

## TERMS AND CONDITIONS OF SALE OF BEYOND BUILDING ENERGY

“**Agreement**” means the agreement between Beyond Building Energy and the Customer, which includes these terms and conditions of sale, which terms and conditions apply whenever Beyond Building Energy supplies Goods to the Customer.

“**Beyond Building Energy**” means Beyond Building Systems Pty Limited (ACN 128 030 302). In Victoria this means Rezeko Pty Ltd (ABN: 126 668 068).

“**Customer**” refers to the person, company or entity to whom Beyond Building Energy has agreed to supply Goods.

“**Goods**” means the products supplied by Beyond Building Energy, and includes all services incidental to the sale of the Goods, including site assessment of the Customer’s premises for the purposes of determining the suitability of the premises for installation of the Goods, and delivery, installation and commissioning of Goods.

“**Full Payment**” means payment for the Goods of a sum that includes both the Beyond Building Energy offer price as listed on the Beyond Building Energy website and an amount equivalent to the Rebate.

“**Intellectual Property**” means all intellectual property owned or controlled by Beyond Building Energy, and includes without limitation: (a) any trademarks used by Beyond Building Energy to sell or market Goods or services from time to time; (b) any and all registered and unregistered rights (including copyright) in any and all designs, artistic works, works of artistic craftsmanship or other copyright subject matter comprising, or comprised in the Goods; and (c) the overall distinctive finish, "get-up", look and feel of the Goods.

“**Rebate**” means any financial payment to which the Customer is entitled in respect of the Goods under the Australian Government Department of the Environment and Water Resources Australian Greenhouse Office Photovoltaic Rebate Program Guidelines for Residential Applicants.

“**Renewable Energy Certificate**” means the form of interest in the Goods recognised under the *Renewable Energy (Electricity) Act 2000* (Cth).

“**Solar Neighbourhood Sponsor**” means an individual, company, local government council or other entity that makes up front payment of a sum equivalent to the Rebate to Beyond Building Energy for the Goods. Where there is no other sponsor, this will be Beyond Building Energy.

### Acceptance of terms and conditions of sale

1. This Agreement supersedes any earlier terms or conditions wherever published or applying between Beyond Building Energy and the Customer, and shall be deemed to override all oral and written agreements, and negotiations by either party prior to the making of the Agreement. The Customer will be deemed to have accepted these terms and conditions if the Customer places any order or otherwise deals with Beyond Building Energy after receiving notice of these terms and conditions. The Customer will be deemed to have accepted these terms of trading in the foregoing circumstances, despite any request by Beyond Building Energy for the Customer to sign a copy of the terms and conditions or otherwise acknowledge the Customer’s acceptance of the Agreement, and despite any omission or refusal of the Customer to do so.

**Prior representations**

2. Any oral representation, warranty or promise whatsoever (other than those contained herein) made by any employee, contractor or agent of Beyond Building Energy to the Customer does not form any part of the Agreement nor the consideration for or basis of any collateral contract.

**Retention of title**

3. The Agreement is not an unconditional sale of Goods to the Customer. No title to the Goods shall pass to the Customer by reason of the delivery of the Goods to the Customer's premises, or the acceptance by Beyond Building Energy of the Customer's request to purchase the Goods. Goods supplied to the Customer by Beyond Building Energy shall remain the sole and absolute property of Beyond Building Energy until installation of the Goods has been completed by Beyond Building Energy or its servants, contractors or agents.

**Risk in Goods**

4. Notwithstanding anything to the contrary contained in this Agreement, all Goods shall be at the risk of the Customer from the time that installation of the Goods in the Customer's premises has been completed.

**Repossession of Goods**

5. Beyond Building Energy is entitled to take possession and dispose of any Goods supplied by Beyond Building Energy to the Customer as Beyond Building Energy sees fit at any time before title vests in the Customer.

**Alterations**

6. Beyond Building Energy reserves the right at its discretion to substitute comparable components that comprise the Goods.

