

Terms and Conditions

1 Definitions and Interpretation

1.1 Definitions

In these Terms and Conditions, unless the context requires otherwise:

Accepted Order means an Order accepted by the Supplier on these Terms and Conditions.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Approved Materials means the advertising, marketing, fixtures and Product display materials as supplied by the Supplier or authorised by the Supplier from time to time.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition Consumer Act 2010* (Cth).

Australian Standards means the applicable standards, requirements and codes in respect of the type of Products within Australia.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Brand means the Trade Marks and all other trademarks (registered or unregistered), get-up, packaging, logos, slogans and associated intellectual property used in connection with the supply of the Supplier's Products, including (without limitation) eco-friendly and energy generating furniture and/or equipment.

Business Day means any week day save for public holidays within New South Wales, Australia.

Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

Commencement Date means the commencement date outlined in the Invoice, or if not specified in the Invoice, means the date of the Accepted Order.

Consumer Guarantee means a consumer guarantee as it applies to supplies made under this agreement, as set out in under Part 3-2, Division 1, Subdivision B of the Australian Consumer Law.

Customer means the person or entity acquiring (or intending to acquire) the Products from the Supplier pursuant to these Terms and Conditions.

Customer Business means the Customer's business as approved by the Supplier, including its trading name, branding and trade marks.

Default Rate means the pre-judgment interest rate set pursuant to the *Civil Procedure Act 2005* (NSW) expressed as a percentage per annum.

Delivery Address means the delivery address described in the Invoice or an Accepted Order (for the avoidance of doubt the Accepted Order delivery address shall apply over the Invoice).

Delivery Date means the delivery date described in an Accepted Order.

Force Majeure Event means an act of God, pandemics (including COVID-19), epidemics, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.

GST has the meaning given in GST Law.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any one or more of the following events:

- (a) in relation to a natural person:
 - (i) that person being unable to pay his or her debts as and when they fall due;
 - (ii) an application and filing for bankruptcy being made in respect of that person; or

- (iii) a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person's assets or undertakings or any of them; or

- (b) in relation to a body corporate:

- (i) that body corporate being unable to pay its debts as and when they fall due;
- (ii) a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them;
- (iii) an application for winding up or other process seeking Accepted Orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
- (iv) that body corporate being or becoming the subject of an Accepted Order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
- (v) that body corporate entering into, or resolving to enter into, a deed of Company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of Company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967 whether used in the Territory or otherwise.

Invoice means an invoice issued by the Supplier to the Customer following acceptance of an Order.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

Order has the meaning given in clause 4.1.

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

Products means the products specified in an Accepted Order.

Risks include but are not limited to serious physical or mental injury, disability and/or death.

Security Interest has the meaning given at Section 12 of the PPSA.

Supplier means Eco IT Solutions Pty Ltd (ACN 604 482 635) trading as Eco Renewable Energy.

Term means the term outlined in the Invoice or, if not specified in the Invoice, the period permitting the Supplier to perform its obligations under such Orders.

Terms and Conditions means these terms and conditions.

Territory means the territory outlined in the Invoice or, if not specified in the Invoice, the Australian state/s in which the Customer operates in.

Trade Marks means any trade marks (registered or unregistered) used by the Supplier to sell or market Products from time to time.

1.2 Interpretation

In these Terms and Conditions:

- (a) any word not defined in these Terms and Conditions will be given its meaning set out in other components of this Agreement or, if not otherwise define, its ordinary and natural meaning; and
- (b) in the event of inconsistency, the following order of priority should apply to the Agreement:
 - (i) an Invoice (including any Special Conditions therein); then
 - (ii) an Accepted Order (including any Special Conditions therein); then

(iii) these Terms and Conditions.

2 Term

2.1 This Agreement shall commence on the Commencement Date and continue for the Term until terminated in accordance with clause 13.

3 Agreement to Supply and Grant of Rights to Customer

3.1 This document records the terms and conditions on which the Supplier agrees to supply and deliver Products to the Customer.

3.2 Upon the Customer submitting an Order pursuant to clause 4.1, it agrees and acknowledges that it has read these Terms and Conditions and agrees to be bound by the same. For the avoidance of any doubt, the continued performance of any obligations by the Customer under these Terms and Conditions (including the submission of Orders) shall be deemed to be an acceptance and an agreement to be bound by the Terms and Conditions.

3.3 Subject to these Terms and Conditions and unless otherwise expressly consented to by the Supplier, the Customer agrees and acknowledges that it acquires the Products for its own personal use and is otherwise restricted from using the Products in any commercial manner, including marketing, promoting, sub-letting, hiring and/or selling the products.

