

Please read this carefully as it sets out what you need to know about the terms and conditions of the Products and Services to be provided to You by Us. Those terms and conditions include the Quote, the Contract Specifics, the General Terms, the Product Specific Terms, the Services Specific Terms, the State Specific Conditions and the Warranty Statement, all of which form Our Agreement with You.

## Contract Specifics

<b>Customer Name (You)</b>	As set out in the Quote
<b>Supply Address / Premises</b>	As set out in the Quote
<b>Details of Your contract</b>	
<b>Quote Number</b>	As set out in the Quote
<b>Deposit</b>	As set out in the Quote
<b>Purchase Price</b> (inclusive of GST)	As set out in the Quote (This price may change – please refer to Warnings below for more detail)
<b>Value of Government Amount</b>	As set out in the Quote
<b>Value of Government Credit (STCs)</b>	As set out in the Quote
<b>Value of AGL Discount</b>	As set out in the Quote
<b>Payment Method for AGL Discount</b>	As a reduction of the Purchase Price.
<b>Balance Payment</b> (= Purchase Price inclusive of GST) less Deposit less Value of Government Amount and less Value of AGL Discount	As set out in the Quote
<b>Payment Method for Balance and other amounts</b>	As set out in the Quote
<b>Cooling Off Period</b>	5 clear Business Days or as set out in the Quote, if applicable
<b>Details of Your Products and Services</b>	
<b>Products</b>	As set out in the Quote
<b>Services</b>	As set out in the Quote
<b>Carbon Neutral Product (certified by Climate Active)</b>	As set out in the Quote

<p>Estimated period for commencement of the installation (as applicable)</p>	<p>Within 3 months of the Commencement Date or as notified by Us to You following the Site Assessment (as applicable)*.</p> <p>*Timing may be impacted by circumstances outside of AGL’s control, for example, the Distributor’s approval process, works in relation to your metering installation or switchboard, the conduct and consequences of Site Assessments (including any issues that arise relating to the Premises, as further described in the Product Specific Terms), and any relevant council approval or building permits required for the installation.</p>														
<p>VPP Services Term</p>	<p>Five years from the date that the Products are installed, fully operational and connected to a continuous and reliable internet connection.</p>														
<p>Exit Fee</p>	<p>Calculated in accordance with the following formula: Exit Fee = \$1,000 – (\$1,000 multiplied by the number of months (including part months) between the VPP Services Commencement Date and the termination date, divided by 60).</p> <p>Exiting the agreement after 12 months would result in an exit fee of = \$1,000 – (\$1,000 x (12/60) = \$1,000 - \$200 = \$800.</p> <table border="1" data-bbox="710 869 1300 1205"> <thead> <tr> <th>Months between start date and termination date</th> <th>Exit Fees</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>\$800</td> </tr> <tr> <td>24</td> <td>\$600</td> </tr> <tr> <td>36</td> <td>\$400</td> </tr> <tr> <td>48</td> <td>\$200</td> </tr> <tr> <td>60</td> <td>\$0</td> </tr> <tr> <td>&gt;60</td> <td>\$0</td> </tr> </tbody> </table>	Months between start date and termination date	Exit Fees	12	\$800	24	\$600	36	\$400	48	\$200	60	\$0	>60	\$0
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12	\$800														
24	\$600														
36	\$400														
48	\$200														
60	\$0														
>60	\$0														
<p>Builder’s Registration / License No. (where applicable)</p>	<p>BLD 276311 (AGL Energy Services Pty Limited) – South Australia</p>														
<p>Electrical Licence No. (where applicable)</p>	<p>#241512C (AGL Energy Services Pty Limited) – New South Wales</p>														

**Agreed and Executed By:**

Customer\*

\*You, as named in the Quote, agree that by typing in your name and accepting the Quote, You:

- (i) agree to be bound by this Agreement;
- (ii) agree that You have the legal authority and capacity to enter into this Agreement;
- (iii) expressly acknowledge that the requirement for this Agreement to be signed is satisfied by You accepting the Quote and that You agree that this is an appropriate electronic method for signing the Agreement under the Electronic Communications Act (2000) South Australia; and
- (iv) will print and retain a copy of this Agreement.

## Supply and Install & Virtual Power Plant Services



Executed by an authorised representative of  
**AGL Energy Services Pty Limited**

*Travis Hughes.*

.....

Travis Hughes  
General Manager – Distributed Energy

**SEE CLAUSE 10.1 OF THE GENERAL TERMS FOR RIGHT TO CANCEL DURING COOLING OFF PERIOD.**

### Warnings

**Important note** - the following warnings are only applicable where the work being undertaken constitutes residential or domestic building work under the applicable acts, and those works exceed the relevant monetary threshold set out in the applicable act.

- (a) Warnings required under applicable acts (Home Building Act 1989 (NSW); Queensland Building and Construction Commission Act 1991 (QLD)) - the Purchase Price (exclusive of GST) specified in the Contract Specifics of this Agreement is subject to change pursuant to the terms of this Agreement.
- (b) The provisions of this Agreement that allow for the Purchase Price to change are:
  - (i) clause 8 (Varying this Agreement) and 9 (Ending this Agreement) of the General Terms; and
  - (ii) clause 6 (Proposed variations under these Terms) of the Product Specific Terms.
- (c) The Purchase Price may change under these clauses:
  - (i) if a Site Assessment is required under this Agreement and We determine that additional charges are applicable because of the special nature of the Premises, unforeseen complexities or difficulties, or any changes at the Premises between the Commencement Date and the date of the installation of the Products;
  - (ii) if there are particular issues with the Premises that We could not have reasonably foreseen before the Commencement Date, which require extra work in order to install the Products properly. We may charge for any increased costs caused by delays in carrying out the work to be carried out under this Agreement; however You will be provided with an opportunity to decide whether to proceed with installation in these circumstances;
  - (iii) We can demonstrate that any costs associated with the supply and installation of the Products have increased after the Commencement Date but before the supply and installation of the Products or due to a change in Regulatory Requirements;
  - (iv) We enter a written Agreement for a variation with You; or
  - (v) Either Us or You cancel the Agreement in the circumstances described in Clause 9 (Ending this Agreement) of these General Terms.

## 1 Parts of this Agreement

These General Terms form part of our Agreement with you for Products and Services. This Agreement also includes the Quote, the Contract Specifics, the Product Specific Terms, the Services Specific Terms, the State Specific Conditions and the Warranty Statement.

## 2 Definitions used in these General Terms

In these General Terms, capitalised words have the following meanings:

**AGL** means AGL Energy Services Pty Limited ABN 57 074 821 720, and **Us, Our** and **We** have corresponding meanings.

**AGL Discount** means the amount specified as such in the Quote.

**Agreement** means this contract for Products and Services, and includes the Quote, the Contract Specifics, these General Terms, the Product Specific Terms, the Services Specific Terms, the State Specific Conditions, the Warranty Statement and any attachments and annexures to, and documents referred to in, any of these.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

**Business Day** means any day other than a Saturday, Sunday or a public holiday in the state in which the Premises are located.

**Carbon Neutral** means "carbon neutral" in accordance with the Climate Active Certification that applies to the Products.

**Clean Energy Regulator** means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

**Climate Active** means the Australian government's Climate Active initiative.

**Climate Active Certification** means the certification in respect of the Products in the Climate Active initiative, issued in accordance with the Climate Active Carbon Neutral Standards administered by the Australian government.

**Commencement Date** means the date that this Agreement starts, as set out in clause 3 of these General Terms.

**Contract Specifics** means the schedule of contract information with that name forming part of this Agreement.

**Cooling Off Period** means the period commencing on the day after the Commencement Date and ending after the number of Business Days specified in the Quote or the Contract Specifics has passed.

**Data** means any data or information collected, captured, generated or processed in relation to or in connection with the Products and Services, Your generation and consumption of energy and Your net export of electricity, and any other data that may be transmitted to Us in connection with Our provision of the Services to You (including which may include your Personal Information).

**Deposit** means the amount (if any) described as such in the Contract Specifics which relates to the State in which the Products and Services are provided

**Distributor** means the entity or person who owns, controls, or operates the distribution system to which the Premises are connected.

**Exit Fee** means the amount calculated in accordance with the formula set out in the Contract Specifics.

**Electricity Sale Contract** means the contract between You and Us or one of Our Related Bodies Corporate and for the supply of electricity to You at the Premises.

**Eligibility Criteria** means the criteria set out in the Quote and in this Agreement that You must meet in order for Us to provide You with the Products and Services.

**General Terms** means these general terms and conditions.

**Government Credit** means all rights, benefits, credits and certificates of any kind which derive from the supply of the Products and Services under a clean energy or carbon reduction government or regulatory program, including all Greenhouse Gas Reduction Credits and RECs.

**Government Amount** means a payment or loan by a government agency in connection with a program that relates to the supply of Products and Services and includes any Government Credit.

**Greenhouse Gas Reduction Credits** means any benefits or credits of any kind (including any emission reduction unit) which arise or are created under any regulatory

regime or licensing requirements including any rights relating to demand side abatement which arise or are capable of being created as a result of the supply of the Products and Services.

**Grid Connection Application** means an application to the Distributor to allow or to make any changes in relation to the export of electricity from the Premises (whether such changes are temporary or not), and any related applications for the purposes of this Agreement.

**GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

**Life Support System** means the equipment used to keep a person alive when they are ill or injured and includes any oxygen concentrator, intermittent peritoneal dialysis, kidney dialysis machine, chronic positive airways pressure respirator or any other equipment required for life support as specified by a medical practitioner.

**Monitoring Services** means the digital monitoring products and services supplied by AGL which are included as part of the VPP Services.

**Our Consumer Obligations** means any of Your rights or remedies, and any conditions, warranties or liabilities imposed on Us, whether under the Australian Consumer Law or any other Laws that cannot be excluded, restricted or modified by agreement.

**Personal Information** has the meaning set out in the *Privacy Act 1988* (Cth).

**Premises** means Your premises on which the Products and Services are to be or have been supplied, installed or performed by Us, as set out in the Contract Specifics.

**Products** means the products (including all component parts of them) supplied by Us to You as described in the Contract Specifics, including any variation to them under this Agreement.

**Product Specific Terms** means the terms and conditions of that name which form part of this Agreement.

**Purchase Price** means the amount set out in the Contract Specifics (subject to clause 9 of the General Terms and clause 6 of the Product Specific Terms) that will be payable by You for the Products and Services under this Agreement, and includes the Deposit.

**Quote** means Our quote provided to You specifying the Products and Services and including (where relevant) installation works that We will provide to You.

**Regulatory Requirements** means any Commonwealth, State or Territory or local regulation, including any laws, regulations and regulatory and administrative documents, orders, licence conditions, codes, guidelines or standards (including Climate Active Certification, the Climate Active Carbon Neutral Standard or similar standards or requirements) that are applicable to the supply of the Products and performance of the Services at the Premises from time to time.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**REPS** means units (measured in gigajoules) from the Retailer Energy Productivity Scheme in effect in South Australia and other states from time to time.

**Services** means the services supplied by Us to You as described in the Contract Specifics, including the VPP Services and/or Monitoring Services and any variation to them under this Agreement.

**Services Specific Terms** means the terms and conditions of that name which form part of this Agreement.

**Site Assessment** means an inspection of the Premises conducted by Us, Our employees or subcontractors in accordance with this Agreement.

**State Specific Conditions** means the conditions (including implied warranties) of that name which form part of this Agreement and are contained in Schedule 2.

**VPP Services** means the right granted by You to Us to monitor, control and use one or more the Products by Us. It includes the Analytical services and Our modifying the Product's settings in Our absolute discretion, including to cause the Product to Draw, Discharge or Hold.

**VPP Services Commencement Date** means the date on which the relevant Product is installed, fully operational, connected to a continuous and reliable internet connection and when your Grid Connection Application has been approved.

**VPP Services Term** means 5 years from the VPP Services Commencement Date,

unless this Agreement is terminated earlier in accordance with this Agreement.

**Warranty Statement** means the document named 'Warranties against defects statement' in Schedule 1.

**You** means the person who enters into this Agreement with Us, and **Your** has a corresponding meaning.

## 3 Commencement of this Agreement

### 3.1 When this Agreement starts

- (a) You may accept this Agreement by accepting Your Quote, on or before the date the Quote expires as set out in the Quote. You may also accept this Agreement by any other method of acceptance that We specify in writing.
- (b) We may agree in writing and in our discretion to extend the date that the Quote expires.
- (c) The Agreement starts once You have accepted it in accordance with clause 3.1(a).

### 3.2 When we provide Products and Services

We will provide the Products and Services to you in accordance with this Agreement, at the times set out in this Agreement, if and when:

- (a) any applicable Cooling Off Period has ended and You have not terminated this Agreement under clause 10.1 during that Cooling Off Period;
- (b) where clause 11.2(a) applies, Your Distributor has approved Your Grid Connection Application; and
- (c) you have met all of the other Eligibility Criteria.

