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## TERMS AND CONDITIONS OF SALE

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These terms and conditions will apply to the products and/or services sold by sonnen Australia Pty Limited (ACN 611 337 547) (**we/our/us**) to you the customer (**you/your**) as set out in the Proposal.

**Please read these conditions carefully before accepting a Proposal to purchase for products and/or services sold by us. By accepting the Proposal you agree to be bound by these terms and conditions.**

### **1. Ordering**

- 1.1 When you accept the Proposal these Terms and Conditions of Sale are attached to, you agree to these Terms and Conditions of Sale and a contract is formed between us comprising of the Proposal and these Terms and Conditions of Sale (**Contract**).
- 1.2 Any terms relating to product quantities and delivery and/or installation times are estimates only and subject to availability, technical feasibility and timely delivery of components to us by our suppliers.
- 1.3 Up to the point a Contract is formed in accordance with clause 1.1, all product offerings by us are non-binding and subject to change. We reserve the right to revise and change any and all product descriptions before a Contract is formed.

### **2. Purchase of System**

- 2.1 You agree to purchase the System and related installation services for the Price on and subject to these Terms and Conditions of Sale.
- 2.2 Where your System has the technical capability for us to access it remotely, you authorise us to remotely access your System in order to collect data in connection with your use of the System and use it for our business purposes, monitor performance of the System, provide remote diagnostic support, provide alerts to you, upgrade software in the System and provide other services from time to time.
- 2.3 Other than as set out in these terms and conditions, we make no representations or warranties in relation to any Third Party Products.

### **3. Installation**

- 3.1 You authorise our Installation Provider to install the System which you have selected, at the Installation Address.
- 3.2 You will provide the Installation Provider and its agents and contractors with access to the Installation Address as reasonably required for the purposes installing the System.
- 3.3 You must ensure the Installation Provider's access to the Installation Address is safe, convenient and unhindered.
- 3.4 You will require approval from the Distributor to connect the System to the Distribution Network, and the relevant paperwork must be completed and submitted prior to the Installation. We will assist you in obtaining the relevant approval, providing that you agree to provide all approvals and assistance reasonably required by us.
- 3.5 It may also be necessary for your existing electricity meter to be upgraded or changed before the Installation Provider can activate the System. This meter change, and associated charges, are not covered by these terms and conditions.

You will be required to arrange for this work to be carried out prior to the installation of the System. Your existing electricity retailer, Distributor or service provider will invoice those charges directly and payment of these charges is your responsibility.

### **4. Prices and Payment**

- 4.1 You will pay to us the Price and such other amounts as become payable in accordance this Contract.
- 4.2 You acknowledge that the Price relates to a bundled product, made up goods and service provided by us and third parties.
- 4.3 All prices are inclusive of GST.
- 4.4 In addition to the Price, you will have to pay:
  - (a) any fees or other amounts specified in the Proposal at the time or times specified; and
  - (b) any additional fees and charges associated with your Installation that we advise you of prior to Installation, either during a pre-installation site inspection or on the day of your Installation. It is impossible for us to determine what these fees and charges are (if any) until the Installation Provider inspects your Installation Address. We will discuss these with you before going ahead with the Installation.
- 4.5 If you fail to pay any amount to us when it is due, in addition to any other rights we may have, we are entitled to (a) suspend deliveries of the System, and (b) charge interest at a rate of 8% per annum or the maximum rate permitted by law, whichever is lesser.
- 4.6 If you elect to pay via an Approved Third Party Financier:
  - (a) you consent to us disclosing your contact details (which may include Personal Information, as defined under the *Privacy Act 1988 (Cth)*) to the Approved Third Party Financier who will then independently assess your application for finance;
  - (b) the Approved Third Party Financier will provide us with written confirmation if it approves your application for finance;
  - (c) if approved, we will proceed with the Installation of the System and instruct the Approved Third Party Financier to pay us the Amount Payable and Additional Fees on your behalf;
  - (d) if the Approved Third Party Financier does not approve your application for finance, we will notify you and you may elect to pay for the System directly or you may terminate these terms and conditions.
- 4.7 You acknowledge and agree that we own any STCs which may be created with reference to the System. You will cooperate with us to assign any STCs including by executing any documentation we reasonably request in order to effect the assignment.

### **5. Title and Risk**

- 5.1 Title in the System passes to you our receipt of payment in full for those System.
- 5.2 Risk in the System will pass to you when that System is installed at the Installation Address.

5.3 We are entitled to register our interest in the System under any applicable security legislation to retain title in the System until paid in full in accordance with clause 6 below.

