



# M SOLAR POWER DISTRIBUTION

M Solar Power Services (Pty) Ltd

Co. Reg No: 2013/115285/07

VAT Reg No.4510265343

Tel: (021) 788 3043  
46 Lakeshore Drive, Capricorn Business Park, 45  
(Jointly or severally referred to as "the Company" throughout this application)

## **GENERAL CONDITIONS OF PURCHASE AND SALE REVISION 1 DATED 08 FEBRUARY**

**2022**

### **TO BE READ WITH THE RELEVANT Quotation**

1. NOW THEREFORE IT IS AGREED THAT:

#### **1. Definitions & Interpretations**

- 1.1 In these general conditions of purchase and sale, unless the context requires otherwise:
- 1.1.1 "Account Grantor" means the Seller;
- 1.1.2 "Account Applicant" means the Purchaser;
- 1.1.3 "Days" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.4 "Delivery" means delivery in accordance with clause 5 below;
- 1.1.5 "Goods" means whatever is purchased or ordered in terms of the Quotation, and includes, where applicable, work to be done or services to be rendered, in terms of the Quotation;
- 1.1.6 "Invoice Address" is the address to which all invoices pertaining to the Quotation are to be directed and is the address as given by the Purchaser on the Quotation and entitled "Invoice Address"
- 1.1.7 "Quotation" means and includes:
- 1.1.7.1 The document entitled "Quotation" signed and/or agreed to by the Seller and the Purchaser; and
- 1.1.7.2 The contents of these general conditions of purchase and sale; and
- 1.1.7.3 All other documents referred to and/or attached to the Quotation; and
- 1.1.7.4 The specifications referred to and/or attached to the Quotation; and
- 1.1.7.5 Any schedule of drawings or photographs attached to the specifications.
- 1.1.7.6 Provided that, should there be any conflict between

any of the above documents, then the contents of the document defined in paragraph 1.1.5.1 above shall prevail.

- 1.1.8 "Purchase Price" means the nett purchase price excluding any withholding taxes which are for the account of Purchaser plus value added tax excluding any settlement discounts and as stated in the Quotation;
- 1.1.9 "Purchaser" means the party to whom the Quotation is addressed and which will take Delivery of or be liable for payment of the Goods;
- 1.1.10 "Seller" means the M Solar Power Services (Pty) Ltd;
- 1.1.11 "the Site" means the place where the Goods shall be transported to, installed or utilized;
- 1.1.12 "the Parties" means the Seller and/or the Purchaser, as the context determines;
- 1.1.13 "the Works mean; the place of business of the Seller situated as reflected on the Quotation.
- 1.2 In these conditions, unless the context require otherwise:
- 1.2.1 words importing any one gender shall include the other two genders;
- 1.2.2 the singular shall include the plural and vice versa;
- 1.2.3 a reference to natural persons shall include created entities and vice versa;
- 1.2.4 any word or expression defined in clause 1 shall, if expressed in the singular, include the plural and vice versa and cognate expressions shall have a corresponding meaning;
- 1.2.5 Clause headings have been inserted for convenience only and shall not be used for or assist or effect the

interpretation of the Quotation.

## **2. Purchase and Sale**

The Purchaser buys the Goods from the Seller in accordance with the Quotation. The Seller agrees to sell the Goods in terms of the Quotation and the Parties agree to be bound by the Quotation.

## **3. Offer and Acceptance**

- 3.1 All quotations will be valid for a period of 72 hours from date of issue. The quotation price will only be secured if the quotation is formally accepted and payment of the full quoted amount (cash sales) or agreed advance (sales with payment terms) is paid within the 72 hour period.
- 3.2 Quotations may be withdrawn by the Seller
- 3.3 Quotation price confirmation is required for any quotation older than 72 hours.
- 3.4 A Quotation will be issued after the conditions mentioned in 3.1 has been met.
- 3.5 No Quotation, in relation to the Goods, other than by an authorised representative of the Seller shall be valid and binding on it.
- 3.6 The Quotation shall be binding on the Parties on the formal acceptance of the Quotation.
- 3.7 The Quotation will reflect the price which is Ex Works.
- 3.8 In the event of a failure to make payment as set out in clause 3.1, the Seller will be able to void any Quotation unilaterally in its sole discretion and the Goods will no longer be available to the Purchaser at the agreed price.

