the Customer upon the Goods being delivered to the Customer.

## 9 Refunds

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- 9.1 The Customer will be entitled to a full refund prior to installation upon making a written request within five (5) Business Days of any of the following occurring:

- (a) the Site-Specific Design provided to the Customer is significantly different to the generic outline previously provided and is not approved by the Customer;
- (b) the Site-Specific Design and performance estimate is provided as a deliverable of the agreement and:
  - (i) Energy Buster does not provide the Customer with the Site-Specific Design and performance estimate before the expiry of any Cooling Off Period; and
  - (ii) the Customer does not consent to the Site-Specific Design and performance estimate upon receipt;
- (c) the estimated delivery timeframe for installation completion that was agreed at the point of agreement is not honoured for reasons reasonably within the control of Energy Buster, and the Customer does not consent to a revised timeframe;
- (d) Energy Buster acts on the Customer's behalf to obtain grid connection approval but does not obtain such approval prior to installation, and the Customer does not receive approval from the energy distributor to connect a system; or
- (e) extra chargeable work arises where the costs are payable to Energy Buster, which was not specified in the initial Quotation, those additional costs are not borne by Energy Buster and the Customer does not consent to those additional costs.

- 9.2 Energy Buster may terminate the agreement immediately upon issuing the Customer a refund in accordance with clause 9.

- 9.3 The Customer will be entitled to a partial refund if the Customer takes responsibility for obtaining grid connection approval (rather than Energy Buster on the Customer's behalf) and:

- (a) the application is rejected; and
- (b) the agreement has already been signed.

If this occurs, the Customer is entitled to terminate the agreement with a refund of all money paid under this agreement less Energy Buster's reasonable expenses incurred up to the time of termination.

## 10 Rebates & incentives

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- 10.1 The Customer authorises Energy Buster to apply in the Customer's name for any grant, incentive or any other benefit (hereafter referred to as an **Incentive**) available from the Commonwealth, State Government, or any local government council in relation to the installation of a solar system and to receive payment of that Incentive on the Customer's behalf.
- 10.2 The Customer agrees to sign any necessary documents, provide any necessary information and take any necessary action Energy Buster may require, to enable Energy Buster to obtain payment of an Incentive.
- 10.3 If Energy Buster receives payment of an Incentive, Energy Buster will apply that payment in or towards satisfaction of the Price.
- 10.4 Energy Buster is not responsible for any failure to obtain an Incentive, unless such failure was due to an act or omission of Energy Buster that the Customer was unaware of or did not agree to.
- 10.5 Except as specified in clause 10.4, the Customer shall remain liable to Energy Buster for the whole of the Price and any other amounts due to Energy Buster which are not paid in full.

- 10.6 The Customer unconditionally assigns all Small-scale Technology Certificates (**STCs**) to which the Customer is entitled in respect of the Goods to Energy Buster unless otherwise negotiated.
- 10.7 The Customer acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of an Incentive by the Customer and in such circumstances Energy Buster will have no liability to the Customer unless due to an act or omission of Energy Buster that the Customer was unaware of or did not agree to.
- 10.8 The Customer acknowledges that STCs in the Clearing House are only sold when there is a buyer, there is no guarantee on how long they will take to sell, and consumers are not guaranteed any certificate price. A variation invoice may be issued if Energy Buster does not receive the value listed on the order form.

## 11 Customer acknowledgments

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- 11.1 The Customer acknowledges that the performance of the Goods may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, irradiance, cloud cover, weather patterns, the location of the Goods and the location of surrounding structures and flora.
- 11.2 The Customer acknowledges that some buildings may not have the optimum orientation for the installation of the Goods or components and therefore understands and accepts that the Good's performance may be compromised in such situations. Notwithstanding the former, Energy Buster will use its reasonable endeavours to install and position the Goods to maximise orientation and exposure to direct sunlight.
- 11.3 The Customer will be advised in writing of any site-specific conditions of which Energy Buster becomes aware that may affect the system's performance.
- 11.4 The Customer agrees that they shall not be entitled to withhold any payment due under this agreement because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor (e.g. SAPN) or any other third party including the Customer's electricity retailer.
- 11.5 The Customer acknowledges that all descriptive specifications, illustrations, drawings and data stated in Energy Buster's fact sheets, price lists or advertising material are indicative only and relate to typical installations.
- 11.6 The Customer acknowledges that their electricity contract/tariff may change following installation of solar and that the consumer should contact their electricity retailer:
  - (a) before signing a contract, to check what new electricity tariff rates may be applied; and
  - (b) after installation of the solar PV system, to confirm that the agreed tariff has been applied.
- 11.7 For the purposes of Regulation 55B of the Electricity (General) Regulations 2012 in South Australia, the customer:
  - (a) Acknowledges that the plant must be capable of being remotely disconnected from, and reconnected to, the relevant distribution network by a relevant agent.
  - (b) Acknowledges the Customer is responsible for appointing a relevant agent who may remotely disconnect and reconnect the solar generation plant from the distribution network.
  - (c) authorise Energy Buster to select SA Power Networks (SAPN) as the Customers authorised Relevant Agent to remotely disconnect and reconnect the solar generation plant from the distribution network for inverter brands SAPN service.
  - (d) authorise Energy Buster to select Intellihub Metering (authorised Relevant Agent) to remotely disconnect and reconnect the solar generation plant from the distribution network using the dedicated relay internal to an Intellihub power-of-choice (NER) compliant smart metering installation capability in circumstances where the Customer is lawfully directed to disconnect or reconnect the plant for all inverter brands not serviced by SAPN.
  - (e) acknowledge that, if the Customer ceases to be the owner/operator of the solar generation plant, the Customer must advise the authorised Relevant Agent as soon as practicable and in any case no later than 7 days after I cease to be the owner/operator of the solar generation plant.
  - (f) acknowledge that the Customer may withdraw this authorisation by providing written notice to the authorised Relevant Agent, in



