

## LED Lighting - Installation Terms

### 1. Definitions

1.1. Organisation shall mean Smart Energy Upgrades (ABN:71188994198), its successors and assignees or any person acting on behalf of and with its authority.

1.2. Customer shall mean the person or persons (or any person acting on their behalf or with their authority) who accepts the supply of Products and/or Services from the Organisation.

1.3. Agreement shall mean acceptance by the Customer of a quotation or invoice for the supply and/or installation of Goods and/or Services by the Organisation, or where no quotation or invoice is issued or accepted: the signing electronically or on paper of an the Organisation's Assignment Form or Nomination Form or other similar document; a verbal acceptance; an implied acceptance by email or other written means, by signing an order form or paying a deposit.

1.4. Certificate shall mean a certificate created under a Scheme.

1.5. Goods shall mean all goods supplied by the Organisation to the Customer including systems (and where the context so permits shall include any supply of Services) and are as described on the invoices, quotations or any other form as provided from the Organisation to the Customer.

1.6. Installation shall mean installation of the Goods.

1.7. Party shall mean either party to an Agreement for the supply and/or installation of Goods and/or Services.

1.8. Price shall mean the price payable for the Goods and/or Services agreed between the Organisation and a Customer in accordance with clause 3 of this Agreement.

1.9. Scheme shall mean a scheme or program operated by an Australian Government or authority acting for an Australian government, including but not limited to: the Victorian Energy Upgrade (VEU) program, the Energy Saving Scheme (ESS), the Peak Demand Reduction Scheme (PDRS), Retailer Energy Productivity Scheme (REPS), the Energy Efficiency Improvement Scheme (EEIS), and the Renewable Energy Target (RET) program.

1.10. Services shall mean all services supplied by the Organisation to the Customer (and where the context so permits shall include any supply of Goods) and are as described on the invoices, quotation or any other form as provided from the Organisation to the Customer including installation of the Goods.

### 2. Acceptance

2.1. Any instruction received by the Organisation from the Customer for the supply of Goods and/or Services and/or the Customer's acceptance of the Goods and/or Services supplied including installation of such Goods shall constitute acceptance of the terms and conditions contained herein.

2.2. Where more than one Customer has accepted the terms and conditioning contained herein, the Customer shall be jointly and severally liable for all payments of the Price.

2.3. These terms and conditions will become binding and can only be amended with the Organisation's written consent once ten days has lapsed from the acceptance of the terms and conditions (after the "cooling off period".)

### **3.Price and Payment**

3.1.The Price refers to the amount as indicated on the invoice(s) provided by the Organisation to the Customer in respect of Goods and/or Services.

3.2.Payment terms are payment on delivery (POD) or as otherwise stated on the invoice provided by the Organisation to the Customer in respect of Goods and/or Services.

3.3.The Organisation reserves the right to cancel the Agreement or suspend delivery of any outstanding Goods or Services if payment is not received by the date agreed, without penalty to the Organisation.

3.4.Minor defects in the Goods supplied or Services rendered shall not entitle the Customer to withhold the whole payment or any part thereof. The Customer will be liable for any debt recovery costs incurred by the Organisation.

3.5.The Organisation may deliver and/or install the Goods in separate instalments. Each instalment may be invoiced separately if agreed between the Organisation and the Customer and shall be paid in accordance with these terms and conditions, or other terms and conditions as may be expressly agreed between the Organisation and the Customer.

3.6.The Organisation shall not be liable for any loss or damage whatsoever, including any consequential loss, resulting from a failure by the Organisation to deliver and/or install the Goods (or any of them) promptly or at all.

3.7.GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### **4.Certificates**

4.1.The Customer agrees to assign to the Organisation the right to create Certificates that are attributable to the installation of the Goods by completing and signing an Assignment Form, Nomination Form or other similar document as may be required under a Scheme.

4.2.The Organisation will pass on an identifiable benefit to the Customer who assigns to the Organisation the right to create Certificates.

4.3.The market value of any Certificates the Organisation is unable to create because of the Customer's failure to assign to the Organisation the right to create Certificates will be added to the Price.

### **5.Ownership and Title**

5.1.Ownership and title in goods and/or services invoiced shall remain vested in the Organisation and shall not pass to the Customer until the Price for the Goods and/or Services has been paid in full and received by the Organisation.

5.2.Where the Goods and/or Services have been supplied solely in exchange for the right to create Certificates, ownership and title in the Goods and/or Services shall remain vested in the Organisation and shall not pass to the Customer until a valid Assignment Form or Nomination Form or other similar document has been completed and signed by the Customer and provided to the Organisation.

