

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“ZEN Energy”** means ZEN Energy Systems New Zealand Limited, its successors and assigns.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting ZEN Energy to provide the Goods and Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **“Services”** means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by ZEN Energy to the Client at the Client's request from time to time (where the context so permits the terms 'Services' or 'Goods' shall be interchangeable for the other).
- 1.5 **“Worksite”** means the address nominated by the Client to which the Goods are to be supplied by ZEN Energy.
- 1.6 **“Cookies”** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using ZEN Energy's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between ZEN Energy and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with ZEN Energy and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, ZEN Energy reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by ZEN Energy in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on ZEN Energy's own knowledge and experience and shall be accepted without liability on the part of ZEN Energy. Where such advice or recommendations are not acted upon then ZEN Energy shall require the Customer or their agent to authorise commencement of the Services in writing. ZEN Energy shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Where the Client requests urgent repairs are undertaken without a quote, the Client agrees that ZEN Energy will undertake best practice repairs at its normal hourly rate. Should the Client have a set budget for the repairs then they must make this known to ZEN Energy prior to the commencement of the Services. Failure to do so will be at the cost of the Client.
- 2.8 Normal service hours shall be deemed to be to fall within ZEN Energy's normal working hours of Monday to Friday (excluding public holidays), 8:00am – 5:00pm. Any emergency Service, which shall constitute no cooling or water leaking where property damage may occur, outside these hours shall be charged to the Client at ZEN Energys prevailing rates.
- 2.9 The minimum charge rate for minor out call work must be pre-paid for all non-account holding Clients.
- 2.10 ZEN Energy shall endeavour to source replacement parts where possible. If the replacement parts are unavailable or obsolete, ZEN Energy may then exclude the affected equipment and/or assets from Services provided by any current contract.
- 2.11 Where the Client is a tenant (and therefore not the owner of the land and premises where Goods are to be installed) then the Client warrants that the Client has obtained the full consent of the owner for ZEN Energy to install the Goods on the owners land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Services provided under this contract and to indemnify ZEN Energy against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Goods and the provision of any related Services by ZEN Energy except where such claim has arisen because of the negligence of ZEN Energy when installing the Goods.
- 2.12 The Client agrees that they shall upon request from ZEN Energy provide evidence that;
- (a) they are the owner of the land and premises upon which the Services are be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Goods to be installed on the land and premises upon which the Services are be undertaken.
- 2.13 ZEN Energy shall not be held liable for any deviations from or mistakes in the information supplied from the manufacturer or any errors in the interpretation of the information, where the manufacturer of any Goods supplied to the Client makes technological improvements and/or minor modifications to technical specifications and design of the Goods. All catalogues and similar publications are provided as an approximate guide.
- 2.14 Should ZEN Energy advise that any of the Client's equipment/machinery is unsafe to use, the Client accepts that ZEN Energy accepts no responsibility for any loss of production that may occur.
- 2.15 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that ZEN Energy shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by ZEN Energy in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by ZEN Energy in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of ZEN Energy, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to ZEN Energy as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies ZEN Energy in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise ZEN Energy in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to ZEN Energy for all additional costs incurred by ZEN Energy (including ZEN Energy's profit margin) in providing any Services, Goods, services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give ZEN Energy not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by ZEN Energy as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At ZEN Energy's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by ZEN Energy to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to ZEN Energy's current price list; or
 - (c) ZEN Energy's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 ZEN Energy reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, air-balancing required, improper unit sizing and design deficiencies, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to ZEN Energy in the cost of labour or Goods which are beyond ZEN Energy's control.
- 6.3 Variations will be charged for on the basis of ZEN Energy's quotation, and will be detailed in writing, and shown as variations on ZEN Energy's invoice. The Client shall be required to respond to any variation submitted by ZEN Energy within ten (10) working days. Failure to do so will entitle ZEN Energy to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At ZEN Energy's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by ZEN Energy, which may be:
- (a) on completion of the Services;
 - (b) by way of progress payments in accordance with ZEN Energy's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the Worksite but not yet installed;
 - (c) for certain approved Clients, due the end of the month following the date of invoice;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ZEN Energy.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and ZEN Energy.
- 6.7 Receipt by ZEN Energy of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then ZEN Energy's ownership or rights in respect of Services, and this contract, shall continue.
- 6.8 ZEN Energy may in its discretion allocate any payment received from the Client towards any invoice that ZEN Energy determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, ZEN Energy may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ZEN Energy, payment will be deemed to be allocated in such manner as preserves the maximum value of ZEN Energy's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ZEN Energy nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by ZEN Energy is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.10 prevents the Client from the ability to dispute any invoice.

- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to ZEN Energy an amount equal to any GST ZEN Energy must pay for any supply by ZEN Energy under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Provision of the Services**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at ZEN Energy's address; or
 - (b) ZEN Energy (or ZEN Energy's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At ZEN Energy's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 Subject to clause 7.4, it is ZEN Energy's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.4 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that ZEN Energy claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond ZEN Energy's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify ZEN Energy that the site is ready.
- 7.5 ZEN Energy may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by ZEN Energy for delivery of the Goods is an estimate only and ZEN Energy will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that ZEN Energy is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then ZEN Energy shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Worksite Access and Condition**
- 8.1 ZEN Energy is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by ZEN Energy will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 8.2 It is the intention of ZEN Energy and agreed by the Client that:
- (a) the Client shall ensure that ZEN Energy has clear and free access to the Worksite at all times to enable them to undertake the Services (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). ZEN Energy shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ZEN Energy;
 - (b) it is the Client's responsibility to provide ZEN Energy, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 8.3 The Client agrees to be present at the Worksite when and as reasonably requested by ZEN Energy and its employees, contractors and/or agents.
- 8.4 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of ZEN Energy to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay ZEN Energy's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where ZEN Energy is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out ZEN Energy's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Services will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by ZEN Energy.
- 9. Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, ZEN Energy is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ZEN Energy is sufficient evidence of ZEN Energy's rights to receive the insurance proceeds without the need for any person dealing with ZEN Energy to make further enquiries.
- 9.3 If the Client requests ZEN Energy to leave Goods outside ZEN Energy's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 10. Compliance with Laws**
- 10.1 The Client and ZEN Energy shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 10.2 The Client acknowledges and accepts that upon ZEN Energy's service technician initial inspection of the Client's system for compliance to New Zealand Standards. Where the system or components of the system fail to meet such Standards, it shall be the responsibility of the Client to bring the non-compliant system or components up to meet Standards criteria. Until such time as this is achieved, such systems or components shall be excluded from coverage under any contract agreed to by the Client and ZEN Energy.
- 10.3 All of the cabling work will comply with the Australian and New Zealand Wiring standards.

