



## Terms and Conditions of Supply

## TERMS AND CONDITIONS OF SUPPLY

## Introduction

Solar Suite Pty Ltd ("Solar Suite") agrees to sell to the Customer, and the Customer agrees to purchase, the Goods from Solar Suite in accordance with these terms and conditions ("Agreement"). The contractual partner of the Customer is always the respective acting entity.

## 1. Definitions

In this Agreement, the following definitions apply:

- (a) **"ACL"** means the Competition and Consumer Act 2010 (Cth.) Schedule 2;
- (b) **"Business Days"** means each day excluding Saturdays, Sundays and Public Holidays in Western Australia;
- (c) **"Confirmed Order"** has the meaning in clause 3.2;
- (d) **"Customer"** means the person or entity who is purchasing.
- (e) **"Confidential Information"** means all financial, business, operational and technical or other data, Customer and supplier information, cost estimates, processes, handbooks, manuals, standards, concepts and methods, ideas, know-how, designs, drawings, inventions, product or service plans, product specifications, marketing information, trade secrets, programs, data or application systems codes, and all other information (whether written, oral or in electronic form, or on magnetic or other media) concerning the Goods, the Documentation, the business and affairs of Solar Suite (or any Related Bodies Corporate), and any other information of a confidential nature that the Customer obtains, receives or has access to as a result of the discussions leading up to, or the entering into or the performance of, the Agreement;
- (f) **"Documentation"** means the documents made available to the Customer by Solar Suite which set out the description of the Goods, operating instructions, manuals and warnings for the Goods, including, but not limited to, drawings, dimensions, weights, capacities, specifications and performance statements;
- (g) **"Goods"** means all goods advertised for sale by Solar Suite on its Website and ordered by the Customer (either on, or via, the Website or by email, telephone or in person) which are collected by the customer from Solar Suite (as the context permits);
- (h) **"Insolvency Event"** means any of the following:
  - (i) a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator has been appointed over the Customer or any property belonging to the Customer;
  - (ii) an event occurs which gives any person the right to seek an appointment referred to in paragraph (i);
  - (iii) the Customer proposes or takes any steps to enter into a scheme, arrangement, agreement or compromise with its creditors or call a meeting of creditors;
  - (iv) the Customer suspends payment of its debts generally;

- (i) **"Intellectual Property"** means any intellectual or industrial property rights that have been, or may be, created or developed, whether or not registered or registrable, including, without limitation, a patent, trademark or service mark, copyright, visual image, performance, recording or broadcast, registered design, business name, domain name, trade secret, confidential information (including the Confidential Information), or database or list of information;
- (j) **"Premises"** has the meaning in clause 6.3;
- (k) **"Price"** means the fees and charges payable by the Customer to Solar Suite for the Goods;
- (l) **"Related Bodies Corporate"** has the meaning in the Corporations Act (Cth) 2001; and
- (m) **"Website"** means the website situated at <https://solarsuite.com.au/> or any other website notified by Solar Suite from time to time.

## 2. Application of this Agreement

- 2.1. Solar Suite is a wholesale supplier and distributor of Goods to customers, and this Agreement should be construed strictly in this context only.
- 2.2. This Agreement applies to all orders placed by the Customer with Solar Suite for the purchase of Goods. No terms or conditions set out in any invoice or purchase order (or similar), issued by the Customer, will override this Agreement.
- 2.3. Solar Suite may change the terms of this Agreement, the Goods or the Price at any time, by giving the Customer written notice, or by otherwise posting it on our Website. Where a change relates to an increase in Price, Solar Suite shall provide the Customer with 30 days' prior written notice or by otherwise posting it on our Website. Suppose the Customer does not agree to these changes. In that case, the Customer may terminate the Agreement by written notice to Solar Suite no later than 30 days after the date the Customer received written notice of the changes or the changes were posted on our Website.

## 3. Placement of orders

- 3.1. Any price quotations prior to the parties entering into this Agreement are indicative only and are not binding on Solar Suite, unless expressly declared as binding in writing. The customer shall be bound for 7 (seven) Business Days to declarations concerning the conclusion of contracts.
- 3.2. Solar Suite requires that any order for Goods must be in writing. Any order made by the Customer for Goods will not constitute a legally binding agreement until the Customer has received a



written confirmation of the order from Solar Suite to its nominated email address ("Confirmed Order").