**Performance**

7. Any performance figures given by Beyond Building Energy to the Customer are given in good faith but are estimates only. Beyond Building Energy has no liability for any loss, cost or damage for failure of the Goods to attain such figures unless specifically guaranteed by Beyond Building Energy in writing. Any such written guarantees will be subject to the recognised tolerances applicable to such figures.

**Guarantee**

8. (1) Beyond Building Energy's liability for any defects in the installation of the Goods is limited to making good any defects by repairing the defects or, at Beyond Building Systems Pty Ltd's option and where appropriate, by replacement, in connection with the component parts as follows:

Panels:                    25 years power output to at least 80% of nominated output  
                                  5 years on product materials from installation  
                                  Panel glass is of a high quality and any breakage is a result of

	external influence, therefore no warranty applies to the panel glass.
Inverter:	5 years from installation
Mounting frame:	5 years from installation
Installation:	1 year from installation
Other parts:	1 year from installation,

so long as:

- (a) defects have arisen solely from faulty materials or workmanship;
  - (b) the Goods have not received maltreatment, inattention or interference;
  - (c) accessories of any kind used by the Customer are manufactured by or approved by Beyond Building Systems Pty Ltd;
  - (d) the seals of any kind on the Goods remain unbroken; and
  - (e) the defective parts are promptly returned free of cost to Beyond Building Systems Pty Ltd.
- (2) Beyond Building Energy is not liable for and the Customer releases Beyond Building Energy from any claims in respect of faulty or defective design of the Goods supplied unless such design has been wholly prepared by Beyond Building Energy and the responsibility for any claim has been specifically accepted by Beyond Building Energy in writing. In any event Beyond Building Energy's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with Clause 8(1).
- (3) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the extent permitted by law. Beyond Building Energy is not liable to any person for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of Beyond Building Energy's negligence or in any way whatsoever.

**Permission to enter Customer's premises**

9. The Customer grants permission to Beyond Building Energy and its employees, contractors and/or agents to enter, at any time, any property where any Goods supplied by Beyond Building Energy to the Customer are to be installed and commissioned, and for the purposes of pre-inspecting the property prior to any installation of Goods. The Customer agrees to make himself present at the property for such pre-inspection, installation and/or commissioning, when and as reasonably required by Beyond Building Energy or its employees, agents and contractors.

**Indemnity**

10. If the Customer sells, disposes of, or otherwise deals with the Goods or any part thereof before full payment has been received by Beyond Building Energy including payment of the Rebate, the Customer must advise Beyond Building Energy in writing. The Customer will indemnify Beyond Building Energy from any damages, costs, liabilities or penalties which Beyond Building Energy may suffer or incur from the Customer's failure to provide information or from relying on the information provided by the Customer.

**Recovery of costs**

11. All costs (including but not limited to legal costs on an indemnity basis) incurred by Beyond Building Energy in obtaining payment from the Customer or in endeavouring to trace the whereabouts of the Goods or obtaining or endeavouring to obtain possession thereof, whether by action or suit or otherwise, and all other transport, storage, sale, repossession and like expenses shall all be recoverable by Beyond Building Energy from the Customer in addition to and without prejudice to Beyond Building Energy's other rights under the Agreement.

**Price**

12. This order is placed on a firm price basis in accordance with the price(s) listed on Beyond Building Energy's website and is not subject to increases in price without the buyer's prior approval in writing and which price includes delivery and installation of the Goods.

**Installation**

13. Beyond Building Energy takes care to ensure that the Goods are installed by competent, trained and independently insured installers approved by the Australian Business Council for Sustainable Energy (BCSE). All care is taken by Beyond Building Energy in selecting installers for of the Goods, but no responsibility is taken for any loss cost or damage incurred by reason of any act or omission of the installer, and the Customer indemnifies and keeps indemnified Beyond Building Energy against any claim suit or demand arising from any loss, cost or damage occasioned or arising from the conduct of the installer.