which case the Customer will be responsible for authorising another Relevant Agent

## 12 Installation

- 12.1 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) Energy Buster, its employees or contractors reasonably form the opinion that the Customer's premises are not safe for the installation of Goods to proceed then Energy Buster shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 7 above) until Energy Buster is satisfied that it is safe for the installation to proceed. Energy Buster may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.
- 12.2 For tile roof installations the customer acknowledges that installing Goods on a tile roof can and in many cases will cause breakages. The customer agrees to provide at their own cost on the date of installation for cement tile roofs a minimum of 10 tiles, and for terracotta tile roofs a minimum of 20 tiles. Any additional tiles required are also at the customers expense, if they can be provided during the installation they will be fitted by the installers. In the event they can not be provided during the installation, the replacement of any tiles is the customers responsibility. In the event that insufficient spare tiles are made available on the day, the customer agrees to any broken tiles can be sourced from the parts of the roof such that the installers will relocate good tiles to facilitate completion of the solar installation. The position of the relocated damaged tiles will be communicated to the customer and the customer will need to promptly replace these tiles at their cost and if necessary undertake temporary water proofing of the affected area.
- 12.3 The customer acknowledges that it is their responsibility to ensure suitable Wi-Fi signal strength at the inverter or any other device requiring internet access supplied under this agreement.

## 13 Access

- 13.1 The Customer shall ensure that Energy Buster has clear and free access to the worksite at all times to enable the works to be undertaken (including to undertake site inspections, to gain signatures for required documents, and for the delivery and installation of the Goods). Energy Buster shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Energy Buster.

## 14 Title

- 14.1 Energy Buster and the Customer agree that ownership of the Goods shall not pass until:
- the Customer has paid Energy Buster all amounts owing for the particular Goods; and
  - the Customer has met all other obligations due by the Customer to Energy Buster in respect of all contracts between Energy Buster and the Customer.
- 14.2 Receipt by Energy Buster of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Energy Buster's ownership or rights in respect of the Goods shall continue.
- 14.3 It is further agreed that:
- where practicable the Goods shall be kept separate and identifiable until Energy Buster shall have received payment and all other obligations of the Customer are met;
  - until such time as ownership of the Goods passes from Energy Buster to the Customer, Energy Buster may give notice in writing to the Customer to return the Goods or any of them to Energy Buster. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;

- Energy Buster shall have the right of stopping the Goods in transit whether or not delivery has been made;
- if the Customer fails to return the Goods to Energy Buster then Energy Buster or Energy Buster's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods;
- the Customer is only a bailee of the Goods and until such time as Energy Buster has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Energy Buster for the Goods, on trust for Energy Buster;
- the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Energy Buster;
- Energy Buster can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Energy Buster will be the owner of the end products.

## 15 Defects

- 15.1 Energy Buster guarantees the Goods and Services supplied are of acceptable quality and fit for purpose.
- 15.2 The Customer shall inspect the Goods and Services on delivery and shall within five (5) days of delivery (time being of the essence) notify Energy Buster of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Energy Buster an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.
- 15.3 If the Goods or Services are agreed to be of unacceptable quality, or if a defect is identified, the Customer may be entitled to a remedy, as outlined in the ACL.
- 15.4 Remedies are outlined in the ACL and may involve a refund, replacement or repair of Goods, or compensation for reasonably foreseeable loss or damage. The remedy available to the Customer shall be limited to that specified in the ACL and applicable only to Goods and Services acquired, as a consumer, within the meaning of the ACL.