3.3. Solar Suite may, at its absolute discretion, accept or decline any order for Goods (or part thereof). Any order for Goods (or part thereof) not accepted is automatically deemed cancelled.

3.4. No application to cancel or vary a Confirmed Order will be considered by Solar Suite unless made by the Customer in writing to Solar Suite. Solar Suite may, at its absolute discretion, consider an application by the Customer to cancel or vary any Confirmed Order. Solar Suite reserves the right to charge the Customer for any loss or expenditure incurred by Solar Suite in relation to any cancellation or alteration of the Confirmed Order (including, but not limited to, the cost of the materials used or purchased, transport costs and the cost of labour incurred).

**4. Price**

4.1. The Customer shall pay the Price for the Goods in accordance with the Confirmed Order. Payment shall be made in the manner nominated by Solar Suite in writing.

4.2. In addition to the Price paid for the Goods, the Customer agrees to pay:

- GST and any other taxes and government charges, levies or fines in relation to the purchase of the Goods;
- the cost of delivery of the Goods, packaging costs, transport insurance and all other costs, charges or expenses in relation to delivery;
- charges for payments made by credit card; and
- charges incurred in connection with the cancellation or variation of a Confirmed Order.

4.3. If between the date of the Confirmed Order and the issue of an invoice, there is an increase in the cost to Solar Suite of supplying the Goods which is beyond the control of Solar Suite, then Solar Suite may increase the amount of the invoice in line with the increase in cost. If there is an increase in the amount to be invoiced, then Solar Suite will notify the Customer in writing, and the Customer may cancel the Confirmed Order by written request within 5 days of receipt of the invoice, and the order will be terminated and Deposit will be refunded.

**5. Payment**

5.1. The Customer must pay for the Goods in full before Goods can be collected or delivery made, unless otherwise agreed in writing by Solar Suite.

5.2. If the Customer fails to pay any amount to Solar Suite under this Agreement by the due date, without limiting any other remedies available to it under this Agreement or at law, Solar Suite may, at its absolute discretion, either:

- charge interest on all outstanding invoices, charged at an interest rate of 1.25% per month (15% per annum). Interest will accrue daily and be payable upon demand;
- cancel any Confirmed Order or suspend the delivery of any Goods until all outstanding invoices are paid in full (including any interest); or

5.4. set off any and all outstanding invoices against any amounts owing to the Customer by Solar Suite under this Agreement.

5.5. The Customer will pay Solar Suite all costs and expenses incurred in recovering any outstanding invoices, fees or charges (including interest), legal costs (on a solicitor/client basis) or expenses paid by Solar Suite to mercantile or collections agents.

5.6. Solar Suite reserve its rights to request at any time upfront payment, bank guarantee or some other form of security if Solar Suite considers the terms of payment of any Goods delivered to the Customer by Solar Suite have not been strictly adhered to by the Customer, or Solar Suite has reasonable concerns about the Customer's ability to pay for any Goods or otherwise perform its obligations herein.

**6. Delivery**

6.1. In the Confirmed Order email (Clause 3.2) Solar Suite will provide the Customer an estimated date at which the Goods may be available for collection by the Customer.

6.2. The time for Delivery of the Goods shall not be regarded as being of the essence and are at all times subject to availability of the Goods. If the delivery of the Goods is delayed for any reason (including the unavailability of the Goods), Solar Suite:

- will use reasonable endeavours to promptly notify the Customer of any delays in delivering the Goods; and
- will not be liable to the Customer for any costs, losses or damages caused by any delays in delivery.

6.3. Solar Suite will make available all Goods purchased by the Customer at Solar Suite's premises ("Premises") or such other location as agreed by the parties in writing from time to time.

6.4. The Customer must collect the Goods from the Premises within 5 Business Days of the date the Customer received written notice from Solar Suite Premises unless otherwise agreed in writing.