## 4 Your entry into this Agreement

### 4.1 On entering into this Agreement

- (a) By accepting the Agreement in accordance with clause 3.1(a):
  - (i) You agree to be bound by this Agreement;
  - (ii) You warrant to Us that You have the legal authority and capacity to enter into this Agreement; and
  - (iii) You agree that the Agreement may be entered into by an electronic method as permitted under the relevant electronic communications legislation *Electronic Communications Act 2000 (SA)* and that the requirement to manually enter Your name to

accept this Agreement equates to your electronic signature on the Agreement.

- (b) You will print and retain a copy of this Agreement.

### 4.2 The impact of this Agreement

- (a) You will make Your own enquiries to find out how the Products and Services may impact on:
  - (i) any retail electricity sale contract You are a party to;
  - (ii) any feed-in tariff You receive or may be eligible for;
  - (iii) any agreement between You and the Distributor; and
  - (iv) the roof, other structure, equipment or infrastructure at the Premises, including any manufacturer's warranties,

and subject to Our Consumer Obligations, You agree that We are not liable for any loss, damage or liability You suffer as a result of the impact of the Products and Services on any of the above.

- (b) Your retail electricity sale contract and any feed-in tariff eligibility may change as a result of entering into this Agreement. It is Your responsibility to contact Your electricity retailer to check what new pricing may be applied and to confirm that any such new pricing has been applied after installation.

## 5 Your entitlement to Government Amounts

### 5.1 Government Amounts

- (a) You may be entitled to receive a Government subsidy, Credit or loan as a result of the supply of the Products and Services.
- (b) This may mean that the Purchase Price is partly or fully paid as a result of You redirecting the payment of any Government Amount to Us, or permitting the assignment of those Government Credits to Us. If the terms of the program governing that Government Subsidy or those Government Credits (as applicable) allow it, then:
  - (i) We will own, and You assign to Us, all rights in and title to any such Government Amount that may arise in relation to the Products and Services;
  - (ii) We may apply for such Government Amount in Your name; and

- (iii) You authorise Us to directly receive payment and grant of, or right and title to, that Government Amount.
- (c) If:
  - (i) We do not receive the Government Amount in accordance with clause 5.1(b), including because You are not eligible to receive it; and
  - (ii) We have already reduced the Purchase Price to reflect that Government Amount, then We may recover the value or amount of that Government Amount as a debt due and owing to Us, payable by You on demand.
- (d) If the Government Amount was not created or was improperly generated, then if this was due to a breach by You of this Agreement, then in addition to the amounts in clause (c), we may also recover all reasonable costs or a reduction in benefits caused by this.
- (e) If clause 5.1(b) does not apply to any entitlement to a Government Amount, then You will be solely responsible for applying for, and receiving payment and grant of, or right and title to, those Government Amounts.
- (f) You agree that You will promptly do all things necessary, including providing any necessary information and signing any further documents, to ensure that this clause 5 is effective.

## 5.2 AGL Discounts

- (a) You will also be entitled to an AGL Discount in relation to the Products where the Contract Specifics specify that we will provide You with an AGL Discount.
- (b) The AGL Discount is provided to you on the condition You will remain part of the VPP for the VPP Services Term.
- (c) We will provide you with any AGL Discount in the method specified in the Contract Specifics or as otherwise notified to You by Us (provided that any change to the method by which We provide You with an AGL Discount will not result in You being required to repay any amount).
- (d) Where you are entitled to an AGL Discount, we may provide you with that AGL Discount either by:
  - (i) Us reducing the amount payable by You to Us under this Agreement by the amount of the AGL Discount; or
  - (ii) one of Our Related Bodies Corporate (acting as Our agent) reducing the amount payable

on the AGL electricity bill associated with Your Electricity Sale Contract in the amount of the AGL Discount.

- (e) A reduction under clause 5.2(d) discharges any liability We otherwise have to You for an AGL to the extent of that liability.

## 6 Payment

- (a) You will pay the Purchase Price and any other amounts owing to Us under this Agreement.
- (b) The Product Specific Terms set out additional details in relation to the time and manner in which payments will be made under this Agreement.
- (c) Unless clause 6(d) applies, we will send You invoices for the Deposit and the balance of the Purchase Price.
- (d) Where specified in the Contract Specifics, amounts that You owe to Us under this Agreement (including any portion of the Purchase Price) may appear as a charge on the electricity bill associated with Your Electricity Sale Contract. Similarly, any amounts that We owe to You may appear as a credit on that electricity bill, reducing the amount payable on that electricity bill. If this occurs:
  - (i) one of Our Related Bodies Corporate will bill or credit You these amounts as Our agent;
  - (ii) any payment made by You to Our agent will discharge Your debt to Us to the extent of the payment;
  - (iii) any credit given by Our agent to You will discharge Our liability to You to the extent of the credit; and
  - (iv) if Your Electricity Sale Contract terminates or if You do not pay any amounts owing to Us under this Agreement in the method specified in that electricity bill, then we may elect to invoice You directly for any amounts You owe to Us, or credit you any amounts that We owe to You, under this Agreement to recover those amounts.
- (e) For the purposes of this Agreement, an amount will be considered to have been paid when We or Our agent have received that amount in cleared funds.

## 7 Carbon Neutral Products

- (a) If the Quote specifies that the Products you purchase from Us will be certified as Carbon Neutral, then the following applies:



- (i) We hold Climate Active Certification in respect of our provision of the Products to You. You may view our Climate Active Certification and Public Disclosure Statements at <https://www.climateactive.org.au/buy-climate-active/certified-brands> as may be updated from time to time.
- (ii) Our Climate Active Certification for the Products to be Carbon Neutral does not apply to the use of the Products, the energy supplied or consumed for the Products, any physical connection of the Products to the distribution system or any Services.
- (iii) Our Climate Active Certification and provision of the Products are subject to all Regulatory Requirements from time to time. We will not be liable to you or any third parties for any loss or damage arising from or in connection with:
  - a. any changes to our Climate Active Certification or the Carbon Neutral Product, caused or contributed to, by changes to or new Regulatory Requirements;
  - b. our Climate Active Certification ceasing or being suspended or terminated for any reason; or
  - c. any information in connection with our Climate Active Certification or the Products being Carbon Neutral (including the information provided in Public Disclosure Statements or on the Climate Active website), including if that information is inaccurate, incomplete or contains errors.

Clause 7(a)(iii) continues after the termination or expiry of this Agreement.
- (iv) To obtain and maintain our Climate Active Certification, we will (amongst other things) acquire and retire eligible carbon offset units from greenhouse gas abatement suppliers which are eligible under the Climate Active Certification program, in our absolute discretion. You are not able to direct or otherwise require us to allocate funds to any particular abatement projects or suppliers.
- (v) If the Quote specifies that the charge for the Products to be Carbon Neutral is included in and forms part of the Purchase Price, you cannot opt-out of paying this charge and are not entitled to any reimbursement of this charge, for any reason.
- (vi) If the Quote specifies that the charge for the Products to be Carbon Neutral is charged separately to the Purchase Price, You must pay that separate charge, You cannot opt-out

of paying that charge and You are not entitled to any reimbursement of that charge for any reason.

## 8 GST

- (a) Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as GST inclusive, does not include an amount on account of GST..
- (b) If GST is payable on a taxable supply made in connection with this document, the party making the supply (**Supplier**) may recover the amount of that GST in addition to amounts otherwise payable, subject to providing a tax invoice.
- (c) If there is an adjustment event in relation to a supply, the Supplier must promptly issue an adjustment note for the difference.
- (d) If a party is entitled to be reimbursed or indemnified in connection with this document, the amount that is reimbursed or indemnified is reduced by the amount of GST for which the party may have an entitlement to claim an input tax credit, except to the extent the party to be reimbursed or indemnified demonstrates it is not entitled to a full input tax credit before the date for payment.

Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

## 9 Varying this Agreement

- (a) We may vary this Agreement by written notice to You in any of the following circumstances, with the variation to take effect immediately from that notice:
  - (i) as We consider necessary to comply with any change in Regulatory Requirements;
  - (ii) to make a change that You have requested and We agree to;
  - (iii) to make an administrative or typographical change; or
  - (iv) to make the terms of this Agreement more favourable to You.
- (b) The Products and Services, including the associated costs and charges for them, can also be varied in the circumstances identified in, and accordance with the process set out in, the Product Specific Terms.
- (c) Any other variation to this Agreement must be agreed by You and Us in writing. We may

notify you of a request to vary this Agreement in accordance with this clause, in which case You can either:

- (i) accept the proposed variation to the Agreement, in which case the Agreement will then be varied; or
- (ii) if you do not accept the proposed variation of the Agreement: (I) if possible, the Agreement will continue without the Variation taking effect or (II) You may terminate the Agreement by giving Us not less than 30 days' notice, in accordance with clause 10.5

## 10 Ending this Agreement

### 10.1 Cancellation in the Cooling Off Period

- (a) The Contract Specifics may specify that this Agreement has a Cooling Off Period or a Cooling Off Period may be required under the Regulatory Requirements. If this is not the case, then this Agreement will not have a Cooling Off Period.
- (b) If this Agreement has a Cooling Off Period, then You may terminate this Agreement without any penalty by giving Us written notice before the end of that Cooling Off Period. This clause applies in addition to any other rights You may have under the Regulatory Requirements.
- (c) If You terminate this Agreement during the Cooling Off Period, then this Agreement will have no effect. For clarity, this means that You will not be required to pay an Exit Fee (if applicable).

### 10.2 Termination by Us without cause

- (a) We may terminate this Agreement at any time by providing You with not less than 30 days' notice:
  - (i) if the agreement between You and the Distributor is terminated for reasons outside of your control;
  - (ii) if Your Distributor does not approve Your Grid Connection Application prior to installation;
  - (iii) if, at any time prior to the completion of your installation, We reasonably determine that it is not technically or operationally feasible, or commercially viable, for Us to supply the Products or Services to You;
  - (iv) if You do not accept a proposed variation in accordance with the Product Specific Terms; or

(v) for any other reason.

- (b) If We terminate this Agreement in accordance with clause 10.2(a), then You will not need to pay an Exit Fee.

### 10.3 Termination by Us for cause

We may terminate this Agreement by providing You with not less than 30 days' notice, if:

- (a) Your Electricity Sale Contract is terminated at any time before the end of the VPP Services Term;
- (b) You notify us, or We become aware, that the property located at the Premises to which the Products and Services are provided, has been sold, leased, sublet, licensed, transferred or assigned to a third person or party.
- (c) You commit a material breach of this Agreement and that breach is not able to be remedied or (if it is able to be remedied) You do not remedy that breach within 60 days from the date of a notice from Us requiring You to remedy that breach; or
- (d) We become aware of any fraudulent conduct by You.

### 10.4 Termination by You without cause

You may terminate this Agreement after any Cooling Off Period has expired by notifying Us in writing and paying the Exit Fee in accordance with clause 10.6. If you terminate this Agreement under this clause, then that termination will be effective on the date that is 30 days after We receive Your notice of termination.

### 10.5 Termination by You for cause

You may terminate this Agreement by providing Us with not less than 30 days' notice, if:

- (a) You do not accept a proposed variation, design or plan or performance estimate in accordance with clause 9(c) or the Product Specific Terms; and
- (b) We commit a material breach of this Agreement and that breach is not able to be remedied or (if it is able to be remedied) We do not remedy that breach within 60 days from the date of a notice from You requiring Us to remedy that breach.

If this Agreement is terminated by You in accordance with this clause, then You will not need to pay an Exit Fee.

## **10.6 When You need to pay an Exit Fee for termination**

- (a) If this Agreement is terminated by Us for cause under clause 10.3 or by You without cause under clause 10.4 after the installation of the Products and Services but before the end of the VPP Services Term, then You must pay Us an Exit Fee
- (b) The Exit Fee will be calculated in accordance with the formula set out in the Contract Specifics.
- (c) For clarity, You will not be required to pay an Exit Fee if this Agreement is terminated:
  - (i) during the Cooling Off Period under clause 10.1;
  - (ii) by Us without cause under clause 10.2; or
  - (iii) by You for cause under clause 10.5.
- (d) In addition to the Exit Fee, other amounts may be payable by You to Us (or refunded by Us to You) on termination of this Agreement, as described in clause 10.7 below.