## **4. Purchase Price and Terms of Payment**

- 4.1 The Purchase Price of the Goods will be that as recorded in the Quotation, save that, by written agreement between the Parties, should it be agreed that the specification of the Goods alter, the Purchase Price may be changed to take into account such altered specification.
- 4.2 The Purchase Price is an "ex Works" price unless otherwise stipulated in the Quotation. Goods are sold exclusive of VAT. Should import duties on Goods sold by the Seller be increased or should any other duty or rate be imposed subsequent to the date of acceptance of any Quotation or Invoice by the Seller, the Seller shall be entitled to increase the prices stipulated in the relevant Quotation so as to compensate for the effect of such increase or imposition of such duty, rate or impost.
- 4.3 In regard to cash sales: The full amount shall be paid, without deduction or set off, immediately prior to Delivery or collection.
- 4.4 In certain instances the Quotation may reflect that the Seller will be required to or have procured the Goods from foreign countries and in foreign currencies for which

Seller are still to settle the full amount due to the original manufacturer or supplier. Therefore prices expressed in the Quotation in South African currency are converted at an estimated exchange rate as reflected on the Quotation. The Purchaser shall be liable for any loss or difference or effect caused by the fluctuation of any relevant exchange rate ("the Loss") occurring until completion of the Quotation and shall pay such Loss prior to Delivery or as stipulated in the Quotation.

- 4.5 In certain instances the Purchaser agrees that the Quotation will be subject to the Seller entering into a forward exchange rate contract ("FEC") to fix the Rand value of the Goods referred to in the Quotation. The Purchaser, by concluding the Quotation, agrees to the FEC. Any effect such FEC shall have on the Purchase Price shall be for the cost or benefit of the Purchaser, it being agreed that all Rand and foreign currency risk relating to the purchase and importation of the Goods to South Africa by the Seller shall be borne by the Purchaser.

## **5. Delivery**

- 5.1 The Purchaser shall be liable for the transportation of the Goods from the Works to the Site, unless otherwise agreed and stipulated in the Quotation. Delivery, unless otherwise stipulated in the Quotation, is ex Works.
- 5.2 The Seller shall have the right to effect partial deliveries unless otherwise specified in the Quotation.
- 5.3 A delivery note, signed by the Purchaser, its employee, agent or representative shall constitute *prima facie* proof, on its mere production, that the Goods Delivered thereunder are in accordance with the quantity and quality reflected thereon.
- 5.4 Any date quoted for Delivery or reflected in the Quotation is an estimate only and subject to change due to component availability. However, the Seller shall use its best endeavours to meet such date.
- 5.5 Should the Purchaser not collect and remove the Goods from the Works within 21 calendar days of first being requested to do so by the Seller, the Seller shall be entitled, without the Purchaser having any recourse, to unilaterally cancel the Order and dispose of such Goods for its own account. A 10% (Ten Percent) handling fee will be set off against any deposit paid by the Purchaser.
- 5.6 The Seller's accounts department shall not release the Goods unless the amount payable reflects and is cleared in its bank account.

## **6. Passing of Ownership to the Purchaser**

Ownership of the Goods shall pass from the Seller to the Purchaser on Delivery or on payment for the Goods,

whichever is the later.

## **7. Risk**

All risk of any loss or damage to the Goods whether such loss or damage be total or partial, from whatsoever cause arising, shall pass to the Purchaser on Delivery/Collection of the Goods.

## **8. Warranties**

- 8.1 The Seller warrants to the Purchaser that the Goods are free of any lien, reservation of ownership and claims.
- 8.2 The Seller shall not be liable, in any way, for any damage or loss to the Goods caused by the abuse, misuse, neglect and/or failure to properly repair the Goods in accordance with the Seller's or original manufacturer/supplier's installation and operating instructions, if any, or caused by abnormal operating conditions and/or failure to properly maintain or operate the Goods.
- 8.3 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavor to transfer to the Purchaser the benefit of any warranty or guarantee given to the Seller.
- 8.4 No warranty is furnished in regard to consumables.
- 8.5 Manufacturer's product warranties are provided by the manufacturer to the client and transferred to the client on purchase.
- 8.6 In the event of a product fault or failure the product will need to be returned as per clause 9.
- 8.7 In the event of a replacement being required authorisation and a replacement product will need to be obtained from the manufacturer.
- 8.8 In some cases courier costs may be applicable. M Solar Power will assist as an intermediary in regards to the manufacturer's warranty.

## **9. Returns**

- 9.1 Before any Goods can be returned for credit, written authorization shall be obtained from the Seller. Goods must be sent to the Seller by the Purchaser under cover of a suitable returns note, duly authorized, together with a copy of the Seller original invoice or delivery note specifying the full reason for return and details of any replacement equipment ordered.
- 9.2 Any authorization for return given is subject to final acceptance after thorough inspection and testing of the returned goods by the Seller. Equipment considered for return must be unused and in a resalable condition.