## 16 Warranty

- 16.1 Subject to Clause 2 and the Customer's warranty rights under the ACL, and except as specified in clauses 16.4 & 16.5 (or where otherwise required by statute), the conditions applicable to any warranty offered by Energy Buster in relation to Goods or Services supplied by Energy Buster shall be as specified in any documentation detailing such warranty that is supplied by Energy Buster to the Customer.
- 16.2 Energy Buster provides a standard retailer's warranty of five years (from the date of installation) on the operation and performance of the whole PV system including workmanship and products, in accordance with the terms of this clause and any documentation referred to in clause 16.1.
- 16.3 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.
- 16.4 General conditions applicable to any warranties given under clause 16.1 include but are not limited to:
- the warranties shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - improper fitting or installation of the Goods by the Customer or any other third party;
    - failure on the part of the Customer to properly maintain any Goods;



- (iii) failure on the part of the Customer to follow any instructions or guidelines provided by Energy Buster;
  - (iv) any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (v) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (vi) fair wear and tear; or
  - (vii) any accident or act of God.
- (b) the warranty shall cease and Energy Buster shall thereafter in no circumstances be liable under the terms of the warranty if any Goods or workmanship is repaired, altered or overhauled by any unqualified, unskilled, inexperienced or unauthorised third party; and
- (c) in respect of all claims Energy Buster shall not be liable to compensate the Customer for any delay in either replacing Goods or remedying the workmanship or in assessing the Customer's claim.
- 16.5 For Goods not manufactured by Energy Buster, the Customer is entitled to seek a remedy from Energy Buster to the extent outlined in the ACL.
- 16.6 To make a warranty claim, please contact Energy Buster by email at [contact@energybuster.com.au](mailto:contact@energybuster.com.au)
- (a) If a supply under this agreement is a supply of goods or services to a consumer within the meaning of ACL, nothing contained in this agreement excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability which cannot be excluded, restricted or modified. However, to the extent that Energy Buster is permitted (including by the ACL) to limit its liability, then Energy Buster's liability will be limited to:
- (i) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
  - (ii) in the case of Goods, the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

## 17 Intellectual property

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- 17.1 The Customer warrants that all designs or instructions provided to Energy Buster will not cause Energy Buster to infringe any intellectual property rights (including any patent, registered design or trade mark) in the execution of the Customer's order, and the Customer agrees to indemnify Energy Buster against any action taken by a third party against Energy Buster in respect of any such infringement.
- 17.2 The Customer agrees that Energy Buster may use any documents, designs, drawings or Goods created by Energy Buster for the purposes of advertising, marketing, or entry into any competition.
- 17.3 The purchase of Goods (which shall include any documentation supplied along with the Goods) shall not confer on the Customer any licence or right under any intellectual property right which is the property of Energy Buster in relation to those Goods, and the Customer agrees not to infringe upon such rights or challenge their validity.
- 17.4 All design details, specifications, drawings, plans, or technical data provided to the Customer by Energy Buster remain Energy Buster's copyright and are to be kept confidential by the Customer. The Customer further agrees that the Customer shall not communicate nor make or supply any copies of any such information to any third party except with the express consent of Energy Buster in writing.
- 17.5 The Customer agrees that the Customer shall indemnify and keep indemnified Energy Buster against any loss or damage incurred by Energy Buster in the event that the Customer breaches any of the provisions contained in this clause 17.

## 18 Default and consequences of default

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- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of

eighteen percent (18%) per annum, after as well as before any judgment.

- 18.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Energy Buster.
- 18.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Energy Buster from and against all costs and disbursements incurred by Energy Buster in pursuing the debt including legal costs on a solicitor and own client basis and Energy Buster's collection agency costs.
- 18.4 Without prejudice to any other remedies Energy Buster may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Energy Buster may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the agreement. Energy Buster will not be liable to the Customer for any loss or damage the Customer suffers because Energy Buster has exercised its rights under this clause.
- 18.5 If any account remains overdue after twenty-eight (28) days then an amount of thirty dollars (\$30.00) shall be levied for administration fees which sum shall become immediately due and payable. The Customer acknowledges and agrees that this fee is a genuine pre-estimate of the loss Energy Buster will suffer as a result of the Customer's failure to pay on time.
- 18.6 Without prejudice to Energy Buster's other remedies at law Energy Buster shall be entitled to terminate all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Energy Buster shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Energy Buster becomes overdue, or in Energy Buster's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer fails to provide the evidence required under clause 3.9; or
  - (c) the Customer becomes bankrupt or insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 19 Security and charge

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- 19.1 The Customer acknowledges that Energy Buster has a security interest for the purposes of the PPS Act in the Goods until title to the Goods passes to the Customer.
- 19.2 Each security interest under this agreement is a "purchase money security interest" under the PPS Act to the extent it secures payment of the amounts owing to Energy Buster, and the security interests attach to the Goods when the Customer obtains possession of them.
- 19.3 The Customer agrees to do (and irrevocably appoint Energy Buster as the Customer's attorney to do) at the Customer's cost anything which Energy Buster considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling Energy Buster to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that Energy Buster has the priority it requires; and
  - (c) enabling Energy Buster to exercise rights in connection with the security interest.
- 19.4 Energy Buster need not give any notice under the PPS Act (including notice of a verification statement) unless the notice is required by the PPS Act and the requirement to give it cannot be excluded.
- 19.5 The parties agree that they are not required to disclose any information of the kind referred to in section 275(1) of the PPS Act.
- 19.6 If there is any inconsistency between Energy Buster's rights under this clause and Chapter 4 of the PPS Act, this clause prevails.