## **10.7 Other costs and amounts payable on termination**

- (a) If this Agreement is terminated by Us without cause under clause 10.2 or by You for cause under clause 10.5, then We will refund You any amounts already paid by You to Us. However, We may deduct any reasonable costs incurred by Us (including amounts associated with any Site Assessment) from that refund, unless the termination occurs where:
  - (i) You have authorised Us to obtain the Distributor's approval under clause 11.2(a) and the Distributor did not approve Your Grid Connection Application; or
  - (ii) You did not accept a proposed variation, design or plan or performance estimate in accordance with the Product Specific Terms.
- (b) If this Agreement is terminated in any circumstances other than by Us without cause under clause 10.2 or by You for cause under clause 10.5, then:
  - (i) You will not be entitled to any refund of any amounts paid by You to Us;
  - (ii) You must pay us for any amounts reasonably incurred by Us including for attending a Site Assessment or to install the Products;

- (iii) if the Product has already been installed at the Premises, You must notify Us within 7 days whether You intend to retain the Product or request that We remove it.
- (c) If You notify Us that You want to retain any installed Products under clause 10.7(b), then You must pay Us any unpaid portion of the Purchase Price and any reasonable costs incurred by Us (including amounts associated with any Site Assessment).
- (d) If You:
  - (i) notify Us that You request the removal of any Products under clause 10.7(b); or
  - (ii) do not pay the unpaid portion of the Purchase Price and Our reasonable costs to Us under clause 10.7(c),then You must transfer all right, title and interest in those Products to Us and deliver the Products to Us on our request. If You do not deliver the Products to Us, then We:
  - (iii) reserve the right to enter the Premises to retake possession of all or any part of the Products; and
  - (iv) may deduct the costs of removal of the Products from any amounts We owe to You under this Agreement.
- (e) We may elect that any amounts that are payable by You on termination of this Agreement are either invoiced by Us to You or included on the electricity bill associated with Your Electricity Sale Contract in accordance with clause 6(d). You must pay those amounts:
  - (i) within 14 Business Days after We send you an invoice for them; or
  - (ii) in accordance with Your Electricity Sale Contract under clause 6(d).
- (f) If You do not pay the unpaid portion of the Purchase Price and Our reasonable costs to Us under clause 10.7(c), and We do not require the return of the Products to Us under clause 10.7(d), then We may:
  - (i) Remotely place your Operated Product in standby mode until such time that the unpaid portion of the Purchase Price is paid by You;
  - (ii) Refer the amount due to Us for collection by a debt collection agency. If this occurs:
    - a. We may charge You our direct and indirect costs associated with collecting your debt (including legal fees, or fees or commissions we pay to a mercantile or debt collection agent) which we will advise you at the time;

- b. We will comply with any guidelines on debt collection issued by the Australian Competition and Consumer Commission under the *Competition and Consumer Act 2010* and Our Privacy Policy and Credit Reporting Policy; and
- (iii) You agree that if you continue not to pay the unpaid portion of the Purchase Price, this may result in a credit default listing on Your credit report.

## **10.8 Other consequences of termination**

- (a) Termination of this Agreement will not affect any rights that We or You may have accrued before that time, including Your obligation to pay Us any amount due at the date of termination.
- (b) When this Agreement is terminated or expires, any licences granted by Us to You under this Agreement will automatically terminate.
- (c) For the avoidance of doubt, when this Agreement is terminated, all Services specified in the Contract Specifics will also terminate.
- (d) Any rights that We or You have to terminate this Agreement under this clause do not affect any other circumstances in which We or You may terminate this Agreement under law or where agreed by You and Us.

## **11 Use of the Products and Services**

### **11.1 Your responsibilities generally**

- (a) You warrant that, at the date of this Agreement and at all times during the VPP Services Term, You meet and will continue to meet the Eligibility Criteria. You must notify us as soon as practicable and in any event within 7 days if you at any time cease to meet any of the Eligibility Criteria.
- (b) You must:
  - (i) comply with all Regulatory Requirements and the Distributor's requirements in relation to the Premises; and
  - (ii) obtain all necessary approvals, consents or authorities from any owner, residents, owner's corporation or local authorities in connection with the Products and Services.
- (c) You are responsible for:
  - (i) all energy charges under Your electricity sale contract associated with the use and operation of the Products and Services; and

- (ii) providing and ensuring the compatibility of all hardware, devices, internet connections, systems and software applications that You use, download, install or operate in order to access and use the Products and Services.
- (d) You expressly acknowledge that the Products and Services are not suitable for back-up of critical loads such as for a Life Support System. You agree that your critical loads (if any) are not connected to or reliant on your Products for operation.

### **11.2 Enabling Us to provide Products and Services**

- (a) The approval of the Distributor may be required in order to connect or maintain the connection of the Products and Services to the Distributor's distribution system. If We ask, You agree to:
  - (i) appoint Us as Your representative to deal with the Distributor and any electricity retailer on Your behalf in order to obtain this approval, including by making a Grid Connection Application; and
  - (ii) authorise Us to accept any terms and conditions (including variations) specified by the Distributor on Your behalf.
- (b) You must immediately notify us if the agreement between You and the Distributor is amended or terminated.
- (c) In addition, We may need to seek additional information from You or a third party (including the Distributor, Your electricity retailer, a government agency, the Clean Energy Regulator or the manufacturer of any Products) in order to provide the Products or Services to You. Where we request this information from a third party, You authorise Us to seek this information on Your behalf.
- (d) You may withdraw the authorisation under this clause by notifying Us in writing, but this may delay or disrupt Our provision of the Products and Services to You. If this occurs, You agree that we may suspend or terminate the provision of Products or Services (or both) that We reasonably consider may be affected by the loss of that authorisation.

### **12 Liability and Our Consumer Obligations**

- (a) If you are a consumer under the Australian Consumer Law, You will be entitled to certain guarantees, rights and remedies under the Australian Consumer Law that cannot be excluded, restricted or modified by agreement. These include consumer

guarantee rights that the Products and Services We provide to You will be of acceptable quality, fit for the purpose disclosed, and carried out by Us with due care and skill.

- (b) Nothing in this Agreement is intended to exclude, restrict or modify the application of any implied condition or warranty, any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (i) contravene that statute; or
  - (ii) cause any term of this Agreement to be void,

### **(Our Consumer Obligations).**

- (c) If We breach Our Consumer Obligations, then except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (where Our liability is not limited under this Agreement), Our liability to You is limited to us (at our election):
- (i) in the case of Services, supplying the Services again or paying the costs of having those Services supplied again; and
  - (ii) in the case of Products, replacing the Products, supplying equivalent products or having the Products repaired, or payment of the cost of having those Products, equivalent products or repaired Products supplied to You.
- (d) Except in relation to Our Consumer Obligations and as expressly stated otherwise in this Agreement (including any State Specific Conditions and the Warranty Statement), all implied conditions, warranties, guarantees, rights, remedies, liabilities or other terms that would impose any liability or obligation on Us are expressly excluded under this Agreement.
- (e) Except in relation to Our Consumer Obligations and as expressly stated otherwise in this Agreement (including any State Specific Conditions and the Warranty Statement) Our liability to You for any loss, harm, damage, costs, expenses or claims arising under or in connection with this Agreement (regardless of how it arises) is:
- (i) excluded to the extent permitted by law; and
  - (ii) otherwise limited to the amounts paid by You in accordance with this Agreement.

## **13 Intellectual Property**

- (a) Any material (including any intellectual property rights in that material) owned by You or Us at the Commencement Date will continue to be owned by You or Us respectively.
- (b) If any material is developed or created during the performance of this Agreement, We will own all rights in that material, including intellectual property rights. You agree to assign all rights in that material to Us on creation and do anything further that We require in order to give effect to this assignment.
- (c) If You provide, submit, send or receive any content to Us under or in connection with this Agreement, You licence us to use, reproduce, modify, adapt and develop that content on a perpetual, worldwide and royalty-free basis for Our and Our Related Bodies Corporate's business purposes, including the purposes of improving and developing our products and services.

## **14 Privacy**

- (a) You authorise Us to collect, use, disclose and store Your Personal Information for the purpose of providing You with, and improving, Our Products and Services.
- (b) Our Privacy Policy, which is available at [www.agl.com.au/privacy-policy](http://www.agl.com.au/privacy-policy), provides You with information on how We collect, use, disclose and store Your Personal Information and on how You can access or correct Personal Information We hold about You, how to make a privacy-related complaint, and how We will deal with such a complaint.
- (c) We may exchange Data, including Personal Information, with third parties, which include the manufacturers and suppliers of any Product or Services and who are located in Australia and other countries. Where We do this, You agree that in the event of a privacy breach relating to Personal Information by an overseas recipient, We will not be accountable for that recipient under the Privacy Act and You may not be able to seek redress under the Privacy Act.
- (d) You agree that Our third party providers may collect, store, use and disclose Data, including Personal Information, about You:
- (i) as described in their privacy policies or statements provided to You;

- (ii) to communicate product information for safety, maintenance and product improvement purposes to you; and
- (iii) to maintain, improve and enhance their products and services.

### 15 Data

- (a) The Products and Services may capture, create or generate Data which is owned by Us.
- (b) Subject to clause 14 of this Agreement and the Privacy Act, by using the Products and Services You explicitly consent and agree to:
  - (i) the transmission of the Data to Us;
  - (ii) Our access to, use and sharing of Data for any purpose relating to the Products and Services, including:
    - a. with third parties, including the manufacturers of the Products and Services, the Australian Energy Market Operator, the Clean Energy Regulator, a Distributor, a government department or agency, academic or research organisation including for research or knowledge sharing purposes;
    - b. with any person as required under the Regulatory Requirements; and
    - c. Our Related Bodies Corporate, for internal assessments, developing new products and services and marketing activities for existing or new products and services; and
  - (iii) Our access to, and use of, Data continuing even if We cease to be Your electricity retailer, the metering provider or the metering data provider for the Premises.
- (c) You acknowledge that a government agency may make Data available to the public in connection with any agreements or funding arrangement between us and that government agency.
- (d) You may withdraw the consents contained in this clause 5 at any time by notifying Us, but you acknowledge that doing so may prevent Us from providing You with Products and Services and may also impact the functionality of the Product and Services.
- (e) This clause 5 continues after the termination or expiry of this Agreement.

### 16 Force Majeure Event

- (a) If an event outside Our or Your reasonable control (**Force Majeure Event**) prevents Us or You from complying with any obligations under this Agreement, other than any

obligation to pay money, then those obligations will be suspended for the duration of the Force Majeure Event.

- (b) If We or You are affected by a Force Majeure Event (being an **Affected Party**), then the Affected Party will use its best endeavours to:
  - (i) promptly notify the other party of, and provide full details about, the Force Majeure Event (including its likely duration and the obligations affected); and
  - (ii) minimise, overcome or remove the Force Majeure Event as quickly as practicable, and to give the other party details of how it will do so (however, this will not require either party to settle any industrial dispute).
- (c) If We are affected by a widespread Force Majeure Event, Our requirement to give You prompt notice under clause 16(b) will be satisfied if We make the necessary information available by way of providing a 24 hour telephone service within 30 minutes of (or as soon as practicable after) being advised of the Force Majeure Event.

### 17 Regulatory Requirements

- (a) This Agreement complies with the Regulatory Requirements. Some Regulatory Requirements are optional or permit the parties to vary or exclude them by agreement. If a term or condition of this Agreement is not consistent with a Regulatory Requirement, then this Agreement will prevail except to the extent that the Regulatory Requirement does not permit this.
- (b) If any matter required to be dealt with by a Regulatory Requirement is not, or is only partly, expressly dealt with in this Agreement, then that matter is incorporated into this Agreement.
- (c) If any term or condition of this Agreement is rendered void for inconsistency with a Regulatory Requirement, then the relevant Regulatory Requirement is incorporated into this Agreement as required.

### 18 Complaint handling and dispute resolution

- (a) If You have a query or complaint, You may contact Us in writing or by telephone.
- (b) We will address any complaints in accordance with Our complaints handling and dispute resolution procedure, which can

be located at [www.agl.com.au](http://www.agl.com.au), or is available on request.

- (c) We will inform You of the outcome of Your complaint. If You are not satisfied with our response to Your complaint, You may refer Your complaint to the energy ombudsman in the State in which the Premises are located.

## 19 Administering this Agreement

### 19.1 Notices

- (a) Except where otherwise specified in this Agreement or required under any Regulatory Requirements, any communication between You and Us under this Agreement may be in person, in writing, by telephone or by electronic communication.
- (b) An electronic communication can include, among other types of communications, email, short message service or multi-media message service, and may consist of a notice with a link to learn more about the details of that notice on Our website. Any communication may be made by electronic communication unless You have provided us with notice that You would prefer to receive communications by mail.
- (c) Any written communication by You or Us is deemed to have been received:
  - (i) if sent by mail, at the estimated delivery time of ordinary post as published by Australia Post; or
  - (ii) if sent by electronic communication, on the earlier of receipt of delivery confirmation or the day of transmission (unless otherwise notified that delivery of the communication was unsuccessful or delayed).

### 19.2 Transferring this Agreement

- (a) We may assign, transfer or novate Our rights and obligations under this Agreement to another person at any time by notice to You, if:
  - (i) that person is a Related Body Corporate of Us; or
  - (ii) that assignment, transfer or novation forms part of the transfer of all or a substantial part of Our battery or solar energy business to that other person.
- (b) You agree to execute any documentation We reasonably require to give effect to an assignment, transfer or novation of Our rights and obligations under clause 19.2(a).
- (c) Unless otherwise agreed under this Agreement, You cannot assign, transfer or

novate Your rights and obligations under this Agreement to any third party.

- (d) This Agreement binds any executor or administrator of Your estate. If You die during the term of this Agreement, Your executor or administrator must perform the remainder of this Agreement on Your behalf.

### 19.3 Subcontracting by Us

We may subcontract any of Our obligations, including Our obligations to install the Products or provide any Services (or any part of them), under this Agreement to one of Our Related Bodies Corporate or to a subcontractor of Us or any of Our Related Bodies Corporate. Those subcontractors will perform all work to the standard set out in this Agreement.

### 19.4 Applicable law

This Agreement is governed by the laws in force in the State in which the Premises are located. The parties submit to the non-exclusive jurisdiction of the courts in that State.

