

TFA Solar Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting TFA Solar to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.5 **"Goods"** means all Goods or Services supplied by TFA Solar to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between TFA Solar and the Customer in accordance with clause 5 below.
- 1.8 **"TFA Solar"** means TFA Solar Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of TFA Solar Pty Ltd.
- 1.9 TFA Solar only uses Clean Energy Council ("CEC") Accredited Installers.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with TFA Solar and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, TFA Solar reserves the right to refuse Delivery.
- 2.6 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, TFA Solar reserves the right to vary the Price with alternative Goods as per clause 5.2. TFA Solar also reserves the right to halt all Services until such time as TFA Solar and the Customer agree to such changes.
- 2.7 The Customer accepts that TFA Solar reserves the right to change the Price offered for Small Technology Certificate's (STC's), Small Generation Units (SGU's) and Large Generation Certificate's (SGC's) without notification or compensation due market STC's/SGU's/SGC's value fluctuation as per clause 5.2.
- 2.8 Any advice, recommendation, information, assistance or service provided by TFA Solar in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on TFA Solar's own knowledge and experience and shall be accepted without liability on the part of TFA Solar. Where such advice or recommendations are not acted upon then TFA Solar shall require the Customer or their agent to authorise commencement of the Services in writing. TFA Solar shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.9 These terms and conditions are meant to be read in conjunction with TFA Solar's Terms and Conditions which are available on request. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.11 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services TFA Solar is to supply. TFA Solar will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.
- 2.12 **Cooling-off Period** - A cooling-off period of ten (10) days is granted from the date of signing the quote. If the Customer has made a progress payment within the ten (10) days cooling-off period and TFA Solar has purchased materials for the installation/repair, TFA Solar will only be able to refund the progress payment component of any payments after their suppliers have refunded TFA Solar for the returned Goods. TFA Solar will refund the progress payment to the Customer minus any out of pocket expenses incurred by TFA Solar for the return freight and/or restocking fees incurred by their suppliers.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that TFA Solar shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by TFA Solar in the formation and/or administration of this Contract; and/or

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- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TFA Solar in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of TFA Solar; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not). ("**Customer Error**"). The Customer must pay for all Goods it orders from TFA Solar notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. TFA Solar is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
- 4. Change in Control**
- 4.1 The Customer shall give TFA Solar not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by TFA Solar as a result of the Customer's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At TFA Solar's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by TFA Solar to the Customer;
 - (b) TFA Solar's quoted price (subject to clause 5.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 TFA Solar reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, roofing structure and cable run, hard rock barriers below the surface or iron reinforcing rods in concrete, safety considerations, discovery of asbestos, change to system design, prerequisite work by any third party not being completed, hidden pipes and wiring in walls) or the effects of changes to wage rates due to industry awards which are only discovered on commencement of the Services; or
 - (d) where the value of any Small Technology Certificate's (STC's), Small Generation Units (SGU's) and Large Generation Certificate's (SGC's) upon which the sale Price is dependant changes as STC's/SGU's/SGC's are traded on the open market and the price varies from time to time; or
 - (e) where there is any change to any monies available to the Customer from the Australian Federal Government's Renewable Energy Target Program (RET Program) or any other Commonwealth, State or Local Government rebates or incentives; or
 - (f) in the event of increases to TFA Solar in the cost of labour or materials which are beyond TFA Solar's control.
- 5.3 TFA Solar reserves the right to change the Price if a variation to TFA Solar's quotation is requested. Variations will be charged for on the basis of TFA Solar's quotation, and will be detailed in writing, and shown as variations on TFA Solar's invoice. All Services shall halt until such time as the Customer gives consent to the variation and the additional Charges. Payment for all variations must be made in full at the time of their completion.
- 5.4 At TFA Solar's sole discretion, a non-refundable deposit as determined by TFA Solar may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by TFA Solar, which may be:
- (a) on Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with TFA Solar's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by TFA Solar.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and TFA Solar.
- 5.7 TFA Solar may in its discretion allocate any payment received from the Customer towards any invoice that TFA Solar determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer TFA Solar may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TFA Solar, payment will be deemed to be allocated in such manner as preserves the maximum value of TFA Solar's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by TFA Solar nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to TFA Solar an amount equal to any GST TFA Solar must pay for any supply by TFA Solar under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that TFA Solar (or TFA Solar's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At TFA Solar's sole discretion, the cost of Delivery is either included in the Price.
- 6.3 At TFA Solar's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 Subject to clause 6.5 it is TFA Solar's responsibility to ensure that the Services start as soon as it is reasonably possible.