## 6. Personal Property Securities Act

6.1 For the purposes of this clause 6, the terms 'financing statement', 'financing change statement', 'PMSI', 'security agreement' and 'security interest' have the meanings set out in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

6.2 You acknowledge and agree that:

- (a) The Contract constitutes a security agreement and a PMSI for the purposes of the PPSA; and
- (b) a security interest is taken in all Systems supplied by us to you under the Contract.

6.3 You agree to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which we ask for and consider necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling us to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
- (c) enabling us to exercise rights in connection with the security interest.

6.4 If you sell or dispose of any of the System, you will hold the proceeds of sale or disposal on trust for us to secure payment of any amounts you owe us for the System. You must not mix these monetary proceeds with any other amount or use them to pay any debt payable to any party other than us.

6.5 You grant and our representatives an irrevocable licence to enter any land or premises for the purpose of inspecting, seizing or otherwise enforcing our rights in respect of the System under this clause and indemnify us for any claims for damage to property or personal injury as a result of exercising those rights. If we seize or retake possession of any part of or all of the System, we may deal with it as we think fit.

6.6 You waive any rights you may have to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 and 157 of the PPSA.

6.7 The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.

6.8 You waive any rights you may have under sections 142 and 143 of the PPSA.

6.9 Neither party will disclose information of the kind mentioned in section 275(1) of the PPSA, and you will not authorise, and will ensure that no other party authorises, the disclosure of such information.

## 7. Warranty

7.1 We will comply with the rules set out in the New Energy Tech Consumer Code with respect to our supplying and installing the System.

7.2 Subject to clause 7.3, we guarantee:

- (a) our workmanship, and the workmanship of the Installation Provider, in installing the System; and

(b) the operation and performance of the System,

will be free from fault or defect for a period of 3 years commencing on the date the System is installed and commissioned (**Guarantee Period**). We will repair any such fault or defect notified to us in that 3-year period, including by replacing all or part of the System where necessary, within a reasonable timeframe at no cost to you.

7.3 The guarantee in clause 7.2 will not apply where:

- (a) the fault or defect is not notified to us within the Guarantee Period; or
- (b) the fault or defect is as a result of:
  - (i) something done by you or somebody else, and not us or our contractors;
  - (ii) something beyond human control that occurred after installation;
  - (iii) the System being misused, abused, neglected or damaged after installation;
  - (iv) the System being maintained other than in accordance with the System maintenance documents;
  - (v) the System being repaired, modified, reinstalled or repositioned by anyone other than a service technician approved by us in writing.

7.4 The guarantee in clause 7.2 is additional to any other guarantee or warranty you may have:

- (a) from the manufacturer of any part of the System, including the warranty outlined in clause 7.5 below; or
- (b) under any applicable law, including the Australian Consumer Law,

although these other guarantees and warranties may not cover labour costs, travel costs and delivery costs arising from a claim under these other guarantees and warranties. We will notify you if this is the case, and tell you the costs payable. The costs will be payable in advance.

7.5 The sonnenBatterie comes with a manufacturer's warranty from us. Details of this warranty are in Annexure 1 to these Terms and Conditions of Sale.

7.6 The guarantee in clause 7.2 will transfer to any subsequent purchasers of the System, providing the subsequent purchaser provides us with contact details (including name, address, email and telephone number) when the ownership of the System transfers.

## 8. Limitation of Liability

8.1 To the extent permitted by law and subject to clause 8.2:

- (a) our total liability in connection with your order, whether based on warranty, contract, statute, tort (including negligence) or otherwise, is limited to a refund of the relevant amount paid for the System.
- (b) we will not be liable under these terms and conditions or an order for:
  - (i) loss of profit, loss of revenue, loss of savings, loss of data, loss of business opportunity, loss of contract, loss arising due to unavailability of the System, loss that was not caused by our breach; or
  - (ii) any indirect, special, consequential or incidental damages.

8.2 Nothing in these terms and conditions is intended to exclude, restrict or modify any non-excludable right or remedy you have under law including the Australian Consumer Law.

## 9. Termination

- 9.1 We may terminate these terms and conditions and an order:
- (a) immediately on written notice if you are in default of these terms and conditions and the default is not remedied within 14 days of receiving written notice to remedy the default; or
  - (b) immediately on written notice if you become bankrupt, are ordered to wind up, pass into liquidation or administration or have a receiver, manager or administrator appointed.
- 9.2 You may terminate these terms and conditions and an order and we will refund you all the monies you have paid to us:
- (a) if you cannot obtain approval from the Distributor to connect the System to the Distribution Network;
  - (b) if the System has not been delivered and installed at the Installation Address within 4 weeks of the date agreed by with you in the Proposal or as otherwise agreed with you in writing;
  - (c) if there are additional fees or charges for the Installation under clause 4.4(b), provided you notify us of termination before the Installation takes place;
  - (d) if any of the System is unattainable and you do not agree to equipment of a similar quality to be substituted; or
  - (e) within 10 days of agreeing to these terms and conditions, providing you did not solicit the relevant System from us (your cooling off period).