### 19.5 Waiver

Except as otherwise provided in this Agreement, a right created under this Agreement may only be waived in writing signed by the party granting the waiver.

### 19.6 Severability

If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Agreement, which will remain in full force and effect.

### 19.7 Interpretation

- (a) In this Agreement:
  - (i) headings are included for convenience only;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a reference to a document or any Regulatory Requirement includes any variation or replacement of it from time to time;
  - (iv) references to persons include any body corporate and any government agency, and include that person's:
    - a. executors, administrators, successors, substitutes and permitted assignees; and
    - b. officers, employees, contractors, agents or other representatives.

- (b) The words 'include' or 'including' or 'for example' are not words of limitation, and are intended to be non-exhaustive examples.
- (c) Where these General Terms refer to a clause number, that reference is to a clause of these General Terms unless otherwise stated.
- (d) Where this Agreement specifies a date or a period of time, and that date or period of time:
  - (i) dates from a given day, or the day of an act or event, then it is to be calculated exclusive of that day;
  - (ii) commences on a given day, or the day of an act or event, then it is to be calculated inclusive of that day; and
  - (iii) is required to occur on or by a day that is not a Business Day, then it can occur on or by the next Business Day.
- (e) If We are entitled to exercise Our discretion under this Agreement, we will do so acting reasonably and on reasonable grounds, including considerations relating to:
  - (i) whether circumstances were beyond Your reasonable control, or were accidental but not negligent;
  - (ii) Your history with Us and our Related Bodies Corporate, including Your conduct under this Agreement, Your Electricity Sale Contract and any previous contract with Us for the sale and supply of products and services;
  - (iii) our evaluation of the likelihood that You will fulfil Your obligations under this Agreement or Your Electricity Sale Contract in the future; and
  - (iv) the consistent application of Our policies applying to similar customers in similar circumstances (including departing from these policies in relevantly different circumstances).



## Product specific terms

### Part A: Terms applicable to all Products

#### 1 Using these Product Specific Terms

##### 1.1 Using these Product Specific Terms

- (a) These Product Specific Terms apply where the Contract Specifics identify any Products that will be supplied or installed (or both) under this Agreement. These Product Specific Terms include:
  - (i) terms and conditions that apply to all Products supplied and installed under this Agreement, which are set out in this Part A; and
  - (ii) terms and condition that apply to specific Products supplied and installed under this Agreement, as identified in the Contract Specifics, which are set out in Part B below.
- (b) If these Product Specific Terms are inconsistent with the General Terms, then these Product Specific Terms will prevail.
- (c) Where these Product Specific Terms refer to a clause number, that reference is to a clause of these Product Specific Terms unless otherwise stated.

##### 1.2 Definitions used in these Product Specific Terms

In addition to the definitions used in the General Terms, capitalised words used in these Product Specific Terms have the following meanings:

**Existing Products** means any solar battery or solar photovoltaic system product (or other product as specified in the Contract Specifics) currently installed at the Premises.

**Metering Works** means any installation of a meter or meter upgrade that may be required or desirable for the effective installation or operation of the Products or for connection of the Products to the electricity grid

**REC** means a renewable energy certificate as defined in the *Renewable Energy (Electricity) Act 2000* (Cth). One type of RECs are Small-scale technology certificates (STCs) which can be generated by residential solar photovoltaic systems.

**Site Issues** means issues relating to the Premises and the installation or location of the relevant Product including, as applicable:

- (a) where an inverter requires re-running of PV down cables to the Product location;
- (b) failure of the switchboard at the Premises to meet the Distributor's or Our requirements;
- (c) failure of any existing system or its installation to meet applicable standards, including electrical safety and earthing standards;
- (d) failure of any existing system voltage or rating of components to meet the applicable requirements for the Products;
- (e) deterioration of the condition of the existing system;
- (f) failure of existing wiring at the Premises to pass electrical safety inspection or insulation resistance tests;
- (g) electrical loading on the existing power circuits at the Premises exceeds the output capacity of the Products or is insufficient to make good use of the output capacity of the Products and requires alterations;
- (h) You request that the existing system, inverter or other equipment or plant is removed from the Premises;
- (i) You request changes to the installation arrangements specified in the Quote or the Contract Specifics (or both);
- (j) You fail to provide or ensure adequate access to the Premises and the installation site of the Products; or
- (k) You fail to prepare the Premises or the installation site in accordance with the Quote or the Contract Specifics (or both).

**Standard Installation** means an installation which has the following features and meets the following requirements:

  - (a) Your Products can be safely installed within 15 metres of Your switchboard;
  - (b) no Switchboard Works are required in order to safely install the Products;
  - (c) Your nominated location for installation of the Products is structurally sound and suitable for mounting the Products in accordance with Manufacturer's installation guidelines;
  - (d) Your electricity meter can, where required by Us, be replaced with a smart meter;

- (e) Your household supply cable will accommodate the Product within acceptable voltage rise limits;
- (f) the Premises comply with current standards, regulations, and requirements of the Distributor and will continue to do so after the Products are installed and operated; and
- (g) the installation location is deemed suitable by Us, acting reasonably.

**Switchboard Works** means any switchboard replacement or upgrade and associated works that may be required or desirable for the effective installation or operation of the Products or for connection of the Products to the electricity grid.

## 2 Ownership and Risk in the Products

- (a) Ownership of the Products will pass to You on the later of the date that:
  - (i) You have paid all of the Purchase Price to Us in full; and
  - (ii) the Products are installed at the Premises.
- (b) We may register our security interest in the Products under the *Personal Property Securities Act 2009* (Cth). You agree to do whatever is necessary to ensure that our security interest is validly registered in priority to all other security interests in the Products.
- (c) Until title to the Products passes to You and in addition to any other rights or remedies We may have, We reserve the right to:
  - (i) enter the Premises to retake possession of all or any part of the Products; and
  - (ii) keep or resell all or any part of the Products in those circumstances.
- (d) If you:
  - (i) resell all or any part of the Products; or
  - (ii) sell the Products together with the Premises in circumstances where the Products have become a fixture,  
  
at any time before you have paid the full amount of the Purchase Price, then without limiting our other rights, You must either:
    - (iii) before or on the day of sale or settlement (as applicable), pay us any unpaid amount of the Purchase Price and request in writing that we release the security interest; or
    - (iv) hold such part of the proceeds of any such sale as represents an unpaid amount of the Purchase Price in a separate identifiable account as the beneficial property of Us, and must pay such amount to Us on request.

- (e) Risk in the Products passes to You on the date the Products are delivered to the Premises (or another delivery address set out in the Contract Specifics or agreed by You and Us in writing).

## 3 Payment for the Products

- (a) You must pay the Deposit to us by the date specified in Your Quote.
- (b) You must pay us the balance of the Purchase Price (that is, the Purchase Price less the Deposit and less any AGL Discount or Government Amount that you are entitled to, if any):
  - (i) within 14 Business Days after we send you an invoice for that amount or any instalment or portion of that amount; or
  - (ii) in accordance with Your Electricity Sale Contract under clause 6(d) of the General Terms.
- (c) The balance of the Purchase Price will be payable to Us in the manner specified in the Contract Specifics, which may be:
  - (i) as a single amount, representing the entire balance of the Purchase Price, payable following the supply and installation of the Products; or
  - (ii) in instalments, representing portions of that balance, payable in accordance with the timeframes specified in a Variation this agreement over a period commencing after the supply and installation of the Products.
- (d) If You choose to pay Us for the Deposit by credit card, then we may charge your credit card for the balance of the Purchase Price automatically on or after the day that it is due under clause 3(a).

## 4 Premises and Site Assessment

### 4.1 Information and approvals

- (a) You must be the owner of the Premises, or if You are not the owner of the Premises, must have written consent from the owner of the Premises (including where applicable the owner's corporation) to:
  - (i) install the Products at the Premises; and
  - (ii) if applicable, to remove and uninstall the Existing Products.
- (b) You warrant that all information You have provided to Us in relation to the Premises is accurate and correct.
- (c) If the information You provide to Us about the Premises is not accurate, then We may incur additional costs (including costs arising out of Site Assessments) and You agree to pay us on demand any reasonable additional costs

incurred by Us by reason of the inaccurate or incorrect information.

## 4.2 Site Assessments and access to Premises

- (a) We may conduct a Site Assessment before delivering the Products and, where applicable, installing the Products and uninstalling and removing the Existing Products.
- (b) You must grant permission to us to access the Premises, and ensure that We have sufficient access to the Premises at a reasonable time, in order to safely:
  - (i) conduct any Site Assessment;
  - (ii) install the Products and uninstall and remove the Existing Products (if applicable).
- (c) You agree to attend the Premises for the Site Assessment. If you cannot attend for any reason, you will ensure a nominated representative attends on your behalf. You will have no recourse against us for any decisions made by your nominated representative on your behalf during the Site Assessment.
- (d) You must comply with, and must ensure any owner of the Premises and any nominated representative present at the Premises complies with, any reasonable direction given by Us in relation to health and safety while We are at the Premises. Any verbally or physically abusive or threatening behaviour by You or your nominated representative while We are at your Premises will be a material breach of this Agreement which will entitle us to immediately Terminate in accordance with clause 9.3.
- (e) If You or Your nominated representative are not at the Premises at the time of a scheduled Site Assessment or Installation appointment, then We may charge You for our reasonable costs in attending the Premises at this time.

## 5 Designs, Plans and Estimates

- (a) Where We are responsible for the installation of the Products, then before the installation of the Products, We may also provide You with:
  - (i) an installation design or plan for the Products; and
  - (ii) an estimate of the performance of the Products.
- (b) If We provide you with the installation design or plan or estimate of performance after the Commencement Date, and You notify Us that You do not accept them within 10 Business Days of receiving the installation design or plan or estimate of performance (as applicable), then You may terminate this Agreement under clause

10.5 of the General Terms. If this occurs, You will be entitled to a refund of any amounts already paid by You to Us in accordance with clause 10.7 of the General Terms.

- (c) You acknowledge that:
  - (i) any estimate of performance provided to You by Us is an estimate only of how the Products may perform and will constitute a representation or warranty by Us that the Products will perform as stated in that estimate; and
  - (ii) various factors outside of Our control can impact how the Products may perform, including manufacturer defects, weather variations, electricity grid faults and performance issues and varying site conditions.
  - (iii) You have read the Product's owner operation manual/s which set out the optimal conditions for Your Product's operation and the events that will void your Manufacturer's Warranty.

## 6 Proposed variations under these Terms

- (a) Unless expressly stated in the Contract Specifics, any installation works We provide are based on a Standard Installation. You are responsible for all installation costs and works that are not a Standard Installation.
- (b) We may become aware that the Premises have particular Site Issues or complexities that could not have been reasonably foreseen by Us prior to completion of the installation, including that the installation is not a Standard Installation. If this occurs, then We will inform You of the extra costs and any other variations required to this Agreement in writing, as soon as practicable, by sending you a written notice describing the proposed variation. That notice will include:
  - (i) the cost of the additional or omitted work required;
  - (ii) any change to the installation design previously provided to you; and
  - (iii) any change to the completion period.
- (c) If You accept a proposed variation under clause 6(b), then any additional charges will be added to the Purchase Price, and the costs of any omitted work will be deducted from the Purchase Price.
- (d) If You do not accept a proposed variation under clause 6(b) within 14 days of the date of Our notice to You, then either You or We may terminate this Agreement under clause 10.5 or 10.2 of the General Terms respectively. If this occurs, You will be entitled to a refund of any amounts already paid by You to Us in

accordance with clause 10.7 of the General Terms.

## 7 Removal of Existing Products

- (a) If the Contract Specifics specifies that You are upgrading from an Existing Product or that We are removing an Existing Product, then:
- (i) You transfer title and ownership of the Existing Product to Us, free and clear of any encumbrance or security interest; and
  - (ii) We are not responsible for any data (including Personal Information) that remains on the Existing Product and becomes inaccessible after uninstallation or removal.
- (b) You warrant that You have good title to any Existing Product, and that You are able to transfer title and ownership in such Existing Product to Us as required under clause 7(a).

## 8 Metering Works

- (a) Unless expressly stated in the Contract Specifics, Metering Works are not included in this Agreement or the Purchase Price, and You are responsible for Metering Works (including all costs of Metering Works).
- (b) If Metering Works are included in the Contract Specifics, these will cover standard metering works. We will liaise with the metering coordinator on Your behalf to facilitate the standard metering works. We will not be responsible for any non-standard metering works.
- (c) You acknowledge that Metering Works under this Agreement are provided by a third party metering co-ordinator, and accordingly We are not responsible for any delay related to the Metering Works or any damage whatsoever that the metering co-ordinator may cause to your property.

## 9 Switchboard Works

- (a) Your Distributor may require You to complete Switchboard Works. Switchboard Works are not included in this Agreement or the Purchase Price, and You are responsible for Switchboard Works (including all costs of Switchboard Works).
- (b) We are not responsible for any delay related to any Switchboard Works.