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- 6.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that TFA Solar claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond TFA Solar's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify TFA Solar that the site is ready.
- 6.6 TFA Solar may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.7 Any time specified by TFA Solar for Delivery of the Goods is an estimate only and TFA Solar will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that TFA Solar is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then TFA Solar shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, TFA Solar is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TFA Solar is sufficient evidence of TFA Solar's rights to receive the insurance proceeds without the need for any person dealing with TFA Solar to make further enquiries.
- 7.3 If the Customer requests TFA Solar to leave Goods outside TFA Solar's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 7.4 TFA Solar shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, TFA Solar accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 Where the Customer has provided instructions or specifications for TFA Solar to complete the Services (including, but not limited to, any requested variation to the original design etc), then TFA Solar shall require proof of concept sign off prior to commencement of the Services and will accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Customer should the Customer fail to adhere to this clause.
- 7.6 In the event that TFA Solar discovers asbestos/hazardous materials whilst undertaking any works TFA Solar shall immediately advise the Customer of the same and shall be entitled to suspend the works pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs incurred by TFA Solar (howsoever arising) as a result of the discovery of asbestos/hazardous materials and/or any suspension of works in relation thereto.
- 7.7 Where TFA Solar is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and TFA Solar shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 7.8 Whilst TFA Solar shall take all due care to prevent any damage to the Customer's roof (any kind of roof) during the performance of the Services, TFA Solar shall not accept liability in the event of any damage caused to the Customer's roof. However, TFA Solar may offer to repair or replace any such damage, provided the Customer has available the necessary materials, at the time of installation.
- 8. Rebates & Incentives**
- 8.1 The Customer authorises TFA Solar to apply in the Customer's name for any grant, rebate or any other benefit (hereafter referred to as a Rebate) available from the Commonwealth, State Government, or any local government council in relation to the installation of a solar system and to receive payment of that Rebate on the Customer's behalf.
- 8.2 The Customer agrees to sign any necessary documents, provide any necessary information and take any necessary action TFA Solar may require, to enable TFA Solar to obtain payment of a Rebate.
- 8.3 If TFA Solar receives payment of a Rebate, TFA Solar will apply that payment in or towards satisfaction of the Price.
- 8.4 TFA Solar is not responsible for any failure to obtain a Rebate and the Customer shall remain liable to TFA Solar for the whole of the Price and any other amounts due to TFA Solar which are not paid in full.
- 8.5 The Customer unconditionally assigns all Small Technology Certificate's (STC's), Small Generation Units (SGU's) and Large Generation Certificate's (SGC's) to which the Customer is entitled in respect of the Goods to TFA Solar unless otherwise negotiated i.e. in the event the Customer wishes to retain their Small Technology Certificate's (STC's), Small Generation Units (SGU's) and Large Generation Certificate's (SGC's) then this can be facilitated but the Customer must then pay the full Price for their solar system no less than five (5) days before installation is due to commence.
- 8.6 The Customer acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of a Rebate by the Customer and in such circumstances TFA Solar will have no liability to the Customer.
- 9. Customer Acknowledgments**
- 9.1 The Customer acknowledges that while TFA Solar may have provided information to it about the performance of solar electricity systems, the Customer acknowledges that to the full extent allowed by legislation that TFA Solar shall not be deemed to have made any warranty or representation, express or implied, in relation to TFA Solar system, including whether or not it is suitable for a particular purpose unless the same is confirmed in writing.
- 9.2 The Customer acknowledges that the Goods or Services are bought solely upon the Customer's skill and judgement.
- 9.3 The Customer acknowledges that the performance of the Goods may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Goods and the location of surrounding structures and flora.

