

MERCURY SOLAR LIMITED TERMS AND CONDITIONS 03/2016

Mercury Solar Limited trading as What Power Crisis ("the Seller") supplies all goods and services to "the Buyer" (as detailed in the "Client Name" overleaf) subject to these terms and conditions.

1. ACCEPTANCE

1.1 Receipt of any order for the supply of goods and/or services will be deemed to be acceptance by the Buyer of these terms and conditions, despite anything stated to the contrary on the Buyer's order, terms and conditions of purchase or similar document. Orders may not be cancelled.

2. PRICE

2.1 All orders will be filled at prices quoted by the Seller in writing or otherwise prevailing at the date of delivery of the goods and/or performance of the services. Prices are subject to change without notice.

2.2 All quotes will remain open for acceptance until the end of the current month from the date of the quote. All quotes are based on the Seller's personnel working normal hours and in the event that the Buyer requires the Seller's personnel to work outside normal hours then the price may be varied upwards at the Seller's reasonable discretion to reflect the greater cost of labour to the Seller.

2.3 Unless stated otherwise, all prices are inclusive of GST.

2.4 In the event that any action, or lack of action, from the Buyer or variation of the Buyer's instructions causes additional cost or expense to the Seller, then such further expense or cost shall be invoiced to the Buyer as an addition to the quoted price and the Buyer will be liable for payment of the same.

3. TERMS OF PAYMENT

3.1 Unless previously agreed by the parties to this agreement, payment is due as follows:

(a) 50% deposit with order, 50% balance due the day of completion.

(b) In the case where the Seller has agreed to a lesser deposit, then any remaining monies due are payable by the buyer on or before the agreed scheduled install of the product.

3.2 Payment of all amounts owing to the Seller shall be made without any set-off or deduction.

4. COMPLETION AND DELIVERY

4.1 Dates given for completion of work and delivery of goods on which work has been performed are stated in good faith but are not to be treated as a condition of the sale. If completion and delivery is delayed for any reason at all the Seller will not be responsible or liable in any way to the Buyer or any other party for loss suffered due to the delay.

4.2 Any change in delivery date notified to the Seller by the Buyer will be accommodated to the extent that the Seller is able to accommodate it but in the event that the change necessitates price increases through staff working overtime, a variation of planned staff availability, or increased cost of materials then all such extra expenses will be charged to the Buyer.

4.3 If the Buyer does not take delivery of the finished work or goods by the delivery date specified or any later date to which the Seller agrees, the Buyer must pay reasonable storage costs until the Buyer takes delivery. The Seller will determine the costs of storage and may invoice the Buyer for these.

4.4 The Seller is not required to accept any claim for discrepancy in orders unless the Buyer makes a written claim (with full reasons) to the Seller within 48 hours of delivery.

4.5 Delivery by the Seller to a carrier of the Buyer will be deemed to be delivery to the Buyer.

5. WARRANTIES AND CONDITIONS

5.1 This clause applies where the supply of goods and/or services pursuant to this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 ("Act") and where the goods and/or services are acquired in trade (as defined in the Act) and the Seller and Buyer are in trade (as defined in the Act). In such circumstances, to the fullest extent permitted by law, the Buyer agrees that the provisions of the Act do not apply to the supply to the Buyer.

5.2 Where the Buyer supplies the goods and/or the services to any customer of the Buyer and that supply would otherwise be subject to the provisions of the Act and where the Buyer's customer acquires or holds themselves out as acquiring the goods and/or services in trade pursuant to the Act then, to the fullest extent permitted by law, the Buyer warrants that it shall obtain the agreement of the Buyer's customer that the Act shall not apply to the supply to the Buyer's customer.

5.3 The Buyer warrants that the services or work carried out by the Seller are according to the Buyer's specifications for the Buyer's own purposes. The Seller's liability regarding supply of goods and/or services is limited as set out in clause 9.

5.4 To the fullest extent permitted by law, with the exception of any express written warranty the Seller may give, no warranty or condition will be implied against the Seller by any statute, at common law or otherwise and no representation, condition, warranty or variation of these terms and conditions will bind the Seller unless it is in writing and signed by the Seller. The Buyer acknowledges and agrees that the Seller accepts no responsibility nor liability for any warranties given by any person other than the Seller, including any suppliers and/or manufacturers warranties.

