

# TERMS AND CONDITIONS



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By purchasing the Goods and accepting delivery thereof, the Purchaser confirms that:

- I. it has been given an adequate opportunity to read and warrants that it has read and understood the terms and conditions of this Agreement; and
- II. in particular it has read and is aware of the implications of all the

## 1 DEFINITIONS

- 1.1 The following terms shall have the meanings assigned to them hereunder, namely:
  - 1.1.1 „Agreement“ means this document constituting all its pages together with the Confirmation of Order;
  - 1.1.2 „CPA“ means the Consumer Protection Act, No 68 of 2008, as amended from time to time;
  - 1.1.3 „CPA Regulations“ means all regulations published in terms of the CPA from time to time;
  - 1.1.4 „Confirmation of the Order“ means the written confirmation of order of the Goods ordered from the Seller by the Purchaser, which will include a Seller's invoice, wherein these General Conditions of Sale are incorporated by reference;
  - 1.1.5 „Day“ means a calendar day;
  - 1.1.6 „End User“ means the person, company or other entity purchasing Goods for its own use;
  - 1.1.7 „Goods“ mean the materials and/or equipment purchased by the Purchaser from the Seller and specified in the Confirmation of Order and any part or component thereof to be sold or provided by the Seller to the Purchaser;
  - 1.1.8 „General Conditions of Sale“ shall mean the terms and conditions as specified herein;
  - 1.1.9 „Purchaser“ shall mean the person, company or other entity identified in the Confirmation of Order as the purchaser of the Goods;
  - 1.1.10 „Parties“ shall mean the Seller and the Purchaser, and „Party“ shall mean either of them, as the context may indicate;
  - 1.1.11 „Prime Rate“ - the prime overdraft interest rate of Standard Bank of South Africa Limited updated from time to time, nominal annual compounded monthly in arrear, as certified by any manager or director of such bank, whose appointment it shall not be necessary to prove and whose certificate shall serve as prima facie proof of its contents;
  - 1.1.12 „Sale Price“ means the purchase price for the Goods as specified in the Confirmation of Order;
  - 1.1.13 „Seller“ means SolarWorld Africa Proprietary Limited; and
  - 1.1.14 „Supplier“ means any person, company or other entity (other than the Seller) having a contract with the Seller for the supply of the Goods or a part or component thereof.

## 2 APPLICABILITY

- 2.1 The Confirmation of Order and the General Conditions of Sale, which together form the Agreement, shall constitute the entire agreement between the Seller and the Purchaser in relation to the purchase of the Goods. The General Conditions of Sale shall form an integral part of the Confirmation of Order. References in the General Conditions of Sale to the Confirmation of Order shall refer to the Confirmation of Order incorporating the General Conditions of Sale.
- 2.2 If there is any conflict between the terms contained in the Confirmation of Order and the terms contained in the General Conditions of Sale then the terms of the Confirmation of Order shall prevail.
- 2.3 Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise nor the like not recorded in the Agreement.
- 2.4 Any standard terms and conditions of the Purchaser shall not apply to the Confirmation of Order unless expressly accepted in writing by Seller.

## 3 DELIVERY

- 3.1 Delivery of the Goods by the Seller to the Purchaser shall be affected in accordance with and subject to the delivery terms specified in the Confirmation of Order, which delivery terms are as described in the latest edition of „Incoterms“ issued by the International Headquarters of the International Chamber of Commerce in Paris, France. If the Incoterms conflict with any other term and/or condition of the Confirmation of Order the term and/or condition of the Confirmation of Order shall prevail.
- 3.2 Delivery shall take place on the estimated date and time and at the place specified in the Confirmation of Order, if any, or otherwise within a reasonable time after the date of the Confirmation of Order or at the date and time as otherwise agreed to between the Parties in writing.
- 3.3 The Seller will use its best endeavours to meet the stipulated dates and time for delivery of the Goods. The Seller is not responsible for failure to perform or to deliver or delays in performance or delivery due to circumstances beyond the Seller's control. The Seller will use reasonable endeavours to continue to perform in terms of this Agreement as soon as performance becomes possible.
- 3.4 Should the Seller foresee any delay in the delivery of the Goods to the Purchaser, the Seller shall give the Purchaser written notice thereof as soon as is reasonably possible.