## **10. The Seller's assumptions on any design required for the Goods.**

- 10.1 The Seller has based its design, if any, for the Goods, on information and/or assumptions set out in the quotation

and which has been furnished to it by the Purchaser. The Seller shall not be liable in any way, should the information furnished to it by the Purchaser be false or misleading or incomplete or inaccurate in any way.

- 10.2 The purchaser is liable for the system scoping, load calculations, workmanship and planning, implementation of a PV system and that it fulfils all legal requirements.

## **11. Standards, Quality and Performance**

- 11.1 The Goods shall be of the standard, quality and type set out in the Quotation.
- 11.2 Any performance figures published by the Seller are based upon its experience and are such as it expects to obtain on test in a test environment.
- 11.3 The Seller has no liability for damages for failure to attain such figures unless it has specifically guaranteed the performance figures, subject to the recognized applicable tolerances.

## **12. Discrepancies and Exclusions from the Purchase Price**

- 12.1 Should it appear to the Seller that there are manifest contradictions, discrepancies or conflicts (the "Error") in any way relating to or arising out of the Quotation, the matter shall be referred by the Seller to the Purchaser for clarification prior to the Seller undertaking any performance in terms of the Quotation.
- 12.2 The Parties shall then endeavor to resolve the Error in a manner acceptable to both Parties. Should the Error not be resolved the Goods shall not be manufactured or sold and the Parties shall be restored to the position they were prior to agreeing the Quotation. Should the Error be resolved, the Quotation shall be amended and signed by the Parties to reflect such resolution. Such amended Quotation shall be given effect to by the Parties.
- 12.3 Unless otherwise set out in the quotation the Seller shall not be liable for:
  - 12.3.1 the Goods not being fit for purpose or achieving any output or production of energy;
  - 12.3.2 micro cracks on photo voltaic panels caused by transportation, handling, installation, thermal tension and seasonal effect or weather;
  - 12.3.3 any damage, not caused by the Seller, to any solar cells contact points;
  - 12.3.4 any potential induced degradation;
  - 12.3.5 any hotspots on panels;
  - 12.3.6 any corrosion or delamination of panels caused by moisture ingress not caused by manufacturing;
  - 12.3.7 any failure to properly install and maintain the Goods.

## **13. Breach**

13.1 In the event of the Seller on the one hand or the Purchaser on the other hand (“the defaulting party”) committing a breach of any provisions of the Quotation, then save where the payment of money is concerned, and where no notice shall be required to be given by any Party to the other, the Party which is not so in breach (“the aggrieved Party”) shall be obliged to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 10 (ten) Days of receipt then the aggrieved party shall be entitled to cancel the Quotation or claim specific performance, in either event without prejudice to the aggrieved party’s right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at law or in terms of the Quotation.

#### **14. Expedited Dispute Process**

14.1 In the event of any claim or dispute (“the Dispute”) between them the Parties may, within three (3) Days of the date of delivery of a written request of either Party, refer the Dispute for resolution as follows: (i) each Party shall appoint as its representative a senior officer in its employ and; (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally and inexpensively.

14.2 Should the senior officers not resolve the Dispute within five (5) Days of the Dispute being referred to them, the matter may be referred to Court at the instance of either Party.

#### **15. Force Majeure**

Should the Seller be delayed in or prevented from delivering the Goods and/or rendering a service and/or executing any work set out in the Quotation owing to force majeure or act of God which is beyond the Seller’s control, the Seller shall not be liable for any loss or damage or any delay resulting therefrom.

#### **16. Assignment**

The Purchaser shall not cede or assign a Quotation without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

#### **17. The Seller’s Duties**

17.1 The Seller shall furnish the Purchaser with all necessary and reasonable information and documentation as in law it may be obliged to give in regard to any hazards and risks in the Goods.

17.2 The Seller shall furnish the Purchaser with full details as to the health and safety measures, as may be required in law, which the Purchaser should effect in regard to the

handling, storage, usage and disposal of the Goods.

#### **18. Packaging**

In the absence of any special written agreement to the contrary, all packaging shall be deemed to be included in the Purchase Price and shall be the property of the Purchaser. The Seller shall not be liable for any damage to any packaging material during the transportation of the Goods from the original manufacturer to the delivery of the Goods to the Purchaser. The Purchaser, unless otherwise agreed, shall be responsible for packing and protecting the Goods in such a manner as to ensure protection against loss or damage in transit due to faulty packing.

#### **19. Intellectual Property**

The Purchaser shall not have any ownership of any intellectual property rights in the Goods.

#### **20. Invoices and Payment Review**

20.1 In regard to cash sales: The full amount shall be paid, without deduction or set off, immediately prior to Delivery or collection.