## 10 Quality of installation

- (a) All work done under this Agreement will comply with:

- (i) the Building Code of Australia to the extent required by law;
  - (ii) all other relevant codes, standards and specifications that the work is required to comply with under any law or Regulatory Requirements, including the CEC Solar Retailers Code of Conduct; and
  - (iii) the conditions of any relevant building permit, development consent or complying development certificate provided to Us.
- (b) Any plans and specifications for work to be done under this Agreement in relation to the Products (including any variations to them) are taken to form part of this Agreement.

## 11 Supplying and installing the Products

- (a) We will take every reasonable precaution when installing the Products and uninstalling and removing any Existing Products at the Premises. However, minor property damage may arise with installation of the Products and uninstallation of the Existing Products (such as nail holes and paint scuffs). Subject to any of Our Consumer Obligations, We are not liable in respect of such minor property damage.
- (b) In addition, We did not build the Premises, have not undertaken any structural assessments, and cannot assess:
- (i) the integrity or ventilation of the roof, building or other enclosure, surface or structure where the Products are to be installed and stored; or
  - (ii) the safety, structural integrity or working order of the Existing Products, systems or other infrastructure at the Premises with which the Products will integrate.

Subject to any of Our Consumer Obligations, We are not liable in respect of such issues.

- (c) You acknowledge and agree that during the installation of the Products and uninstallation of the Existing Products, We may require all electrical equipment or power at the Premises be switched off.

## 12 Time for Site Assessment and installation

- (a) Time is not of the essence under this Agreement.
- (b) Any dates quoted for any Site Assessment and supply and installation of the Products are estimates only (and may alter or be delayed by reasons outside of Our control, including due to Distributor approvals, Metering Works, Switchboard Works, Site Issues, approvals such as building or council approvals, and unavailability of the Products or installers).

- (c) You will use Your best endeavours to attend the Premises for the Site Assessment and for the installation of the Products. If You cannot attend, You will ensure a nominated representative attends on your behalf. You will have no recourse against Us for any decisions made by your nominated representative on your behalf during the Site Assessment or installation.

## 13 Warranty

### 13.1 Implied warranties

We acknowledge that this Agreement is in all respects subject to the applicable implied warranties set out in the State Specific Conditions under this Agreement.

### 13.2 Warranty Statement

We will remedy at Our cost any defect in accordance with the warranty against defects set out in clause 1 of the Warranty Statement (**Express Warranty**). Details on how You may make a claim under the Express Warranty are set out in the Warranty Statement in Schedule 1.

### 13.3 Manufacturer's Warranties

- (a) We will endeavour to assist You, at Your option and subject to the terms and conditions of the Warranty Statement, to make claims under any specified products manufacturer's warranties set out in clause 2 of the Warranty Statement (**Manufacturer's Warranties**). Details on how You may make a claim under the Manufacturer's Warranties are set out in the Warranty Statement.
- (b) You acknowledge and agree that the Manufacturer's Warranties cover the components of the Products as set out in the Warranty Statement and do not warrant the overall performance of the Products.

## 14 Electro Magnetic Compatibility

- (a) Any PV inverter comprised in the Products installed under this Agreement satisfies the most restrictive Electro Magnetic Compatibility (**EMC**) international standard EN 61000 relevant for the "RCM" approval.
- (b) We will bear no responsibility, cost or liability for any degradation in the performance or operation of Your electrical products due to the EMC of the Products during or following installation of the Products.
- (c) You will be responsible for any costs associated with rectifying EMC issues between Your

electrical products and the Products, including the supply and installation costs of any equipment required to rectify such EMC issues.

## Part B: Terms applicable to Specific Products

## 15 Terms applicable to solar systems

### 15.1 General

- (a) Where the Contract Specifics identify a solar system that will be supplied or installed (or both) under this Agreement, then this clause 15 applies.
- (b) Any references to Products within this Agreement includes the relevant solar system identified in the Contract Specifics.

### 15.2 Government Credits

Where a Government Credit under clause 5.1(b) of the General Terms is a REC:

- (a) Your assignment to Us and Our ownership under clause 5.1(b) includes the right to create and register RECs in respect of the Products for a period of 15 years from the date of installation of that Product; and
- (b) You confirm that you have not created, or assigned the right to create, any RECs for a solar photovoltaic system previously at the Premises.

### 15.3 Feed-in tariffs

- (a) We do not provide any warranty in respect of the value of any feed-in tariff, and We are not responsible for providing advice in relation to feed-in tariffs to the extent that We are not Your electricity retailer.
- (b) You may contact Our contact centre, Your electricity retailer or the relevant government agency for more details on feed-in tariffs.

### 15.4 Technical standards

- (a) Where there is a requirement for your Products to be installed with the technical capability to be remotely disconnected and reconnected to manage risks to the National Electricity Market, you authorize us to appoint a relevant agent on your behalf to perform these services, unless you notify us in writing before or on your installation date of your preferred relevant agent. These services will be subject to a separate contract between you and the relevant agent and may be subject to additional fees. As a result of these services, you acknowledge that the amount of energy generated by your Products and exported to the grid at your feed-

in tariff rate may be impacted and this may impact on the amount of your electricity bill.

(b) We warrant that the Products supplied to You will comply with any required technical or safety standards in effect at the Supply Address.

## Services specific terms

### Part A: Terms applicable to all Services

#### 16 Using these Services Specific Terms

##### 16.1 Using these Services Specific Terms

- (a) These Services Specific Terms apply where the Contract Specifics identify any Services that will be provided under this Agreement. These Services Specific Terms include:
- (i) terms and conditions that apply to all Services provided under this Agreement, which are set out in this Part A; and
  - (ii) terms and condition that apply to specific Services supplied and installed under this Agreement, as identified in the Contract Specifics, which are set out in Part B below.
- (b) If these Services Specific Terms are inconsistent with the General Terms, then these Services Specific Terms will prevail.
- (c) Where these Services Specific Terms refer to a clause number, that reference is to a clause of these Services Specific Terms unless otherwise stated.

##### 16.2 Definitions used in these Services Specific Terms

In addition to the definitions used in the General Terms, capitalised words used in these Services Specific Terms have the following meanings:

**Backup Power** means any power delivered from any available energy remaining in the Product while any power outage impacts the Premises where the Product is located.

**Charge** means the drawing of electricity into the Product, either from a solar photovoltaic system or from the National Electricity Grid, and **Charging** has the same meaning.

**Discharge** means the exporting of electricity to the Premises or the National Electricity Grid, and **Discharging** has the same meaning.

**Hold** means to cease Charging and Discharging the Product.

**Monitoring Portal** means a web-based platform in which there will be functions, information and tools related to the System and Services

**Monitoring Services** means the right to access and use the Monitoring Portal in accordance with the terms of this Agreement.

**National Electricity Grid** means the physical and market infrastructure required to transport

and supply electricity in New South Wales, Victoria, Queensland, South Australia and Tasmania.

**VPP Services** means the right granted by You to Us to monitor, control and use one or more of the Products. It includes the Monitoring Services and Our modifying the Product's settings in Our absolute discretion, including to cause the Product to Draw, Discharge or Hold.

#### 17 Time for providing the Services

- (a) We will provide You with the VPP Services from the VPP Commencement Date, unless this Agreement is terminated earlier in accordance with clause 10 of the General Terms.
- (b) For clarity, if this Agreement is terminated in accordance with clause 10 of the General Terms before the VPP Services Start Date, then We will not be required to provide You with the Services, and You will not be required to pay Us for them.

#### 18 Your obligations in relation to the Services

- (a) You will make Your own enquiries to find out how the Services may impact on any warranties in relation to the Products, and subject to Our Consumer Obligations, We are not liable for any loss, damage or liability You suffer as a result of the impact of the Services on those warranties.
- (b) In order for Us to provide the Services to You, You must comply with the terms of this Agreement.

#### 19 Data received from the Services

Information and data, or reports, that You receive via the Services may be incomplete or vary from the data and information recorded by other metering devices, including any network electricity meter at the Premises. For clarity, in the event of any such discrepancy, the network electricity meter will take precedence.

#### 20 Additional Services

- (a) From time to time, We may offer to add additional services (including adding additional Products that may be supported by the Services) by prior written notice to You (**Additional Services**). This written notice will set out the terms of the Additional Services, including any price impacts.
- (b) If You accept the provision of the Additional Services in the manner set out in the written

notice and sign a copy of that notice, then on and from signing that notice:

- (i) the content of the notice will be incorporated into this Agreement; and
- (ii) any relevant terms of this Agreement will be varied in accordance with the terms of the notice.

## **Part B: Terms applicable to specific Services**

### **21 VPP Services**

#### **21.1 General**

- (a) Where the Contract Specifics identify that VPP Services will be provided under this Agreement, then this clause 6 applies.
- (b) Any references to:
  - (i) Services within this Agreement includes the relevant VPP Services identified in the Contract Specifics; and
  - (ii) Products within these Service Specific Terms includes the Products to which those VPP Services relate.

#### **21.2 Your responsibilities**

- (a) At all times during the VPP Services Term, unless otherwise authorised in writing by Us, You must:
  - (i) maintain ownership and occupation (as applicable) of the Premises, or, if You are not the owner of the Premises, maintain the consent of the owner in relation to this Agreement;
  - (ii) maintain an Electricity Sale Contract in relation to the Premises;
  - (iii) maintain and operate the solar photovoltaic system to which the Products are connected at the Premises;
  - (iv) maintain ownership of or the right to use the Products;
  - (v) ensure each Product is properly functioning and maintained and that each Product is connected to the internet (if possible through an ethernet connection), on a continuous basis;
  - (vi) comply with all Regulatory Requirements in relation to the Premises and the Products; and
  - (vii) maintain an agreement with Your Distributor in relation to the Premises, the Products and the solar photovoltaic system and not be in breach of any such agreement.

- (b) You must not, and must not allow any other person to (unless otherwise authorised in writing by Us):
  - (i) control, move, remove, tamper with, disable, displace or damage any Product (including disconnecting its internet connectivity); or
  - (ii) provide You with any services similar to or the same as the VPP Services in relation to the Products during the VPP Services Term.

#### **21.3 Impact of VPP Services**

- (a) You acknowledge that the VPP Services may impact upon your electricity usage as follows:
  - (i) a Draw from the National Electricity Grid may appear as additional electricity consumption on Your electricity bill under Your Electricity Sale Contract; and
  - (ii) a Discharge may impact on the amount of electricity generated from Your solar photovoltaic system that You have to use from the Products.
- (b) In addition, the VPP Services will result in charge cycling of the Product and that this may have an impact on the lifespan of the Product.
- (c) To the extent permitted by law, We are not liable to You for any loss, damage or liability You suffer as a result of or in connection with any of the impacts described in clauses 21.3(a) and 21.3(b).
- (d) If Your Product has Backup Power, We will not allow the level of energy stored in the Product to drop below the following level as a result of a Discharge from the Product:
  - (i) for a Tesla Powerwall: 20% of useable energy storage capacity; or
  - (ii) for a LG Chem SolarEdge and Sungrow: up to 20% of useable energy capacity, as set in Your inverter during installation or as otherwise amended with your agreement.

#### **21.4 Estimate of VPP Services**

- (a) Except where one of the exclusions identified in clause 21.4(b) below applies, We estimate that the impact of the VPP Services on Your AGL electricity bill will not exceed \$50 (inclusive GST) over each 12 month period measured from the VPP Services Commencement Date and each anniversary of that date.
- (b) Clause 21.4(a) does not apply if:
  - (i) Your Electricity Sale Contract includes an electricity tariff that has a 'demand charge' component;



- (ii) Your Product is set to a mode other than (for Tesla) 'Self-Powered' or (for SolarEdge inverters) 'Maximise Self-Consumption (MSC)' or (for Sungrow) 'Self-Consumption'. For clarity, this means that operating modes such as time-based control, demand charge management and backup-only functionality are excluded.
- (c) Notwithstanding clause 21.4(a), if the terms and conditions of Your Electricity Sale Contract change (including any change to any charge, benefit or tariff), then any benefits, including financial benefits, arising under this Agreement may be impacted.

## 22 Monitoring Services and software

### 22.1 AGL Monitoring Portal

- (a) Monitoring Services will be provided as part of the VPP Services under this Agreement and AGL will provide You with the right to access and use the Monitoring Portal for the duration of the term of this Agreement.
- (b) AGL may alter the Monitoring Portal including the tools, features or its functions, at any time.
- (c) The Monitoring Portal may be subject to additional reasonable terms and conditions that will be notified to You, from time to time. AGL is not obliged to provide the Monitoring Portal in connection with this Agreement if You do not agree to any additional reasonable Monitoring Portal terms and conditions. If You continue to use the Monitoring Portal after such notification, You will be taken to have agreed to those additional reasonable terms and conditions.
- (d) You acknowledge that the Products and Services, including Monitoring Services, may include software that is necessary for functionality and compatibility. This software may update automatically once a new version or feature is available.
- (e) You must not copy, modify, distribute, sell, or attempt to reverse engineer any part of the Products or Services (including the AGL Monitoring Portal or software associated with the Services).

### 22.2 Accuracy of data from the Monitoring Services

- (a) You acknowledge and agree that information and data, or reports, that You may receive via the Services may be incomplete or vary from the data and information recorded by other

devices, including any grid electricity meter at the Premises. For clarity, in the event of any such discrepancy, the grid electricity meter will take precedence.

