

SOLAR JUICE TERMS AND CONDITIONS OF SALE

1. Defined terms

In this document:

Business Day: means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Commercial Credit Account: means the credit account provided by the Company in accordance with its terms and conditions.

Conditions: means these terms and conditions of sale

Company: means Solar Juice Pty Ltd ACN 139 534 026

Consequential loss: means indirect, economic, special or consequential loss or damage, loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit.

Consumer Law: means the *Competition and Consumer Act 2010* (Cth) and any other State or Federal legislation in force relating to consumer agreements.

Customer: means the person placing an Purchase Order with the Company, whether directly or via an agent, authorised representative, or any other person held out by the customer as having the authority to bind the customer to these Conditions.

Delivery address: means the address nominated by the Customer in a purchase order for the delivery of the Goods.

Delivery Fee: means the costs incurred in delivering the Goods to the Customer.

Goods: means any equipment, materials and other items provided to the Customer by the Company.

GST Act: means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights: means all intellectual or industrial property rights throughout the world (whether registered or not) including all business names, copyrights, patents, trademarks, service marks, trade names, designed, confidential information, trade secrets and know how.

Returns Policy: means the policy that the Company has in place in relation to the return of the Goods as published at www.solarjuice.com.au/terms and as amended from time to time.

Personnel: means any officer, employee, agent or sub-contractor of a party.

Possession: has the meaning given to that term in the PPSA

Progressive or Periodic Supply: has the meaning given to that term in the PPSA

PPSA: means the Personal Property Securities Act 2009 (Cth).

Purchase Order: means a written request for the supply of Goods in accordance with clause 3

Purchase Price: means the price payable by the Customer to the Company for Goods, as notified to the Customer by the Company from time to time.

Security Interest: has the meaning given to that term in the PPSA

Supplier: means the entity making the supply.

2. Interpretation

In this document, unless contrary to or inconsistent with the context:

- (a) words importing the singular include the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a document or agreement (including a reference to these Conditions) is to that document or agreement as amended, supplemented, varied or replaced;
- (d) a reference to these Conditions includes the agreement recorded by these Conditions;
- (e) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, whether or not it comprises a separate legal entity.

3. Purchase Orders

- (a) The Customer may submit a Purchase Order in writing to the Company.
- (b) The Purchase Order must state:
 - (i) the Goods to be purchased;
 - (ii) the Purchase Price of those Goods (which must be consistent with the current Purchase Price notified to the Customer by the Company. If supply is required in future months then the Company reserves the right to change the pricing to match the current price list of the month of supply);
 - (iii) a Delivery Address for the Goods; and
 - (iv) the Customer's contact details.
- (c) Any Purchase Order placed by the Customer:
 - (i) is an offer to purchase the Goods from the Company on these Conditions;
 - (ii) is subject to the Company's review;

(iii) is not binding on the Company until the earlier of the following:

- (A) the Company has provided the Customer with a written acknowledgement and acceptance of the Purchase Order;
 - (B) the Company takes steps to procure the Goods for the Customer;
 - (C) the Company delivers the Goods to the Customer, its servants, agents or carrier; or
 - (D) the Customer has paid for the Goods, whether in whole or in part.
- (d) The Purchase Order cannot be cancelled, altered or otherwise amended by the Customer after it has been accepted by the Company other than with the written consent of the Company.
 - (e) The Company may unilaterally cancel any Purchase Order prior to receiving payment for the Goods in accordance with clause 5(a). Once payment has been made, any cancellation, alteration or amendment to the Purchase Order must be done by written agreement between the parties.
 - (f) Upon acceptance of the Purchase Order, the Company must:
 - (i) supply the Goods ordered by the Customer in accordance with the Conditions; and
 - (ii) deliver the Goods to the Customer in accordance with clause 6.

