

TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the date of invoice. Tindo Operations Co Pty Ltd ABN 97 617 219 924 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*) (Supplier) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Customer not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of:
 - (a) 10 percent of the amount of the invoice payable; and
 - (b) a further 10 percent per annum payable per year, or part thereof, until payment by the Customer.
3. Payment by Mastercard, Visa card, or EFT are acceptable. All payments made by Mastercard or Visa will attract an additional surcharge of 1.5% of the total sales price.

Pricing

4. All transactions are quoted and processed in Australian Dollars (AUD).

GST

5. All prices shown exclude Australian GST unless otherwise indicated and will be charged at the applicable rate unless exemption is claimed at the time of order.

Validity

6. All prices are subject to change without notice. The Supplier reserves the right to at any time make reasonable adjustments and changes to the prices without notice. For the avoidance of doubt, the quotation price is valid for seven days from the date of the quotation.

Delivery and Collection of Orders

7. The Customer acknowledges that goods delivered by a courier are outside Supplier's control and the Supplier will not be liable for any loss, damage, delay or non-delivery of goods contributed to by a third party, to the extent permitted by law.
8. Deliveries shall be made during normal working hours and at the cost and risk of the Customer. In the event the Customer or the Customer's agent is not on site to accept the delivery, then the driver's signature denoting the time, date & place of delivery, shall be deemed to be acceptance of the said delivery by the Customer.
9. If a delivery driver or courier, in their absolute discretion, deem the Customer's delivery site unsafe or inaccessible then the delivery driver or courier reserves the right to not make the delivery of the goods until such time as the issues in relation to the site have been rectified or an alternative address supplied. In the meantime, the goods will be taken back to the Supplier's premises at the Customer's expense and any subsequent re-delivery will be at the Customer's expense.
10. If a delivery driver or courier enters the Customer's delivery site at the direction of the Customer or its personnel and becomes bogged or stuck, or otherwise causes damage then the Customer will be liable for the costs of recovering the delivery vehicle and for any damaged caused to the vehicle and any other property or person.
11. Subject always to the preceding clauses, the Supplier's obligation to deliver goods will not extend beyond delivery immediately inside the boundary of the address details provided by the Customer.
12. If a date for delivery or performance is nominated by the Customer, the Supplier will not be bound to deliver the goods or perform the services by that date unless it expressly agrees to do so in writing, signed by the Supplier, in which case, it will be deemed to agree to use reasonable endeavours to deliver or perform the services by the relevant date. The Supplier shall be excused from any failure to deliver or perform which is contributed to by causes beyond its reasonable control and the time specified for completion of delivery or performance shall be extended commensurately. Delay in delivery, performance or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to the Supplier's disadvantage.

The Supplier Credits and Clean Energy Regulator

13. The Supplier will, following completion of the supply, provide the Customer with documentation to effect any voluntary assignment of the Supplier credits available under the relevant renewable energy legislation.
14. The Supplier's quotation form will include The Supplier's estimate of the available Supplier credits (STCs). The STCs estimate provided by the Supplier is given in good faith at the time of the quotation but may vary from the actual STC discount available at the time of installation of the goods or provision of the services to the Customer. The Supplier will notify the Customer of the actual STC discount available at the time of installation. The Supplier will not be liable for any variation in the STCs available to the Customer. For the avoidance of doubt, you will be liable to The Supplier for 100% of the quoted price, some of which may be offset by your voluntary assignment of available STCs to The Supplier.
15. The Supplier will provide the Customer with the STC Assignment Form on the day of installation. The Customer will not receive any STC discount or rebate until the STC Assignment Form is signed and returned to The Supplier.
16. The Customer must not assign the right to create Renewable Energy Certificates (RECs) unless they are the legal owner of the small generation unit (SGU) listed in the quotation, order or other document provided by the Supplier.
17. If any assignment of the right to create RECs is deemed invalid for any reason at any time, the Customer will immediately repay to The Supplier the REC payment and any other cost, loss or damage that The Supplier has incurred or suffered as a result of the invalid assignment.
18. The Customer warrants that it will comply with any relevant Renewable Energy legislation including retaining receipts and proof of installation for the life of any RECs, and refrain from providing any misleading information in any documents.

Building and Construction Industry Security of Payment Act

19. For the purposes of the Building and Construction Industry Security of Payments Acts (or equivalent acts) existing or enforceable from time to time in each State or territory in Australia:
 - (a) Every date on which goods or services are supplied shall be deemed a reference date, and The Supplier shall be entitled to issue payment claims accordingly.
20. It shall be sufficient service of a payment claim if it is posted to your postal address as nominated on any quotation form or to any other postal address that you nominate to us from time to time.

Point of shipping

21. The prices shown are ex-works in the absence of a formal quotation stating otherwise.

Shipping Method

22. Shipments will be despatched according to our best judgment unless a specific carrier and method is specified at the time of order. Generally the Supplier encourages Customers to take advantage of the Supplier's freight rates with the Supplier's major carriers and have freight charges included in invoices for goods.
23. Shipping costs are influenced by the size and weight of the product and the Customer's location. Exact shipping costs are calculated in the shopping cart and will be added to the order total before checkout.
24. Goods shipped in this method, unless otherwise specified by the Supplier, carry insurance for loss or damage in transit provided that the Supplier's obligation under this clause shall expire upon a signature being obtained by the Supplier's carriers for goods received in good order and condition and also provided that any claims for damage or shortages are made in writing within fourteen days of shipment. If an alternate carrier is specified or if goods are shipped on a "freight charges collect" basis, all responsibility for goods passes to the Customer immediately upon receipt of the goods by the nominated carrier.
25. At no time and under no circumstances will the Supplier:
 - (a) accept responsibility for product damaged in transit if product has been signed for in good order and condition; and

- (b) be held liable for damages except for product carried by the Supplier's own nominated carriers

26. The above terms and conditions set out at clauses 8, 9, 10 and 11 apply to domestic shipping only.

Claims for Shortages

27. Claims for shortages must be made in writing within fourteen days after the date of shipment of material.

Lead Times

28. Generally items which are available ex-stock will be shipped as soon as practicable. Lead times on non stock or depleted stock items vary and will be quoted at the time of acceptance of order.

