

ZEN Energy Systems Terms & Conditions of Contract

1. **(Agreement)** This Contract governs the agreement between ZEN and the Homeowner in respect of the Works. Upon request the Homeowner is entitled to receive a signed copy of this Contract as soon as is reasonably practicable after this Contract is signed by both parties.
2. **(Works)** ZEN agrees to undertake the Works in relation to the Property on the terms and conditions of this Contract.
3. **(Payment)** The Homeowner must pay the Contract Price at the times and in the amounts set out under the "Payment" section of the Order and Method Payment Form with respect to the Works.
4. **(Council approval)** The performance of obligations under this Contract (except for clause 1 and the requirement of the Homeowner to pay the deposit specified in clause 5) is subject to the Homeowner obtaining council approval and such other approvals as may be required in respect of the Works. ZEN does not guarantee, warrant or make any representation that council or other approvals will be obtained. The Homeowner must make their own enquiries as to such approvals. The Homeowner acknowledges and agrees that it is responsible for all costs and expenses in obtaining council and other approvals. Where required council approval is not obtained 14 days prior to the scheduled installation date, either party may terminate this Contract by giving written notice to the other party. Where this Contract is terminated in accordance with this clause, ZEN shall refund to the Homeowner any deposit paid by the Homeowner under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed or for which the Homeowner has received a benefit.
5. **(Commencement and completion)** Subject to payment being made in accordance with this Contract and the Homeowner completing at its cost any required pre-commencement works specified in the Order and Method Payment Form, ZEN will do everything that is reasonably possible to ensure that the installation of the system shall commence within 60 days of the date of this Contract and subject to unforeseen circumstances arising, anticipates that the Works shall be completed within 14 days of commencement of installation. ZEN shall advise the Homeowner of any anticipated delay upon such delay becoming apparent to ZEN. In the event that the Works are not completed by the date provided for by this clause 5, the Homeowner acknowledges that it shall not be entitled to any damages (liquidated or otherwise) in respect of such delay.
6. **(Homeowner default and termination)** If the Homeowner breaches this Contract, including without limitation by failing to make a payment in accordance with clause 3, failing to complete any Homeowner required pre-commencement works specified in the Order and Method Payment Form within a reasonable time determined by ZEN, or denies ZEN access to the Property in order to carry out the Works, ZEN may issue a written notice to the Homeowner to remedy the default within 10 Business Days of receipt of that notice. If the default is not remedied within 10 Business Days of receipt of such notice, ZEN may terminate this Contract by further written notice to the Homeowner. Termination of this Contract by ZEN is without prejudice to any rights that ZEN may have in respect of this Contract. The Homeowner shall be liable for any debt recovery costs (including legal fees on a full indemnity basis) incurred by ZEN in collecting the Contract Price or any part of the Contract Price from the Homeowner.
7. **(Plans and Specifications)** All plans and specifications annexed to or accompanying these terms and conditions, including any variations to such plans and specifications, form part of this Contract.
8. **(Variations)** Variations to this Contract, including variations to any plans and specifications annexed to these terms and conditions, may only be made with the written agreement of ZEN and the Homeowner.
9. **(Homeowner responsibility for condition and maintenance of roof)** The Homeowner warrants that the installation location, such as, but not limited to, the Homeowner's roof, is suitable to accommodate the works and will be maintained in such a condition for the life of the system. ZEN is not liable for any losses, damages or costs associated with not complying with this clause.
10. **(Changes in governmental taxes or charges)** ZEN may vary the Contract Price to reflect any unforeseeable cost increases in providing the Works that result from any change to governmental taxes or charges that come into force after the execution of this Contract. In such circumstances, the Homeowner agrees that the Contract Price may be increased to reflect the relevant cost increase.
11. **(Performance of system)** The Homeowner acknowledges and accepts that the performance of the goods supplied by ZEN is contingent upon a clear view of the sun and correct elevation. It is the responsibility of the Homeowner to ensure that shading of the goods is, and continues to be, minimised (including, if necessary, the removal or pruning of any shade causing trees or vegetation). Specifically, the Homeowner acknowledges and accepts that if the elevation is outside of the optimum 25° to 30° pitch, facing due North, there will be a reduced energy yield.
12. **(Homeowner to rectify or address circumstances discovered after commencement)** The Homeowner acknowledges and agrees that ZEN has agreed to undertake the Works on the Property on the basis of a visual inspection carried out by its staff. If and to the extent that ZEN discovers after commencement of the Works circumstances that were not readily apparent in the visual inspection of the Property, including without limitation circumstances relating to structural integrity, hidden defects, electrical wiring or cabling, gas or water pressure, status or mounting of consumption meters (including without limitation the presence of any asbestos), shading or elevation and other matters relating to the Property that may impact on the completion of the Works or the performance of the completed Works, the Homeowner agrees that it is responsible at its cost to rectify or address such matters as ZEN reasonably requires in order for ZEN to complete the Works or for ZEN to be satisfied that the performance of the completed Works will not be affected. In such circumstances, the Homeowner must, within 10 Business Days of ZEN notifying the Homeowner of such matters :
 - a) rectify or address such matters at its own cost; or
 - b) request that ZEN rectify or address such matters at the cost of the Homeowner and in such circumstances, the Homeowner agrees to execute a variation to this Contract relating to such additional work.If the Homeowner fails to comply with its obligations under this clause 12, or ZEN determines that such circumstances have not been or cannot be rectified or addressed to ZEN's satisfaction, then ZEN may terminate this Contract by written notice to the Homeowner and refund within 14 days all monies paid by the Homeowner to ZEN

ZEN Energy Systems Terms & Conditions of Contract

under this Contract, less any monies determined by ZEN as being payment for the part of the Works that have been completed or for which the Homeowner has received a benefit.