20.2 All payments must be accompanied by a remittance advice giving sufficient information to enable the Seller to correctly allocate the monies received against the invoices outstanding. In the absence of proper information and when only part payment is received will be allocated to the oldest amount(s) due.

20.3 Should the Purchaser’s account be in arrears compared to the agreed payment terms, the Seller reserves the right to withhold further supplies until the arrears are paid and that the Seller is satisfied of the Purchaser’s continued credit worthiness. While supplies are being withheld, goods may not be supplied as ‘cash sales’ as the monies received by the Seller will be deemed to be in part payment of the oldest debt(s).

#### **21. Charges at Point of Dispatch**

Unless otherwise provided in the Quotation all charges at the point of Delivery, such as, but not limited to, weighing, loading, sheeting, storage and demurrage, shall be borne by the Purchaser.

#### **22. Export / Import Permits**

22.1 In the case of export from South Africa, the Purchaser shall do all that is necessary and be liable for all costs of export, including obtaining all documentation and permits:

22.1.1 to enable the Goods to be exported into the country of destination and;

22.1.2 to enable payment to be effected in accordance with

the Quotation.

### **23. Overriding Effect**

The Quotation shall override all terms and conditions stipulated, incorporated or referred to by the Purchaser in any document or negotiations and shall be the only document recording the Parties respective rights and obligations in-terms thereof.

### **24. Variation**

No amendment or variation of the Quotation shall be of any force or effect unless recorded in writing and signed on behalf of the Seller by an authorized signatory.

### **25. Relaxation not Waiver**

No relaxation or indulgence of the Quotation by the Seller in favour of the Purchaser shall be construed as a waiver of the Seller's rights.

### **26. Governing Law**

The rights and obligations of the Parties shall be governed by the laws of the Republic of South Africa and the Parties agree to submit to the jurisdiction of the courts of the Republic of South Africa for determination of all disputes. The Parties further agree to submit to the jurisdiction of the Magistrates Court for the District of Johannesburg in addition to any other South African court, which may have jurisdiction by operation of law.

### **27. Domicilium citandi et executandi**

27.1 The Parties elect such addresses as appear on the Quotation as their *domicilium citandi et executandi* for all purposes of the Quotation.

### **28. National Credit Act/Consumer Protection Act**

In the event that the National Credit Act 34 of 2005 and/or Consumer Protection Act 68 of 2008 applies to this agreement or to a specific transaction, any provision of the agreement or of the particular transaction concerned or in conflict with these acts shall be deemed to be deleted and shall not apply.

### **PERMISSION TO USE PURCHASER'S PERSONAL INFORMATION**

By entering into this Quotation:

30) The Purchaser hereby voluntarily authorises the Seller to process the Purchaser's and/or its employees' personal information (including name, credit card & banking details, physical address, telephone numbers & any other information provided to the Supplier).

- 31) The Purchaser indemnifies the Seller against any action by the employees of the Purchaser insofar as processing of their personal and special personal information is concerned.
- 32) Processing shall include the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use; dissemination by means of transmission, distribution or making available in any other form; or merging, linking, as well as blocking, degradation, erasure, or destruction of information. This consent is effective immediately and will endure until the relationship between the Purchaser and the Seller has been terminated.
- 33) By agreeing to the terms of this Agreement the Purchaser expressly consents to the processing of its information for marketing purposes and knows and understands that by agreeing to same that it may receive marketing materials in the form of SMS's, emails, and the like from the Seller.
- 34) The Seller is the responsible party in respect of such personal information, as envisaged in Protection of Personal Information Act, 4 of 2013 ("the Act") and the regulations thereto and its address and contact details appear at the top of page 1 hereof.
- 35) The Seller herewith warrants to take appropriate, reasonable technical and organisation measures to prevent loss of damage to or unauthorised destruction of the Purchaser's personal information and unlawful access to or production of the Purchaser's personal information.
- 36) In the event that the Seller's becomes aware of any unauthorised use of the Purchaser's personal information, the Seller will notify the Purchaser thereof.

### **PROTECTING SPECIAL PERSONAL INFORMATION**

37) By agreeing to the terms of this Agreement the Purchaser expressly consents to the processing of special personal information as defined in the Act.

### **RIGHTS IN TERMS OF THIS CONSENT**

38) It shall remain the Purchaser's obligation to update it's personal information and special personal information as defined in the Act.

### **TRANS-BORDER FLOW OF INFORMATION**

39) The Purchaser hereby expressly consents to the processing of its personal information by way of the trans-border flow of information. This will occur where personal information has to be sent to service providers outside of the Republic of South Africa for storage or further processing processes on the Purchaser's behalf.