

Solar Australia Terms and Conditions of Trade

Preamble:

These terms and conditions together with any quotation, order (including on-line or web-based orders), assessment or proposal to which these terms are attached or in which these terms are referred, together make up a legally binding agreement (**the Agreement**) between: **Solar Australia Pty Ltd ACN: 129 328 490 (Solar)** AND the person(s) or company named as the purchaser (**the Purchaser**) in the attached or previously signed quotation form, site assessment form, quotation, order or proposal (**the Documents**).

This Agreement may be accepted by doing either one or more of the following:

- (a) signing these terms and conditions of trade; or
- (b) signing the quotation form, site assessment form, proposal or other document issued by Solar in which these terms and conditions were attached or referred to;
- (c) clicking "I agree" or "I accept" or similar indication of acceptance of these terms during an online transaction where you are given notice of the existence of these terms; or
- (d) placing an order or accepting a quotation or proposal whether in writing, via email or other electronic means or orally after receiving notice of these terms and conditions of trade.

THE PARTIES AGREE as follows:

1. Agreement to Buy and Sell

1. The parties acknowledge that Solar will sell and the Purchaser will purchase goods and services from time to time pursuant to these terms and conditions. If any future contract or document between Solar and the Purchaser is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract refers to and specifically alters this Agreement in writing and is signed by Solar.

2. Placement of Orders and Variations

1. The Purchaser may order the goods and services from Solar in writing, by phone, email, facsimile, Solar-hosted on-line or web-based ordering (if Solar has this facility) or other electronic communication or telecommunication acceptable to Solar (which includes without limitation purchase orders, the acceptance by the Purchaser of a quotation, proposal or variation prepared by Solar) (**orders**). Upon placement of the order, the Purchaser will be bound to proceed with the purchase of the goods and services at a price confirmed by Solar.
2. Solar will not be bound by any terms or conditions expressed in orders or acceptances generated by the Purchaser except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by Solar.

3. Solar may decline to accept any order without providing a reason in its absolute discretion.

4. If the Purchaser requests or Solar deems there to be a variation in the scope of the supply of goods or services, then Solar may (but is not obliged to) notify the Purchaser in writing of the variation, the price variation, associated delays and any other information Solar deems relevant.

5. Solar may (but is not obliged to) accept a variation or cancellation in its absolute discretion.

3. Delivery and Collection of Orders

1. The Purchaser acknowledges that goods delivered by a courier are outside Solar's control and Solar will not be liable for any loss, damage, delay or non-delivery of goods contributed to by a third party, to the extent permitted by law.

2. Deliveries shall be made during normal working hours and at the cost and risk of the Purchaser. In the event the Purchaser or the Purchaser's agent is not on site to accept the delivery, then the driver's signature denoting the time, date & place of delivery, shall be deemed to be acceptance of the said delivery by the Purchaser.

3. If a delivery driver or courier, in their absolute discretion, deem the Purchaser's delivery site unsafe or inaccessible then the delivery driver or courier reserves the right to not make the delivery of the goods until such time as the issues in relation to the site have been rectified or an alternative address supplied. In the meantime, the goods will be taken back to Solar's premises at the Purchaser's expense and any subsequent re-delivery will be at the Purchaser's expense.

4. If a delivery driver or courier enters the Purchaser's delivery site at the direction of the Purchaser or its personnel and becomes bogged or stuck, or otherwise causes damage then the Purchaser will be liable for the costs of recovering the delivery vehicle and for any damaged caused to the vehicle and any other property or person.

5. Subject always to the preceding clauses, Solar's obligation to deliver goods will not extend beyond delivery immediately inside the boundary of the address details provided by the Purchaser.

6. If a date for delivery or performance is nominated by the Purchaser, Solar will not be bound to deliver the goods or perform the services by that date unless it expressly agrees to do so in writing, signed by Solar, in which case, it will be deemed to agree to use reasonable endeavours to deliver or perform the services by the relevant date. Solar shall be excused from any failure to deliver or perform which is contributed to by causes beyond its reasonable control and the time

specified for completion of delivery or performance shall be extended commensurately. Delay in delivery, performance or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to Solar's disadvantage.

7. Some orders will require complete payment or a percentage of the order price to be paid up front by the Purchaser to Solar, some or all of which may be non-refundable. This will be notified to the Purchaser after the order is placed.

