Building Contract Terms and Conditions

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1. Quality of Construction

1.1 All work done under this contract will comply with:

(a) The Building Code of Australia to the extent required under the *Environmental Planning and Assessment Act 1979* (including any instrument made under that Act)

(b) all other relevant codes, standards and specifications that the work is required to comply with under any law

(c) the conditions of any relevant development consent or complying development certificate and any construction certificate.

1.2 Despite subclause 1.1, this contract may limit the liability of RPC for a failure to comply with subclause 1.1 if the failure relates solely to:

(a) a design or specification prepared by or on behalf of the Owner (but not by or on behalf of RPC), or

(b) a design or specification required by the Owner, if RPC has advised the Owner in writing that the design or specification contravenes 1.1.

2. General condition of Contract

It is agreed, subject to this and the other clauses of this contract, that:

2.1 RPC will:

- Comply with the statutory warranties in section 18B of the Home Building Act 199 and complete the work in accordance with the requirements of this contract; and
- Comply with all relevant Australian Standards, laws and the requirements of the relevant local council and all statutory authorities with respect to the work.

2.2 The Owner will pay the Contract Price in the manner specified in this Contract (see clause 14 and *Payment Schedule*).

3. Warranties

3.1 Supplied Goods under this Contract come with guarantees that cannot be excluded under the Australian Consumer Law ("ACL"). The Owner is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Owner is also entitled to have the Goods repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure.

3.2 Manufacturer's Warranties

(a) All manufacturer's warranties (if any) are "Back to Base" – meaning the Owner will have to deliver the Goods to and collect it from RPC or a mutually agreed service agent

(b) Goods manufactured by RPC are subject to the warranties set out in the documentation provided or made available to the Owner at the time of installation

(c) Goods manufactured by other parties may come with a guarantee or warranty from the manufacturer. Any such guarantees or warranties will be set out:

(i) in the documentation provided or made available to the Owner at the time of installation, or

(ii) on our website www.rpc.com.au

4. Statutory warranties

RPC warrants that:

4.1 the work will be done with due care and skill and in accordance with the plans and specifications set out in the Contract

4.2 all Goods supplied by RPC will be good and suitable for the purpose for which they are used and, unless otherwise stated in the Contract, those Goods will be new

4.3 the work will be done in accordance with, and will comply with, the Home Building Act or any other law

4.4 the work will be done with due diligence and within the time stipulated in the Contract, or if no time is stipulated, within a reasonable time

4.5 the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the Owner expressly makes known to RPC or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of RPC, the particular purpose for which the work is required or the result that the Owner desires the work to achieve, so as to show that the Owner relies on RPC's skill and judgement.

These warranties do not in any way reduce or limit RPC's obligations in relation to workmanship, materials, completion or other matters specified in clause 1 and 2 or elsewhere in this Contract. No provision of this Contract can reduce, restrict or remove these statutory warranties.

5. Contract Price

Rainbow Power Company warrants that as at the date of this Contract, the Contract Price is based upon thorough evaluation of the information supplied by the Owner and includes all matters including equipment that could be reasonably expected to be necessary for the completion of the work covered by this Contract except those Goods and Services listed under *Conditions – Exclusions - Inclusions* and clause 9.

5.1 The Contract Price includes GST, unless otherwise expressly stated.

5.2 The Contract Price is dependent upon an inspection by RPC of the installation site, which may occur on the scheduled installation date. However, subject to this clause 5 and clause 16, RPC will not vary the Contract Price unless,

(d) the information provided by the Owner and relied on by RPC was incorrect or incomplete, or

(e) the Owner failed to provide information that RPC declared to the Owner was required within the time limits required by RPC;

(f) due to unforeseen access constraints or safety concerns, specialist equipment is required for us to perform the Services.

5.3 If RPC needs to vary the Contract Price because:

(a) the information provided by the Owner was incorrect or incomplete, or

(b) the Owner failed to provide information that RPC declared to the Owner was required within the time limits required by RPC,

RPC will advise the Owner of the variation in accordance with clause 16 and the Owner may either accept the varied Contract Price or terminate the Contract in accordance with clause 24.

5.4 If RPC determines that, due to unforeseen access constraints or safety concerns, specialist equipment such as a cherry picker or scaffold will be required for us to perform the Services we will advise you of the additional costs. You may either accept the variation (clause 16) or terminate the Contract in accordance with clause 24.