**Additional expenses**

14. The cost of connecting the Goods to the electricity grid is the responsibility of the Customer. The Customer may also become liable to pay additional expenses for the installation of the Goods if Beyond Building Energy or its employees, agents or contractors form the opinion that the Customer's premises are not immediately suitable for the installation of the Goods including, without limitation, due to presence of asbestos, inaccessible roofs or defective wiring. Where the Customer is required to pay additional costs in order to complete installation of the Goods, Beyond Building Energy will first notify the Customer as to the quantum of additional cost, and give the Customer the opportunity to cancelling the order under Clause 20.

**Payment**

15. Unless the Customer has written approval for credit, all payments are to be made by PayPal, bank cheque or other cleared funds at the time of ordering the Goods. If the Customer has credit approval, payment must be within 14 days of invoice or such other

period, if any, as may have been agreed to in writing by Beyond Building Energy, failing which interest is payable by the Customer thereafter on demand at the rate of 12% per annum calculated daily until the date of payment of the balance outstanding from time to time. The Customer acknowledges and agrees that this rate and the amount chargeable represent the minimum loss and liquidated damages which will be sustained by Beyond Building Energy in the event of non-payment. Beyond Building Energy has the right in its discretion to withdraw credit at any time prior to the delivery of the whole of any order.

#### **Assignment of Rebate**

- 16.1 Upon the entering into this Agreement the Customer unconditionally undertakes to assign and is deemed to have assigned for the exclusive benefit of the Solar Neighbourhood Sponsor its interest in the Rebate. The Customer agrees to complete and execute for the benefit of Solar Neighbourhood Sponsor any documents, contracts or papers reasonably necessary to give effect to such assignment. The Customer undertakes not to otherwise deal with the Rebate.
- 16.2 Where the Customer has made Full Payment for the Goods, the Customer retains exclusive benefit of the Rebate.

#### **On sale of Goods**

17. Upon the sale to third parties of any Goods supplied by Beyond Building Energy to the Customer prior to the full payment of all monies owing to Beyond Building Energy, including payment and assignment to Beyond Building Energy of the Rebate, the Customer agrees to hold all proceeds on trust for Beyond Building Energy and deposit such proceeds in a separate bank account and agrees to not mix the proceeds with any other monies and shall account to Beyond Building Energy upon demand.

#### **Assignment of Renewable Energy Certificates**

18. Upon entering into this Agreement, the Customer unconditionally undertakes to assign and is deemed to have assigned to Beyond Building Systems Pty Ltd its right to create Renewable Energy Certificates. The Customer agrees to complete and execute for the benefit of Beyond Building Systems Pty Ltd any documents, contracts, or papers reasonably necessary to give effect to this assignment. The Customer undertakes not to otherwise deal with its right to create Renewable Energy Certificates.

#### **Customer's liability to pay Solar Neighbourhood Sponsor equivalent of Rebate**

19. If in the event that the Australian Government, Department of Environment and Water Resources, Australian Greenhouse Office declines to grant or pay a Rebate to the Customer after granting pre-approval for the payment of the Rebate to the Customer, the Customer agrees to pay the Solar Neighbourhood Sponsor an amount equal to the quantum of the Rebate.

#### **Cancellation**

20. Orders cannot be cancelled by the Customer except by arrangement in writing by Beyond Building Energy. Goods ordered in error or in excess cannot be returned for credit or exchange except by special arrangement agreed to in writing by Beyond Building Energy. In these circumstances Goods will only be accepted if returned in their original packaging

by Beyond Building Energy's nominated carrier in saleable condition, and received by Beyond Building Energy within 7 days from the date of such arrangement. Orders or balance of orders may be cancelled by Beyond Building Energy in the event of any failure by the Customer to adhere to the terms of the Agreement or if Beyond Building Energy suspects the credit worthiness of any Customer. Orders may be cancelled by the Customer where the Customer is required to pay additional expense in relation to the installation of the Goods, and declines to make such payment or if the Goods are not installed within six months of making an order. Orders may be cancelled by Beyond Building Energy if:

- i. due to its inability to supply Goods including, without limitation, failure by its suppliers to provide any part of Goods;
- ii. variations or cessation of the rebate scheme; or
- iii. failure of any solar neighbourhood to reach 50 orders.
- iv. where it is not possible to obtain a rebate for the applicant.
- v. where economic conditions force the prices of its materials and services up, including but not limited to currency changes and global economic pressures, to the extent that the price agreed with the customer is no longer sustainable to Beyond Building Energy.