8. If goods are to be collected from Solar's premises and are not collected by the agreed collection date, then:

- (a) Solar will not be liable for any damage caused to goods after that date;

- (b) Solar may charge (and the Purchaser will be liable to pay to Solar) a storage fee calculated based on the price of the goods being stored multiplied by 5% per month, calculated daily and compounding at monthly rests; and

- (c) Solar may in its absolute discretion dispose of the goods in any manner it sees fit and recover from the Purchaser the costs of doing so (along with the price of the goods, storage fees and legal costs on an indemnity basis) as a liquidated debt.

4. No Returns

- 4.1. Goods delivered by Solar are not returnable unless the goods are determined by Solar to be defective in manufacture or materials.

5. Payment, quotations and Price

- 5.1. All supplies of goods and services are made at the price current at the time of delivery or completion in \$AUD. The price is quoted EXW (Incoterms 2010) from Solar's premises. Costs and charges for freight to and handling at the point of delivery to the Purchaser or the Purchaser's agent are payable by the Purchaser unless otherwise stated on the quote/order form. Costs and charges will vary depending on size, weight and length of individual orders. All quotes remain current for 14 days only from the date of quote but are not fixed. NOTE pricing may vary from time to time subject to exchange rate variations and/or material increases outside the control of Solar.

- 5.2. Solar may provide estimates based on drawings/ specifications provided by the Purchaser. These are not quotations unless Solar has clearly marked and intended them to be quotations.

- 5.3. The Purchaser acknowledges that Solar prepares all quotations and supplies all goods and services based on the information provided to Solar by the Purchaser. Solar will not be responsible for (and will be at liberty to charge for) differences in estimates or quoted quantities and the actual quantities of goods required to be supplied for a particular job.

- 5.4. The Purchaser warrants that the information provided to Solar is accurate and not false or misleading in any way. Solar will not be held liable for any loss or damage suffered as a result of the Purchaser providing false or misleading information.

- 5.5. Where a Site Assessment is conducted by Solar, the Purchaser will verify the information and specifications determined by Solar's assessor by signing the Site Assessment Form.

- 5.6. The Purchaser must pay to Solar the price in relation to each purchase of goods or services as set out in the corresponding tax invoice. The Purchaser will pay a deposit equal to the deposit amount set out in the quotation (and if no deposit amount is set out, then 10% of the price stated on Solar's quotation form) at the time of signing or accepting the quotation. The Purchaser will pay the balance of the price prior to or on the day of installation of the goods and/or provision of the services. Solar is not obliged to commence the installation or supply until the balance of the invoice is paid in full.

6. Solar Credits and Clean Energy Regulator

- 6.1. Solar will, following completion of the supply, provide the Purchaser with documentation to effect any voluntary assignment of solar credits available under the relevant renewable energy legislation.

- 6.2. Solar's quotation form will include Solar's estimate of the available solar credits (**STCs**). The STCs estimate provided by Solar is given in good faith at the time of the quotation but may vary from the actual STC discount available at the time of installation of the goods or provision of the services to the Purchaser (due to changes in the Renewable Energy Target legislation). Solar will notify the Purchaser of the actual STC discount available at the time of installation. Solar will not be liable for any variation in the STCs available to the Purchaser. For the avoidance of doubt, you will be liable to Solar for 100% of the quoted price, some of which may be offset by your voluntary assignment of available STCs to Solar.

- 6.3. Solar will provide the Purchaser with the STC Assignment Form on the day of installation. The Purchaser will not receive any STC discount or rebate until the STC Assignment Form is signed and returned to Solar.

- 6.4. The Purchaser must not assign the right to create Renewable Energy Certificates (**RECs**) unless they are the legal owner of the small generation unit (**SGU**) listed in the quotation, order or other document provided by Solar.

- 6.5. If any assignment of the right to create RECs is deemed invalid for any reason at any time, the Purchaser will immediately repay to Solar

Initials:

- the REC payment and any other cost, loss or damage that Solar has incurred or suffered as a result of the invalid assignment.
- 6.6. The Purchaser acknowledges and gives permission to Solar or a Clean Energy Regulator representative (or other authorised person) to inspect the SGU within 5 years of any certificate redemption.
- 6.7. The Purchaser warrants that it will comply with any relevant Renewable Energy legislation including retaining receipts and proof of installation for the life of any RECs, and refrain from providing any misleading information in any documents.
- 7. Site Assessment, installation issues, metering and tariffs**
- 7.1. Solar will conduct a Site Assessment **at the time the quotation is provided.**
- 7.2. The Purchaser warrants and acknowledges that:
- Net metering may not be explicitly represented on the Purchaser's electricity bill. The Purchaser will make its own investigations as to accurate savings;
 - the meter is subject to the availability from the Purchaser's energy provider and may take up to 8 weeks to install. Solar will be in no way liable or in breach of this Agreement for delay or failure to install the meter;
 - the efficiency of any installed PV collectors is dependent on exposure to sunlight and any obstructions will affect the solar array's energy production;
 - any existing roof penetrations (including but not limited to whirlybirds, satellite dishes, antennas, stink pipes) must be removed prior to installation unless otherwise agreed in writing with Solar. The cost of removal of any existing roof penetrations on the day of installation will be at the sole cost and expense of the Purchaser, including the cost of any delays resulting from failure to remove the roof penetrations;
 - if they purchase a grid-connected solar PV System, they have investigated the cost of any Feed-In Tariffs charged by the retailer supplying the grid-connected solar PV System and they in no way rely on any representation made by or on behalf of Solar relating to such costs.
- 7.3. Solar will evaluate the power supply and load control at the installation address and will make recommendations to the Purchaser of any potential issues. The Purchaser will ensure it seeks its own advice from a qualified electrician and resolves any phase loading issues and rewiring/load shifting measures are taken prior to the installation in order to maximise solar benefit. Solar will not be held liable for any under-performance of the goods or services as a result of a breach of this clause by the Purchaser.
- 8. Building and Construction Industry Security of Payment Act**
- 8.1. For the purposes of the *Building and Construction Industry Security of Payments Acts* (or equivalent acts) existing or enforceable from time to time in each State or territory in Australia:
- Every date on which goods or services are supplied shall be deemed a reference date, and Solar shall be entitled to issue payment claims accordingly.
 - It shall be sufficient service of a payment claim if it is posted to your postal address as nominated on any quotation form or to any other postal address that you nominate to us from time to time.
- 9. Passing of Title and Risk**
- 9.1. Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of Solar as full legal and equitable owner until such time as the Purchaser has paid Solar the full purchase price together with the full price of any other goods the subject of any other contract with Solar. Risk in all goods passes on delivery or collection (as the case may be).
- 10. Warranties and Liability**
- 10.1. This Agreement does not attempt to exclude, restrict or modify the application of any applicable laws of the Commonwealth State or Territory which cannot be excluded, restricted or modified.
- 10.2. The Purchaser acknowledges and agrees that to the extent permitted by law, Solar will not be liable for, and the Purchaser releases Solar in respect of, any claim, loss, cost, damage or expense (**Claim**) arising out of any act or omission of Solar or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of this Agreement or a warranty by Solar.
- 10.3. The parties agree that to the extent permitted by law any liability for a Claim against Solar that cannot be excluded will be limited to the lesser of:
- the re-supply or repair of defective goods or services (if applicable);
 - the cost of the re-supply or repair by a third party of defective the goods or services in question (if applicable); or
 - the contract price of the original supply of the goods or services.
- 10.4. Notwithstanding any of the above, the parties agree that Solar will under no circumstances be liable to the Purchaser for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.
- 10.5. Solar's liability/obligations to honour any claim under or in connection with this Agreement do not extend to rectification of defects, loss or damage which is caused or contributed to by use, storage or operation of any part of the goods other than in accordance with the more stringent of either: guidelines or specifications supplied by Solar or the manufacturer; industry best practice; relevant building codes; Australian Standards; or use under normal working conditions. Solar will also not be liable for defects, loss, costs or damage arising out of or in connection with:
- the misuse, neglect, or wilful destruction of any part of the goods;
 - any damage caused by or to the goods as a result of continued use of any part of the goods after a defect has been detected or ought to have been detected; or
 - installation or fixing of goods to other goods or property after a defect has been detected or ought to have been detected.
- 10.6. Solar will use reasonable endeavours to transfer warranties given by third party manufacturers of the goods supplied to the extent those warranties are transferable. However, Solar will not be liable for negotiating with manufacturers on behalf of the Purchaser and will not be liable to provide warranties to the Purchaser in addition to those provided by the manufacturer and transferred under this clause (other than those warranties implied by law and not permitted to be excluded).
- 10.7. The content of any third party manufacturer's warranties may be provided upon request to Solar. Note that these warranties will be subject to their own terms and conditions with which the Purchaser should be familiar. Some claims for defective goods will not be accepted by the third party manufacturer of goods.
- 10.8. To the extent permitted by law and unless otherwise expressly agreed, Solar does not provide and expressly excludes all warranties whether implied by statute or otherwise in respect of any goods.
- 10.9. If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 11. Term and amendment**
- 11.1. This Agreement will commence and will have effect on and from the date of acceptance as set out in the preamble of these terms and conditions and will expire upon reasonable notice being given by one party to the other or in accordance with clause 11.2.
- 11.2. Without limiting any other rights of Solar, Solar may terminate the Agreement without notice if the Purchaser is in default under this Agreement in any way or commits an act of insolvency or an external administrator or controller, liquidator or trustee in bankruptcy is appointed to the Purchaser.
- 11.3. Solar may assign or otherwise transfer any of its rights under this Agreement.
- 11.4. The Purchaser may not without the prior written consent of Solar assign or otherwise transfer any of its rights or obligations under this Agreement.
- 11.5. Solar may amend the terms forming part of this Agreement providing it first provides you with 28 days' notice of the intended amendments, and (only where amendments will prove to be materially disadvantageous to you) provides you with the opportunity to terminate the Agreement ahead of the amendments coming into effect.
- 12. Defaults and Rights**
- 12.1. In the event of a default under this Agreement by the Purchaser, the whole of any outstanding balance will become immediately due and payable by the Purchaser to Solar together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.
- 12.2. The certificate of a director or the credit manager of Solar will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.
- 12.3. No failure or delay of Solar to exercise any right or obligation of the Purchaser of any obligation hereunder and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by Solar of any particular default by the Purchaser shall affect or prejudice Solar's rights in respect of any subsequent default and no indulgence or forbearance by Solar of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default.
- 13. Intellectual Property**
- 13.1. For the purposes of this Agreement, "Intellectual Property Rights" means copyright, trademark, design, patent, and any other rights whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by Solar in respect to this Agreement .
- 13.2. Any pre-existing Intellectual Property Rights owned by Solar before the commencement of this Agreement, will remain vested in Solar.
- 13.3. Any pre-existing Intellectual Property Rights owned by the Purchaser before the commencement of this Agreement, will remain vested in the Purchaser.
- 13.4. The Purchaser agrees to grant to Solar a non-exclusive, transferable, royalty free licence to use the Purchaser's pre-existing Intellectual Property Rights to the extent that use relates to any material created by Solar pursuant to this Agreement.