6.5. If Solar Suite agrees in writing to deliver the Goods to a delivery address nominated by the Customer, Solar Suite shall use reasonable endeavors to effect delivery of the Goods to the nominated delivery address and by the date and time specified in advance by Solar Suite. Solar Suite may, at its absolute discretion, deliver Goods to a post box, post restante address. All associated costs (including the costs incurred by Solar Suite effecting transport insurance on behalf of the Customer) are payable by the Customer, and delivery will be at the Customer's risk.

6.6. If Solar Suite is unable to effect delivery of the Goods to the Customer's nominated delivery address for any reasons (including the failure on the Customer's part to take delivery within a reasonable time), Solar Suite will, at its absolute discretion, be entitled to:

- handle and store the Goods at the Customer's risk and in such manner as Solar Suite may determine;
- charge the Customer handling and storage fees at Solar Suite's prevailing rates at the time; and
- charge the Customer additional fees at the prevailing rate to effect delivery of the Goods, and Solar Suite will not be liable to the Customer or anyone else for any costs, losses



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or damages caused to the Customer (or anyone else) by any delays or failure to effect delivery.

6.7. The Customer will ensure that any person who collects or takes delivery of the Goods on behalf of the Customer is authorized by the Customer to do so. The Customer shall procure that its duly authorized representative shall be present at delivery or the collection of the Goods. Acceptance of delivery by such representative shall constitute conclusive evidence that Customer has examined the Goods and found it to be in good condition, complete in every way for purpose for which it is intended, and in quantities ordered by the Customer. If required, the duly authorized representative shall sign a receipt confirming acceptance.

6.8. Solar Suite may, at its absolute discretion, withhold delivery of the Goods if:

- (a) an Insolvency Event occurs in respect of the Customer and the Corporations Act 2001 (Cth) does not prevent Solar Suite from withholding delivery of the Goods because of that Insolvency Event; or
- (b) the terms of payment for any Goods have not been strictly adhered to by the Customer.

**7. Defective Goods**

7.1. When the Goods are delivered to, or collected by, the Customer, the Customer must promptly check the Goods for any defects. The Customer must, no later than 20 Business Days after collecting the Goods, give Solar Suite written notice of these defects.

7.2. Subject to clause 8.3, where:

- (a) the Customer is entitled to the benefit of a consumer guarantee under the ACL in respect of defective Goods purchased from Solar Suite, the Customer will return the defective Goods to Solar Suite for exchange with replacement Goods and Solar Suite will pay the reasonable cost to replace the defective Goods; or
- (b) the ACL does not apply but the Goods are covered by a separate manufacturer's warranty, Solar Suite will use reasonable endeavours to assist the Customer to seek a remedy from the manufacturer direct in accordance with the manufacturer's warranty.

7.3. Solar Suite will assist the Customer to return the defective Goods to the manufacturer for exchange with replacement Goods and Solar Suite will pay the reasonable cost to replace the defective Goods, if this is not covered by the manufacturer's warranty.

7.4. To the full extent permitted by law, the Solar Suite will not exchange or replace defective Goods:

- (a) which have been lost, stolen or damaged while in the possession, custody or control of the Customer or anyone else, or otherwise as a result of an act or omission by anyone other than Solar Suite;
- (b) which have been tampered with, defaced or misused by the Customer or any other person;
- (c) which have been installed, interoperated or intermingled with third party materials, goods or services;
- (d) which have been modified, altered or repaired by any party other Solar Suite or the manufacturer;
- (e) which have not been correctly stored or used under normal conditions, including as specified by Solar Suite; or
- (f) if the Customer failed to provide Solar Suite with written notice in accordance with clause 8.1.

7.5. To the maximum extent permitted by law, clause 8.2 is the sole and exclusive remedy of the Customer in relation to defective Goods.

7.6. The Customer acknowledges that the Goods may contain minor deviations (including but not limited to, deviations in colour, finish or size of the Goods) which do not affect the quality, value or performance of the Goods and the Customer is not entitled to any recourse, including:

- (a) compensation or a refund of the Price;
- (b) cancel a Confirmed Order; or
- (c) reject the Goods as defective, as a result of any minor deviations.