- 13. (Risk and title to goods)** Risk in the goods passes to the Homeowner upon delivery to the Property. Ownership of the goods will remain with ZEN until all amounts owing by the Homeowner to ZEN on any account whatsoever (**Amounts Owing**) have been paid. Until the Amounts Owing have been paid, the Homeowner holds the goods as trustee and agent for ZEN. If the Homeowner fails to comply with this Contract in relation to payment or otherwise then ZEN may enter the Property and seize possession of the goods and retain, sell or otherwise dispose of such goods. The Homeowner consents to ZEN effecting a registration on the PPSA register (in any manner ZEN considers appropriate) and the Homeowner agrees to provide all assistance reasonably required by ZEN. The Homeowner waives the right to receive notice of a verification statement in relation to any registration on the register. For the purposes of this clause 13, the following words have the meaning given to them in the PPSA: account, register, registration, security interest and verification statement.
- 14. (Make good of loss or damage)** ZEN will make good any loss or damage to the Homeowner's property directly caused by ZEN, such obligations to be reduced to the extent that the Homeowner's acts or omissions, or any pre-existing condition, fault or defect relating to the Property (including without limitation circumstances relating to structural integrity, hidden defects, electrical wiring or cabling, gas or water pressure and status or mounting of consumption meters) contributed to such loss or damage.
- 15. (Access to Property)** The Homeowner must allow ZEN access to the Property so that ZEN can undertake the Works.
- 16. (Homeowner in Attendance)** The Homeowner agrees to be in attendance for the duration of the installation. If for any reason the Homeowner is not in attendance ZEN will not be held liable for any inaccuracies with the installation. Should the installation not proceed on the scheduled date and time for any reason ZEN excludes liability for any claims, losses, damages and costs incurred by the Homeowner for the installation not taking place as planned.
- 17. (Limitation of liability)** To the fullest extent permitted by law, ZEN's liability to the Homeowner is limited (at the option of ZEN) to:
- in the case of services supplied or offered by ZEN (i), the supply of the services again, or (ii) the payment of the cost of having the services provided again; and
 - in the case of goods supplied by ZEN, (i) the replacement of the goods or the supply of equivalent goods, or (ii) the repair of such goods, or (iii) the payment of the cost of replacing the goods or acquiring equivalent goods, or (iv) the payment of the cost of having the goods repaired.
- 18. (Exclusion of liability)** To the fullest extent permitted by law, and subject to clause 14 of this Contract, ZEN excludes all liability for any claims, expenses, losses, damages and costs (including any incidental, special and /or consequential damages or loss of profits) made, suffered or incurred by the Homeowner resulting (either directly or indirectly) in connection with the Works.
- 19. (No compensation for system failure)** ZEN cannot be held liable for any losses, actual or presumed, incurred by the Homeowner as a result of system failure. All failures should

be reported immediately to ZEN and ZEN will address such failures in a fair and reasonable timeframe.

- 20. (No guarantee or warranty for electricity purchase or rebates)** ZEN does not guarantee or warrant that the Homeowner will be entitled to or eligible for any purchase of exported solar electricity by an electricity retailer, rebate, discount or similar financial benefit, or that any such benefit will be maintained. The Homeowner must make its own enquiries as to the availability of and eligibility for such financial benefits.
- 21. (Dispute Resolution)** If the Homeowner or ZEN considers that a dispute has arisen in relation to any matter governed by this Contract, that party must give the other party written notice outlining the basis of the dispute. The parties must then meet or appoint a third party to assist in the resolution of the dispute. If such a resolution is not achieved, the aggrieved party may refer the dispute for adjudication by the Building Disputes Tribunal. Notwithstanding the existence of a dispute, the Homeowner must still comply with its obligations to pay ZEN in accordance with the terms of this Contract.
- 22. (Severability)** If and to the extent any provision or part of a provision is illegal or enforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
- 23. (Governing Law)** This Contract shall be governed by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
- 24. (Entire Agreement)** This Contract sets out the entire agreement between the parties.

Definitions

The terms set out below shall have the following meanings when used throughout this Contract:

Business Day means any day except a Saturday or a Sunday or other public holiday in the region in which the Property is located;

Contract means these terms and conditions and the Order and Method Payment Form attached to these terms and conditions and includes any plans, specifications and other documents annexed to or accompanying these terms and conditions;

Contract Price means the amount specified for the Works in the Order and Method Payment Form;

Homeowner means the person named in and to whom, the Order and Method Payment Form is addressed;

Order and Method Payment Form means the order and method payment, quotation or such other form attached to these terms and conditions;

PPSA means the Personal Property Securities Act 1999 and any regulations made pursuant to it;

Property means the property located at the address specified in the "Quotation" section of the Order and Method Payment Form;

Works means the supply of the system selected by the Homeowner and any associated components or parts as described in the Order and Payment Form, and the provision of the services necessary to install them;

ZEN means ZEN Energy Systems New Zealand Limited (NZBN 9429040993904) of 46 Tallyho Street, Mangakakahi, Rotorua 3015, New Zealand.