- 13.5. Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by Solar on or after the commencement of this Agreement will remain vested in Solar notwithstanding those rights were created pursuant to or for use in or with the goods or services the subject of this Agreement.
- 13.6. Where goods are manufactured to the Purchaser's specification, the Purchaser hereby indemnifies Solar from against liability to or action by a third party arising out of or in any way related to infringement of the intellectual property rights of a third party.

14. Force Majeure

- 14.1. A Force Majeure event means anything outside reasonable control of a party, including but not limited to:
- (a) Power, data or communication outages;
 - (b) Acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
 - (c) A transaction embargo;
 - (d) Industrial action (including a picket); and
 - (e) Any legislation or regulation and any action or inaction of any government or government agency.
- 14.2. If Solar is wholly or partially unable to perform its obligations because of a Force Majeure event, then:
- (a) As soon as reasonably practicable after the Force Majeure event arises, Solar will notify the Purchaser of the extent to which Solar is unable to perform its obligations; and
 - (b) Solar's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.

15. Applicable Law

- 15.1. The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the State of Australia where the head office of Solar is located. This Agreement is deemed to have been entered into at the address of the head office of Solar.

16. Purchaser's Warranties

- 16.1. The Purchaser warrants that:
- (a) in the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the *Bankruptcy Act* or otherwise assigned his/her assets for the benefit of creditors;
 - (b) it has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due;
 - (c) it is not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of Solar whether in answer to an enquiry or otherwise;
 - (d) prior to the placement of any order, it has made its own independent enquiries and satisfied itself as to the size, design, capacity, quality and fitness for purpose of the goods and/or services and, to the extent permitted by law, the Purchaser is not relying on any warranty, promise or representation in relation to the goods and/or services, either expressly or impliedly given by Solar.

17. Personal Information

- 17.1. The Purchaser consent to Solar from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Purchaser with any third party and to carrying out any further pertinent investigation about the Purchaser's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

18. Goods and Services Tax (GST)

- 18.1. All amounts payable by the Purchaser under this Agreement are exclusive of GST. If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount") and paid at the same time and in the same manner as the consideration.