5.5 All goods and services are subject to usual trade tolerances over and under in respect of weight, dimensions or other measures of quality or performance.

5.6 The Buyer warrants that all information provided by the Buyer to the Seller for the purposes of completing funding or grant applications, is true and correct.

6. OWNERSHIP AND RISK

6.1 Despite the fact that ownership in the goods may not have passed to the Buyer, risk in the goods shall pass to the Buyer on delivery to the Buyer or into the custody of the party acting on the Buyer's behalf. The Buyer shall be obliged to insure the goods from the time of such delivery from the Seller's premises and pending payment in full to insure the goods in the name of the Seller and for their respective interests.

6.2 Notwithstanding any period of credit, legal and beneficial ownership of goods supplied by the Seller shall remain with the Seller until payment in full is made for the goods and services and for all other goods and services supplied by the Seller to the Buyer.

6.3 While ownership of such goods remains with the Seller:

(a) The Buyer will hold the goods on trust for the Seller as Bailee;

(b) The Buyer must ensure the goods supplied by the Seller for work to be undertaken and held pending work, in the course of work, or after the completion of work are stored separately and clearly identified as belonging to the Seller to the greatest extent possible.

(c) If the goods are sold or otherwise disposed of by the Buyer prior to payment in full, the Buyer will have been deemed to have done so as agent for the Seller and the proceeds of such sale will be the property of the Seller. The Buyer will hold the proceeds of such sale on trust on account for the Seller and keep them in a separate fund from its own money.

6.4 The Seller may re-take possession of all or any goods in the Seller's discretion wherever they are situated as long as the goods are capable of independent identification, and the Seller may sell the same by private treaty or by public auction. All proceeds of sale shall be applied to the amounts owing to the Seller and upon receipt of payment any excess which has brought the Buyer's account in credit shall forthwith be paid to the Buyer. The exercise of such rights shall not constitute a waiver of any other rights contractual or otherwise, which the Seller may have against the Buyer in respect of unpaid accounts.

6.5 The Buyer acknowledges that these terms and conditions create a security in all goods supplied by the Seller and any proceeds from the sale of the goods, to secure payment of all moneys owing (together with all other obligations) from the Buyer to the Seller under this agreement now and in the future, in terms of the Personal Property Securities Act 1999 ("the PPSA").

6.6 The Buyer shall provide all information, execute or arrange for execution of all documents and do all other things that the Seller may require to ensure that the Seller has a perfected security interest under the PPSA.

6.7 The Buyer shall immediately upon request by the Seller, procure from any person considered by the

Seller to be relevant to its security position such agreements and waivers as the Seller may at any time require.

6.8 The Buyer shall immediately notify the Seller of any changes in the Buyer's name, address details any other information provided to the Seller to enable the Seller to register a financing change statement if required.

6.9 The intellectual property comprised in the copyright, confidential information, design, specification, manufacturing methods and know-how created by the Seller in the course of carrying out works shall at all times be and remain the property of the Seller.

7. DEFAULT

7.1 Where the Seller considers the Buyer may be unable to meet its payment obligations to the Seller, the Seller may, without limiting or affecting its other rights and remedies, do all or any of the following:

(a) Demand payment of all or part of any moneys due to the Seller;

(b) Require security for the Buyer's obligations before making further supplies of goods or services;

(c) Without notice, withhold deliveries of goods and provision of services.

7.2 Where:

(a) The Buyer is in breach of any of these terms and conditions (including failure to make payment on due date); or

(b) The Buyer becomes insolvent or is adjudicated bankrupt or an application is made for the Buyer's liquidation or a liquidator or a receiver is appointed in respect of any of the Buyer's assets; or

(c) The Buyer no longer carries on business or threatens to stop carrying on business; or

(d) The Buyer enters into or threatens to enter into an arrangement with its creditors, then, without limiting or affecting the Seller's other rights and remedies, the Seller may do all or any of the following:

(e) Where the Buyer has failed to make payment on the due date, require the Buyer to compensate the Seller by making payment to the Seller on demand of interest as liquidated damages on the amount due from the due date until the date of payment at a rate equal to 1.5 per cent per month (in addition to the Buyer remaining liable for the full amount outstanding);

(f) Cancel this and any other contract of supply with the Buyer;

(g) Exercise all and any of a secured party's rights in Part 9 of the Personal Property Securities Act 1999.