5.5 The Contract Price may be increased by the amount of any increase in tax or duty which is imposed after the date of this Contract and which directly relates to work done or Goods supplied under this Contract

5.6 The Contract Price may be adjusted after the date of Contract only in accordance with this Contract clause 16.

6. STCs and Government Rebates

6.1 The Owner may be entitled to receive a grant, rebate or other benefit from a government or to create Small-scale Technology Certificates (STCs) as a result of the purchase or installation of the Goods. RPC does not warrant that the Owner will receive any grant, rebate or other benefit or be entitled to create STCs.

6.2 If the *Payment Schedule* and/or Deposit incorporates a point of sale discount on the basis that:

(a) the Owner will assign some or all of the rights to create STCs to RPC; the *Payment Schedule* and/or Deposit is conditional on the Owner assigning to RPC the rights to create those STCs;

(b) RPC will receive payment of a grant, rebate or other benefit, the Owner authorise RPC to apply for that grant, rebate or other benefit in the Owner's name and to receive payment of that grant, rebate or benefit on the Owner's behalf.

6.3 The Owner agrees to take whatever action RPC may reasonably require in order for the assignment referred to in subclause 6.2(a) to take effect or for RPC to obtain payment of the grant, rebate or other benefit referred to in subclause 6.2(b).

6.4 RPC will use reasonable endeavours to assist the Owner to assign to RPC the right to create any STCs or to apply for and receive any grant, rebate or other benefit that the Owner may be entitled to or eligible to create as a result of the purchase or installation of the Goods. However if, for any reason outside RPC's control:

(a) The Owner has not received the payment of any grant, rebate or benefit incorporated in the *Payment Schedul*e and/or Deposit; or

(b) RPC is not able to create the anticipated number of STCs,

the Owner must pay the amount of that grant, rebate or benefit or the amount equal to the value of the point of sale discount given (or the balance which remains outstanding) to RPC within 5 clear business days of RPC notifying the Owner of the additional amount being payable.

6.5 The Owner acknowledges that a government may, at any time, make legislative changes which may affect the Owner's eligibility for, or entitlement to, any incentives, subsidies, grants, rebates, STCs or other benefits. RPC will not be liable to the Owner in the event that such legislative changes occur and the Owner expressly excludes RPC from any such liability.

6.6 The Owner acknowledges that in certain circumstances a government may require the Owner to repay a grant, rebate or other benefit. Except where RPC has breached its obligations to the Owner, RPC will have no responsibility to the Owner in the event that the Owner is required by a government to repay a grant, rebate or other benefit.

7. Cooling off period

For Contracts with a Contract Price over $20,000

Under the Home Building Act the Owner may rescind the Contract under the following provisions. The Contract may be rescinded even if work has commenced under the Contract.

The notice of rescission must be given to RPC:

(a) where the Owner has been given a copy of the signed Contract – within 5 clear business days after being given a copy of the signed Contract, or

(b) where the Owner has not been given a copy of the signed Contract within 5 days after the Contract was signed – within 5 clear business days after the Owner becomes aware of being entitled to be given a copy of the signed Contract.

The notice of rescission must state that the Owner rescinds the Contract, and must be given to RPC by leaving it at the address shown as RPC's address, or by any method of service provided by clause 26.

If a notice of rescission is given to RPC:

(a) the Contract is taken to be rescinded from the time it was signed, subject to (b), (c), (d) and (e) below
(b) RPC may retain out of any money already paid to RPC the amount of any reasonable out of pocket expenses that RPC incurred before the rescission
(c) RPC must refund all other money paid to RPC under the Contract by, or on behalf of, the Owner at or since the time the Contract was made
(d) the Owner is not liable to RPC in any way for rescinding the Contract
(e) RPC is entitled to be paid a reasonable price for any work carried out under the Contract to the date the notice of rescission is given.

8. Approvals

RPC will promptly seek approval from the relevant network operator (if applicable) for connection of a grid interactive solar system. The cost for such an approval is born by RPC. If approval is not granted, the Owner and RPC can negotiate a variation in accordance with clause 16 or terminate the Contract (see clause 24 and 25).

The Owner must apply for and obtain, at his expense, all other approvals that may be required by the local council or other statutory authorities.

Where the Owner does not hold the title to the land, approval must be obtained by the Owner from the landlord, and evidence of such approval must be presented to RPC.

9. Exclusions

The following Goods and Services are expressly **excluded** from this Contract unless listed under *Description of work/material* or under *Conditions – Exclusions - Inclusions*

- Meter box upgrades
- Trenching
- Scaffolding and/or edge protection
- Upgrades to roof or building structure
- AC cable runs over 10m (max distance from inverter to meter box or sub-mains)
- DC cable runs over 20m (max distance from solar panels to inverter(s))

10. Commencement of work

RPC will commence the work within 60 business days from:

- the date of this Contract, or
- if the approval of the local council or other statutory authority has still to be obtained for the work, the date of the written notification of that approval, or
- if the consent of the lending authority is required, the date of written notification of consent that the work may proceed whichever is latest.