**8. Risk and title**

8.1. Risk of loss, theft, damage or destruction of the Goods passes to the Customer as soon as Solar Suite has delivered the Goods to the Customer by making the Goods available for collection by the Customer or an authorised representative of the Customer (including transport company or freight forwarder engaged by the Customer to collect the Goods).

8.2. Title to, and in, the Goods will not pass to the Customer until payment in full for the Goods (and any other amounts owing by the Customer to Solar Suite under this Agreement) is received by Solar Suite in clear funds.

**9. Exclusion of warranties and liability**

9.1. The Goods and the Documentation are provided to the Customer on 'as is' basis. It is the Customer's responsibility to satisfy itself as to the suitability, condition and fitness for purpose of the Goods and the Documentation without relying upon the skills or judgment of Solar Suite. To the maximum extent permitted by law, Solar Suite makes no warranty that the Goods requested by the Customer meets the needs of the Customer's business, are suitable for the purpose for which they are used or defect or error free.

9.2. Solar Suite's will not be liable to the Customer or anyone else where the Goods:

- (a) have not been used strictly in accordance with the Documentation;
- (b) the suitability of any Goods for any particular purpose or use under specific conditions which were not made known or communicated to Solar Suite;
- (c) have been altered, repaired or modified by anyone other than Solar Suite or manufacturer;
- (d) have been subjected to unusual or non-recommended use, misuse, neglect, accident, damage in transit, abuse or unusual or natural hazard;
- (e) have been installed improperly; or



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(f) have been interoperated with third party materials, goods or services.

93. To the extent that the Customer acquires goods or services from Solar Suite as a consumer within the meaning of the ACL, the Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by this Agreement.

94. Nothing in this clause 9 operates to exclude, restrict or modify the application of any condition, warranty or provision implied by law, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

- (a) contravene that statute; or
- (b) cause any term of this Agreement to be void,

(Non-excludable Obligation).

95. Except in relation to Non-excludable Obligations and to the maximum extent permitted by law:

- (a) all representations, conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this Agreement;
- (b) Solar Suite will not be liable to the Customer or any third party for:
  - (i) indirect, consequential, incidental, special or exemplary damages, expenses, losses or liabilities; or
  - (ii) loss of profits, business interruption, loss of revenue, economic loss, loss of goodwill, loss of or damage to reputation, downtime costs, loss of use, failure to realize anticipated savings, loss under or in relation to any other contract, loss of opportunity or expectation loss or loss of production, loss of, or damage or corruption, to data; or
  - (iii) loss of, or damage to, any property or any personal injury or death to the Customer or any third person, arising out of, relating to or connected to the provision, delivery or use of the Goods, the Documentation and this Agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring; and
- (c) Notwithstanding anything else, Solar Suite's total aggregate liability arising out of, relating to or connected to the provision, delivery or use of the Goods, the Documentation and this Agreement (and whether arising under any statute, in tort (for negligence or otherwise), or on any other basis in law or equity), is limited to the amounts paid by the Customer under this Agreement in the 1 (one) month immediately preceding the date on which the claim giving rise to such liability arose.

96. The Customer agrees to defend, indemnify and hold Solar Suite, its Related Bodies and each of their officers, directors, employees and contractors (collectively, the "**Indemnified**") harmless from and against any and all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of any:

- (a) loss of or damage to any property belonging to the Customer or any third party, or any personal injury or death arising out of or in connection with this Agreement; or
- (b) breach or non-performance by the Customer of any its obligations under this Agreement.

10. **Suspension and termination**

10.1. This Agreement commences on the date of execution of the Agreement by both parties and continues unless terminated pursuant to its terms.

10.2. Either party may terminate this Agreement at any time on 14 days' notice in writing to the other party, but the termination of this Agreement will not cancel or affect any current Confirmed Orders.

10.3. Without prejudice to any of its other rights, powers or remedies, Solar Suite may suspend or cancel any Confirmed Order for the delivery of Goods and may terminate this Agreement immediately by notice in writing, if:

- (a) the terms of payment for any Goods by Solar Suite have not been strictly adhered to by the Customer;
- (b) the Customer makes a statement that is, or likely to be, misleading or deceptive in respect of its creditworthiness; or
- (c) the Customer breaches any of its obligations under this Agreement.