- 10.4 Notwithstanding clause 10.1 and pursuant to the Health & Safety at Work Act 2015 (the “HSW Act”), ZEN Energy agrees at all times to comply with sections 28 and 34 of the “HSW Act” with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 10.5 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services.
- 11. Client’s Responsibility:**
- 11.1 The Client is responsible for the correct operation and regular maintenance.
- 11.2 The Client accepts and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 11.3 Prior to ZEN Energy commencing any work the Client must advise ZEN Energy of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.4 Whilst ZEN Energy will take all care to avoid damage to any underground services the Client agrees to indemnify ZEN Energy in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.3
- 12. Client’s Acknowledgements and General Exclusions:**
- 12.1 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 12.2 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify ZEN Energy immediately upon any proposed changes. The Client agrees to indemnify ZEN Energy against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 12.3 The Client warrants that any structures to which the Goods are to be affixed are able to:
- (a) withstand the installation of the Goods once installed. The Client accepts that if the structural integrity is in a compromised state prior to installation of the Goods, then minor cracking in plaster or other ceiling surfaces could result after installation due to the weight of the Goods; and
- (b) that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that ZEN Energy, or employees of ZEN Energy, reasonably form the opinion that the Client’s premises is not safe for the installation of Goods to proceed then ZEN Energy shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 7.3 above) until ZEN Energy is satisfied that it is safe for the installation to proceed.
- 12.4 The Client acknowledges that ZEN Energy is only responsible for parts that are replaced by ZEN Energy and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify ZEN Energy against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 12.5 ZEN Energy shall not be held responsible for any changes, additions or deletions to existing assets of the Client due to any requirements dictated by local codes, government authorities, insurance companies or any other third party unless authorised and contracted by the Client for such work.
- 12.6 This contract does not cover any work to assets not covered by this contract including but not limited to, high voltage electrical work, blown fuses, disconnected circuit breakers, plumbing and/or piping.
- 12.7 The Client acknowledges that variation in high grid voltage supplied can negatively impact the performance of a solar energy system, which can result in lower energy generation from the solar energy system. It is New Zealand’s regulatory settings that dictate the parameters within which a solar energy system needs to operate and high grid voltage can be caused by many factors outside of the Client’s and ZEN Energy’s control. Voltage on the electricity network is set and controlled by the Client’s local / regional electricity network operator and any remedies for alteration in grid voltage at the Client’s property need to be resolved by the network operator, which has also approved the connection of the Client’s system to their network.
- 13. Title**
- 13.1 ZEN Energy and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid ZEN Energy all amounts owing to ZEN Energy; and
- (b) the Client has met all of its other obligations to ZEN Energy.
- 13.2 Receipt by ZEN Energy of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to ZEN Energy on request;
- (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for ZEN Energy and must pay to ZEN Energy the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the production of these terms and conditions by ZEN Energy shall be sufficient evidence of ZEN Energy’s rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with ZEN Energy to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for ZEN Energy and must pay or deliver the proceeds to ZEN Energy on demand;

- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of ZEN Energy and must sell, dispose of or return the resulting product to ZEN Energy as it so directs;
- (f) unless the Goods have become fixtures the Client irrevocably authorises ZEN Energy to enter any premises where ZEN Energy believes the Goods are kept and recover possession of the Goods;
- (g) ZEN Energy may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ZEN Energy; and
- (i) ZEN Energy may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 1999 (“PPSA”)

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by ZEN Energy to the Client and the proceeds from such Goods.
- 14.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ZEN Energy may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, ZEN Energy for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of ZEN Energy; and
 - (d) immediately advise ZEN Energy of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 ZEN Energy and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by ZEN Energy, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by ZEN Energy under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of ZEN Energy agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies ZEN Energy from and against all ZEN Energy's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ZEN Energy's rights under this clause.
- 15.3 The Client irrevocably appoints ZEN Energy and each director of ZEN Energy as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects and Returns

- 16.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify ZEN Energy of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford ZEN Energy an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ZEN Energy has agreed in writing that the Client is entitled to reject, ZEN Energy's liability is limited to either (at ZEN Energy's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
 - (a) ZEN Energy has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) ZEN Energy will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 Subject to clause 16.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

17. Warranties

- 17.1 Subject to the conditions of warranty set out in clause 17.2 ZEN Energy warrants that if any defect in any Goods manufactured or Services provided by ZEN Energy becomes apparent and is reported to ZEN Energy within twelve (12) months of the date of delivery (time being of the essence) then ZEN Energy will either (at ZEN Energy's sole discretion) replace or remedy the defect.
- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by ZEN Energy; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and ZEN Energy shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without ZEN Energy's consent.
- (c) in respect of all claims ZEN Energy shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 17.3 For Goods not manufactured by ZEN Energy, the warranty shall be the current warranty provided by the manufacturer of the Goods. ZEN Energy shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

18. Consumer Guarantees Act 1993

- 18.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by ZEN Energy to the Client.