RPC may, by written notice, request the Owner to provide satisfactory evidence of the Owner's title to the land or approval from landlord and capacity to pay the Contract Price and for any variations agreed to after the Contract is signed.

If the Owner fails to provide such evidence within 10 business days from receipt of such notice, RPC may suspend the work under the Contract in accordance with clause 22 or take action to end it in accordance with clause 25.

11. Completion of work

The work will be complete when RPC has finished the work in accordance with the Contract documents any variations, there are no omissions or defects that prevent the work from being reasonably capable of being used for its intended purpose, any damage cause by RPC in accordance with clause 19 is repaired and all rubbish and surplus material are removed from site.

When RPC believes the work is complete, RPC will notify the Owner that the work has been completed in accordance with this Contract. Within 10 business days of receipt of notice from RPC, the Owner must advise RPC in writing of any items of work the Owner considers to be incomplete or defective. If the Owner does not so notify RPC, the work will be taken to be complete.

RPC must complete any outstanding work promptly and again notify the Owner on its completion. Unless the Owner notifies RPC in writing that any item is still incomplete or defective within a further 10 business days from receipt of notification by RPC, the work will be taken to be complete.

Should there be any dispute between the parties as to whether the work has been completed, it must be dealt with in accordance with the dispute resolution procedure (clause 23).

12. Time for completion

RPC must complete the work within three months which runs from the date of this Contract or, if any approval for the work is to be obtained, from the date of written notification of that approval whichever is later. The time for completion may be subject to amendment in accordance with clause 13.

13. Extension of time

Both RPC and the Owner (if applicable) must take all reasonable steps to minimise any delay to the work. RPC will be entitled to a reasonable extension of time to complete the work, if a delay is caused by:

- inclement weather or conditions resulting from inclement weather
- any order of a court or tribunal that the work be suspended, unless that order resulted from the fault of RPC
- any act or omission of the Owner
- any industrial dispute affecting the progress of work (not being a dispute limited to the site or limited to employees of RPC)
- the unavailability of materials necessary for the continuation of the work, unless due to the fault of RPC
- a variation to the work
- a suspension of the work by RPC under clause 22, or
- any other matter, cause or thing beyond the control of RPC

If RPC wishes to claim an extension of time, RPC must notify the Owner of the cause and estimated length of the delay within 10 business days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.

If the Owner does not, within a further 10 business days, notify RPC in writing that the extension of time sought is unreasonable, the completion date for the Contract will be extended by the period notified to the Owner.

If the Owner gives RPC written notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure set out in clause 23.

14. Progress payments

The Owner must pay RPC the amounts set out in the *Payment Schedule* within 5 clear business days of the completion of the stages of the work nominated in the *Payment Schedule*. A stage of work has reached completion when it has been finished in accordance with the Contract documents and any variations agreed to and there are no omissions or defects that prevent that stage of the work from being reasonably capable of being used for its intended purpose.

Payment of a progress payment is not to be regarded as acceptance by the Owner that the work has been completed satisfactorily of in accordance with the Contract documents.

If there is any bona fide dispute in relation to the value or quality of work done, the dispute must be dealt with in accordance with the dispute resolution procedure set out in clause 23.

If the Owner fails to pay the amount of a progress claim in part or in full by the due date and fails to give notice disputing the claim to RPC, interest at the current bank rate (as defined in clause 27) will be payable to RPC on the amount outstanding for the period overdue. However, if the Owner gives notice of a dispute in accordance with the dispute resolution clause 23, interest at the current bank rate will only be payable if the dispute is resolved in favour of RPC and shall be calculated from the time when payment would have otherwise been due.

15. Final payment

When the work is complete in accordance with clause 7 the Owner must pay the amount remaining unpaid under the Contract. Payment must be made in the manner specified in clause 14. If the amount is not paid, interest in accordance with clause 14 applies.

On receipt of the final payment, RPC must hand over to the Owner all guarantees, instruction manuals and the like unless already provided and all keys relating to the work, together with any certification or approval which may have been provided by any public authority relating to the work.

