

SUPPLY TERMS

These terms and conditions are between Power Diverter Australia Pty. Ltd. (ABN 31 613 702 453), (**we, us or our**) and you, the person or entity stated in the Quote (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions, any applicable Warranty Terms, and the Quote form the entire agreement under which we will provide the Goods and Installation Services to you (**Terms**).

Our Disclosures: Please read these Terms carefully and contact us if you have any questions. By accepting these Terms, you agree that:

- you acknowledge that the benefit from the Goods and Installation Services is contingent on being connected to your functioning electric hot water tank, and grid-tied solar system.
- we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise);
- subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering these Terms that are not included in these Terms;
- subject to your Consumer Law Rights, we will not refund any amounts paid by you; and
- subject to your Consumer Law Rights, our liability for the provision of the Goods and Installation Services will be limited to, at our discretion us reperforming the relevant Goods and Installation Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Installation Services, to which the Liability relates.

1. Acceptance

1.1 You have requested the Goods and, if applicable, the Installation Services set out in the Quote, and you are taken to have accepted these Terms by the earlier of:

- (a) accepting the Quote online or sending an email to us accepting the Quote (expressly or impliedly);
- (b) accepting the Quote and 'checking out' an order on our website;
- (c) instructing us to proceed with the Goods and Installation Services; and
- (d) making any payment of part or all of the Price.

2. Goods

2.1 We agree to provide the Goods to you in accordance with the Quote, these Terms and all applicable laws.

2.2 We may, at our absolute discretion, accept or reject an order. If we need to reject your order, we will notify you within a reasonable time after your order is placed. Once we accept an order, a binding agreement is formed for the supply of the Goods to you in accordance with these Terms.

2.3 It is your responsibility to check the order details, including selected Goods and any prerequisite conditions for the use and installation of the Goods, before you submit your order for the Goods with us. You agree that our Goods may not be effective unless it is installed with a functioning electric hot water tank, and grid-tied solar system.

2.4 Where you ask us for guidance on which model of the Goods to purchase, this will be contingent on the information you provide to us. It is your sole responsibility to determine the suitability of the Goods for you.

3. Installation Services

3.1 This clause applies where you have requested Installation Services from us in the Quote.

3.2 We provide the Goods and Installation Services to you using our Personnel who will be suitably qualified professionals.

3.3 Prior to completing the Installation Services, we may require you to send us photographs of the Site for installation of the Goods. We do not warrant that we will be able to determine from the photographs whether any remediation is required prior to us providing the Installation Services.

3.4 In our (or our Personnel's) discretion, we may require you to remediate an existing electrical issue prior to us completing the Installation Services for safety reasons and to ensure the Goods can function effectively.

3.5 You agree to provide us (and our Personnel) with access to the Site as is reasonably necessary for us to provide the Installation Services, free from harm or risk to health or safety:

- (a) at the times and on the dates reasonably requested by us or as agreed between the Parties; and/or
- (b) to enable us to comply with our obligations under this Agreement or at Law.

3.6 You agree that any plant or equipment belonging to you (such as your hot water tank or solar system), or directions provided, by you in relation to the Goods and Installation Services (**Your Items**) will be:

- (a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;
- (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
- (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws,

and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.

4. Time

- 4.1 We will use our commercial best endeavours to provide the Goods and Installation Services by the dates set out in the Quote, or where no date is specified, then within a reasonable period of time.
- 4.2 We will have no liability (including a failure to meet any date referred to in clause 4.1, for delays caused by one or more of the following events or circumstances:
- (a) a Variation or deemed Variation;
 - (b) an act, omission or breach by you;
 - (c) inclement weather;
 - (d) industrial action, except where caused by us; and/or
 - (e) any other event or circumstance beyond our reasonable control (including Force Majeure Events).

5. Refunds and Your Consumer Law Rights

- 5.1 We do not accept returns for change of mind or other circumstances. You may have rights under the Australian Consumer Law in addition to this clause.
- 5.2 Certain legislation, including the Australian Consumer Law and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods and Installation Services which cannot be excluded, restricted or modified (**Consumer Law Rights**). Nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL.
- 5.3 You agree that our Liability for the Goods and Installation Services is governed solely by the ACL and these Terms.
- 5.4 Subject to your Consumer Law Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods and Installation Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.
- 5.5 Where a warranty against defects is provided to you with the Goods and Installation Services, the terms and conditions of this warranty is outlined in the Warranty Terms.

6. Price and Payment

- 6.1 You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 6.2 You must pay the Price upfront using one of the methods set out on the Quote, or where the order is made on our website, using one of the methods set out on our website.
- 6.3 You must not pay, or attempt to pay, the Price by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- 6.4 We do not store any credit card details, and all payment information is collected and stored through our third-party payment processor.
- 6.5 Unless otherwise agreed in writing between the Parties, we will not provide the Goods or the Installation Services until we receive the Price in full.
- 6.6 Where we agree to provide you with Installation Services without pre-payment of the Price in full, you agree to make payment for the Price relating to the Installation Services in accordance with the payment terms on the Quote. If you fail to make payment of the Price or any amount payable under these Terms, we may:
- (a) cease providing the Goods and Installation Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so, (including legal fees, debt collector fees and mercantile agent fees); and
 - (b) commence proceedings against you and recover from you, our additional costs (including legal costs) in doing so.
- 6.7 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).