- (b) The Monitoring Services Terms and Conditions contain further conditions and information on the data presented on the AGL Monitoring Portal.

## 23 Government Credits

### 23.1 REPS

- (a) Where a Government Credit under clause 5.1(b) of the General Terms is a REPS:
  - (i) Your assignment to Us and Our ownership under clause 5.1(b) includes the right to create REPS in respect of the Products and Services for the VPP Services Term; and
  - (ii) You confirm that you have not created, or assigned the right to create, any REPS in relation to a VPP previously at the Premises.

## Schedule 1

### Warranty Information

proof of purchase from AGL or the authorised reseller).

#### 1. Warranty against defects.

1.1 AGL Energy Services Pty Limited (**AGL**) supplies goods that are covered by various manufacturers' warranties. These warranties are offered in addition to your **statutory** rights under the Australian Consumer Law. You may choose to make a claim under this warranty or under the Australian Consumer Law. This document applies where you choose to make a claim under this warranty against defects.

1.2 AGL will endeavour to assist its customers, at its option and subject to the terms, exclusions and limitations set out in this warranty statement, to make claims under any applicable manufacturer's warranties if the Product has a manufacturing defect in material or workmanship which:

- (a) falls within the scope of the manufacturer's warranty; and
- (b) which occurs within the relevant warranty period, summarised in this document.

1.3 AGL may, at its option and subject to stock availability, elect to replace a defective Product with another product of comparable quality and features as reasonably determined by AGL and process a warranty claim against the manufacturer itself.

1.4 AGL will remedy at its cost any defect in material or workmanship for 5 years. If the manufacturer's warranty for a particular component covers less than a 5 year period, AGL will warrant that component against manufacturing defects from the expiry of the manufacturer's warranty until 5 years from the installation of the component, subject to the limitations and exclusions in clause 3 below. Under this warranty, and subject to any additional rights you may have under the Australian Consumer Law, AGL may elect to repair or replace the defective component.

1.5 Unless otherwise stated in the relevant warranty documents, all warranty periods commence on the earlier of the date the Product is installed by AGL or sold to the customer by a reseller authorised by AGL (as stated in the receipt or

#### 2. Limitations and exclusions.

2.1 To the extent permitted by law, claims are excluded from the scope of the warranty in clause 1 of this Schedule and AGL will not process a manufacturer's warranty claim or be liable in respect of any express or implied warranty or guarantee:

- (a) unless the Product was installed by a Clean Energy Council (**CEC**) qualified installer and as per the installation instructions supplied with the Product or installed by AGL;
- (b) unless the customer has paid in full all amounts owing to AGL by the customer;
- (c) if the defect is contributed to or caused by any improper usage of the Product, failure to comply with any instructions supplied with the Product or usage of the Product for purposes other than that for which the Product was designed or intended;
- (d) if the defect occurs wholly or partially as a result of any act or omission by the customer, or any person other than a person employed or sub-contracted by AGL;
- (e) if the Product has not been satisfactorily maintained, has been subject to misuse, neglect, accident or abuse, or for damage caused by the customer continuing to use the Product after the defect becomes apparent;
- (f) if the Product is repaired, or any attempt to repair the Product is made, by anyone other than a CEC authorised repairer of the Products acting at AGL's direction;
- (g) if the Product is moved for any reason after it has been installed (regardless of whether the Product is subsequently reinstalled or moved back to the same location) unless the Product is reinstalled at the same Premises by a CEC qualified installer nominated by AGL and it is stored during any interim period in accordance with that installer's instructions;
- (h) for any damage or defect caused by lightning, flood, power surge, fire, pest damage, corrosion, actions of third parties or any other act of God, event or accident outside AGL's reasonable control and not arising under normal and standard operating conditions;
- (i) if the Product is altered or modified in any way (including if the Product's serial or identification number is altered, defaced or removed) unless such modification has been approved in writing by AGL;

- (j) for normal wear and tear; or
- (k) for any other like fault which does not affect the basic performance of the Product, including but not limited to, any external scratches, stains, or natural mechanical wearing.

2.2 Except as provided for in your Quote, your supply and installation contracts and this document, to the full extent permitted by law, and subject to your statutory rights under the Australian Consumer Law, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on AGL are expressly excluded.

### 3. How to make a claim.

3.1 To make a warranty claim through AGL:

- (a) notify AGL of your intention to make a warranty claim within the relevant warranty period for the Product;
- (b) outline the nature of the defect in the Product or the installation services;
- (c) provide evidence of the defect (for example, by visual evidence such as sending photos, or by providing 90 days of performance data by reading the total kWh production at the beginning and end of the 90-day period. The total kWh production can be read on the inverter display under information – please refer to the inverter operation manual for instructions on how to access this information);
- (d) provide your name, address, installation address (if different) and contact number; and
- (e) provide evidence of proof of purchase or date of supply.

3.2 All communications regarding your claim must be by email or post to the addresses specified below.

3.3 AGL will make its initial response to a claim made under this warranty within 5 business days of receipt of your claim.

3.4 AGL may send a service provider to your premises in relation to a claim under this warranty.

3.5 The customer bears all expenses associated with initial claims under this warranty. However, you may be reimbursed for your reasonable postage costs incurred in the event that you have made a valid warranty claim. Please retain proof of

postage expenses incurred in order for such costs to be reimbursed.

3.6 If the claim relates to a manufacturer's warranty, AGL may require the customer to complete additional forms and processes required by the manufacturer in order to process the claim.

### 4. Where to send a claim.

4.1 AGL's contact details:

**Address:** Locked Bag 14120 MCMC Melbourne VIC 8001

**Contact number:** 1300 377 118

**Email:** [batterysupport@agl.com.au](mailto:batterysupport@agl.com.au)

You may also elect to send your warranty claim directly to the manufacturer.

### 5. This warranty is additional to your other statutory rights.

- 5.1 This warranty against defects statement applies in addition to any statutory rights or remedies that you may have, including under the Australian Consumer Law.
- 5.2 This warranty against defects statement does not exclude, restrict, limit or modify those rights or remedies, except to the extent that their application may be lawfully excluded, restricted, limited or modified.
- 5.3 AGL's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
  - (a) to cancel your service contract with AGL; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- 5.4 You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

## State specific conditions

### New South Wales

To the extent of inconsistency between State Specific Conditions and the General Terms and Conditions and Products and Services Specific Terms, these State Specific Conditions prevail (unless otherwise specified).

A reference to a clause within the State Specific Conditions is a clause in the State Specific Conditions, unless the contrary appears.

Where the Premises are in New South Wales and the Act applies, then the following State Specific Conditions apply.

#### 1. Definitions

The existing clause 1 of the General Terms and Conditions is amended by inserting the following new definitions:  
Consumer Information means the consumer building guide annexed to this Agreement, and forming part of the Agreement.

#### 2. Using these State Specific Conditions

If these State Specific Conditions are inconsistent with any other provision in this Agreement, then these State Specific Conditions will prevail.

#### 3. Implied Warranties

- (a) AGL acknowledges that this Agreement is in all respects subject to the applicable implied warranties specified in Part 2C of the Act including the following:
  - (i) AGL warrants that the work will be done with due care and skill and in accordance with the plans and specifications set out in the Agreement,
  - (ii) AGL warrants that all materials supplied by the holder of a contractor licence (or person required to hold a contractor licence) will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the Agreement, those materials will be new,
  - (iii) AGL warrants that the work will be done in accordance with, and will comply with, the Act or any other law,
  - (iv) AGL warrants that the work will be done with due diligence and within the time stipulated in the Agreement, or if no time is stipulated, within a reasonable time,
  - (v) AGL warrants that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling,
  - (vi) AGL warrants that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the contractor licence or person required

to hold a contractor licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

#### 4. Other State Specific Conditions

##### (i) Plans and specifications

If the Purchase Price is \$5,000 or more, despite anything to the contrary in this Agreement:

1. all plans and specifications for Products provided under this Agreement, including any variations to those plans and specifications, will form part of this Agreement;
2. any agreement to vary this Agreement, or to vary the plans and specifications for Products provided under this Agreement, must be in writing signed by You (or on your behalf) and by Us.

##### (ii) Quality of construction

Despite anything to the contrary in this Agreement:

1. all work done under this Agreement will comply with:
  - a. the Building Code of Australia (to the extent required under the *Environmental Planning and Assessment Act 1979* (NSW), including any regulation or other instrument made under that Act);
  - b. all other relevant codes, standards and specifications that the work is required to comply with under any law, and
  - c. the conditions of any relevant development consent or complying development certificate; and
2. despite subclause 4(ii)(1), this Agreement may limit the liability of AGL for a failure to comply with subclause 4(ii)(1) if the failure relates solely to:
  - a. a design or specification prepared by or on behalf of You (but not by or on behalf of Us), or
  - b. a design or specification required by You, if We

have advised You in writing that the design or specification contravenes subclause 4(ii)(1).

**(iii) Consumer building guide**

If the Purchase Price is \$5,000 or more, AGL will provide you with the Consumer Information to review before You sign this Agreement.

**(iv) Insurance requirements**

If the Purchase Price is \$20,000 or more, AGL will provide You with details of the cost of any applicable insurance cover required to be taken out by AGL under the Act and which is passed through to You under the Purchase Price.

**(v) Checklist**

If the Purchase Price is \$20,000 or more, the checklist below has been provided for You to go through before You sign this Agreement.

- 1 Have You checked that contractor holds a current contractor licence?  Yes  No
- 2 Does the licence cover the type of work included in the contract?  Yes  No
- 3 Is the name and number on the contractor's licence the same as on the contract?  Yes  No
- 4 Is the work to be undertaken covered in the contract, drawings or specification?  Yes  No
- 5 Does the contract clearly state a contract price or contain a warning that the contract price is not known?  Yes  No
- 6 If the contract price may be varied, is there a warning and an explanation about how it may be varied?  Yes  No
- 7 Are You aware of the cooling-off provisions relating to the contract?  Yes  No
- 8 Is the deposit within the legal limit of 10%?  Yes  No
- 9 Does the contract include details of the progress payments payable under the contract?  Yes  No
- 10 Do You understand the procedure to make a variation to the contract?  Yes  No
- 11 Are You aware of who is to obtain any council or other approval for the work?  Yes  No
- 12 Do You understand that You are not required to pay AGL a deposit or any progress payments until AGL has given you a certificate of insurance under Part 6 or Part 6B of the Home Building Act 1989 (except where the work is of a kind that does not require insurance)?  Yes  No

12A. Does the contract include either of the following:

- (a) the cost of the insurance under Part 6 of the Home Building Act 1989,  Yes  No
  - (b) the cost of the alternative indemnity product under Part 6B of the Home Building Act 1989?  Yes  No
- 13 Has the contractor given You a copy of the Consumer Building Guide, which provides key information about Your rights and responsibilities under NSW's home building laws and where to get more information?  Yes  No
- 14 Does the contract include a statement about the circumstances in which the contract may be terminated?  Yes  No

### **Signatures**

Do not sign this Agreement unless You have read and understand the clauses as well as the notes and explanations contained in the Agreement and this document.

If You have answered “no” to any question in the checklist, You may not be ready to sign the Agreement. You should retain an identical signed copy of the Agreement including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

### **Signed copy of Agreement**

Under the Act, a signed copy of this Agreement must be given to You within 5 Business Days after the Agreement is entered into.

### **Insurance under Part 6 or Part 6B of the Home Building Act 1989**

AGL must provide You with a certificate of insurance under Part 6 or Part 6B of the Home Building Act 1989 before the contractor commences work and before AGL can request or receive any payment.

### **Owners acknowledgement**

I/we have been given a copy of the **Consumer Building Guide**

and I/we have read and understand it. I/we have completed the

checklist and answered “**Yes**” to all items on it.

## New South Wales Consumer Building Guide

### Mandatory information for consumers

**Builders and tradespeople must give you a copy of this guide** before entering into a contract for residential building work that costs more than \$5,000. Read this guide to help protect your rights, carry out your responsibilities and support your building project.

#### Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency regulating residential building work (including building or trade work on single dwellings, villas, houses and home units) under the *Home Building Act 1989*.

#### What to consider before work starts

##### Licensing

Licensing requirements include:

- tradespeople and builders carrying out residential building work valued at more than \$5,000 must be licensed by NSW Fair Trading (check a licence on the Fair Trading website or by calling 13 32 20)
- regardless of the work's cost, a licence is always required for specialist work (like plumbing, air conditioning and refrigeration, electrical work and gasfitting)
- if the work requires more than one tradesperson, you need a builder to manage the building project and co-ordinate the tradespeople, such as plumbers, painters and carpenters.

#### Home Building Compensation Scheme

The State Insurance Regulatory Authority (SIRA) regulates home building compensation (HBC) cover in NSW. HBC cover is required where work is worth more than \$20,000 (including labour and materials). The builder or tradesperson must give you evidence of HBC cover before they start work on your project or you pay them any money, including a

deposit. For more information or to check the validity of your cover, visit [sira.nsw.gov.au](http://sira.nsw.gov.au) or call 13 10 50.

