

Terms and Conditions (Solar Health Check)

1. Summary of key terms

Below is a summary of the key terms set out in these Terms. It is important however that you review all of the provisions set out in these Terms in their entirety.

- (a) **Inspection and Report:** GEM Energy's primary responsibility is to undertake the Inspection and deliver the Report to you. The Report is for your personal use only. Please refer to clause 7.1(d) for more information.
- (b) **Your obligations:** Clause 3.2 sets out your obligations in connection with the Inspection. Please review this clause in detail.
Importantly, clause 3.2(d) requires you to obtain and make available at least 10 spare terracotta tiles at the Installation Location if the roofing material is terracotta.
If you fail to comply with these obligations, GEM Energy may suspend the Inspection and you may be required to pay additional costs.
- (c) **Critical electrical issues:** If GEM Energy identifies any critical electrical issues during the Inspection, it may immediately disconnect the Existing Equipment. GEM Energy has no obligation to or liability for reconnection of such Existing Equipment. Please refer to clause 3.3 for more information.
- (d) **Price:** You must pay the Price upon acceptance of the Accepted Quote.
- (e) **Termination rights:** Either party may terminate these Terms in accordance with clause 5.1(c).
- (f) **GEM Energy's liability:** Except for ACL Claims, GEM Energy's liability is limited to the total Price paid by you. Please refer to clause 7 for more information.

2. General

In consideration of the Customer paying the Price, GEM Energy Australia Pty Ltd ACN 164 579 382 (**GEM Energy**) agrees to undertake an Inspection and deliver the Report to you (**Customer**) in accordance with these terms and conditions (**Terms**).

3. Inspection and Report

3.1 General

- (a) GEM Energy agrees to attend the Installation Location to (**Inspection**):
 - (i) inspect and assess the Customer's existing solar panel equipment (**Existing Equipment**); and
 - (ii) prepare a written report regarding the findings as to the ongoing fitness for purpose of the Existing Equipment (**Report**).
- (b) Within a reasonable time after acceptance of the Accepted Quote, GEM Energy will undertake the Inspection and deliver the Report to the Customer within a reasonable time following the Inspection.
- (c) Upon GEM Energy's request, the Customer must provide GEM Energy with all information reasonably necessary to prepare the Report.
- (d) GEM Energy agrees to ensure that its Personnel undertake the Inspection, and provide the Report:
 - (i) with due care, skill and diligence, in a safe and lawful manner; and
 - (ii) using appropriately qualified, licensed and trained personnel.

3.2 Customer's obligations

The Customer must:

- (a) ensure that a person who is at least 18 years of age is in attendance at the Installation Location at all times while the Inspection is being performed;
- (b) provide clear and unhindered access to the Installation Location and any parts of the Installation Location or its near surrounds reasonably required by GEM Energy to perform the Inspection;
- (c) keep and maintain the Installation Location in a clean, safe and secure condition, and ensure that the Installation Location is safe for GEM Energy to perform the Inspection;
- (d) if the roofing material at the Installation Location is terracotta tiles, obtain and make available at least 10 spare terracotta tiles at the Installation Location for use by GEM Energy in repairing any cracked tiles arising during or in connection with the Inspection;
- (e) notify GEM Energy prior to its Personnel attending the Installation Location if there is any asbestos at the Installation Location;
- (f) permit, or obtain such permissions, to reasonably allow GEM Energy and its Personnel to enter, and perform the Inspection at the Installation Location;
- (g) cooperate with, act reasonably, provide true information and follow GEM Energy's directions;
- (h) permit GEM Energy to take any photographs or record other evidence for the purposes of preparing the Report;
- (i) ensure that it has all necessary consents and notices in place to enable lawful transfer to or recording by GEM Energy of any personal information or data; and
- (j) not film or otherwise record any part of the Inspection without GEM Energy's prior written consent.

3.3 Critical electrical issues

If, during the Inspection, GEM Energy identifies any critical electrical issues that may be deemed unsafe (acting reasonably), GEM Energy may immediately disconnect the Existing Equipment using reasonable means and report such circumstances to the relevant electrical safety office. The Customer acknowledges that it must not reconnect the Existing Equipment unless and until the required rectification works are completed. For the avoidance of doubt, GEM Energy is not responsible for any costs associated with reconnecting the Existing Equipment.