- 3.5 If the Goods are ready for delivery before the estimated time for delivery specified in the Confirmation of Order, the Seller shall give the Purchaser written notice regarding the earliest possible date of delivery in accordance with the terms of the Confirmation of Order.
- 3.6 Should the Seller in its own and unfettered discretion, as it is entitled to do, decide to utilise one or more suppliers to deliver the Goods directly to the Purchaser in accordance with the terms of the Confirmation of Order or otherwise, the Purchaser hereby agrees to hold the Goods for such supplier/s until such time as the supplier/s have transferred their right, title and interest in and to the Goods to the Seller, at which time the Purchaser hereby agrees to hold the goods for and on behalf of the Seller, who shall have become the owner thereof. Upon full payment of the Sale Price, the Seller shall transfer such ownership to the Purchaser. In respect of all other rights arising out of or in connection with these General Conditions of Sale any such right will be applying between the Purchaser and the supplier/s and be applicable accordingly. Any notice given by the supplier/s as regards the execution of the cession and transfer to the Seller shall be deemed to have been a notice by the Seller to the Purchaser.
- 3.7 Without prejudice to any other remedies that the Seller may have at law or in terms of the Confirmation of Order, the Seller may put the Goods into storage at the Purchaser's cost, if and for so long as the Purchaser is unable and/or unwilling, to receive the Goods in accordance with the terms and conditions of the Confirmation Of Order.

## 4 PRICE AND PAYMENT

- 4.1 Unless otherwise stated in the Confirmation of Order, the cost of specially required tests, packaging, transport and delivery of the Goods as well as documents, special licenses, permits or duties (including without limitation any applicable taxes) to be paid in countries of transit and/or of final destination, are excluded from the Sale Price.
- 4.2 Payment of the Sale Price must be paid to a bank account designated by the Seller, without any deduction, set off or discount and within 30 (thirty) days after the date of the Seller's invoice, unless otherwise agreed upon in writing by the Seller and the Purchaser.
- 4.3 The Purchaser shall not be entitled to set off any payment due under the Confirmation of Order against any alleged or actual amounts due from or claims against the Seller under the Confirmation of Order, or any other agreement between the Seller and the Purchaser.
- 4.4 Payment of the Sale Price shall be effected exclusively in the currency described in the Confirmation of Order.
- 4.5 In the event of failure by the Purchaser to pay the Sale Price, or any portion thereof, on the due date thereof, the amount outstanding at that time shall bear interest at the Prime Rate, such interest to be calculated from the first date of such failure up to and including the date of receipt by the Seller of payment by the Purchaser of the full amount outstanding plus interest, without any notice of default being required and without prejudice to any other rights that the Seller may have at law or in terms of the Confirmation of Order.
- 4.6 The Purchaser indemnifies the Seller against any loss, damage, claim, cost, expense, fee and liability, including any applicable court costs and legal fees on a scale as between an attorney and a client, which the Seller may suffer or incur as a result of or in connection with securing or endeavouring to secure fulfilment by the Purchaser of its obligations in terms of the Confirmation of Order (‘the Indemnified Loss’).
- 4.7 The Purchaser shall be obliged to pay the Seller the amount of any Indemnified Loss suffered or incurred by the Seller as soon as the Seller is obliged to pay the amount thereof (in the case of any Indemnified Loss which involves a payment by the Seller) or as soon as the Seller suffers the Indemnified Loss (in the case of an Indemnified Loss which does not involve a payment by the Seller) and immediately upon presentation by the Seller of a certificate, setting out the Indemnified Loss, the contents of which shall constitute prima facie proof for purposes of any legal proceedings.

## 5 DEFAULT

Should the Purchaser breach any provision of the Agreement, and fail to remedy such breach within 10 (ten) days after receiving written notice requiring such remedy, then (irrespective of the materiality of such breach or provision) the Seller shall be entitled, without prejudice to any of its other rights in law including any right to claim damages, by written notice to the Purchaser to cancel the Confirmation of Order or to claim immediate specific performance of all of the Purchaser's obligations whether or not otherwise then due for performance. Notwithstanding the above going, if the breach constitutes repudiation, the Seller shall not be required to give notice requesting the remedy thereof before cancelling the Confirmation of Order.

