



## TERMS AND CONDITIONS

These Terms and Conditions (the "**Agreement**") shall become effective upon the commencement of the Services, or verbal or written authorisation by the Customer for **Adelaide Solar Care (ASC)** to proceed with the Services (the "**Effective Date**"). The Customer in turn agrees that from the Effective Date the Customer has accepted these terms and conditions in their entirety and on an unqualified basis.

### RECITAL

- A. The Customer requires the Services of ASC.
- B. ASC has agreed to provide the Services to the Customer.

### AGREED TERMS AND CONDITIONS:

#### 1. INTERPRETATION

In these terms and conditions, unless the contrary intention is apparent:

- "ASC" means Adelaide Solar Care (ABN 57 577 429 490), a business registered in Australia;
  - "Agreement" means this Agreement between ASC and the Customer;
  - "Commencement Date" means the date the Services were commenced by ASC or upon verbal or written authorisation by the Customer for ASC to proceed with the Services;
  - "Customer" means; a natural person, individual or legal entity (within the meaning of the Corporations Act 2001), its officers, employees and agents to whom the Services are supplied to by ASC;
  - "Fee" means ASC's Fee as provided in the Quotation/Quote to the Customer for the Services;
  - "Effective Date" means the date ASC and the Customer entered into this Agreement for ASC to provide the Services for the Fee.
  - "Expiry Date" means the date the Services were completed by ASC and upon receipt by ASC from the Customer of full payment for the Services performed by ASC. For the avoidance of doubt, the provisions under clause 13.6 shall survive the Expiry Date, or termination in accordance with clause 11.3 of this Agreement;
  - "Liability" means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature;
  - "Party or Parties" means ASC and the Customer individually or collectively, as applicable;
  - "Personnel" means any individual, employee, agent, officer or subcontractor of a party to this Agreement;
  - "Quotation or Quote" means the quoted (written or verbal) Fee and Services provided by ASC to the Customer relating to the Services offered by ASC to the Customer;
  - "Services" mean the activity, work, function, supply or other services offered and Quoted by ASC as part of its business to the Customer;
  - "Term" means from the Commencement Date of the Services and upon receipt by ASC of full payment for the Services. For the avoidance of doubt, the Term includes any extension of the Term under clause 11 of this Agreement, or as otherwise agreed between the parties;
- headings are for ease of reference only and do not affect the meaning of this Agreement; the singular includes the plural and vice versa; other grammatical forms of defined words or expressions have corresponding meanings; a reference to a clause or paragraph is a reference to a clause or paragraph to this Agreement and a reference to this Agreement includes any Quotation provided by ASC for the Services; a reference to a statute, ordinance or by-law includes regulations and other instructions under it and consolidations, amendments, re-enactments or replacements of any of them; a reference to a person, individual includes executors, administrators, permitted assigns and successors of that person; and "includes" means "including without limitation".

#### 2. TERM

This Agreement shall continue for the Term or until terminated in accordance with clause 11.3 of this Agreement.

#### 3. SERVICES

ASC shall provide the Services to the Customer for the Quoted Fee as provided by ASC to the Customer and on the terms and conditions of this Agreement.

#### 4. CONSIDERATION

##### 4.1 Fee

4.1.1 In consideration of the provision of the Services by ASC, the Customer will pay ASC the Fee detailed in the Quotation provided to the Customer.

4.1.2 The Fee shall be paid by the Customer upon the completion of the Services by ASC, without any deduction or off-set. For approved Credit Applicants, the Fee shall be paid within seven (7) days from the date of ASCs invoice to the Customer, without any deduction or off-set.

4.1.3 Where applicable, should the Customer default in the payment of any Fee or monies due under this Agreement, then all monies due to ASC shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and ASC shall be entitled to charge interest on all amounts not paid by the due date for payment and the Customer undertakes to pay any interest so charged. Such interest shall be calculated on a daily basis from the due date for payment until the date ASC receives the payment at such rate, up to but not exceeding, 2% per month.

4.1.4 Any expenses, costs or disbursements incurred by ASC in recovering any outstanding monies including debt collection agency fees and or solicitors costs shall be paid by the Customer providing that those fees do not exceed the scale charges as charged by the debt collection agency and or solicitor.

### GST

4.2 The Fee includes GST.

4.2.1 In addition to any consideration due under this Agreement, the Customer shall pay to ASC an amount equal to any GST which ASC is or becomes liable to pay for any Services made under or in connection with this Agreement.

4.2.2 Any amount payable under clause 4.2.1 shall be paid at the same time as payment for the Services giving rise to the obligation to pay GST, or if no amount is payable for the Services, or if a valid Tax Invoice has not been given to the Customer prior to that time, within seven (7) days of the issue of a valid Tax Invoice by ASC to the Customer. In this clause, "GST" and "Tax Invoice" have the meaning set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### 5. WARRANTIES

5.1 ASC hereby warrants and assures the Customer, that the Services are performed personally by ASCs staff, diligently, competently, with due care and skill and in a professional and expeditious manner.

5.2 To the extent permitted by law, warranty for the Services provided by ASC is limited to one of the following and at ASCs absolute discretion:

- i. Re-supply of the Services;
- ii. Refund of the cost of the quoted Services; or
- iii. The provision of equivalent Services by a third party as nominated by ASC.

Any warranty claim by the Customer, must be notified to ASC in writing by the Customer within 30 days of the Expiry Date of the Agreement.

### 6. ACCESS AND SERVICES

6.1 ASC will require access to the Customer's premises in order to perform the Services and the Customer authorises and agrees to provide ASC with reasonable and safe access to its premises for the purpose of ASC providing the Services from the Effective Date of this Agreement.