4. Price and invoicing

- (a) The Customer will pay GEM Energy the Price in respect of the Inspection and Report. The Price is exclusive of GST and other similar taxes and surcharges and net of withholding or other similar taxes.
- (b) The Price becomes due and payable on acceptance of the Accepted Quote. The Customer must pay all invoices by the due date.
- (c) The Customer will pay GEM Energy for any additional products or services outside of the Inspection and Report requested by the Customer at GEM Energy's then current market rates for such products or services.
- (d) If the Customer does not pay any invoice on or before the due date, GEM Energy shall be entitled to receive interest on overdue payments of 1% per month and to withhold the Inspection and/or delivery of the Report.

5. Termination

5.1 General

- (a) Provided that the Customer pays GEM Energy for any Termination Costs, the Customer may terminate these Terms and the Accepted Quote at any time prior to commencement of the Inspection. Without limiting GEM Energy's other rights, the Customer agrees that GEM Energy may apply the Price paid in advance towards any such Termination Costs.

- (b) Provided that GEM Energy refunds any Price paid in advance by the Customer, GEM Energy may terminate these Terms and the Accepted Quote at any time prior to, or during, the Inspection.
- (c) A party may terminate these Terms and the Accepted Quote immediately without notice if the other party:
 - (i) is in material breach of these Terms and, where capable of remedy, has failed to remedy such breach within 20 Business Days of being advised in writing of such breach by the party; or
 - (ii) suffers an Insolvency Event.

5.2 Obligations on termination or expiry

- (a) On termination or expiry of these Terms:
 - (i) the Customer must pay GEM Energy for any services that GEM Energy has provided up to the date of termination for which GEM Energy has not been paid;
 - (ii) GEM Energy will cease to provide the Inspection and Report; and
 - (iii) GEM Energy will have no obligation to deliver the Report, whether fully or partially completed, to the Customer.
- (b) Termination of these Terms will not affect any accrued rights, remedies, obligations or liabilities of the parties.
- (c) Clauses 5 to 7 and 10 survive the expiration or earlier termination of these Terms.

6. Intellectual Property Rights

- (a) The Customer acknowledges that all GEM Energy IP remains the exclusive property of GEM Energy or, where applicable, the third party licensor from whom GEM Energy derives the right to use them.
- (b) All Intellectual Property Rights in, to and in connection with the Report will be owned by GEM Energy (**Created IP**). GEM Energy grants the Customer a non-exclusive, royalty-free (subject to payment of the Price), irrevocable, non-transferable licence to use of the GEM Energy IP and Created IP for the purpose of using and analysing the Report to evaluate the Existing Equipment.

7. Limitation of liability

7.1 General

- (a) Subject to clause 7.2, the total liability of GEM Energy for any Claims arising under or in connection with these Terms that are not ACL Claims will be limited to the total Price paid by the Customer to GEM Energy.
- (b) To the extent permitted by law, neither party shall be liable to the other party for any Consequential Loss.
- (c) Each party must mitigate any Claims it suffers as a result of a breach by the other party of these Terms, or a warranty provided under these Terms (including where such claims or loss give rise to an indemnity).
- (d) As far as the law permits and unless otherwise specified in these Terms:
 - (i) the Report is for personal use only and cannot be assigned to or relied on by any third party;
 - (ii) the Customer shall be solely responsible, as against GEM Energy and its Personnel, for any opinions, recommendations, or other conclusions made or actions taken by the Customer or any other third party based (wholly or in part) on the results obtained from the Report;
 - (iii) GEM Energy shall have no liability for:
 - (A) any breach of warranties provided by a third party in connection with the Existing Equipment as a result of the Inspection or the Report;
 - (B) any injury, loss or damage arising from or in connection with the Existing Equipment or any warranties or representations related to the Existing

Equipment, except to the extent caused by the gross negligence of GEM Energy or its Personnel in performing the Inspection;

- (C) any injury, loss or damage that does not arise from or in connection with the acts or omissions of GEM Energy or its Personnel, including without limitation where such injury, loss or damage arises from or in connection with the Existing Equipment or latent defects at the Installation Location;
- (D) any injury, loss or damage caused by errors or omissions in any information or instructions that the Customer provide to GEM Energy in connection with the Inspection or the Report; and
- (iv) except for the warranties made directly to the Customer in these Terms, GEM Energy makes no warranties with respect to the Inspection and/or Report and disclaims all statutory or implied warranties, including without limitation, warranties of merchantability, fitness for a particular purpose, or arising from a course of dealing or usage of trade and any warranties of non-infringement.