## 10. General

- 10.1 These terms and conditions contain the entire understanding between the parties concerning the subject matter of these terms and conditions and supersedes all prior communications.
- 10.2 These terms and conditions are governed and construed by the laws of New South Wales, Australia. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
- 10.3 If we are prevented or hindered or delayed in performing our duties under these terms and conditions due to an event or circumstance beyond our reasonable control, such non-performance shall not be considered a breach of these terms and conditions for the duration of the event.
- 10.4 The failure of either party to enforce any provisions under these terms and conditions will not waive the right of such party thereafter to enforce any such provisions.
- 10.5 If any term or provision of these terms and conditions is held by a court to be illegal, invalid or unenforceable under the

applicable law, that term or provision will be severed and the remaining terms and conditions will be unaffected.

## 11. Interpretation

- 11.1 In these terms and conditions, unless the context requires otherwise:
- (a) a reference to any party includes that person's executors, administrators, substitutes, successors and permitted assigns;
  - (b) a reference to a legislative provision or legislation (including subordinate legislation) is a reference to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
  - (c) a reference to "dollars" or "\$" is a reference to Australian dollars

## 12. Definitions

**Approved Third Party Financier** means a third party credit provider to whom we may, with your consent, provide your contact details so that they may contact you in order to arrange financing for the Installation of the System.

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Contract** has the meaning given in clause 1.1.

**Distribution Network** means the electricity network which supplies electricity to and from the Installation Address.

**Distributor** means the entity who operates the Distribution Network.

**Guarantee Period** has the meaning given to it in clause 7.2.

**Installation** means the installation of the System at the Installation Address.

**Installation Address** means the address specified in the Proposal as the address where the System will be installed.

**Installation Provider** means a CEC- accredited, appropriately licensed and suitably qualified and experienced third party who we contract with to undertake the Installation.

**Price** means the total price stated in the Proposal (as updated and agreed in writing by you).

**Proposal** means the proposal we send you outlining the System we propose to sell you, and details relating to the Installation.

**STCs** means small-scale technology certificates (being a class of renewable energy certificates) created under section 23C of the *Renewable Energy Electricity Act 2000* (Cth).

**System** means the Photovoltaic and/ or battery system provided by us and/or a third party specified in the Proposal which is to be, or has been installed, at the Installation Address by an Installation Provider.

**Third Party Products** means products or services that have not been provided by us.

## Annexure 1: sonnenBatterie Manufacturer's Warranty

### 1. Definitions and scope

1.1 In this warranty, terms have the following meanings:

- (a) **Authorised Partner:** partners or distributors authorised by sonnen to sell, install and/or repair the sonnenBatterie;
- (b) **Complete Recharge Cycle** is:
  - (i) a full charge and a full discharge of the sonnenBatterie; or
  - (ii) partial charges and partial discharges of the sonnenBatterie which when aggregated together constitute a full charge and a full discharge of the sonnenBatterie.
- (c) **Customer:** the purchaser of the sonnenBatterie, for whose benefit the sonnenBatterie is brought into service and where the purchase is not for the purpose of resupply;
- (d) **Installation Certificate:** the sticker and/or certificate recording the serial number of the sonnenBatterie, Authorised Partner number and date on which the sonnenBatterie is brought into service, which is provided to the Customer by sonnen or the Authorised Partner or a certified installer or repairer;
- (e) **sonnen:** sonnen Australia Pty Ltd ACN 611 337 547;
- (f) **sonnenBatterie:** the product as first delivered to you, or any replacement or repaired product provided to you under the terms of this warranty.

1.2 This warranty is given by sonnen to the Customer in respect of the sonnenBatterie. To the extent permitted by law, the warranty will not transfer to any subsequent purchasers of the sonnenBatterie without the prior written consent of sonnen, such consent will not be unreasonably withheld.

1.3 If the Customer subsequently purchases additional sonnenBatteries, sonnen or its Authorised Partner will issue a separate Installation Certificate in respect of each sonnenBatterie, which will be subject to the warranties contained therein.

### 2 Warranty details

2.1 If the sonnenBatterie develops a fault or defect during the warranty period, and subject to the terms below, sonnen or its Authorised Partner will repair it or replace it. It may be replaced by a refurbished sonnenBatterie of the same type rather than being repaired. Refurbished parts may be used to repair the sonnenBatterie.

2.2 sonnen offers this warranty on top of any guarantees imposed by the *Competition and Consumer Act 2010* and any other applicable State or Territory legislation.

