

1. Definitions

- 1.1 “S1E” shall mean Solar 1 Electrical Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Solar 1 Electrical Pty Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by S1E to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean all Goods supplied by S1E to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by S1E to the Client.
- 1.5 “Services” shall mean all Services supplied by S1E to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Equipment” shall mean all Equipment including any accessories supplied on hire by S1E to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by S1E to the Client.
- 1.7 “Price” shall mean the Price payable for the Goods as agreed between S1E and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by S1E from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by S1E shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of S1E.
- 3.4 The Client shall give S1E not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by S1E as a result of the Client’s failure to comply with this clause.
- 3.5 Goods are supplied by S1E only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At S1E’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by S1E to the Client in respect of Goods supplied; or
 - (b) S1E’s quoted Price (subject to clause 4.2) which shall be binding upon S1E provided that the Client shall accept S1E’s quotation in writing within thirty (30) days.
- 4.2 S1E reserves the right to change the Price in the event of a variation to S1E’s quotation, upon acceptance by both parties.
- 4.3 S1E may submit detailed progress payment claims in accordance with S1E’s specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and S1E.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At S1E’s sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client’s nominated address (in the event that the Goods are delivered by S1E or S1E’s nominated carrier).
- 5.2 At S1E’s sole discretion the costs of delivery are included in the Price.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then S1E shall be entitled to charge a reasonable fee for redelivery.
- 5.4 S1E may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 The failure of S1E to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 S1E shall not be liable for any loss or damage whatsoever due to failure by S1E to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of S1E.

6. Risk

- 6.1 If S1E retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, S1E is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by S1E is sufficient evidence of S1E's rights to receive the insurance proceeds without the need for any person dealing with S1E to make further enquiries.
- 6.3 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. S1E will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.4 Where S1E is required to install the Goods the Client 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 S1E shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

7. Underground Locations

- 7.1 Prior to S1E commencing any work the Client must advise S1E of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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.
- 7.2 Whilst S1E will take all care to avoid damage to any underground services the Client agrees to indemnify S1E 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 7.1.

8. Client Responsibilities

- 8.1 The client acknowledges it is the sole responsibility of the client to negotiate individual tariffs and electricity rates with the clients selected retailer.
- 8.2 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the works and agrees that S1E shall not be liable for any damage caused to those items through the Clients failure to comply with this clause.
- 8.3 The Client shall ensure that S1E has clear and free access to the work site at all times to enable them to undertake the works. S1E 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 S1E.

9. Title

- 9.1 S1E and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid S1E all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to S1E in respect of all contracts between S1E and the Client.
- 9.2 Receipt by S1E 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 and until then S1E's ownership or rights in respect of the Goods shall continue.
- 9.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until S1E shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from S1E to the Client S1E may give notice in writing to the Client to return the Goods or any of them to S1E. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) S1E shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to S1E then S1E or S1E's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as S1E has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to S1E for the Goods, on trust for S1E; and
 - (f) the Client shall not deal with the money of S1E in any way which may be adverse to S1E; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of S1E; and
 - (h) S1E can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that S1E will be the owner of the end products.

10. Defects

- 10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify S1E of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford S1E an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which S1E has agreed in writing that the Client is entitled to reject, S1E's liability is limited to either (at S1E's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11. Warranty

- 11.1 Subject to the conditions of warranty set out in clause 11.2 S1E warrants that if any defect in any workmanship of S1E becomes apparent and is reported to S1E within sixty (60) months of the date of delivery (time being of the essence) then S1E will either (at S1E's sole discretion) replace or remedy the workmanship.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by S1E; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and S1E shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without S1E's consent.
 - (c) in respect of all claims S1E shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 11.3 For Goods not manufactured by S1E, the warranty shall be the current warranty provided by the manufacturer of the Goods. S1E shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

12. Intellectual Property

- 12.1 Where S1E has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in S1E, and shall only be used by the Client at S1E's discretion.
- 12.2 The Client warrants that all designs or instructions to S1E will not cause S1E to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify S1E against any action taken by a third party against S1E in respect of any such infringement.
- 12.3 The Client hereby authorises S1E to utilise images of the Goods designed or drawn by S1E in advertising, marketing, or competition material by S1E.

13. Default and Consequences of Default

- 13.1 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 S1E's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by S1E.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify S1E from and against all costs and disbursements incurred by S1E in pursuing the debt including legal costs on a solicitor and own client basis and S1E's collection agency costs.
- 13.4 Without prejudice to any other remedies S1E may have, if at any time the Client is in breach of any obligation (including those relating to payment) S1E may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. S1E will not be liable to the Client for any loss or damage the Client suffers because S1E has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to S1E's other remedies at law S1E shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to S1E shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to S1E becomes overdue, or in S1E's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Security and Charge

- 14.1 Despite anything to the contrary contained herein or any other rights which S1E may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to S1E or S1E's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that S1E (or S1E's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should S1E elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify S1E from and against all S1E's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint S1E or S1E's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Dispute Resolution

- 15.1 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:
- (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.

16. Compliance with Laws

- 16.1 The Client and S1E shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 16.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 16.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

17. Cancellation

- 17.1 S1E may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice S1E shall repay to the Client any sums paid in respect of the Price. S1E shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by S1E (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

18. Privacy Act 1988

- 18.1 The Client and/or the Guarantor/s agree for S1E to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by S1E.
- 18.2 The Client and/or the Guarantor/s agree that S1E may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 18.3 The Client consents to S1E being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 18.4 The Client agrees that personal credit information provided may be used and retained by S1E for the following purposes and for other purposes as shall be agreed between the Client and S1E or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by S1E, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 18.5 S1E may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

19. Building and Construction Industry Security of Payment Act 2002

- 19.1 At S1E'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 Payment Act 2002 may apply.
- 19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

20. General

- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 20.3 S1E shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by S1E of these terms and conditions.
- 20.4 In the event of any breach of this contract by S1E the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 20.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by S1E nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.6 S1E may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Client agrees that S1E may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which S1E notifies the Client of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 The failure by S1E to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect S1E's right to subsequently enforce that provision.