5.3.Until title to the Goods passes to the Customer:

5.3.1.The Organisation shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods

5.3.2.The Organisation shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any parts are stored, or upon which the Organisation reasonably believes them to be kept

5.3.3.The Customer shall store or mark the Goods in a manner reasonably satisfactory to the Organisation indicating that title to the Goods remains vested in the Organisation; and

5.3.4.the Customer shall insure the Goods to their full replacement value, and arrange for the Organisation to be noted on the policy of insurance as the loss payee.

5.4.Notwithstanding the above and irrespective of whether title to the Goods remains vested in the Organisation, risk in the goods shall pass to the Customer immediately upon delivery of the Goods to the Customer.

5.5.If any of the Goods are damaged or destroyed following delivery and/or installation but prior to ownership passing to the Customer, the Organisation is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Organisation is sufficient evidence of the Organisation's rights to receive the insurance proceeds without the need for any person dealing with the Organisation to make further enquiries.

5.6.Goods are not entitled to be returned except at the discretion of the Organisation. Returned Goods will only be accepted if written consent is given by the Organisation. In the event that Goods are returned, the Customer shall be liable to pay the Organisation all agreed damage, freight and other expenses associated with return of the Goods and bailment.

## **6.Warranties under Australian Consumer Law**

6.1.The protections and Consumer Guarantees provided for under Australian Consumer Law shall not be excluded or limited. These terms and conditions, and in particular the limitations of liability set out in these terms and conditions, are therefore subject to and will not apply to the extent that they limit or exclude such protections and Consumer Guarantees applicable to consumers.

6.2.However, where the Australian Consumer Law permits the Organisation to limit the remedies available to it in respect of the Customer for a breach of a Consumer Guarantee, the Organisation limits its remedies to the Customer, at the Organisation's option, in the case of the Goods, to the repair or replacement of the Goods, the supply of equivalent goods or the payment of the cost of having the Goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the Services again or paying the cost of having the Services supplied again.

6.3.Subject to clauses 6.1 and 6.2 the Organisation excludes, to the extent permitted by law:

6.3.1.any term, condition, warranty or statutory right that may otherwise be implied or apply to the provision of the Goods and/or Services by operation of custom, law or statute;

6.3.2.any liability for loss or damage incurred by the Customer as a result of or in connection with these terms and conditions or the negligence of the Organisation; and

6.3.3.any liability for legal costs and disbursements and, without limitation, any consequential loss suffered by the Customer under or in connection with these terms and conditions.

6.4.To the extent permitted by law, the Organisation will not process a manufacturer's warranty claim or be liable in respect of any express or implied warranty or guarantee:

6.4.1.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;

6.4.2.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 subcontracted by the Organisation;

6.4.3.if the Product is moved for any reason after it has been installed unless the Product is reinstalled at the same address by an appropriately qualified person;

6.4.4.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 the Organisation reasonable control and not arising under normal and standard operating conditions; or

6.4.5.if the Product is altered or modified in any way unless such modification has been approved in writing by the Organisation.

## **7.Force Majeure**

7.1.A Force Majeure Event does not excuse a failure to pay. If a Force Majeure Event prevents the Organisation from partially or wholly complying with obligations under the Agreement then the Organisation shall not be obliged to perform those obligations until it is no longer prevented from doing so and the Organisation shall be granted an extension of time accordingly. If the Organisation are prevented by the Force Majeure Event from carrying out such obligations for more than 6months, either Party may terminate the Agreement with immediate effect by giving notice to the other Party.

7.2.If a Party terminates the Agreement under this clause, the rights and obligations of the Parties will cease and the accrued rights or remedies of a party will not be affected. Then the Customer shall pay the Organisation:

7.2.1.amounts due to the Organisation for work carried out under the Agreement; and

7.2.2.the cost of materials reasonably ordered by the Organisation for the work under the Agreement which Energy Makeover is liable to accept.

## **8.General**

8.1.If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

8.2.The Terms and Conditions and any contract to which they apply shall be governed by the laws of a jurisdiction as determined by the Organisation.

8.3.The Organisation shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Organisation of these terms and conditions.

8.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Organisation or to withhold payment of any invoice because part of that invoice is in dispute.

8.5. The Customer agrees that the Organisation may review these terms and conditions at any time.

8.6. The Organisation reserves the right to subcontract all or part of the supply, delivery and installation of the Goods.

8.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

8.8. The failure by the Organisation to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Organisation's right to subsequently enforce that provision.

### **Smart Energy Upgrades**

08/05/2024