2.3 The warranty period commences on the date on which the sonnenBatterie is first brought into service as recorded on the Commissioning Report. The warranty period ends on whichever date occurs first:

- (a) 10 years from the date of commencement of the warranty period; or
- (b) 10,000 Complete Recharge Cycles of the sonnenBatterie.

2.4 The warranty does not cover:

- (a) any sonnenBatterie where:
  - (i) the lead-sealing of the battery has been damaged;
  - (ii) it has not been installed or repaired by sonnen or an installer or repairer certified by sonnen, as recorded on the Installation Certificate;
  - (iii) the electrical connection to the electricity network has not been carried out in accordance with the sonnenBatterie installation instructions provided by sonnen;
  - (iv) it has been used or maintained other than in accordance with the sonnenBatterie's operating instructions or as set out in the technical data specification sheet provided with the sonnenBatterie;
  - (v) it has been used with spare parts and accessories which do not comply with the original specifications issued by sonnen;
- (b) negligence on the Customer's part;
- (c) normal wear and tear;
- (d) damages caused by events beyond sonnen's reasonable control, including but not limited to flood, fire, theft, lightning, earthquake or extreme hot or cold weather;
- (e) faults or defects caused by third parties, including work done by unauthorised service or repair agents;
- (f) damages caused by excess voltage from the electrical supply and/or power network to which the sonnenBatterie is connected;
- (g) any incidental or consequential damages, loss of profits, loss of data or any other indirect damages;
- (h) any costs or expenses incurred by the Customer for the procurement of substitute equipment or services; or
- (i) any transport or travel costs incurred by the Customer in excess of \$200.

2.5 The performance of the sonnenBatterie is reliant on routine software updates that sonnen provides remotely through the internet periodically. If the sonnenBatterie is not connected to the internet, or software updates are not performed, sonnen does not warrant that the sonnenBatterie will be free from defects or faults. sonnen recommends that the Customer does not disconnect the sonnenBatterie from the internet for any extended periods of time.

2.6 Under normal usage the capacity of the sonnenBatterie is expected to reduce over time. sonnen warrants that during the warranty period the capacity of the sonnenBatterie will not fall below 80% of the nominal capacity stated on the technical data specification sheet provided with the sonnenBatterie.

### 3 Making a warranty claim

3.1 Warranty claims must be made:

- (a) within 6 months after the date on which the Customer became aware of the fault or defect, or after which the fault or defect became reasonably apparent; and
  - (b) by no later than 3 months after the expiration of the warranty period.
- 3.2 To make a claim the Customer should first contact their Authorised Partner.
- 3.3 The Customer will then need to provide to the Authorised Partner the details in clause 6 below.
- 3.4 The warranty claim may be dealt with by sonnen or its Authorised Partner, as follows:
  - (a) accessing the sonnenBatterie through remote access in order to assess the warranty claim, and perform any repairs or updates to its software; and/or
  - (b) replacing or otherwise repairing the sonnenBatterie in accordance with clause 3.6.
- 3.5 The decision whether to repair or replace the sonnenBatterie is at sonnen's sole discretion unless there is a 'major failure' as defined in the Australian Consumer Law.
- 3.6 Any physical repairs, replacement or collection of the sonnenBatterie will be performed by sonnen or its Authorised Partner as follows:
  - (a) The repair, replacement or collection will be carried out from the place at which the sonnenBatterie was first delivered.
  - (b) If the claim is covered sonnen will deliver any repaired or replaced sonnenBatterie back to the Customer.
  - (c) If the claim is not covered sonnen will deliver the sonnenBatterie back to the Customer.
- 3.7 If the claim is not covered, the Customer will be responsible for any transport, travel and labour costs incurred in dealing with the claim.
- 3.8 If the claim is covered, sonnen will be responsible for any transport, travel and labour costs to a maximum amount of \$200.

#### 4 sonnen contact details

Address: sonnen Australia Pty Ltd | Tenancy 6, Lionsgate Business Park | 180 Philip Highway | Elizabeth South SA 5112  
Phone: 137 666  
Email: [service@sonnen.com.au](mailto:service@sonnen.com.au)

#### 5 Statutory guarantees

- 5.1 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

#### 6 Claim details

- 6.1 If the Customer is making a claim under the warranty or the statutory guarantees, sonnen will require the following information:

- (a) Name;
- (b) Address;
- (c) Product purchased;
- (d) Serial number on Installation Certificate;
- (e) Date on which sonnenBatterie was brought into service (as shown on the Installation Certificate);
- (f) Authorised Partner or certified installer or repairer number (as shown on the Installation Certificate); and
- (g) Description of the problem.