4. Pricing

- (a) Subject to acceptance of a Purchase Order in accordance with clause 3, the Company will provide, and the Customer agrees to acquire, the Goods for the Purchase Price as notified by the Company to the Customer from time to time.
- (b) Unless otherwise provided for, the Purchase Price for the Goods is:
 - (i) expressed in Australian dollars;
 - (ii) exclusive of GST and any other taxes, levies or charges imposed on the Goods. And
 - (iii) exclusive of any Delivery Fees, insurance, handling or other expenses in respect of the Goods.
- (c) To the extent that any of the additional charges in clauses 4(b)(ii) and 4(b)(iii) apply to the Goods, these charges must be paid by the Customer in accordance with clause 5.

5. Payment

- (a) The Customer must make payment as follows:
 - (i) if the Customer has a Commercial Credit Account, in accordance with its obligations in respect of that Commercial Credit Account; or
 - (ii) if the Customer does not have a Commercial Credit Account, with the Company, within 7 days of the Company notifying the Customer that the Purchase Order is accepted, and in any event, prior to the delivery of the Goods.
- (b) The Customer acknowledges that all payments via credit card will incur a surcharge of 1.5% for VISA/MasterCard and 2.5% for American Express, which the Customer agrees to pay at the same time as payment of the Goods is processed by the Company.

6. Delivery

- (a) The Company will use its reasonable efforts deliver the Goods to the Customer at the Customer's Delivery Address.
- (b) If the Company cannot deliver the Goods to the Customer's Delivery Address for any reason outside of the control of the Company, the Customer will be liable for any additional Delivery Fees or storage fees incurred by the Company in attempting to deliver the Goods.
- (c) If the Company becomes aware that delivery of the Goods may be delayed, then the Company will use reasonable efforts to ensure that the Customer is notified of the delay and its estimated duration.
- (d) If the Customer does not accept delivery of the Goods after three attempts by the Company to deliver the Goods, then the Company may elect to terminate that Purchase Order and seek recovery of all costs, losses, expenses or damages that the Company incurs as a result of the Customer's failure to accept delivery of the Goods, and all such costs, losses, expenses or damages are deemed a debt due by the Customer to the Company.
- (e) The Customer acknowledges that the Company:
 - (i) may make delivery of the Goods in instalments;
 - (ii) does not warrant that the Goods will be delivered on any proposed delivery date;
 - (iii) will not be liable for any loss or damage, however caused, caused by:
 - (A) the late delivery of the Goods; or
 - (B) any damage to the Goods during delivery; and