19. Intellectual Property

- 19.1 Where ZEN Energy has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in ZEN Energy, and shall only be used by the Client at ZEN Energy's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of ZEN Energy.
- 19.2 The Client warrants that all designs, specifications or instructions given to ZEN Energy will not cause ZEN Energy to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ZEN Energy against any action taken by a third party against ZEN Energy in respect of any such infringement.
- 19.3 The Client agrees that ZEN Energy may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which ZEN Energy has created for the Client.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ZEN Energy's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes ZEN Energy any money the Client shall indemnify ZEN Energy from and against all costs and disbursements incurred by ZEN Energy in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ZEN Energy's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies ZEN Energy may have under this Contract, if a Client has made payment to ZEN Energy, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ZEN Energy under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to ZEN Energy's other remedies at law ZEN Energy shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ZEN Energy shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ZEN Energy becomes overdue, or in ZEN Energy's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by ZEN Energy;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1 Without prejudice to any other rights or remedies ZEN Energy may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then ZEN Energy may suspend or terminate the supply of the Services. ZEN Energy will not be liable to the Client for any loss or damage the Client suffers because ZEN Energy has exercised its rights under this clause.
- 21.2 ZEN Energy may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice ZEN Energy shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to ZEN Energy for Services already performed. ZEN Energy shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by ZEN Energy as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by ZEN Energy is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. ZEN Energy acknowledges its obligation in relation to the handling, use,

disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in the Act. ZEN Energy acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by ZEN Energy that may result in serious harm to the Client, ZEN Energy will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to ZEN Energy in respect of Cookies where the Client utilises ZEN Energy’s website to make enquiries. ZEN Energy agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to ZEN Energy when ZEN Energy sends an email to the Client, so ZEN Energy may collect and review that information (“collectively Personal Information”)

If the Client consents to ZEN Energy’s use of Cookies on ZEN Energy’s website and later wishes to withdraw that consent, the Client may manage and control ZEN Energy’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.

22.3 The Client authorises ZEN Energy or ZEN Energy’s agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client’s creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by ZEN Energy from the Client directly or obtained by ZEN Energy from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993 and 2020.

22.5 The Client shall have the right to request (by e-mail) from ZEN Energy, a copy of the Personal Information about the Client retained by ZEN Energy and the right to request that ZEN Energy correct any incorrect Personal Information.

22.6 ZEN Energy will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.7 The Client can make a privacy complaint by contacting ZEN Energy via e-mail. ZEN Energy will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Suspension of Services

23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

- (a) ZEN Energy has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator’s notice that the Client must pay an amount to ZEN Energy by a particular date; and
 - (iv) ZEN Energy has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if ZEN Energy suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator’s determination has not been complied with.
- (c) if ZEN Energy exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to ZEN Energy under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of ZEN Energy suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes ZEN Energy from continuing the Services or performing or complying with ZEN Energy’s obligations under this Contract, then without prejudice to ZEN Energy’s other rights and remedies, ZEN Energy may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by ZEN Energy as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

23.2 If pursuant to any right conferred by this Contract, ZEN Energy suspends the Services and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, ZEN Energy shall be entitled to terminate the Contract, in accordance with clause 21.

24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not ZEN Energy may have notice of the Trust, the Client covenants with ZEN Energy as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of ZEN Energy (ZEN Energy will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Rotorua Courts, New Zealand.
- 26.4 Subject to the CGA, ZEN Energy shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ZEN Energy of these terms and conditions (alternatively ZEN Energy's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.5 ZEN Energy may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of ZEN Energy.
- 26.7 ZEN Energy may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by doing so. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of ZEN Energy's subcontractors without the authority of ZEN Energy.
- 26.8 The Client agrees that ZEN Energy may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for ZEN Energy to provide Services to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to ZEN Energy.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.