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- 9.4 The Customer acknowledges that some buildings may not have the optimum orientation for the installation of the Goods or components and therefore understands and accepts that the Goods performance may be compromised in such situations. Notwithstanding the former TFA Solar will use its best endeavours to install and position the Goods to maximise orientation and exposure to direct sunlight.
- 9.5 The Customer acknowledges that they shall not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party.
- 9.6 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in TFA Solar's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
- 9.7 The Customer acknowledges that additional costs such as connection to the electricity grid, smart meters, switchboard upgrades, additional cabling, trenching, digging, council application fees, etc are the sole responsibility of the Customer and that unless otherwise specified in writing pricing has been determined on the basis that TFA Solar's responsibilities are limited to the supply and installation of the Goods in the designated roof space only.
- 9.8 The Customer acknowledges that they will communicate with their selected Retailer as their contract/tariff may change after the installation.

10. Installation

- 10.1 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that TFA Solar, its employees or contractors reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then TFA Solar shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.5 above) until TFA Solar is satisfied that it is safe for the installation to proceed.
- 10.2 The installation date will be advised as soon as all materials have been delivered to TFA Solar's office/workshop and weather permitting. TFA Solar aims to be installing the system at the earliest convenience.
- 10.3 If a product substitution is required, Goods will not be substituted, without prior agreement from the Customer.

11. Access

- 11.1 The Customer shall ensure that TFA Solar has clear and free access to the work site at all times to enable them to undertake the Services. TFA Solar shall not be liable for any loss or damage to the site, (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of TFA Solar.

12. Underground Locations

- 12.1 Prior to TFA Solar commencing any work the Customer must advise TFA Solar of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst TFA Solar will take all care to avoid damage to any underground services the Customer agrees to indemnify TFA Solar in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1

13. Title

- 13.1 TFA Solar and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid TFA Solar all amounts owing to TFA Solar; and
 - (b) the Customer has met all of its other obligations to TFA Solar.
- 13.2 Receipt by TFA Solar of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to TFA Solar on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for TFA Solar and must pay to TFA Solar the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for TFA Solar and must pay or deliver the proceeds to TFA Solar on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of TFA Solar and must sell, dispose of or return the resulting product to TFA Solar as it so directs;
 - (e) the Customer irrevocably authorises TFA Solar to enter any premises where TFA Solar believes the Goods are kept and recover possession of the Goods;
 - (f) TFA Solar may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of TFA Solar;
 - (h) TFA Solar may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 2009 ("PPSA")

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a

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- monetary obligation of the Customer to TFA Solar for Services – that have previously been supplied and that will be supplied in the future by TFA Solar to the Customer.
- 14.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TFA Solar may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, TFA Solar for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of TFA Solar;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of TFA Solar;
 - (e) immediately advise TFA Solar of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.4 TFA Solar and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by TFA Solar, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by TFA Solar under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of TFA Solar agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies TFA Solar from and against all TFA Solar's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TFA Solar's rights under this clause.
- 15.3 The Customer irrevocably appoints TFA Solar and each director of TFA Solar as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 16.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify TFA Solar in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow TFA Solar to inspect the Goods.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 TFA Solar acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TFA Solar makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. TFA Solar's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, TFA Solar's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If TFA Solar is required to replace the Goods under this clause or the CCA, but is unable to do so, TFA Solar may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, TFA Solar's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty documentation (and shall in all cases be compliant with conditions applicable with the CCA (inclusive of the Australian Consumer Laws) or any other relevant legislation) provided to the Customer by TFA Solar at TFA Solar's sole discretion which may be;
 - (iv) an expressed warranty that will cease in respect of the Goods supplied from the date of delivery in accordance with clause 6 of TFA Solar's Terms and Conditions of Trade subject to:
 - (A) The Manufacturer's warranty of:
 - (a) five (5) years on all PV System (including any components that are deemed to be defective) provided from the date of delivery;
 - (B) TFA Solar's warranty of:
 - (b) seven (7) years for parts and labour for all Battery Energy Storage System (BESS) or Battery System (BS) under daily cycling operations; and
 - (c) five (5) years for any inverter; and
 - (d) five (5) years workmanship warranty for parts and labour (including operation and performance) on the whole system;
 - (v) if access cannot be provided to appropriate locations for servicing any warranty repairs in respect of installation and supply of panels for a unit, filter or branch box serving, then plaster may need to be cut and replaced and shall be at the Customer's expense; and