## 6 LIMITATION OF LIABILITY

- 6.1 Notwithstanding any other provision in the Confirmation of Order (including the Seller's liability under clause 7 of these General Conditions of Sale), the Seller's liability for damages suffered by the Purchaser as a result of the Seller's failure to comply with its obligations in terms of the Confirmation Of Order shall be limited to liability for damages caused by the Seller's wilful misconduct or gross negligence and shall not at any time exceed the Sale Price of the Goods.

- 6.2 Subject to any warranties implied in the CPA (to the extent that the CPA applies to the Agreement) and any claim under Section 61 of the CPA, the Seller shall under no circumstances whatsoever be liable (save for liability for gross negligence), whether in contract or delict, for the death of or injury to the employees of the Purchaser, or for any indirect or consequential losses or damages of whatever nature and howsoever arising suffered by the Purchaser.
- 6.3 In addition the Seller shall not be liable for any loss, liability, damages or expense suffered by the Purchaser caused by or attributable to -
- 6.3.1 any defect in any Goods;
- 6.3.2 any breach by the Purchaser of the Agreement; or
- 6.3.3 the acts or omissions of any employees, agents, representatives and/or subcontractors of the Purchaser.

## 7 WARRANTY

- 7.1 The Seller warrants the good condition of the Goods for a period of 12 (twelve) months after their delivery on the terms and conditions of the remaining provisions of this paragraph.
- 7.2 The Seller shall repair or cause to be repaired, free of charge in Seller's factory or, at Seller's option, on the Purchaser's site, any defects which have been observed in the Goods and which the Purchaser can prove to be the result of defective materials, poor workmanship or defective construction on the Seller's part. Any related costs of transport of the Goods, other goods, or people arising from such repair work shall be for the Purchaser's account.
- 7.3 In the case of on-site repair, the Purchaser shall place at Seller's disposal at a mutually acceptable price agreed upon in advance, workmen and ancillary equipment to assist Seller in the on-site repair.
- 7.4 Parts replaced by the Seller shall become the Seller's property and must be returned to the Seller by the Purchaser if the Seller so requests.
- 7.5 The Seller's obligations under the warranty shall only come into force, if (i) within 14 (fourteen) days after the defect being observed, the Purchaser furnishes the Seller with all details thereof in writing; and (ii) the Goods have been installed, maintained, handled and properly applied or used by the Purchaser and its directors, employees, agents or contractors and no changes or repairs have been made to them without the Seller's prior written consent.
- 7.6 The Seller gives no warranty in respect of Goods or parts thereof obtained by the Seller from Suppliers, which shall be covered only by the specific Supplier's warranty, if any. The Seller undertakes to cede to the Purchaser, if necessary, all such claims as it may hold against such supplier.
- 7.7 The Seller does not warrant that the Goods comply with any specifications or requirements of any local, provincial or national authority or any legal requirements pertaining to the use of the Goods by the Purchaser and/or the End User and the use of the Goods shall accordingly always remain subject to the laws and regulations applicable to the specific area in which the Goods will be used.
- 7.8 The Seller's warranty shall not take effect if at the time the warranty is invoked the Purchaser is in breach of any of its obligations under this Agreement.

## 8 OWNERSHIP AND RISK

- 8.1 Provided that the Purchaser has made full payment of the Sale Price for the Goods, ownership and risk regarding the Goods shall pass to the Purchaser on delivery of the Goods in accordance with the Confirmation of Order. To the extent that full payment of the Sale Price of the Goods has not been made by the Purchaser, however, ownership shall remain with the Seller until full payment of the Sale Price has been made; and notwithstanding this, risk regarding the Goods shall always pass to the Purchaser on delivery of the Goods in accordance with the Confirmation of Order, alternatively Clause 3 of these General Conditions of Sale.
- 8.2 As long as ownership of the Goods remain with the Seller, the Purchaser shall refrain from any activity that may infringe the Seller's ownership rights and the Purchaser shall not sell, pledge, mortgage, process, assemble, or employ the Goods in any manner, without having obtained the Seller's prior written consent.
- 8.3 The Seller shall not be responsible for obtaining any permits, licences or other documents that may be necessary for the transfer of ownership to the Purchaser or the possession, use or assembly of the Goods by the Purchaser.