Should an order be cancelled by Beyond Building Energy, a full refund will be made to the Customer.

**Acceptance of order**

21. Beyond Building Energy is not obliged to accept any order. Failure on the part of the Customer to make any payment on the due date shall constitute a breach of an essential term of the Agreement and Beyond Building Energy shall be entitled to treat such failure as a repudiation of the contract by the Customer and, without limiting Beyond Building Energy's rights, Beyond Building Energy shall be relieved of any further performance thereof.

**Availability of Goods**

22. If Goods ordered by the Customer are not available at the time of order they will be supplied by Beyond Building Energy when available, and Beyond Building Energy shall not be liable to the Customer to make good any damage or loss whether arising directly or indirectly as a result of any ensuing delay in delivery. The Customer expressly acknowledges that the price of the Goods has been determined on the basis of bulk orders being satisfied by multiple Customers. The Customer expressly acknowledges that Beyond Building Energy may, and is in fact likely to suffer delay in receiving minimum bulk orders before shipment of Goods occurs. The Customer further acknowledges that delays may be caused as a result of the Australian Greenhouse Office in considering any application for pre-approval for the Rebate, as well as the time taken by Beyond Building Energy or its contractors to perform site assessment to determine the suitability of the Customer's premises for the installation of the Goods.

**Delivery times**

23. Any times quoted for delivery are estimates only, involving no contractual obligation and Beyond Building Energy shall not be liable to the Customer to make good any damage or

loss whether arising directly or indirectly out of the delay in installation and commissioning. Time will not be of the essence for any installation and commissioning. Beyond Building Energy may notify the Customer of any delay in writing at its earliest convenience.

**Delivery of excess quantity of Goods**

24. In the event of any over-delivery in quantity of Goods to the Customer, the Customer must accept the Goods ordered and may reject the rest, in which case it must immediately inform Beyond Building Energy, and allow Beyond Building Energy to retrieve the excess Goods. The estimated quantities shown in any quotation are not guaranteed and the Customer will be charged for actual lesser quantity supplied unless Beyond Building Energy has indicated in writing to the contrary.

**Delivery**

25. Without prejudice to Clause 15 of these terms and conditions of sale, where the Customer requests delivery to any site, including the Customer's premises, Beyond Building Energy can elect to deliver the Goods to that location but, if the location is unattended at the time of delivery, Beyond Building Energy may leave the Goods at the location and Beyond Building Energy shall not be responsible for any damage to or loss of the Goods after delivery howsoever arising.

**Force majeure**

26. In the event of a "force majeure" event Beyond Building Energy shall be entitled either to rescind the Agreement (without being liable for damages) or to extend delivery or time for performance by a reasonable period of not less than the duration of such event and all liability under any contract, including liability for damage whether specified or otherwise, shall be modified or adjusted accordingly. "Force majeure" shall include all happenings beyond Beyond Building Energy's control or in consequence of which Beyond Building Energy is hindered in executing its obligations and shall include all strikes, trade disputes, fire, accidents and supply, import or export delays.

**Disclaimer of liability**

27. Beyond Building Energy shall not be liable for any costs, expenses, loss or damage of whatsoever nature and whether direct, indirect or consequential caused by or contributed to by any error, misrepresentations or misleading information supplied by or contained by any manufacturer's or supplier's packaging, labels, specifications, brochures, pamphlets, advertising or other media.