## 20 Compliance with laws

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- 20.1 The Customer and Energy Buster shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 20.2 The Customer shall obtain (at the expense of the Customer) all licenses, insurances and approvals (including local Government approvals) that may be required for the works.
- 20.3 The Customer agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 21 Cooling Off

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- 21.1 For unsolicited sales (e.g. telemarketing calls or door-to-door sales), the Customer has a right to terminate this agreement without reason and without penalty by notifying Energy Buster in writing within the Cooling Off Period.
- 21.2 If the Customer terminates this agreement after the Cooling Off Period, or if the Customer terminates this agreement and a Cooling Off Period does not apply (as the sales were solicited), the Customer must pay Energy Buster:
  - (a) a cancellation fee of \$250 inc GST; and
  - (b) all amounts for work performed by Energy Buster as at the date of termination, including the cost of any Goods installed or Services performed.

## 22 Cancellation

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- 22.1 Energy Buster may at its discretion terminate this agreement:
  - (a) in the event that the value of any Small-scale Technology Certificates upon which the sale Price is dependant decreases by more than ten percent (10%);
  - (b) if there is any change to any monies available to either Energy Buster or the Customer through an Incentive; or
  - (c) at any other time before the Goods are due to be delivered, by giving written notice to the Customer. On giving such notice Energy Buster shall repay to the Customer any sums paid in respect of the Price. Energy Buster shall not be liable for any loss or damage whatsoever arising from such termination.
- 22.2 Energy Buster may terminate this agreement immediately upon issuing a refund to the Customer for any reason set out in clause 9.
- 22.3 Either party may terminate this agreement if the other party breaches this agreement and fails to remedy the breach within fourteen (14) days of receiving written notice from the other party requesting it to do so.
- 22.4 Upon termination of this agreement:
  - (i) Energy Buster will be under no obligation to provide the Goods or Services;
  - (ii) all amounts for Goods and Services supplied will be immediately due and payable (unless the Customer is entitled to a full refund in accordance with clause 9); and
  - (iii) all Goods installed or in the Customer's possession which have not been paid for must be returned to Energy Buster.
- 22.5 Termination of this agreement does not affect the accrued rights or remedies of either party.
- 22.6 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items (particularly Goods imported from overseas) will definitely not be accepted, once production has commenced or an order has been placed.

## 23 Complaints

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- 23.1 All complaints must be made to Energy Buster in writing.
- 23.2 Energy Buster will address any complaints in accordance with its complaints handling policy, which is available at

[https://energybuster.com.au/images/PDFS/Complaints\\_Handling\\_Procedure.pdf](https://energybuster.com.au/images/PDFS/Complaints_Handling_Procedure.pdf) .

## 24 General

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- 24.1 Energy Buster is signatory to, and bound by, the Clean Energy Council Solar PV Retailer Code of Conduct. More information is available at <http://www.cleanenergycouncil.org.au/> .
- 24.2 If any provision of this agreement shall be invalid, void, illegal or unenforceable then that provision shall be severed from the terms and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 This agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia and the courts of appeal from them.
- 24.4 Energy Buster shall be under no liability whatsoever to the Customer for any personal injury, indirect or consequential loss and/or expense (including loss of profit, costs of business interruption, loss of opportunities, or any like claim) suffered by the Customer, arising either out of a breach by Energy Buster of this agreement, or through the use of, or supply to, the Customer of the Goods, or through the failure of the Goods to operate for any reason which is beyond the reasonable control of Energy Buster.
- 24.5 In the event of any breach of this agreement by Energy Buster the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 24.6 The Customer shall not be entitled to set off against or deduct from the Price, any sums owed or claimed to be owed to the Customer by Energy Buster, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.7 Energy Buster may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer agrees and understands that they have no authority to give any instruction to any of Energy Buster's sub-contractors without the authority of Energy Buster.
- 24.8 The Customer agrees that Energy Buster may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Energy Buster notifies the Customer unless the Customer notifies Energy Buster otherwise within ten (10) working days of such notification.
- 24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of that party.
- 24.10 The failure by Energy Buster to enforce any provision of this agreement shall not be treated as a waiver of that provision, nor shall it affect Energy Buster's right to subsequently enforce that provision.