## 9 CONFIDENTIALITY

All designs, drawings and all further technical, financial or other information pertaining to the Goods and furnished to the Purchaser (including the terms of the Confirmation of Order) shall not be sold, copied, shown or otherwise be disclosed in any manner whatsoever by the Purchaser to third parties

## 10 PURCHASER'S INFORMATION UNDERLYING THE ORDER

All data, estimates, assumptions and all other factors underlying the Purchaser's decision to purchase the Goods and all changes therein, whether or not made explicit to the Seller, are used at the Purchaser's risk and the Seller gives no warranties regarding the accuracy of such data, estimates or assumptions or the suitability of the Goods for the Purchaser's purposes.

## 11 SECURITY

If the Seller has reason to believe that the Purchaser is not fulfilling or may not for any reason whatsoever, including but not limited to insolvency, perform in a proper manner his obligations under the Confirmation of Order, the Seller may require security, in an amount and manner that it in its sole discretion deems fit, from the Purchaser for the proper fulfilment of such obligations and suspend delivery of the Goods until such security has been furnished by the Purchaser to the satisfaction of the Seller.

## 12 TERMINATION

If the Purchaser –

- 12.1 is insolvent or is deemed for the purposes of any applicable law to be unable to pay its debts as they fall due;
- 12.2 is placed in liquidation or business rescue, whether provisionally or finally, at the instance of any creditor or otherwise, compulsorily or voluntarily, or is dissolved or deregistered (other than for the purposes of a reconstruction or an amalgamation without insolvency);
- 12.3 commits any act of insolvency as envisaged in section 8 of the Insolvency Act, 24 of 1936, as amended, or any act that would be such an act of insolvency if that person were a natural person;
- 12.4 makes or attempts to make or recommend a general offer of compromise with all or any class of its creditors; or
- 12.5 has any of its undertakings, assets, rights or revenues attached or taken possession of, or any creditor levies or enforces any execution or other process against any of its undertakings, assets, rights or revenues, the Seller shall, without prejudice to any of its other rights in law, by written notice to the Purchaser, be entitled to cancel the Agreement with immediate effect or with effect from a day specified in that notice.

## 13 WAIVER

The delay or failure on the part of the Seller to insist, in any one instance or more, upon strict performance of any of the terms or conditions of the Agreement, or to exercise any right or privilege, shall not be construed as waiver of any such terms, conditions, rights or privileges by the Seller, and the same shall continue and remain in full force and effect.

## 14 ASSIGNMENT

- 14.1 The Seller shall at all times be entitled to cede, delegate and/or assign any of its rights and obligations under the Agreement to any third party without the prior written consent of the Purchaser.
- 14.2 The Purchaser shall not be entitled to cede, delegate and/or assign any of its rights and obligations under the Agreement to any third party without the prior written consent of the Seller.

## 15 CHANGEABILITY

No addition to, amendment, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

## 16 PURCHASER'S USE OF GOODS

The Purchaser shall not remove, obstruct or cause damage to the Seller's name, trademark, logo or any other reference to the Seller or the Seller's product on the Goods.

## 17 APPLICABLE LAW

The Agreement shall be exclusively governed by the laws of the Republic of South Africa. The Parties hereby consent and submit to the jurisdiction of the High Court of South Africa (Western Cape High Court, Cape Town) in respect of any dispute or claim arising out of or in connection with the Agreement.

## 18 ARBITRATION

- 18.1 Any disputes arising from or in connection with the Agreement shall, if so required by either Party by giving written notice to that effect to the other, be finally resolved in accordance with the long commercial rules of the Arbitration Foundation of Southern Africa („AFSA“) by one arbitrator appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.
- 18.2 Each Party to this agreement (i) expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and (ii) irrevocably authorises the other to apply, on behalf of all Parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

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