10.4. Without affecting any other right or remedy available to it, Solar Suite may suspend or cancel any Confirmed Order for the delivery of Goods and may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) an Insolvency Event occurs in relation to the Customer; and
- (b) the Corporations Act 2001 (Cth) does not prevent Solar Suite from terminating this Agreement because of that Insolvency Event.

10.5. On termination of this Agreement, without prejudice to other rights or remedies, the Customer shall pay to Solar Suite on demand:

- (a) all outstanding invoices and other amounts due under this Agreement (including any interest); and
- (b) any costs and expenses (including legal costs) incurred by Solar Suite in collecting any sums due under or arising out of this Agreement.

10.6. Termination of the Agreement is without prejudice to the rights of Solar Suite accruing up to the date of termination.

11. **Confidentiality and Intellectual Property**

11.1. Save as required by law, the Customer will not, during and after termination of this Agreement, without prior written consent of Solar Suite, use or disclose to any other person (except to the Customer's professional advisors) any Confidential Information of Solar Suite or its Related Bodies Corporate. The Customer shall at any time on demand or on termination of this Agreement, immediately deliver to Solar Suite all Confidential Information in



its or its officers, employers, contractors or agent's possession, control or custody, or if requested by Solar Suite in writing, destroy all such Confidential Information.

- 11.2. Nothing in this Agreement shall be construed as granting any right, title or interest in any of Solar Suite's Intellectual Property in relation to the Goods, the Documentation or otherwise ("Solar Suite IP"). Any and all Solar Suite IP, and anything else generated therefrom, will be Solar Suite's sole and exclusive property.
- 11.3. The Customer must not (and must not direct or authorise anyone else) to directly or indirectly infringe, the Solar Suite IP.
- 11.4. The Customer hereby grants Solar Suite permission to use and publish the Customer's name, logo and trademark, together with reference(s) to the fact that the Customer is a customer or client of Solar Suite, in any medium whatsoever, including on its website or marketing collateral.

## 12. GST

- 12.1. A reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (Act) is, unless the context dictates otherwise, a reference to that term as defined or used in that Act.
- 12.2. Any amount referred to in this Agreement which is relevant to determining a payment to be made by either party to the other is exclusive of any GST unless expressly indicated otherwise.
- 12.3. If GST is imposed on a supply made under or in connection with this Agreement, then the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- 12.4. The supplier must issue a tax invoice to the recipient of the supply at the time of payment of the GST-inclusive consideration or at another time agreed by the parties in writing.
- 12.5. If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

## 13. Force Majeure

Solar Suite will have no liability to the Customer or to anyone else under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond control including, but not limited to, acts of God, failure of a utility service or transport or telecommunications network, riots, civil commotion, computer hacking, war, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or

machinery, fire, flood, storm or earthquake, any disaster or adverse weather, governmental actions, default or non-performance of hosting or data centre providers or other suppliers or sub-contractors, labour disputes, or any other failure, act or omission in Solar Suite's supply chain.

## 14. Notices

- 14.1. All notices given by Solar Suite may be given by email to the address in the Customer Account. It is the Customer's obligation to keep that email address current and correct. The Customer agrees that the record of Solar Suite having sent a notice to it by email is, of itself, conclusive proof of receipt.
- 14.2. Notices given by the Customer must be delivered to Solar Suite in writing (In this respect, E-Mail shall be considered as "in writing").

## 15. General

- 15.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.3. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some parts were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.4. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 15.5. Neither party shall, without the prior written consent of the other party (which will not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, except that Solar Suite may assign, sell or transfer its rights or obligations under this Agreement to a Related Bodies Corporate or bona fide third-party purchaser of Solar Suite's business.
- 15.6. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 15.7. The United Nations Convention on contracts for the International Sale of Goods does not apply to this Agreement.
- 15.8. The laws of the State of Western Australia, Australia govern this agreement. You agree to submit to the exclusive jurisdiction of the Courts of Western Australia

**The Customer acknowledges and agrees that, by signing the Supply Agreement document, it has read and understood the terms and conditions set out in this agreement.**