3.4 Nothing in this Agreement means or implies that the relationship between the Supplier and the Customer is that of agent and principal, employer and employee, partners or joint venturers. No party has authority to bind or to purport to bind the other party.

4 Product Orders

4.1 The Customer must submit a purchase order to the Supplier (each an **Order**) specifying:

- (i) the amount and type of Products it requires to be supplied;
- (ii) the address for delivery of those Products; and
- (iii) any special delivery instructions for those Products (provided always that the delivery date for each Order must fall on a Business Day).

4.2 Each Order constitutes an offer by the Customer to purchase the Products specified in that Order on the terms of these Terms and Conditions (to the exclusion of any other terms other than those which apply or cannot be excluded by operation of law).

4.3 The Supplier may, in its sole discretion:

- (i) accept an Order by supplying the Products specified in that Order (each an **Accepted Order**); or
- (ii) decline an Order (without being obliged to give reason for doing so) by giving notice to that effect to the Customer.

4.4 No Order is binding until it is accepted by the Supplier. Upon confirmation of an Accepted Order, the Supplier will issue the Customer with an Invoice.

4.5 An Accepted Order may only be amended or cancelled with the prior written consent of the Supplier and subject to any terms and conditions as may reasonably be specified by the Supplier, including that additional fees may apply.

4.6 If the Supplier is unable to supply the quantity of a Product specified in an Order but is able to supply a lesser quantity, it may give notice to that effect to the Customer. The Customer may offer to purchase the lesser quantity by placing a new Order with the Supplier. For the avoidance of doubt, clause 4.3 applies to offers made in accordance with this clause 4.6.

4.7 The Supplier reserves the right to stipulate a minimum order quantity at any time for the Products.

5 Product Availability

5.1 The Supplier reserves the right to vary the Products offered for supply to the Customer at any time. The Supplier will give the Customer as much notice as reasonably possible of any variation of Products available to be purchased under this Agreement.

5.2 The Supplier cannot guarantee that all Products will be available for order by the Customer but will use its reasonable endeavours to fulfil any Approved Orders placed by the Customer.

5.3 Fulfilment of Approved Orders is subject to stock availability. The Supplier will not be liable to the Customer to make good any loss and/or damage whether arising directly or indirectly as a result of non-availability of Products.

6 Delivery

6.1 Unless otherwise stated in the Accepted Order:

- (i) The Supplier will arrange for the freight of the Products to the Delivery Address at the Customer's cost; and
- (ii) The Supplier will not arrange insurance of the Products during freight; and
- (iii) the price for the Products is exclusive of all freight and all freight and other carrier costs and any insurance associated with a delivery must be paid by the Customer on the terms of the Supplier's Invoice.

6.2 The Supplier will use its preferred carrier for delivery of the Products.

6.3 The Supplier will endeavour to deliver the Products in an Accepted Order within the delivery times specified in the Accepted Order.

6.4 Delivery times given by the Supplier are estimates only and the Supplier accepts no liability to the Customer or to any other person if it is unable to deliver Products within an estimated delivery time.

6.5 Where the Customer does not take delivery when the Products are ready for delivery, the Supplier is entitled to store the Products without liability and at the Customer's cost and risk.

7 Acceptance of Products

7.1 On delivery of Products to the Customer, the Customer must immediately check the quantity against the delivery confirmation and visually inspect the Products for their quality, condition and saleability.

7.2 The Customer will be deemed to have:

- (i) accepted each Product received in a delivery from the Supplier;
- (ii) acknowledged that it is satisfied as to all of the quantity, condition, quality and saleability of that Product;
- (iii) to the maximum extent permitted by law, waived any rights it has to make claims against the Supplier relating to the quantity, condition, quality or saleability of that Product; and
- (iv) assumed full responsibility for the maintenance of the quality, condition and saleability of that Product after its delivery by the Supplier,

unless it gives the Supplier a written notice setting out the nature of any defects within two (2) Business Days of the delivery of the Product.

8 Defective Products

8.1 Subject to clause 12, if the Customer can verify to the Supplier's reasonable satisfaction that a Product was defective at the time the Product was delivered to the Customer, the Supplier must use reasonable endeavours to either credit the Customer's account to the value of the Product or replace the defective Product within twenty (20) Business Days of the Customer returning the defective Products to the Supplier, at the Customer's cost unless otherwise agreed by the Supplier in writing.