7.2 Australian Consumer Law

If the Australian Consumer Law in schedule 2 of the *Competition and Consumer Act 2010* (Cth) applies to the supply of services under these Terms, GEM Energy acknowledges and agrees that its services come with a guarantee that cannot be excluded, and that the following mandatory notice under section 102(1) of the Australian Consumer Law that must be provided to the Customer will apply:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

8. Force Majeure

- (a) Neither party shall be liable for any delay or failure to perform its obligations under these Terms if due to Force Majeure.
- (b) A party may terminate these Terms on written notice to the other party if a Force Majeure continues for a period of 30 days.

9. General

9.1 Notices

A notice, consent or communication under these Terms must be in writing, signed by or on behalf of the person giving it, addressed to the receiving person, and will be given and received as follows:

- (a) if it is hand delivered, on the day it is given;
- (b) if it is sent by post, three Business Days after posting; and
- (c) if it is sent by email, that day, if the time of departure from the sender's mail server is before 5.00pm on a business day, or the next business day in any other case.

9.2 Assignment and Subcontracting

- (a) A party must not assign or novate, in whole or in part, any of its rights and obligations under these Terms without the prior written consent of the other party.
- (b) GEM Energy may subcontract, in whole or in part, any of its rights and obligations under these Terms, including without limitation to independent contractors, without the prior written consent of the Customer, provided that GEM Energy will not be relieved of its obligations under these Terms as a result of such subcontracting.

9.3 Miscellaneous

- (a) These Terms may only be amended by written agreement between all parties.
- (b) The laws of Queensland govern these Terms. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- (c) A clause or part of a clause of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining clauses or parts of the clause of these Terms continue in force.
- (d) These Terms supersedes all previous agreements about its subject matter. These Terms embodies the entire agreement between the parties.
- (e) A right under these Terms may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

10. Definitions

In these Terms:

Accepted Quote means a Quote accepted by the Customer.

ACL Claims means any Claims brought under or pursuant to the Australian Consumer Law.

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not a Saturday, Sunday or public holiday in Queensland.

Claims means all losses, liabilities, demands, claims, costs and expenses of any kind.

Consequential Loss means any consequential, special, indirect or incidental loss including without limitation loss of profit, business interruption, loss of business, loss of opportunity, loss of reputation or loss related to breach of third party contracts or arrangements.

Force Majeure means a matter beyond the reasonable control of a party and includes an act of God, national emergency, flood, storm, earthquake, fire, explosion, epidemic, pandemic, civil disturbance, riot, war, industrial action, quarantine, embargo and other similar governmental action or a general and continued energy shortage, power or utilities interruption, but cannot apply with respect to the payment of money due under these Terms.

GEM Energy IP means any existing or subsequently created Intellectual Property Rights owned or licensed by GEM Energy and includes any improvements to such Intellectual Property Rights.

Insolvency Event means any of the following events occur to a party:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller is appointed to, or over, any of the property or undertaking of the party;
- (b) if the party is unable to pay their debts when they become due and payable;
- (c) if the party ceases to carry on business; or
- (d) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Inspection has the meaning given to that term in clause 3.1(a).

Installation Location means the location of where the Inspection will be performed by GEM Energy or its Personnel as set out in the Accepted Quote.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, whether registered, unregistered or unregistrable, including all copyrights, patents, trademarks, service marks, designs, confidential information, trade secrets, know how, data and databases, systems and domain names.

Quote means a quote issued by GEM Energy for the provision of the Inspection and Report.

Personnel means a party's directors, officers, employees, agents, contractors and subcontractors, as the context permits.

Price means the price for the provision of the Inspection and the Report set out in the Accepted Quote.

Termination Costs means:

- (a) if the Customer terminates the Terms and the Accepted Quote at least 5 Business Days prior to the date for the Inspection, nil;
- (b) if the Customer terminates the Terms and the Accepted Quoted within 5 Business Days prior to the date for the Inspection, 50% of the Price.