7.3 The Buyer will pay all costs and expenses (including costs on a solicitor/client basis and debt collectors' costs) the Seller or the Seller's nominee incurs in enforcing or attempting to enforce their rights under this clause and under the Personal Property Securities Act 1999.

These costs and expenses incurred may be deducted from the proceeds of sale.

7.4 Payments received from the Buyer will be applied first in reduction of interest, liquidation damages and costs due under this clause, with the balance being applied in reduction of any amounts due under clause 3.

8. CLAIMS FOR DAMAGED OR DEFECTIVE GOODS

8.1 Subject to clauses 5, 6 and 10.1, the Seller may, at the Seller's discretion, repair any damaged or defective goods or make a reasonable allowance on the purchase of goods to replace the goods, provided that:

(a) The Buyer returns the goods to the Seller, or if the goods are not easily movable, notifies the Seller, within 14 days of delivery at the Buyer's cost, and within the same period provides a copy of the invoice and a claim specifically identifying the damage or defect(s);

(b) The Seller has a reasonable opportunity to investigate the claim; and

(c) The Buyer is not in default or breach.

8.2 If the Buyer does not comply with the above requirements, the Buyer will be deemed to have accepted the goods and the Seller will not incur any liability whatsoever to the Buyer in relation to the goods.

9. LIMITATION OF LIABILITY

9.1 Without restricting the limitations of liability contained elsewhere in these terms and conditions, the Seller's liability is limited to the price of the goods and/or services in respect of which such liability arises. The Seller has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage of whatever type or however arising.

9.2 The Seller is not responsible for any damage whatsoever caused either to the goods supplied or as a result of malfunction if:

(a) Goods are fitted by unqualified tradespersons or are fitted in an unprofessional manner; or

(b) Goods are adapted to a use for which they are not specifically intended; or

(c) Goods are added to or repaired using components not recommended or approved by the Seller or the manufacturer; or

(d) Goods are improperly stored or transported.

(e) Work is performed or services are provided by the Seller according to the Buyer's specifications and (in the Seller's sole discretion) the damage or malfunction is the direct result of the specification or the Buyer's communication of the specification to the Seller.

10. GENERAL

10.1 The Seller will not be in breach of these terms and conditions because of any failure on the Seller's part directly or indirectly due to wars, strikes, lockouts, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond the Seller's reasonable control.

10.2 The Buyer indemnifies the Seller against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by, the Buyer, or the Buyer's servants or agents.

10.3 If any of these terms or conditions is held by a Court to be ineffective because of nonregistration, illegality or any other reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.

10.4 No waiver by the Seller of any term or condition will constitute a waiver of any other of these terms or conditions.

10.5 The Seller may vary these terms and conditions at any time by notice in writing to the Buyer. The Buyer may not vary these terms and conditions unless the Seller agrees in writing.

10.6 The Buyer authorises the Seller to seek and obtain from and supply any information concerning the credit or business standing of the Buyer from any other person and directs any such person to supply or receive and record such information to and from the Seller.

10.7 Any dispute or difference arising between the Seller and the Buyer concerning the agreement or its construction or interpretation shall be subject to arbitration by a sole arbitrator to be agreed upon between the parties or failing agreement to be appointed by the President of the Auckland District Law Society. Every arbitration shall be conducted under the provisions of the Arbitration Act 1996.

10.8 In consideration of the Seller agreeing to supply the Buyer with the goods and/or services at the request of the person entering into these terms and conditions as guarantor ("Guarantor") (which is acknowledged), the Guarantor unconditionally guarantees the due and punctual performance by the Buyer of all of the Buyer's obligations under these terms and conditions. Such guarantee is a continuing guarantee and shall not be discharged or affected by the Seller giving any time or indulgence, extension of credit, waiver or consent at any time to the Buyer or by any variation to any agreement in respect of the supply under these terms and conditions.