16. Variations

The work including materials may be varied by written agreement between the Owner and RPC. A notice describing the variation, the cost of the additional or omitted work and any change to the Completion Period must be provided to the Owner, and the notice must then be signed and dated by both parties to constitute acceptance. The price of extra work, which includes GST, will be added to the Contract Price. The cost of omitted work will be deducted from the Contract Price. If the varied Contract Price exceeds $20,000, a certificate of insurance under the Home Building Compensation Fund must be attached to the Contract and the additional requirements for contracts over $20,000 must be included in this Contract or a new Contract entered into that complies with the requirements in the Home Building Act 1989 for contracts over $20,000. Any adjustment to the Contract Price due to an agreed variation will be taken into account at the time of the next progress payment or paid as agreed by the parties. Variations shall be subject to the overall conditions of this Contract.

Right to terminate the Contract for variations due to unforeseen matters or a requirement of council or other statutory authority

If the work must be varied due to a matter that could not reasonably be expected to be necessary for the completion of the work or subject to subclause 5.2 (f) or a request of the council or other statutory authority which was not known at the date of this Contract and the Owner notified RPC in writing that the Owner is unable to meet the cost of that variation, then the Owner will be entitled to terminate the contract by notice in writing to RPC (clause 26).

If the Contract is so terminated, RPC is entitled to payment:

- in accordance with clause 14 and the *Payment Schedule* in respect of completed stages
- the actual cost of the work done since the completion of the last stage and for any materials on site.

If the Contract is so terminated before any work has commenced, the Owner is entitled to a refund of the deposit (if applicable). RPC will refund any amounts due to the Owner pursuant to this clause within 30 days of the variation or termination

17. Insurance of work and personal injury

Before RPC commences any work under this Contract or is given access to the site, RPC must have current insurance cover for:

(a) Public liability insurance to cover liabilities to third parties for death or personal injury or damage to property for an amount not less than $5 million

(b) Workers' compensation insurance to cover any employees (if requested RPC must provide the Owner with proof that all such insurances have been taken out and are current), and

(c) Property damage insurance for the work (including work in progress and materials) for the full reinstatement and replacement cost.

18. Contractor's indemnity in favour of Owner

RPC will indemnify the Owner against any loss or liability for death, personal injury or property damage arising out of the work under this Contract, except to the extent that the Owner or, Owner's representative contributed to the loss or liability.

19. Damage to property

RPC must make good any loss or damage to the work or property of the Owner caused by RPC or RPC's employees, agents or subcontractors. The Owner must remove any furniture or personal goods from the vicinity of the work to minimise the risk of damage.

20. Access for contractors

The Owner must provide access for RPC and any employee or subcontractor of RPC to carry out the work as required during work hours allowed by relevant statutory authorities. The Owner must remove any personal property likely to impede the work.

21. Installation

The Owner or the Owner's representative must be present at the site on the scheduled installation date, or provide detailed written instructions where to place the Goods.

22. Suspension of work by RPC

If the Owner, without reasonable and substantial cause:

- fails to provide satisfactory evidence of title to the land and/or capacity to pay the Contract Price, including any variations
- fails to pay a progress payment or any other amount due to RPC within the time allowed, but only if the Owner fails to pay the progress payment or other amount due after a written notice from RPC requiring payment within a further period of 5 business days
- fails to advise RPC promptly of any requirement of or notice from a statutory authority, if any, that affects the work
- fails to perform any work which prevents RPC from continuing with the work under the Contract
- denies RPC or RPC's sub-contractors access to the site so as to prevent the work from proceeding, or otherwise prevents RPC from carrying on the work; or if the Owner becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the Owner is a company, goes into liquidation or receivership or is otherwise without full capacity,

RPC may, without prejudice to any other rights under the Contract, suspend the work by giving written notice to the Owner in accordance with clause 26 specifying the reason.

If the Owner remedies the default, RPC must recommence the work within 10 business days unless RPC has ended the Contract under clause 25.

23. Disputes

If the Owner or RPC considers a dispute has arisen in relation to any matter covered by this Contract, that party must promptly give to the other party written notice in accordance with clause 26 of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.

If the parties do not agree to confer with a third party to assist in the resolution of the dispute, or if the dispute is not resolved following the assistance of such a third party, the Owner may notify Fair Trading that a building dispute exists and seek the assistance of Fair Trading to resolve the dispute.

24. Termination of Contract by Owner

Due to the fault of RPC

If RPC

- is unwilling to complete the work or abandons the work
- suspends the work before completion without reasonable cause
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or goes into liquidation or receivership or is otherwise without full capacity
- fails to proceed defective work or remove faulty or unsuitable materials, or
- without reasonable cause fails to comply with an order or direction of a public authority with respect to defective or incomplete work, which would substantially affect the quality and/or progress of the work,

the Owner may, if such default can be remedied, notify RPC in writing that unless the default is remedied within 10 business days or such longer period as specified, the Owner will terminate the Contract.