Cancellation or changes in orders

29. The Supplier reserves its right to refuse any cancellations or changes made in relation to orders and will only be accepted in the event that the Supplier does not suffer a loss.

Returned Material

30. Credit not exceeding 90% of the original price is generally allowed (subject to approval at the sole discretion of the Supplier) provided it is returned freight prepaid and in "as new" condition. In no case will the Supplier authorise the return of material more than seven days after shipment from the Supplier's date of dispatch.
31. The following conditions relating to the return of goods for credit apply to all goods returned for this purpose:
 - (a) Goods returned must be accompanied by a Delivery Docket stating original invoice number, date of purchase and reason for return.
 - (b) Non standard equipment made to special order cannot be credited under any circumstances.
 - (c) Inward freight, packing and delivery charges are the responsibility of the Customer. If not prepaid by the Customer, freight will be deducted from the amount of the credit.
 - (d) Unless otherwise agreed, goods returned will be subject to a re-stock fee. All goods with a net value in excess of \$20 will be subject to at least a 10% re-stock charge.

Warranty

32. The Supplier warrants that all goods supplied shall be free from defect in materials and workmanship under normal application, installation, use and service conditions. The period of time which will be applied to each goods supplied (**Product Warranty Period**) will be dependent upon the goods supplied and will be nominated by the Supplier at its sole discretion upon the purchase of each good.

Jurisdiction

33. The Customer acknowledges and agrees that this agreement will be governed by the laws of South Australia, and the laws of the Commonwealth of Australia which are in force in South Australia.
34. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
35. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of South Australia and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

36. The Customer charges in favour of the Supplier all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
37. The Customer charges in favour of the Supplier all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
38. The Customer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder.
39. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

40. The Customer acknowledges and agrees that the credit to be provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

41. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Customer's offer will complete a contract.
42. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of the terms and conditions set out herein. Each quotation provided will be in accordance with the terms and conditions set out herein.

Retention of title

43. Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
44. Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
45. Until payment in full has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
46. The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Customer will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.
47. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 46 hereof unless and until the funds held on trust are remitted to the Supplier.
48. The Customer agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
49. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clause 48. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.

50. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
51. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.
- Cancellation of terms of credit**
52. The Supplier reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of this agreement or not.
53. Upon cancellation with or without notice all liabilities incurred by the Customer become immediately due and payable to the Supplier.
- Indemnity**
54. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
- Provision of further information**
55. The Customer undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
56. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- Corporations**
57. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.
- Trustee capacity**
58. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
- the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - the Customer has the right to be indemnified out of trust assets;
 - the Customer has the power under the trust deed to sign this agreement; and
 - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
59. The Customer must give the Supplier a copy of the trust deed upon request.
- Partnership**
60. If the Customer enters into this agreement as partners, the Customer warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.
61. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- Insolvency**
62. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.
- Waiver**
63. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.
64. Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA:
- under section 95 to receive notice of intention to remove an accession;
 - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - under section 121(4) to receive a notice of enforcement action against liquid assets;
 - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - under section 130 to receive a notice to dispose of goods;
 - under section 132(2) to receive a statement of account following disposal of goods;
 - under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - under section 142 to redeem the goods;
 - under section 143 to reinstate the security agreement; and
 - under section 157(1) and 157(3) to receive a notice of any verification statement.
- Costs**
65. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
66. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
67. Subject to clauses 68 and 70, payments by, or on behalf of, the Customer will be applied by the Supplier as follows.
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 48 and 66.
 - Secondly, in payment of any interest incurred in accordance with clause 73.
 - Thirdly, in payment of the outstanding invoice(s).
68. The Supplier may apply and allocate payments received by, or on behalf of, the Customer in a manner in the Supplier's absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
69. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time whatsoever.
70. Payments allocated (and/or reallocated) under clause 68 and/or 69 will be treated as though they were allocated or reallocated, respectively, in the manner determined by the Supplier on the date of receipt of payment.
- Taxes and duty**
71. The Customer must pay GST on any taxable supply made by the Supplier to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
72. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.
- Interest rates**
73. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.
- Set-off**
74. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
75. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.
- Miscellaneous**
76. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
77. In relation to the supply of goods, the Supplier's liability is limited to:
- replacing the goods or supplying similar goods;
 - repairing the goods;
 - providing the cost for replacing the goods or for acquiring equivalent goods; and
 - providing the cost for having the goods repaired.
78. In relation to the supply of services, the Supplier's liability is limited to:
- supplying the service again; or
 - providing for the cost of having the services supplied again.
79. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.
80. The Customer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Customer under the PPSA.
81. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative.
82. The Customer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
83. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
84. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- Severance**
85. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
86. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- Variation**
87. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer.
88. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
89. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing.
- Consent to register**
90. The Customer hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
91. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- Entire agreement**
92. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
93. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- Privacy Act**
94. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document).