#### Approvals

To help your building project go smoothly:

- check with your local council or an accredited private certifier on approvals your building work needs
- engage a building certifier. This is your responsibility, not the builder's.

#### Contracts and payments

**All contracts must be in writing.** The two main contract types are:

- **fixed price or lump sum** - where the builder or tradesperson agrees upfront to a fixed amount for the whole job. Unforeseen changes during construction may affect the final cost
- **cost plus contract** - there is no guaranteed final cost for the job (often this contract is used where the project's nature prevents the final cost from being calculated). The consumer repays the builder for verified direct and indirect costs and fees at regular intervals. It is good practice for the builder to give a non-binding estimate before starting, and track costs with you against the project's budgeted estimate.

Residential building work **worth less than \$20,000** must be done under a 'small jobs' contract. The written contract must be dated and signed by, or on behalf of, each party. It may specify that work be paid for at regular intervals. It must contain:

- the parties' names, including the name of the holder of the contractor licence as shown on the contractor licence
- the number of the contractor licence
- a description of the work
- any plans or specifications for the work, and
- the contract price, if known.

Residential building work **worth more than \$20,000** requires a full home building contract. As well as all of the requirements of the 'small jobs' contract, it must include other

comprehensive information such as the details of the statutory warranties the builder must provide, the cost of any applicable HBC cover and the contract price or warning that the contract price is not known. Find a **complete list of contract requirements** on our website.

All contracts over \$20,000 in value must have a progress payment schedule. Progress payments must match the work carried out and, for cost plus contracts, be supported by receipts or other verifying documents.

Any change you need to make to a contract is a '**variation**'. Variations must be in writing and be signed by both parties to the contract. Almost all will impact the contract price.

The **maximum deposit** you can be asked to pay before work starts is 10%.

### Common traps and tricks

Beware of:

- an extremely low quote compared with others. This may indicate the job's quality is being compromised, or that the builder may not fully understand what is required
- 'sales pitches' putting pressure on you to sign a contract quickly to avoid a price increase
- a builder who recommends you get an owner-builder permit while they organise all the building work. The builder may be trying to avoid responsibility and may not have the right kind of licence or HBC cover.

### When things go wrong

#### Statutory warranties

Builders and tradespeople must guarantee that their work is fit-for-purpose, performed diligently and delivered in a reasonable timeframe, in line with the contract. Unless otherwise specified, materials should be new and appropriately used. These warranties are time-limited: legal proceedings to enforce them must be

commenced within 6 years for major defects and 2 years for all other defects. There is another 6 months for both warranty periods if the defect only became apparent after 18 months or 5 and a half years. Find out more about these warranties on the Fair Trading website.

### Resolving a dispute with your builder or tradesperson

These steps can help you resolve a dispute:

- **you must notify your builder or tradesperson** and discuss concerns as soon as you become aware of a problem. Follow up with an email or letter
- **understand acceptable work standards** by downloading the *Guide to Standards and Tolerances* from our website
- contact Fair Trading for **free dispute resolution** if you and your builder or tradesperson are unable to resolve the dispute
- lodge a claim with the **NSW Civil and Administrative Tribunal (NCAT)** if you remain unsatisfied with the dispute resolution outcome
- protect your rights under the **HBC Scheme**: contact your insurer or provider as soon as you become aware of defective or incomplete work.

### Home building compensation disputes

For help resolving disputes with a HBC insurer or provider, visit the SIRA website [sira.nsw.gov.au](http://sira.nsw.gov.au) or call 13 10 50.

### More information

Visit the Fair Trading website to:

- learn more on your rights and responsibilities and the statutory warranties
- do an online licence check to verify a builder or tradesperson's licence details
- find out about dispute resolution
- download free home building contracts
- subscribe to enews.



## State specific conditions

### Victoria

To the extent of inconsistency between State Specific Conditions and the General Terms and Conditions and Products and Services Specific Terms, these State Specific Conditions prevail (unless otherwise specified).

A reference to a clause within the State Specific Conditions is a clause in the State Specific Conditions, unless the contrary appears.

Where the Premises are in Victoria and the Act applies, then the following State Specific Conditions apply.

#### 1. Definitions

Not applicable.

#### 2. Using these State Specific Conditions

If these State Specific Conditions are inconsistent with any other provision in this Agreement, then these State Specific Conditions will prevail.

#### 3. Implied Warranties

- (a) AGL acknowledges that this Agreement is in all respects subject to the applicable implied warranties specified in Part 2 of the Act including the following:
  - (i) AGL warrants that the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in this Agreement,
  - (ii) AGL warrants that all materials to be supplied by AGL for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Agreement, those materials will be new,
  - (iii) AGL warrants that the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the *Building Act 1993* (Vic) and the regulations made under that Act,
  - (iv) AGL warrants that the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by this Agreement,
  - (v) AGL warrants that if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed,
  - (vi) if the Agreement states the particular purpose for which the work is required, or the result which You wish the work to achieve, so as to show that You rely on AGL's skill and judgment, AGL warrants that the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be

expected to achieve that result,

- (vii) AGL warrants that any provisional sum included by AGL in this Agreement has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the Agreement is made, including the nature and location of the Premises and installation site.

#### 4. Other State Specific Conditions

##### 23.2 (i) Starting Date

- 23.3 If the Purchase Price is \$5,000 or more, and there is no starting date for delivery and installation of the Products, We will do everything reasonably possible to ensure that the delivery and installation of the Products will start as soon as possible.

##### 23.4 (ii) Insurance Requirements

- 23.5 If the Purchase Price is \$5,000 or more, We will hold professional indemnity insurance and public liability insurance to the levels required by the Act and as set out in the Quote.

##### 23.6 (iii) Termination due to unforeseeable cost or time blow outs

- 23.7 If the Purchase Price is \$5,000 or more, You may terminate this Agreement by providing us with signed written notice of your intention to do so if either (i) the Purchase Price rises by 15% or more after the date of this Agreement; or (ii) the delivery and installation of the Products is not achieved within 150% of the time period it was meant to be completed

within, and We could not have foreseen either of these events at the date of this Agreement.

- 23.8 This right does not arise where the changes are due to a Variation carried out in accordance with this Agreement.
- 23.9 Where the Agreement is ended in accordance with this right, We are entitled to retain or recover from You the reasonable price of the delivery and installation of the Products and provision of the Services up until the date that this Agreement is terminated.

23.10 **(iv) Checklist**

If the Purchase Price is \$5,000 or more, the checklist below has been provided for You to go through before You sign this Agreement.

Please do not sign this Agreement unless You have read and understand the clauses as well as the notes and explanations contained in this Agreement. If You have answered "no" to any question in the checklist, You may not be ready to sign the Agreement. You should retain a signed copy of this Agreement including any drawings, specifications and other attached documents. Make sure that You initial all attached documents and any amendments or deletions to this Agreement.

**Domestic Building Contracts Act 1995**

**24 Director of Consumer Affairs Victoria**

**25 Approved Domestic Building Contracts Checklist**

**Section 31(1)(r) of the Domestic Building Contracts Act 1995**

This checklist must be included in major domestic building contracts entered into from 1 September 2016 in substantially the same form or to the same effect as follows.

**Before signing this legally binding contract, check this list:**

If the cost of the building work is more than \$16,000, has an insurance policy or certificate of currency for domestic building insurance covering your project been issued and provided to You?

(Note: If not, the contract is conditional upon you receiving either an insurance policy or a certificate of currency for domestic building insurance.)

If this contract is conditional upon You receiving written approval for finance, have You obtained such approval?

Have You appointed a private building surveyor or has a municipal building


surveyor been engaged?

(Note: If not, You will need to choose and engage a building surveyor before your building work starts so that a building permit can be issued for your building work.)

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**If You answer 'NO' to any of the following questions that apply to your building project, You are not ready to sign the contract:\***

Have You had this contract long enough to read and understand it?

Have You been provided with evidence that the builder named in this contract is registered with the Victorian Building Authority?

Are the price and progress payments clearly stated?

Do You understand how the price is calculated and may be varied?

Has the builder assessed the suitability of the site for the proposed works? If tests are necessary, have they been carried out?

If a deposit is payable, is it within the legal limit?




The maximum under the Domestic Building Contracts Act 1995 is:

10% if the price is less than \$20,000, or

5% if the price is \$20,000 or more.

Is the work shown and described clearly in the contract, plans and specifications and any other relevant documents (such as engineering computations or soil report)?

Are your special requirements or standards of finish included in the plans and specifications?

Are the commencement date and completion date clearly stated or capable of being worked out?

Do You understand the procedure for extensions of time?

Are any 'provisional sums' or 'prime cost items' clearly stated in the schedules and understood by You?

Do You understand the procedure for


variations of plans and specifications?

Do You understand the circumstances in which You can end the contract?

Did your builder give You a copy of the Domestic Building Consumer Guide?

If yes, insert the date on which You were given a copy of this guide

dd/mm/yyyy

Have You read the Domestic Building Consumer Guide and the related information at **consumer.vic.gov.au/buildingguide**?


**This checklist does not form part of the contract.**

**I/we have read and completed this checklist:**

Signature/s

Date dd/mm/yyyy


**\* Note:** Not all of these questions will apply to a domestic building contract that covers a limited scope of work, for example, a contract that is limited to the preparation of building plans and specifications.

## State specific conditions

### Queensland

To the extent of inconsistency between State Specific Conditions and the General Terms and Conditions and Products and Services Specific Terms, these State Specific Conditions prevail (unless otherwise specified).

A reference to a clause within the State Specific Conditions is a clause in the State Specific Conditions, unless the contrary appears.

Where the Premises are in Queensland and the Act applies, then the following State Specific Conditions apply.

#### 1. Definitions

The existing clause 1 of the General Terms and Conditions is amended by inserting the following new definitions:

**Consumer Information** means the consumer building guide annexed to this Agreement and smart building and renovating publication produced by the Queensland Building and Construction Commission found at [https://www.qbcc.qld.gov.au/sites/default/files/Consumer\\_Building\\_Guide.pdf](https://www.qbcc.qld.gov.au/sites/default/files/Consumer_Building_Guide.pdf), and forming part of the Agreement.

#### 2. Using these State Specific Conditions

**25.1 If these State Specific Conditions are inconsistent with any other provision in this Agreement, then these State Specific Conditions will prevail.**

#### 3. Implied Warranties

- (a) If the Purchase Price is \$3,300 or more, AGL acknowledges that this Agreement is in all respects subject to the applicable implied warranties specified in Part 3 of Schedule 1B of the Act including the following:
  - (i) AGL warrants that all material to be supplied for use in the installation of the Products:
    1. will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and
    2. unless otherwise stated in this Agreement, will be new;
  - (ii) AGL warrants the installation of the Products will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975 (QLD);
  - (iii) AGL warrants the installation of the Products will be carried out:
    1. in an appropriate and skilful way; and
    2. with reasonable care and skill;
  - (iv) AGL warrants the installation of the

Products will be carried out with reasonable diligence; and if plans and specifications form part of this Agreement, AGL warrants the installation of the Products will be carried out in accordance with those plans and specifications.

#### 4. Other State Specific Conditions

##### (i) Consumer building guide

If the Purchase Price is \$20,000 or more, the Consumer Information has been provided for You to go through before You sign this Agreement.

Please do not sign this Agreement unless You have read and understood the clauses as well as the notes and explanations contained in this Agreement. You should retain a signed copy of this Agreement including any drawings, specifications and other attached documents. Make sure that You initial all attached documents and any amendments or deletions to this Agreement.

If You do not receive a copy of the Consumer Information within 5 Business Days after this Agreement is entered into, You may withdraw from this Agreement by providing AGL with written notice of Your intention to withdraw.

##### **Signed copy of Agreement**

Under the Act, a signed copy of this Agreement must be given to You within 5 Business Days after the Agreement is entered into.

If You do not receive a copy of this Agreement within 5 Business Days after this Agreement is entered into, You may withdraw from this Agreement providing AGL with written notice of Your intention to withdraw.

##### **Copy of commencement of delivery and installation of the Projects**

If the Purchase Price is \$20,000 or more, AGL will provide You with a signed notice of the date on which We will commence delivering or installing the Products to You and the date for delivery and installation of the Products.

##### **Certificates of inspection**

Where We are given a certificate of inspection in relation to the delivery or installation of the Products, We must provide You with the relevant certificate of inspection as soon as reasonably possible after receiving it.

**Owners acknowledgement**

I/we have been given a copy of the consumer building guide and smart building and renovating publication and I/we have read and understand it.

## Queensland Consumer Building Guide

### 25.2 Your building contractor must give you this guide before you sign the contract.

This guide has been developed by the Queensland Building and Construction Commission (QBCC) under Schedule 1B of the Queensland Building and Construction Commission Act 1991 (the Act) to assist home owners undertaking domestic building work with a total contract price of \$20,000 or more. It's aimed at helping you avoid disputes and common pitfalls.

### 25.3 Cooling-off period

You may withdraw from the contract within five business days of receiving copies of the signed contract (including any plans and specifications) and this guide. However, there are costs for home owners in withdrawing (generally \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). You must also advise the contractor in writing.