### 7. INDEMNITIES AND RELEASE

#### 7.1 Customer Indemnities

The Customer indemnifies ASC from and against all Liabilities suffered or incurred by the Customer in respect of any:

- a. loss of or damage to any real or personal property; or
- b. personal injury or death,

that arises out of or as a direct consequence of the performance or non-performance of this Agreement by ASC or ASCs Personnel. The indemnity will be reduced proportionately to the extent that such liability is attributable to the gross negligence or unlawful act or omission of ASC or its Personnel.

For the avoidance of doubt, the Customers indemnity to ASC includes and is not limited to any pre-existing damage, defect or failure of any nature existing in or to any real or personal property of the Customer, including cracked roof tiles, solar panels, loose fixtures of fittings (including wiring) etc.

7.2 The Customer indemnifies and keeps ASC indemnified from and against all Liabilities arising out of or in connection with:

- c. any act or omission of the Customer which gives rise to a Liability of ASC to a third party;



- d. any act or omission of the Customer which occurs while such a person is acting or purporting to act in such capacity, or otherwise in connection with such person's employment, agency, contract or subcontract with the Customer and which gives rise to a Liability of ASC to a third party; or
- e. any Liability made or action brought by, or on behalf of, the Customer or the Customers Personnel against ASC arising as a result of a matter as between the relevant person and the Customer.

7.3 Where applicable, the Customer agrees to indemnify ASC and keep ASC indemnified against any claims by any person employed by the Customer (including the Customers Staff) which may arise from or as a result of this Agreement.

7.4 Notwithstanding anything else stated herein, nothing shall exclude or limit the liability of either party to the other, for death or personal injury arising as a result of the negligence of the other party. Under this clause 7.4, and subject to any indemnities provided by the Customer to ASC, ASC and or its insurer, reserves the right to take control of and defend any such claim.

For the avoidance of doubt, ASC will have no liability to the Customer under or in connection with this Agreement in respect of: LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT, WASTED MANAGEMENT, OPERATION OR OTHER TIME (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWSOEVER ARISING.

7.5 The Customers obligations under this clause 7 will survive the expiry or termination of this Agreement.

#### 8. LIMITATION OF LIABILITY

8.1 ASCs liability to the Customer, however so arising, but excluding liability under clause 7.1 (b) and to the extent permitted by law, is limited in the aggregate to 110% of the Agreement value of the Services provided by ASC to the Customer.

#### 9. INSURANCE

9.1 ASC shall during the Term of this Agreement effect and maintain Public Liability Insurance. The parties acknowledge and agree, that ASCs insurer may act in any capacity, for and on behalf of ASC relating to any events under the insurance policy.

#### 10. NOTIFICATIONS

10.1 The Customer must notify ASC verbally as soon as reasonably possible, and in writing within 24 hours, of:

- a. Any potential insurance claim relating to the Services provided by ASC. For the avoidance of doubt, any such notification by the Customer to ASC is in no way an admission of liability by ASC.

#### 11. SUSPENSION

11.1 Without prejudice to any other rights which ASC has under this Agreement, ASC may in its absolute discretion, suspend the Services in whole or in part under this Agreement for any reason whatsoever, including, but not limited to:

- a. the protection or safety of any person or property, until such time or times as ASC may reasonably think fit for the Services to resume.

11.2 ASC will, when the reason for any suspension no longer exists, advise the Customer and commence or recommence the suspended Services, in whole or part.

11.3 Should any Suspension continue for a period greater than 60 days, ASC reserves the right to terminate this Agreement without liability.

11.4 Any reasonable and substantiated cost incurred by ASC by reason of any suspension in whole or in part under clause 11.1, or any subsequent termination in accordance with 11.3, will be borne, and paid for by the Customer.

#### 12. DISPUTE RESOLUTION

12.1 If a dispute arises between ASC and the Customer under or in connection with this Agreement, the parties must use their best efforts

to resolve that dispute by negotiation or otherwise, before commencing legal proceedings.

12.2 The parties will be deemed to have used their best efforts to resolve a dispute if:

- i. they have met to discuss the dispute and have failed to resolve it within five (5) days of that meeting; or
- ii. if one party to the Agreement does not respond within two (2) days of a request by the party initiating the Dispute Resolution provisions to meet; or
- ii. if one party fails to attend a meeting to resolve the dispute without 24 hours prior written notification to the other party.

12.3 In the event of 12.2 i. ii. Or iii., the non-offending party shall be deemed to have used their best efforts to resolve a dispute and may commence legal proceedings or any other proceedings it is lawfully entitled to commence in order to resolve the dispute.

12.4 Nothing in this clause 12 will preclude either party from seeking an urgent interim interlocutory injunction in causes of genuine urgency.

#### 13. MISCELLANEOUS

##### 13.1 Applicable Law

The law for the time being prevailing in the State of South Australia shall govern this Agreement in all respects and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state or territory and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

##### 13.2 Entire Agreement

This Agreement embodies the entire understanding of the parties as to the Services and supersedes all prior agreements, understandings, arrangements and undertakings between the parties.

##### 13.3 Variation

No variation to this Agreement shall be of any force or effect unless reduced to writing and signed by both parties.

##### 13.4 Severability

Each clause in this Agreement is severable from the others and if one or more is found to be unenforceable this shall not affect the validity of the others or any of them.

##### 13.5 Waiver

Unless otherwise provided for under this Agreement, the fact that the affected party to this Agreement does not act on a default by the other party of any terms or obligations of this Agreement, shall not be construed or operate in any way as a waiver or reduce any such rights or remedies of the affected party.

##### 13.6 Surviving Clause

The following clauses shall survive the Expiry Date or termination of this Agreement; 4.2 GST, 5. Warranty, 7. Indemnity and Release, 8. Limitation of Liability, 13.1. Applicable Law, 13.4. Severability and 13.5 Waiver.