**Indemnity**

28. The Customer shall indemnify Beyond Building Energy against all claims, costs and liability arising out of any infringement or alleged infringement of any law or the rights of any third party, including without limitation any copyright, patent, design, or formula, in connection with the supply of Goods at the Customer's request or specification.

**Warranty**

29. Except for such conditions or warranties as are required by law to be implied and the

provisions of Clause 8, no condition, warranty or representation of any kind is given by Beyond Building Energy to the Customer whether in relation to the condition or suitability of the Goods, the date of delivery, the quality, fitness, safety, quiet enjoyment or otherwise of the Goods and all warranties, conditions and representations are hereby excluded to the maximum extent permitted by law. Furthermore, Beyond Building Energy's liability for the breach of any conditions or warranties implied by law is limited to, at the option of Beyond Building Energy, replacement of the Goods, or supply of equivalent Goods, or repair of the Goods, or payment of the costs of such replacement, supply or repair. The Customer acknowledges that, except as aforesaid, Beyond Building Energy is not liable for any cost, expenses, loss or damage of whatsoever nature, whether direct, indirect or consequential, caused by or resulting from breach of any conditions or warranties.

#### **Jurisdiction**

30. The Agreement shall be deemed to have been entered into in the State of New South Wales and the Customer agrees to submit to the exclusive jurisdiction of the courts of that State, except in the case of Victorian customers, where the agreement shall be deemed to have been entered into in the State of Victoria and Victorian Customers agree to submit to the exclusive jurisdiction of the courts of that State.

#### **Intellectual Property**

31. The Customer acknowledges and agrees that under no circumstances will it take any interest in Intellectual Property, and Beyond Building Energy reserves all of its rights in respect of the Beyond Building Energy Intellectual Property.

#### **Severance**

32. If any terms in this Agreement shall for any reason be declared or become unenforceable, invalid or illegal for any reason, the other terms and provisions of this Agreement shall remain in full force and effect as if the Agreement never included the unenforceable, invalid or illegal terms.

#### **No waiver**

33. Beyond Building Energy's failure to exercise or delay in exercising any right, power or privilege will not operate as a waiver of any such right, power or privilege.
34. Any leniency, indulgence or extension of time which may be granted by Beyond Building Energy to the Customer will not prejudice any of Beyond Building Energy's rights in any way, nor will they constitute a waiver of any of Beyond Building Energy's rights.

#### **Variation of Agreement**

35. No variation of or addition to this Agreement will be binding unless reduced to writing and signed by both parties hereto or their duly authorised representatives.

#### **Notices**

36. Any notice or other notification required to be given under this Agreement must be in writing and will be deemed duly served three days after it is mailed postage prepaid or by registered mail or by security post, or one day after transmission by facsimile by either

party to the other party as its address shown herein or last known business address or relevant facsimile number.

**GST**

37. If and to the extent that any payment or other consideration to be made or furnished by Beyond Building Energy to a person other than the Customer, pursuant to or in connection with this Agreement, may be increased or added to by reference to (or as a result of any increase in the rate of) any GST for which Beyond Building Energy is not entitled to receive and retain an "Input Tax Credit" (as defined in *A New Tax System (Goods and Services Tax) Act 1999*), the Customer shall pay to Beyond Building Energy on demand an amount equal to that increase or the value of that addition.

**Privacy**

38. Beyond Building Energy may disclose any personal information in its possession relating to the Customer to any credit reporting agency or similar body, for the purpose of assessing the Customer's creditworthiness. The Customer consents to such disclosure, and also consents to Beyond Building Energy receiving information from credit reporting agencies or similar bodies regarding the Customer's commercial activities or creditworthiness.

**Customer warranty**

39. The Customer warrants for the benefit of Beyond Building Energy that any and all information provided by the Customer to Beyond Building Energy in connection with any order to purchase the Goods is true and correct. If in the event that Beyond Building Energy relies upon such information and Beyond Building Energy suffers loss or damage as a result of that information being in any way materially false or incorrect, the Customer indemnifies Beyond Building Energy for such loss or damage including consequential loss suffered by Beyond Building Energy.