8.2 Subject to clause 12, if a Product was free from defects when the Product was delivered to the Customer, the Supplier will not be obligated to replace the cost of that Product to the Customer.

9 Price and Payment

9.1 The price of the Products will be as set out in the Invoice.

9.2 The price of the Products quoted by the Supplier or on the Supplier's price list is exclusive of GST. In addition to the price payable for the Products, the Customer must pay to the Supplier, in accordance with the terms of the Supplier's invoice, the GST payable in respect of the supply of those Products.

9.3 Subject to clause 9.5, the entire balance of the Invoice owed to the Supplier by the Customer must be paid in full no later than seven (7) days of the Delivery Date of the Product.

- 9.4 The Supplier may require the Customer to pay a non-refundable deposit as part of any Accepted Order. The Customer agrees and acknowledges that it shall comply with the Supplier's request to pay any deposit under these Terms and Conditions within the time stipulated in any Invoice or as otherwise reasonably requested by the Supplier.
- 9.5 Unless the Supplier has approved the Customer to be supplied Products on credit under these Terms and Conditions, all Orders must be paid in full prior to dispatch to the bank account nominated by the Supplier in the Invoice.
- 9.6 If the Customer has been granted a credit account by the Supplier, Invoices are payable on the terms set out in each Invoice.
- 9.7 The Customer must pay all amounts due to the Supplier (whether under these Terms and Conditions or otherwise):
- (i) without set-off, deductions counter-claims or conditions; and
 - (ii) in available cleared funds to the bank account nominated by the Supplier in the Invoice.
- 9.8 If the Customer owes any amount to the Supplier (whether under these Terms and Conditions or otherwise), the Supplier may, in its sole discretion and without prejudice to any of its other rights, do one or more of the following:
- (i) withhold all future supplies of Products until that amount has been paid in full; or
 - (ii) set-off that amount against any amount owing by the Supplier to the Customer.
- 9.9 If an amount due under these Terms and Conditions is paid after the due date the Customer must pay the Supplier, in addition to the overdue amount:
- (i) interest at the Default Rate calculated based on a 365-day year from the date of the default until the date the amount (together with all accrued interest) is paid in full; and
 - (ii) all costs and expenses incurred by the Supplier in collecting the overdue amount, including legal costs on an indemnity basis.
- 9.10 The Customer's obligation to pay an amount owing applies notwithstanding any delay in the delivery of the Products.
- 9.11 Time is of the essence in respect of all amounts payable pursuant to these Terms and Conditions.
- 9.12 If the customer has added on a maintenance plan reflected in their invoice, this will be billed monthly/ quarterly or annually and must be paid within 7 days of the invoice date. Late payments will incur a 10% late payment fee for every month it is late.
- 9.13 Should the customer wish to cancel the maintenance plan, there will be a 30 day notice period & they will be required to pay 50% of all the outstanding money due for their entire maintenance period.
- 10 Title and risk**
- 10.1 Risk in each Product passes to the Customer upon dispatch of the Products by the Supplier or its agent or representatives.
- 10.2 Until the Supplier has received payment in full for all Products supplied by the Supplier under an Accepted Order:
- (i) title to the Products shall remain with the Supplier; and
 - (ii) the Products shall, so far as practicable, be kept separate from other goods on the premises of Customer, so as to be readily identifiable as the property of the Supplier.
- 10.3 The Customer agrees and acknowledges that the use of the Products may be for recreational activities that can be dangerous and accepts that there is a degree of Risk involved.
- 10.4 The Customer agrees and acknowledges that they use the Products at their own risk and otherwise subject to the Terms and Conditions and otherwise declares that it:
- (i) is aware that use of the Products may involve a Risk and that safety is not guaranteed;
 - (ii) is mentally and physically able to use the Products;
- (iii) will not use the Products unless they are in a good physical condition;
 - (iv) will use the Products within its skill level and capability.
- 10.5 The Customer acknowledges that by virtue of clause 10.2, the Supplier has or will have a Security Interest in the Products and the proceeds from the sale of the Products for the purposes of the PPSA, as well as a Security Interest in all of the Customer's present and after acquired property until paid in full.
- 10.6 The Customer acknowledges that the Supplier may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist the Supplier to achieve perfection of this Security Interest under the PPSA.
- 10.7 The Customer and the Supplier agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):
- (i) section 117 (obligations secured by interests in personal property and land);
 - (ii) section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
 - (iii) section 125 (obligation to dispose of or retain collateral);
 - (iv) section 129 (disposal by purchase);
 - (v) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
 - (vi) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vii) subsection 132(4) (statement of account if no disposal);
 - (viii) section 142 (redemption of collateral); and
 - (ix) section 143 (reinstatement of security agreement).
- 10.8 The Customer waives its right to receive a verification statement under section 157 of the PPSA.
- 11 Force Majeure**
- 11.1 The Supplier will not be liable for any loss incurred as a result of delay or failure to observe any of these Terms and Conditions due to a Force Majeure Event. The Supplier's obligations under these Terms and Conditions will be suspended and will resume as soon as the cause of the Force Majeure Event has ceased to have effect. For the avoidance of any doubt, and subject to these Terms and Conditions and the Consumer Guarantees, the Customer's payment obligations under clause 9 of the Terms and Conditions shall not be obviated by any event Force Majeure Event.
- 12 Limitation of Liability and Indemnity**
- 12.1 The Products may come with Consumer Guarantees which cannot be excluded at Law. These Terms and Conditions are subject to any applicable Consumer Guarantees.
- 12.2 The Supplier makes no express or implied warranties under these terms and conditions in relation to any Product.
- 12.3 To the maximum extent permitted by law, the Supplier will not be liable for direct, indirect, consequential, special, punitive or exemplary damages including but not limited to loss of profits, loss of business, loss by reason of delay, whether arising in negligence, from breach of contract or otherwise, in connection with these Terms and Conditions, which, for the avoidance of any doubt, shall also include (without limitation) and damages or losses (as noted herein) arising out of the use of the Products.
- 12.4 To the maximum extent permitted by law, the Supplier limits its liability for breach of these Terms and Conditions in relation to any particular supply of Products, to the price of the Products determined in accordance with clause 9.1