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- (vi) after the first year of installation any call out regarding warranty is applicable to a diagnostic call out charge of \$100.00 incl GST.
 - (b) in respect of all claims TFA Solar shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim; and
 - (c) the warranty shall cease and TFA Solar shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered, tampered with or overhauled by the Customer or anyone else other than a TFA Solar or the Manufacturer representative or without TFA Solar's written consent.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) TFA Solar has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to (iv) but subject to the CCA, TFA Solar shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by TFA Solar;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 TFA Solar may in its absolute discretion accept non-defective Goods for return in which case TFA Solar may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 16.11 Notwithstanding anything contained in this clause if TFA Solar is required by a law to accept a return then TFA Solar will only accept a return on the conditions imposed by that law.
- 16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where TFA Solar has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of TFA Solar. Under no circumstances may such designs, drawings and documents be used without the express written approval of TFA Solar.
- 17.2 The Customer warrants that all designs, specifications or instructions given to TFA Solar will not cause TFA Solar to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify TFA Solar against any action taken by a third party against TFA Solar in respect of any such infringement.
- 17.3 The Customer agrees that TFA Solar may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which TFA Solar has created for the Customer.

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TFA Solar's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes TFA Solar any money, the Customer shall indemnify TFA Solar from and against all costs and disbursements incurred by TFA Solar regarding legal costs on a solicitor and own client basis, internal administration fees, TFA Solar's contract fees owing for breach of these terms and conditions, including but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 18.3 Further to any other rights or remedies TFA Solar may have under this Contract, if a Customer has made payment to TFA Solar, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TFA Solar under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to any other remedies TFA Solar may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions TFA Solar may suspend or terminate the supply of Goods to the Customer. TFA Solar will not be liable to the Customer for any loss or damage the Customer suffers because TFA Solar has exercised its rights under this clause.
- 18.5 Without prejudice to TFA Solar's other remedies at law TFA Solar shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to TFA Solar shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TFA Solar becomes overdue, or in TFA Solar's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by TFA Solar;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. Dispute Resolution

- 19.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

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- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Compliance with Laws

- 20.1 Both the Customer and TFA Solar agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous materials and the safe removal and disposal of the same.
- 20.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 20.3 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by TFA Solar, then TFA Solar shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations 2002. The Customer accepts and agrees that any costs associated with the rectification works including any materials and labour shall be to the Customer's account.

21. Cancellation

- 21.1 Either party may terminate the Services by providing the other party with written notice, subject to conditions of clauses 18.4 and 18.5 (Default Event):
 - (a) where TFA Solar cancels any Contract to which these terms and conditions apply or cancels Delivery of Goods at any time before the Goods are delivered, then upon giving such notice TFA Solar shall repay to the Customer any money paid by the Customer for the Goods. TFA Solar shall not be liable for any loss or damage whatsoever arising from such cancellation; and
 - (b) where the Customer cancels Delivery of Goods, then the Customer shall be liable for any and all loss incurred (whether direct or indirect) by TFA Solar as a direct result of the cancellation (including, but not limited to, any loss of profits). All current invoices issued up to and including the cancellation date shall become immediately due and payable.
- 21.2 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Refund Policy