If RPC does not comply with the Owner's request within the time allowed, or if the default cannot be remedied, the Owner may terminate the Contract by giving written notice to that effect to RPC.

If the Owner terminates the Contract due to the fault of RPC, any unfixed materials or fittings on the site may be retained by the Owner.

Following the issue of a notice by the Owner under this clause no unfixed materials or fittings shall be removed from the site by RPC.

If the Contract is so terminated, RPC is entitled to payment in accordance with clause 14 and the *Payment Schedule* in respect of completed stages and payment of the amount equal to the value of the point of sale discount given (clause 6).

Other than due to the fault of RPC

The Owner may also terminate the Contract by notice in writing to RPC in the following circumstances:

- If the Contract Price is above $20,000, and if the Owner within the Cooling Off Period, does not wish to proceed with the Contract (see clause 7).
- If the approval from the relevant network operator for the work has not been obtained within 60 business days of the date of the Contract (see clause 8)
- If the Owner is unable to meet the cost of a variation due to a matter that could not reasonably be expected to be necessary for the completion of the work or due to unforeseen access or safety concerns that require specialist equipment or a requirement of the council or other statutory authority (see clause 16)

A notice required under this clause must be given in accordance with clause 26.

If the Owner ends the Contract in the above circumstance, RPC may remove from the site and retain all unfixed materials, fittings and Goods supplied by RPC.

25. Termination of Contract by RPC

Due to the fault of the Owner

If the Owner:

- fails to provide satisfactory evidence of title to the land or approval from landlord or capacity to pay the Contract Price including any variations (see clause 8)
- fails to pay a progress payment or amount due under the Contract (clause 14)
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the Owner is a company, goes into liquidation or receivership or is otherwise without full capacity
- denies access to the site to RPC, RPC's employees or sub-contractors so as to prevent the work from proceeding (clause 20)
- fails to perform any work or supply materials excluded from this Contract which prevents RPC from continuing with the work under the Contract or otherwise obstructs RPC from performing the work
- fails to rectify a clause of suspension under clause 22 within the time specified in clause 22, or
- obstructs RPC from performing the work
- is not present at the site on the schedule installation date and has not provided detailed written instructions where to position the Goods

RPC may, where such default can be remedied, notify the Owner in writing that unless the default is remedied within 10 business days or such longer period as specified, RPC will terminate the Contract.

Unless the Owner complies with RPC's request within the time allowed, or if the default cannot be remedied, RPC may terminate the Contract by giving written notice to this effect to the Owner.

If RPC terminates the Contract under this clause, RPC may remove from the site and retain all unfixed materials, fittings and equipment supplied by RPC and will be entitled to recover all losses and expenses, including the amount equal to the value of the point of sale discount given (clause 6), arising from the termination of the Contract or to offset such amounts from any amount due to the Owner.

Other than due to the fault of the Owner

RPC may terminate the Contract if all necessary approvals for the work have not been obtained within 60 business days of the date of this Contract, unless failure to obtain those approvals is due to the act, omission or default of RPC (see clause 8).

A notice under this clause must be given in accordance with clause 26.

26. Giving of notices

Any written notice required to be given under the Contract or under the cooling off provisions under the Home Building Act 1989 may be served by:

(a) Giving it to the party personally,

(b) Leaving it with a person, apparently over the age of 16, at the other party's mailing address shown in the Contract, or

(c) Sending it by registered post to the party's mailing address shown in the Contract.

27. Glossary of terms used in this document

Business Day means any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30, or 31 December.

Contract means the legally binding agreement between the Owner and RPC set out in several documents, including but not limited to the below Terms & Conditions.

Contract Price has the meaning given in clause 5.

Cooling Off Period has the meaning given in clause 7.

Current Bank Rate means the Commonwealth Bank Overdraft Index Rate as published from time to time plus 2% per annum.

Goods means any or all of the products supplied by us or on our behalf.

GST means Goods & Service Tax – a tax levied by the Federal Government on the supply of goods and services.

Lending authority means a bank, building society or other financial institution which lends the Owner the Contact Price or any portion of that amount.

Owner or *You* means the person or entity who awards a Contract for a project and undertakes to pay RPC.

RPC, Rainbow Power Company, Contractor, we, our or *us* has the meaning Rainbow Power Company Ltd ACN 003 323 420 and any of our representatives, associates, directors, employees, officers, agents, subcontractors or related entities.

Services means any or all of the installation or application services conducted by us or on our behalf.

Building Contract Terms and Conditions refers to the terms and conditions set out below, and those incorporated by reference, which form part of each building contract.