

## Terms and Conditions of Sale – 15/02/2023

### 1. Definitions

1.1. Agreement shall mean acceptance by the Customer of a quotation or invoice for the supply and/or installation of Goods and/or Services by Energy Makeovers, or where no quotation or invoice is issued or accepted: the signing electronically or on paper of an Energy Makeovers 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.

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

1.3. 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 Energy Makeovers.

1.4. Energy Makeovers shall mean Energy Makeovers Pty. Ltd. ABN 77 131 681 859, its successors and assigns or any person acting on behalf of and with the authority of Energy Makeovers Pty. Ltd.

1.5. Goods shall mean all goods supplied by Energy Makeovers to the Customer including systems (and where the context so permits shall include any supply of Services as hereinafter described) and are as described on the invoices, quotations or any other form as provided from Energy Makeovers 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 Energy Makeovers and the Customers in accordance with clause 3 of this Agreement.

1.9. Scheme shall mean a "white certificate scheme" wherever so operating in Australia, including but not limited to the Victorian Energy Upgrade (VEU) program, the Energy Saving Scheme (ESS), the Residential Energy Efficiency Scheme (REES) and the Energy Efficiency Improvement Scheme (EEIS).

1.10. Services shall mean all services supplied by Energy Makeovers 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 Energy Makeovers to the Customer including installation of the Goods.

### 2. Acceptance

2.1. Any instruction received by Energy Makeovers 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 entered into the Agreement, the Customer shall be jointly and severally liable for all payments of the Price.

2.3. Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with Energy Makeovers' written consent.

### 3. Price and Payment

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

3.3. Energy Makeovers 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 Energy Makeovers.

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 Energy Makeovers.

3.5. Energy Makeovers may deliver and/or install the Goods in separate instalments. Each instalment may be invoiced separately if agreed between Energy Makeovers 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 Energy Makeovers and the Customer.

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

3.7. Any Call-out Fees or Site Assessment Fees charged to the Customer are non-refundable.

3.8. 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.

3.9. If a site revisit is deemed a customer related fault, the customer will be charged a callout fee. The current and applicable callout fee can be found on Energy Makeovers website or by calling our

customer services centre during normal business hours.

### 4. Certificates

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

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

4.3. The market value of any Certificates Energy Makeovers is unable to create because of the Customers failure to assign to Energy Makeovers 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 Energy Makeovers and shall not pass to the Customer until the Price for the Goods and/or Services has been paid in full and received by Energy Makeovers.

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 Energy Makeovers and shall not pass to the Customer until a valid Assignment Form or Nomination Form has been completed and signed by the Customer and provided to Energy Makeovers.

5.3. Until title to the Goods and/or Services passes to the Customer:

5.3.1. Energy Makeovers shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods and/or Services;

5.3.2. Energy Makeovers and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods and/or Services or any parts are stored, or upon which Energy Makeovers reasonably believes them to be kept;

5.3.3. the Customer shall store or mark the Goods and/or Services in a manner reasonably satisfactory to Energy Makeovers indicating that title to the Goods and/or Services remains vested in Energy Makeovers; and

5.3.4. the Customer shall insure the Goods and/or Services to their full replacement value, and arrange for

## Terms and Conditions of Sale – 15/02/2023

Energy Makeovers 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 and/or Services remains vested in Energy Makeovers, risk in the Goods and/or Services shall pass to the Customer immediately upon delivery of the Goods and/or Services to the Customer.

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

5.6. Goods and/or Services are not entitled to be returned except at the discretion of Energy Makeovers. Returned Goods and/or Services will only be accepted if written consent is given by Energy Makeovers. In the event that Goods and/or Services are returned, the Customer shall be liable to pay Energy Makeovers all agreed damage, freight and other expenses associated with return of the Goods and/or Services 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 Energy Makeovers to limit the remedies available to it in respect of the Customer for a breach of a consumer guarantee, Energy Makeovers limits its remedies to the Customer, at Energy Makeovers' 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

Energy Makeovers 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 Energy Makeovers; 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, Energy Makeovers 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 Goods and/or Services, failure to comply with any instructions supplied with the Goods and/or Services or usage of the Goods and/or Services for purposes other than that for which the Goods and/or Services 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 Energy Makeovers;

6.4.3. if the Goods and/or Services is moved for any reason after it has been installed unless the Goods and/or Services 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 Energy Makeovers reasonable control and not arising under normal and standard operating conditions; or

6.4.5. if the Goods and/or Services is altered or modified in any way unless such modification has been approved in writing by Energy Makeovers.

### 7. Force Majeure

7.1. A force majeure Event does not excuse a failure to pay. If a force majeure event prevents Energy Makeovers from partially or wholly complying with obligations under the Agreement then Energy Makeovers shall not be obliged to perform those obligations until it is no longer prevented from doing so and Energy Makeovers shall be granted an extension of time accordingly. If Energy Makeovers are prevented by the force majeure event from carrying out such obligations for more than 6 months, 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 Energy Makeovers:

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

7.2.2. the cost of materials reasonably ordered by Energy Makeovers 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. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

8.3. Energy Makeovers 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 Energy Makeovers 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 Energy Makeovers or to withhold payment of any invoice because part of that invoice is in dispute.

8.5. The Customer agrees that Energy Makeovers may review these terms and conditions at any time.

8.6. Energy Makeovers reserves the right to subcontract all or part of the supply, delivery and installation of the Goods and/or Services.

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 Energy Makeovers to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Energy Makeovers' right to subsequently enforce that provision.