7. Delivery, Title and Risk

- 7.1 As between the Parties, you agree to pay for the costs of delivery, which will be particularised in the Quote.
- 7.2 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full.
- 7.3 We deliver the Goods using a range of delivery methods. You may need to sign for some deliveries. If neither you nor your authorised representative is at the delivery address to accept delivery, you agree that we may leave the Goods at your premises. Any delivery periods displayed on our website are estimates only, based on the information provided by the delivery company.
- 7.4 Risk in the Goods will pass to you on delivery of the Goods to the delivery address specified in your order.

8. Term and Termination

- 8.1 These Terms will commence on the Commencement Date, and will continue until the earlier of (a) the Goods and Installation Services being supplied to you in accordance with these Terms; and (b) the Terms being terminated in accordance with this clause 8 (**Term**).
- 8.2 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 business days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
 - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 8.3 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Goods and Installation Services;
 - (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you; and
 - (c) you are to pay for all Goods and Installation Services provided prior to termination, including Goods and Installation Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms.
- 8.4 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

9. Latent Conditions and Variations

- 9.1 You may request a variation or change to the Installation Services, including the timing for the provision of the Installation Services, by providing written notice (including by email) to us, with details of the requested variation or change (**Variation Request**).
- 9.2 We will not be obliged to comply with a Variation Request unless the Parties agree to the Variation Request (or an amended Variation Request) in writing, including any effect on the Price (**Variation**).
- 9.3 If we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with such instruction or direction unless and until a Variation Request has been issued in accordance with clause 9.1 and a Variation has been agreed in accordance with clause 9.2
- 9.4 If we encounter any condition, event, circumstance, matter or thing in, on or around the Site or otherwise that could not have reasonably been foreseen or anticipated by us as at the date of the Quote, and that would or would likely result in us, you or any third party suffering or incurring additional cost or delay, or would require a change to the Quote, Goods, Installation Services, Price, and/or these Terms (**Latent Condition**), during the provision of the Goods and Installation Services, we will notify you as soon as reasonably practicable after becoming aware of the Latent Condition.
- 9.5 Any additional works, materials, costs or delays that we suffer or incur as a result of any Latent Conditions, or any instructions or directions given by you that are in addition to the Quote, will constitute a deemed Variation.
- 9.6 Any deemed Variation for a Latent Condition will be priced in accordance with this clause.

10. Liability

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for any Consequential Loss;
- (b) our maximum aggregate liability for any Liability arising from or in connection with the Goods and Installation Services and these Terms will be limited to us resupplying the Goods or reperforming the relevant Installation Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Installation Services, to which the Liability relates.
- (c) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (including a failure to take reasonable steps to mitigate the relevant Liability); and
- (d) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by your installation of the Goods (unless we have provided Installation Services), and for Your Items.
- (e) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Goods and Installation Services.

This clause 10 survives expiry or termination of these Terms.

11. Intellectual Property

- 11.1 All Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with the Terms, any content on our website, and the Goods and Installation Services) (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- 11.2 We authorise you to use Our Intellectual Property solely for your own personal, non-commercial use, and in the manner in which it was intended to be used.
- 11.3 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not commit any Intellectual Property Breach.
- 11.4 This clause 11 will survive the termination or expiry of these Terms.

12. General

- 12.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of South Australia to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 12.2 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 12.3 **Governing law:** These Terms are governed by the laws of South Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in South Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 12.4 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.
- 12.5 **Severance:** If any provision (or part of it) under these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

13. Definitions

- 13.1 In these Terms, unless the context otherwise requires:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Commencement Date means the date these Terms are accepted in accordance clause 1.1.

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss" for the purposes of this definition.

Consumer Law Rights has the meaning given in clause 5.1.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Goods means the goods to be provided by us to you under these Terms, as expressly set out in the Quote.

Installation Services means the services performed by us to install the Goods under these Terms, as expressly set out in the Quote.

Intellectual Property means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Breach means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party to these Terms or otherwise.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote for the provision of the Goods and Installation Services, as adjusted in accordance with these Terms.

Site means the location on your property where the Goods are to be delivered, and/or the Installation Services are to be performed.

Quote means the quote (including any online quote on our website, or sent to you by email) to which these Terms are attached or incorporated by reference.

Term has the meaning given in clause 8.1.

Variation has the meaning given in clause 9.2.

Variation Request has the meaning given in clause 9.1.

Your Items has the meaning given in clause **Error! Reference source not found.**

Warranty Terms means, where applicable, the terms and conditions for our warranty against defects provided to you with the Goods and Installation Services.