### 25.4 QBCC licence

You should only deal with a QBCC-licensed contractor. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home

Warranty Scheme. Always check the contractor's licence and licence history via QBCC's Online Licence Search.

### 25.5 QLD Home Warranty insurance

Residential construction work valued at more than

\$3,300 is covered by the Queensland Home Warranty Scheme. It provides protection for home owners against

non-completion, defective work and subsidence for up to 6 years from completion, provided a licensed contractor performs the work. After the contract has been signed, the contractor must pay the insurance premium to QBCC, and you should receive a Certificate of Insurance and Policy Booklet within two weeks.

### 25.6 Cost Plus and Construction Management contracts

QBCC recommends home owners obtain formal legal advice before signing either of these types of

contracts which reduce your Home Warranty insurance protection and often result in disputes and cost overruns. Visit the QBCC website for more details on the risks associated with these contracts.

### 25.7 Commencement Notice

For contracts priced at \$20,000 or more, the contractor must give the owner a signed Commencement Notice within 10 business days of work commencing on site. It must state the date work started on site and the Date for Practical Completion.

### 25.8 Contract price

The total contract price must be stated on the first page of the contract schedule, along with a warning about any provisions that may cause the price to change. If the total contract price includes any allowances (items or services for which the price is not fixed at the time the contract is signed), these allowances must be stated in the contract schedule.

## 25.9 Deposits and progress payments

The maximum deposit allowed is:

- 10% where the total contract price is under \$20,000
- 5% where the price is \$20,000 or more
- 20% for a contract of any price where the value of the work to be performed off-site is more than 50% of the total contract price.

Owners and contractors are free to determine the number and timing of progress payments (if any) for their particular project, provided these payments are proportionate to the value of work performed on site

(e.g. don't pay more than 50% before half of the work has been completed).

## 25.10 Building approvals and inspections

Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction.

You can check the certifier's licence via QBCC's Online Licence Search.

## 25.11 Variations

Any change to the materials used or the scope of the work to be performed under the contract is known as a 'variation'. Variations are frequently the cause of cost overruns and building disputes. All variations must be detailed in writing and copied to the owner by the contractor within five business days after they are agreed to, and before any of the variation work commences.

## 25.12 Dispute prevention

To reduce the risk of a dispute, carefully read and understand the contract. Also check any associated plans and specifications before signing. Discuss any questions with your contractor and seek legal advice if you still have concerns.

## 25.13 Dispute resolution

If a dispute with your contractor occurs, firstly advise them in writing giving them a reasonable time to respond. If this doesn't resolve the problem, explore QBCC's free Early Dispute Resolution (EDR) service and your legal options. It's critical that you engage a practising solicitor before terminating the contract.

Incorrect termination may have serious legal and financial consequences and reduce your Home Warranty protection.

## 25.14 Extensions Of Time (EOTs)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined

(e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could have been anticipated). The contractor must give you a written EOT claim that you should carefully consider (not unreasonably reject) and respond to promptly in writing. If you approve the claim, the Date for Practical Completion will be extended by the period claimed. If you do not approve the claim, the extension is deemed 'disputed'.



### **25.15 Practical completion and handover**

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract, all legal requirements, and either without any defects or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.

### **25.16 Implied warranties**

Under the Act, a range of warranties are deemed to be part of all regulated domestic building contracts. The warranty period is six years for structural defects and one year for all other defects.

Complete and sign the section below to acknowledge that you have received this guide from your building contractor. Once signed, the building contractor will return a copy of this guide to you with the contract.

(a) NAME: \_\_\_\_\_

(b) DATE: \_\_\_\_\_

(c) SIGNATURE: \_\_\_\_\_

(i) For further information on the building process, visit the QBCC website [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or call QBCC 24/7 on 139 333.

Prior to signing a contract view 'The Home Owner Building Guide' video series at [QBCCBuildBetter](#)

## State specific conditions

### South Australia

To the extent of inconsistency between State Specific Conditions and the General Terms and Conditions and Products and Services Specific Terms, these State Specific Conditions prevail (unless otherwise specified).

A reference to a clause within the State Specific Conditions is a clause in the State Specific Conditions, unless the contrary appears.

Where the Premises are in South Australia and the Act applies, then the following State Specific Conditions apply.

#### 1. Definitions

The existing clause 1 of the General Terms and Conditions is amended by inserting the following new definitions:

**Consumer Information** means the notice annexed to this Agreement, and forming part of the Agreement.

#### 2. Specific Conditions

Not applicable.

## 26 Annexure – South Australia notice

### 27 Form 1

Notice under Section 28(1)(f) of Building Work Contractors Act 1995

#### 27.1 Your Building Contract: Your Rights and Obligations

This notice contains important information about your rights and obligations. You should read it carefully and keep it for further reference.

Your domestic building work contract is a binding legal agreement. You have rights and obligations under the agreement. You also have certain rights guaranteed under the Building Work Contractors Act 1995 in relation to the agreement. In particular, you have certain "cooling off" rights, which may enable you to cancel your contract if you are not satisfied with it, and you act quickly.

##### 1. What does the Act require?

You must have a written contract with your building work contractor, setting out all the terms and conditions of your agreement. You must be given a copy of the signed contract, together with a copy of this notice. Both documents must be readily legible.

##### 2. What are my "cooling off" rights?

You may cancel your building contract, if you act before the "prescribed time".

If you wish to cancel, you must give your building work contractor written notice of your

intention not to be bound by the contract. You must serve that notice on the building work contractor either personally or by certified mail in an envelope addressed to the contractor.

You must do this-

- (a) before 5 clear business days have expired after the making of the contract; or
- (b) if your building work contractor has not complied with relevant provisions of the Act, before the contractor completes the building work under the contract.

Cancellation is a serious step and should not be taken lightly. You may need to seek legal advice, or the advice of Consumer and Business Services, before exercising this right of cancellation. Wherever possible, you should first discuss your problem with the building work contractor.

##### 3. What should I do?

First, read this notice carefully. Then read the documents that you have signed. If you are not happy about any aspect, or have any questions, then ask your building work contractor to explain. If you are not satisfied with the explanation you have received, then seek advice from a lawyer or from the Office of Consumer and Business Affairs.

##### 4. Is there anything I should look for in particular?

Most importantly, check to see that the work you want your building work contractor to do has been fully and accurately set out in the contract (including the plans and specifications). Do not rely on verbal promises or agreement. If you want to change the work to be done at a later stage, you will have to reach agreement with your building work contractor, and your contractor will usually be entitled to make a separate, additional charge as a variation to your contract. Not checking now could be very expensive.

##### 5. What about the price I have been quoted? Can it change?

Some building contracts provide for a "fixed price". Others include a "rise and fall" clause. If your contract includes a rise and fall clause, then the price you have been quoted (even if it is referred to in your contract) will most probably NOT be the total amount you will have to pay. Your contract

price can also change due to any variations to the building work in accordance with your contract.

Note: Most variations require your written approval in advance, but others may be unforeseen. You should refer to your particular contract. Certain items in your contract may be designated "prime cost" or "provisional sums", which may also lead to a change in the total sum you can be charged.

If your contract includes a rise and fall clause, or other provisions as a result of which a price set out in your contract may change, or is an estimate only, then the contract must contain "THIS PRICE MAY CHANGE" or "ESTIMATE ONLY" adjacent to the price subject to change. If there is more than one such price, then they must be set out in a single list in the contract.

Those prices that are only estimates must be fair and reasonable estimates.

#### 6. What is a rise and fall clause?

A rise and fall clause entitles your building work contractor to pass onto you increases (or reductions) in the cost of performing your building work after you have signed your contract, whether those costs relate to labour (including relevant overhead) or materials.

The formulae used in building contracts to determine the amount of the additional costs that can be passed onto you vary. Check your contract carefully. If you have any questions, ask your building work contractor to explain, or seek advice.

#### 7. What are "prime cost" items?

Your building work contract may include the supply of certain goods and services, eg., kitchen stoves, bathroom tiling. These items may be designated "prime cost", so that if the standard of goods you select is higher than that provided for by your building work contractor, then you may have to pay an additional cost over and above that provided for, plus a surcharge, which may be up to 15% of the cost of the item.

#### 8. What are "provisional sums"?

These are amounts your building work contractor has determined as "best estimates" of the cost of doing certain building work under your contract.

For example, if your building site slopes and no contour survey has been carried out, your building work contractor may not be able to prepare a final price for the earthworks needed to provide a level site for your domestic building work. The building work contractor may include an estimated figure which is subject to change when a survey plan is provided. That estimated figure is a "provisional sum".

Provisional sums must be fair and reasonable estimates in the circumstances in which they are provided.

#### 9. What is a charging clause?

A charging clause in a building work contract is a clause that gives your building work contractor the right to lodge a caveat over the property on which the building work contract is performing building work under the contract. If a caveat is lodged over the property, you (as owner of the property) may be restricted from dealing with and registering dealings with the property at the Land Titles Office.

The interest created by the clause would entitle your building work contractor to apply to the court for the

sale of the property to recover any debt owed by you for building work performed under the contract.

Check your contract carefully, and, if you are not certain about whether your building work contract contains a charging clause or the implications of a charging clause, you should seek independent legal advice.

#### 10. Are there any special problems with package land and building deals?

Yes.

If you have entered into a package deal for land and building work, then it is likely you have signed a number of documents. The information contained in this notice relates only to the domestic building work contract you have signed. It does not apply to your contract for the purchase of land, which is subject to different rules. You probably have less time to consider those documents than your building contract.

Be particularly careful about package deals where your building work contractor is unable to start work immediately because necessary approvals have not been granted, or services connected, or legal titles granted. Your building work contractor may be entitled to make additional charges arising from delays which are the fault of neither yourself or the contractor. If in doubt, talk to your building work contractor or seek advice.

#### 11. What other rights do I have?

The Act implies certain warranties on the part of your building work contractor, and these apply regardless of what your contract says.

These warranties are as follows:

- (a) your building work must be performed in a proper manner to accepted trade standards and in accordance with the agreed plans and specifications; and
- (b) the materials supplied by the building work contractor will be good and proper materials; and
- (c) the building work will be performed in accordance with all statutory requirements; and
- (d) unless the contract stipulates a period within which the work must be completed – the work will be performed with reasonable diligence; and
- (e) if your contract is for the construction of a house – the house will be reasonably fit for human habitation; and
- (f) if you have made known to your building work contractor the purpose for which the work is required, or the result you want to achieve in a way that demonstrates that you are relying on your contractor's skill and judgment, then your contractor warrants that the work and the materials will be fit for your purposes, or of a nature and quality that they might reasonably be expected to achieve that result.

If your building work contractor does work or provides materials which do not comply with those warranties, then your rights have been infringed, and you may have a right to take legal action before the courts. If you are not satisfied, talk to your building work contractor. If you are still not satisfied, seek advice from a lawyer or the Office of Consumer and Business Affairs.

#### 12. What about Building Indemnity Insurance?

Your building work contractor must take out a policy of building indemnity insurance before work commences. The insurance protects you from some of the losses you may suffer if your building work contractor dies, disappears or becomes insolvent. Your building work contractor must provide you with a copy of the certificate of insurance. Keep it for your protection.

Important Note: From 1 September 2002, building work contractors have not been required to take out a policy of building indemnity insurance in respect of contracts for the construction of multi-storey residential buildings.

(A multi-storey residential building is a building that has a rise in storeys of more than 3 and contains 2 or more separate dwellings. A storey does not include a mezzanine or a space within a building if it is intended that the space contain only a lift shaft, stairway, meter room, laundry, bathroom, shower room, water closet, car park or combination of any of the above.)

**13. Am I obliged to pay a deposit in advance of work done?**

As a general rule, your building work contractor is entitled only to genuine progress payments for work done. Your building work contractor may ask you to pay in advance for money that has to be paid to a third party (eg: a council for planning approval, building indemnity insurance or to an engineer or surveyor for a report). Apart from money in advance for such fees, the law prohibits the taking of any deposit on a domestic building work contract in excess of \$1,000 or if the contract price is over \$20,000, 5% of the contract price. If in doubt, seek advice before making any payments.

**14. When should I make a progress payment?**

The law requires that your building work contractor make a written demand for a progress payment, so payment should not be made without such a demand. Progress payments should not be made in advance of the performance of the building work to which the demand relates. If you have borrowed money from a recognised lending institution, it is likely to make progress payments on your behalf.

**15. What if I have a dispute with my building work contractor?**

First, talk to your building work contractor. Many potentially serious disputes can be avoided by good communication between building owner and contractor. Your contract may have clauses relevant to dispute resolution which may assist both parties in resolving the dispute.

If that does not work, you may need independent advice. You may wish to seek legal advice, or the advice of the Office of Consumer and Business Affairs. Some disputes can be resolved by negotiation. Others can only be resolved by legal proceedings, whether before the courts or by private arbitration as provided in many building contracts.

Before commencing any legal action over building work, you should seek advice from a lawyer or from the Office of Consumer and Business Affairs.

**16. Where should I go for advice?**

First, talk to your building work contractor. If you want or need independent advice about your building work contract, talk to a lawyer or the Office of Consumer and Business Affairs. A list of lawyers appears in the telephone directory under the heading of "Solicitors".