- (iv) late delivery of the Goods will not constitute a material breach of these Conditions and will not entitle the Customer to terminate these Conditions.
- (f) The Customer must notify the Company of any errors or shortfall in a delivery of Goods in writing within three (3) Business Days of the date on which the Goods were delivered. If it does not, the parties agree that the delivery will be deemed to have contained the Goods set out in the Purchase Order.
- (g) The Customer must, within 5 business days of being notified of their availability, collect the Goods. The Company reserves the right to charge the Customer storage on goods not collected within 5 business days of notification of their availability at the rate of \$35.00 per week per pallet or part thereof.
- (h) If the Customer fails to collect the Goods within 14 days of being notified of their availability, the Company may terminate this contract, keep the deposit and resell the Goods and reserves the right to charge a restocking fee of 15%
- 7. Risk and title**
- (a) Title to the Goods will pass to the Customer upon full payment of the Purchase Price and any other monies owing by the Customer to the Company.
- (b) Risk in the Goods will pass to the Customer upon the earlier of:
- full payment of the Purchase Price and any other monies owing by the Customer to the Company; or
 - the Goods leaving the Company's warehouse for the purposes of delivery to the Customer.
- 8. Security interest**
- (a) The Customer grants a Security Interest in the Goods as security for the payment of all amounts owing to the Company and the performance of all obligations under these Conditions.
- (b) The Customer authorises the Company to file all financing statements and other documents and otherwise to do all things necessary to perfect and continue the Security Interest, to protect and preserve the Goods, and to realise the Security Interest held by the Company.
- (c) The Security Interest granted pursuant to this clause shall become immediately enforceable upon the breach of these Conditions by the Customer, in which case the Company may:
- take Possession of and sell or lease the Goods (either by public auction, private treaty or otherwise and either in full or in part, and otherwise subject to any conditions that the Company considers appropriate); and
 - appoint and remove any one or more persons to be a receiver of the whole or any part of the Goods, the income and proceeds of the Goods (or both) and to pay such receiver the remuneration as the Company considers appropriate.
- (d) To the extent permitted by law:
- for the purpose of sections 115(1) and 115(7) of the PPSA:
 - the Company need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) or 135;
 - sections 142 and 143 are excluded; and
 - for the purposes of section 115(7) of the PPSA, the Company need not comply with sections 132 and 137(3).
- 9. Return of Goods**
- (a) The return of non-defective Goods is governed by the Return Policy as amended from time to time. The Company will not accept the return of the Goods or provide any refund for those Goods unless the Customer complies with the terms of the Return Policy.
- (b) For the avoidance of doubt, the Company is under no obligation to accept the return of non-defective Goods, and may refuse to do so at its absolute discretion.
- 10. Limitation of liability**
- (a) The Customer acknowledges and agrees that the Company will not be liable under or in connection with these Conditions for any failure to perform its obligations under these Conditions that is caused or contributed to by circumstances beyond the reasonable control of the Company.
- (b) To the full extent permitted by law, any warranty or condition implied under the law in relation to the Goods is excluded.
- (c) Where a warranty cannot be legally excluded, including for the purposes of the non-excludable statutory guarantees under the Consumer Law, the Company's liability is limited, at the Company's option, to:
- the replacement of the Goods or the supply of equivalent goods;
 - the repair of the Goods;
 - the payment of the cost of having the Goods replaced; or
 - the payment of the cost of having the Goods repaired.
- (d) To the extent permitted by the Consumer Law, the Company excludes all other liability whatsoever to the Customer arising out of or in any way connected with these Conditions, including any liability for Consequential Loss of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence, other tort or other cause of action. For clarity, the Company specifically excludes all liability whatsoever arising from or connected with:
- the improper or incomplete installation of the Goods;
 - the Customer's failure to properly maintain the Goods;
 - any modifications to the Goods;
 - the fair wear and tear of the Goods or deterioration of the Goods due to normal use and exposes;
 - damage to the Goods arising from environmental conditions;
 - the misuse or abuse of the Goods; or
 - damage to the Goods arising from an accident.
- (e) Notwithstanding this clause 10, the Company will, to the extent reasonably possible, extend to the Customer the benefit of any warranty provided by the original manufacturer of the Goods.
- 11. Set-off**
- The Company may set-off against or deduct from any amount due to the Customer any amount that is payable, or would be payable, by the Company to the Customer.
- 12. Variations**
- (a) These Conditions may be unilaterally amended by the Company from time to time, and the most recent version of these Conditions published at www.solarjuice.com.au/terms will apply to all Purchase Orders received by the Company after that date.
- (b) Once a Purchase Order has been accepted by the Company, the Purchase Order and the Conditions applying to it may only be varied by the written agreement of the parties, except as stated in clause 3 (b) (ii)
- 13. GST**
- (a) Any terms capitalised in clause 13 and not defined in clause 1 have the same meaning given to those terms in the GST Act.
- (b) Except under clause 13, the consideration for a Supply made under or in connection with these Conditions does not include GST.
- (c) If a supply made under or in connection with this document is a Taxable Supply, then at or before any part of the consideration for the Supply is payable:
- the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
 - the Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 13(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- (e) If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (f) Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit

- the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- (g) Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 13(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.
- 14. Indemnity**
- (a) The Customer indemnifies and must keep indemnified the Company and the Company's Personnel, from and against all liability, damage, charges, claims, demands, writs, suits, proceedings, judgements, orders, decrees, costs, losses and expenses of any nature whatsoever (including Consequential Loss) which the Company or any of the Company's Personnel may suffer or incur arising from or in connection with:
- (i) any breach by the Customer of any of the provisions of these Conditions;
- (ii) the Customer's use, possession, ownership or resale of the Goods to any third party, and that third party's use, possession, ownership of the Goods;
- (iii) any interest in or right over, or any alleged interest in or right over, (whether by encumbrance, lien, charge, mortgage or any other interest (including a security interest) or right recognised by the law of any relevant jurisdiction) any Goods the Company attempts to supply under this document;
- (iv) any criminal or fraudulent act or omission, or wilful misconduct, of the Customer, except to the extent that the liability, loss, damage, cost of charge or expense is caused by the fraud or unlawful act of the Company or the Company's Personnel.
- (b) The parties acknowledge and agree that this indemnity will continue after termination of these Conditions.
- 15. Warranties**
- (a) Each party warrants to the other party that:
- (i) it has full authority and all necessary consents to enter into and perform its obligations under these Conditions and any Purchase Order; and
- (ii) these Conditions and any Purchase Order will constitute binding obligations of it in accordance with their respective terms.
- (b) The Customer warrants that it understands that:
- (i) the Company may alter the specification of the Goods at any time without notice to the Customer, provided that the modification does not materially alter the performance of the Goods;
- (ii) the Company's representation of any performance figures in respect of the Goods is an estimate only, and such performance is not guaranteed;
- (iii) the incorrect installation and service of the Goods may cause loss of life, injury to persons and/or damage to property;
- (iv) the installation and service of the Goods must be undertaken by a suitably qualified electrician or renewable energy installer conversant;
- (v) all workmanship in respect of the installation and service of the Goods is the Customer's responsibility;
- (vi) it has had the opportunity to seek independent legal advice on these Conditions and their effect;
- (vii) it has entered into these Conditions and any Purchase Order out of their own free will; and
- (viii) it has not relied on any representation, whether express or implied, in entering into these Conditions or any Purchase Order.
- 16. Intellectual property**
- The Customer acknowledges that it will not obtain any Intellectual Property Rights in connection with the Goods.
- 17. Entire agreement**
- (a) These Conditions and any Purchase Order supersede all previous agreements about its subject matter and embody the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.
- 18. Notice**
- (a) A notice, consent or communication under this document is only effective if it is:
- (i) in writing in English, signed by or on behalf of the person giving it;
- (ii) addressed to the person to whom it is to be given; and
- (iii) given as follows:
- (A) delivered by hand to that person's address;
- (B) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
- (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
- (D) sent by email to that person's email address.
- (b) A person's address, fax number and email address are those set out in the Purchase Order or confirmation of acceptance of a Purchase Order, or as the person otherwise notifies the sender.
- 19. Compliance with law**
- (a) The Customer must comply with all applicable laws and regulations and the requirements of any competent authority in respect of the Customer's use or dealings with the Goods.
- (b) The Company is not liable for the Customer's compliance with clause 19(a).
- 20. Assignment**
- The Customer must not subcontract, assign, sublicense, transfer, charge or in any manner take over or purport to subcontract, assign, sublicense, transfer, charge or deal with any part of these Conditions or its rights under these Conditions or any Purchase Order without the prior written approval of the Company.
- 21. Governing law**
- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.
- 22. General**
- (a) A clause or part of a clause of these Conditions that is illegal or unenforceable may be severed from these Conditions and the remaining clauses or parts of the clause of these Conditions continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from these Conditions in the relevant jurisdiction, but the rest of these Conditions will not be affected.
- (c) If any party to these Conditions consists of more than one person:
- (i) an obligation of those persons is joint and those persons' liability is joint and several; and
- (ii) a right of those persons is held by each of them severally.
- (d) The rights, duties and remedies granted or imposed under the provisions of these Conditions operate to the extent not excluded by law.