12.5 To the maximum extent permitted under the Australian Consumer Law, the Supplier's liability for breach of a Consumer Guarantee is limited to any one or more of the following, at the Supplier's election:

- (i) the replacement of the Products or the supply of equivalent Products;
- (ii) the repair of the Products;
- (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
- (iv) the payment of the cost of having the Products repaired.

12.6 This clause 12 continues to bind the parties after this Agreement is terminated.

12.7 Subject to this clause 12, the Customer indemnifies and holds the Supplier harmless to the full extent permitted by law for any loss or damage whatsoever arising in connection with the supply of the Products to the Customer or this Agreement, including any third party claims.

13 Termination

13.1 Without prejudice to any other right under these Terms and Conditions, the Supplier may terminate this Agreement:

- (i) without cause on thirty (30) days' prior written notice; or
- (ii) immediately, in the event of:
 - (A) an Insolvency Event affecting the Customer; or
 - (B) the Customer's breach of these Terms and Conditions which remains unremedied for a period of seven (7) days following written notice from the Supplier to the Customer.

13.2 Upon termination of this Agreement:

- (i) All amounts owing from the Customer to the Supplier are immediately due and payable; and
- (ii) Any Approved Materials and other items associated with the Brand in the Customer's possession must be immediately returned to the Supplier, at the Customer's cost.

14 Recall

14.1 If the Customer is directed by the Supplier to assist in any suspension of supply or recall of Products required in accordance with applicable

law, the Customer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall.

15 Special Conditions

15.1 If any Special Conditions are inserted into the Invoice or Accepted Order then they shall apply in the event of any inconsistency with these Terms and Conditions.

16 General

16.1 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral. This Agreement applies to the exclusion of the Customer's terms and conditions, which the Customer is deemed to waive by delivery in response to this Accepted Order. Any variation to this Agreement shall be binding on the Supplier only if reduced to writing and signed by the Supplier and the Customer.

16.2 These Terms and Conditions shall be binding on the Supplier and the Customer, their heirs, executors, administrators and permitted assigns.

16.3 The Agreement operates as a 'standing agreement' and each Accepted Order shall constitute a separate contract for supply of the Products between the parties and the Supplier may enforce its rights under this Agreement against an Accepted Order, multiple Accepted Orders or the Agreement as a whole.

16.4 The Customer may not, without the prior written consent of the Supplier, assign, transfer or grant any Security Interest over, its right, title and interest in or to the Agreement to any person (or agree or purport to do so).

16.5 Except as required by law, the Customer must not disclose to any person without the Supplier's prior written consent the existence of, or details in, the Agreement or any other information the Supplier gives the Customer.

16.6 If any provision of the Agreement is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these Terms and Conditions.

16.7 All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these terms and conditions does not prevent any other exercise of that right or the exercise of any other right.

16.8 These terms and conditions are governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.