- 22.1 Subject to the Clean Energy Council-Solar Retailer's Code of Conduct, no refund will apply where a Customer has signed a Contract and all variations deemed necessary to the system design have been documented and sign-off by both parties, prior to the installation.
- 22.2 A refund shall apply (in accordance with section 2.1.6 (e) of the Code of Conduct) when:
 - (a) the final system design provided is effected by any site conditions or special circumstances (including the estimated performance) beyond the control of TFA Solar which may result in extra chargeable work not covered by the quote. This shall include any additional costs that may arise at or after installation and that will not be borne by TFA Solar i.e. fees for meter exchange/reconfiguration, damage on meter panels and changing dedicated off peak control devices, if required; or
 - (b) the estimated delivery timeframe for installation completion that was agreed upon at the point of Contract is not honoured, for reasons reasonably within TFA Solar's control, and the Customer does not consent to a revised timeframe; or
 - (c) where TFA Solar acting on behalf of the Customer to obtain the grid connection approval does not do so, prior to installation, and the Customer does not receive approval from the distributor to connect a system; and
 - (d) where extra chargeable work arises (i.e. more than five percent 5% of the Contract Price), which was not specified in the initial Contract, and the additional costs are not borne by TFA Solar and the Customer does not consent to these additional costs.

23. Privacy Policy

- 23.1 All emails, documents, images, or other recorded information held or used by TFA Solar is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. TFA Solar acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TFA Solar acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by TFA Solar that may result in serious harm to the Customer, TFA Solar will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to TFA Solar in respect of Cookies where the Customer utilises TFA Solar's website to make enquiries. TFA Solar agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TFA Solar when TFA Solar sends an email to the Customer, so TFA Solar may collect and review that information ("collectively Personal Information")If the Customer consents to TFA Solar's use of Cookies on TFA Solar's website and later wishes to withdraw that consent, the Customer may manage and control TFA Solar's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Customer agrees that TFA Solar may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Customer; and/or

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- (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 23.4 The Customer consents to TFA Solar being given a consumer credit report to collect overdue payment on commercial credit.
- 23.5 The Customer agrees that personal credit information provided may be used and retained by TFA Solar for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 23.6 TFA Solar may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 23.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 23.3 above;
 - (b) name of the credit provider and that TFA Solar is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided TFA Solar is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and TFA Solar has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of TFA Solar, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.8 The Customer shall have the right to request (by e-mail) from TFA Solar:
- (a) a copy of the Personal Information about the Customer retained by TFA Solar and the right to request that TFA Solar correct any incorrect Personal Information; and
 - (b) that TFA Solar does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 23.9 TFA Solar will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.10 The Customer can make a privacy complaint by contacting TFA Solar via e-mail. TFA Solar will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 24. Building and Construction Industry Security of Payments Act 2009**
- 24.1 At the TFS Solar's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.
- 25. Unpaid Seller's Rights**
- 25.1 Where the Customer has left any item with TFA Solar for repair, modification, exchange or for TFA Solar to perform any other service in relation to the item and TFA Solar has not received or been tendered the whole of any monies owing to it by the Customer, TFA Solar shall have, until all monies owing to TFA Solar are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 25.2 The lien of TFA Solar shall continue despite the commencement of proceedings, or judgment for any monies owing to TFA Solar having been obtained against the Customer.
- 26. Service of Notices**
- 26.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

27. Trusts

- 27.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TFA Solar may have notice of the Trust, the Customer covenants with TFA Solar as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of TFA Solar (TFA Solar will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (vii) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (viii) any alteration to or variation of the terms of the Trust;
 - (ix) any advancement or distribution of capital of the Trust; or
 - (x) any resettlement of the trust property.

28. General

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which TFA Solar has its principal place of business, and are subject to the jurisdiction of the Adelaide Courts in South Australia.
- 28.3 Subject to clause 16, TFA Solar shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by TFA Solar of these terms and conditions (alternatively TFA Solar's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 28.4 TFA Solar may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 28.5 The Customer cannot licence or assign without the written approval of TFA Solar.
- 28.6 TFA Solar may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of TFA Solar's sub-contractors without the authority of TFA Solar.
- 28.7 The Customer agrees that TFA Solar may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for TFA Solar to provide Goods to the Customer.
- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 28.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 28.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 28.11 TFA Solar complies with the Solar Retailer Code of Conduct issued by the Clean Energy Council.