

Standard terms and conditions

This document (referred to herein as the 'Agreement') forms the terms and conditions of trade of Soluna Australia Pty Ltd ACN 634 963 296 ('Soluna Australia'), including:

- the offer ('Quotation') issued by Soluna Australia;
- the buyer ('Buyer'), the legal entity requesting the Quotation, and
- the products ('Products') set out in the Quotation.

This Agreement commences when the Buyer accepts Soluna Australia's offer for valuable consideration, set out in the Quotation. Any sale by Soluna Australia to the Buyer of the Products is subject to this Agreement, unless otherwise agreed in writing by Soluna Australia, and any terms and conditions set out in a purchase order issued by the Buyer for Products ('Purchase Order') will not be binding on Soluna Australia.

Purchase orders and acceptance

All Purchase Orders placed by the Buyer, whether in writing or electronically transmitted, are subject to Soluna Australia's written acceptance ('Acceptance'); however, where Purchase Orders comply with the terms of the Quotation they will be deemed to have been accepted upon their receipt by Soluna Australia. Upon Soluna Australia's Acceptance, or deemed acceptance, the Buyer becomes bound by the provisions of this Agreement, regardless of whether Soluna Australia acknowledges or otherwise signs the Agreement. Once issued, Purchase Orders may only be modified or cancelled, in whole or in part, upon the mutual written agreement of Soluna Australia and the Buyer.

Rescheduling or cancellation

The Buyer may cancel a Purchase Order at any time upon written notice and payment to Soluna Australia of the cancellation charges referred to below.

In the event that a Purchase Order is cancelled 30 days or less before a scheduled shipment of Products, the cancellation charges payable by the Buyer to Soluna Australia will be calculated as 25% of the value of the Purchase Order being cancelled.

The Buyer may reschedule the delivery date for a Purchase Order once only, upon written notice to Soluna Australia, as long as the rescheduled delivery date remains within the same calendar quarter – or the quarter following – the original shipping date, and provided the reschedule request is initiated no less than 20 days before the scheduled shipping date.

The Buyer may not cancel custom or made-to-order Products.

The Buyer may not return any Products already shipped and delivered to the Buyer, except in limited circumstances (see [Warranty](#) conditions).

Purchase price and payment

The Buyer will pay Soluna Australia the price for Products that is specified in the Quotation ('Purchase Price'), in accordance with the payment terms specified in the Quotation, unless otherwise agreed in writing by Soluna Australia and the Buyer.

Invoices issued by Soluna Australia for purchased Products are due as per the instructions on the invoice, with payments to Soluna Australia made in Australian dollars by wire transfer to the account specified on the invoice, unless prior arrangements have been made.

Taxes and other charges

Unless otherwise indicated in the Quotation, the Purchase Price does not include any taxes and other charges applicable to the purchase, shipping and delivery of Products, these all being in addition to the Purchase Price and to be paid by the Buyer.

Late payments

Any amount not paid by the Buyer when due will be subject to a finance charge equal to 1% per month (12% per annum) or such lower rate that is the highest rate permitted by applicable law. Without limiting any remedies available to Soluna Australia, Soluna Australia may defer or cancel the relevant delivery of Products ordered by the Buyer from Soluna Australia until full payment of all amounts due is made. Unless otherwise agreed in writing by Soluna Australia, in no event may the Buyer set off any amounts due to Soluna Australia against amounts that may be owed to the Buyer by Soluna Australia.

Shipment terms

Unless otherwise stated in the Purchase Order, all shipments are from the warehouse from which the Products are shipped or Ex-Works (DLG Energy).

Packing and shipping

Soluna Australia will pack and ship Products ordered in accordance with its general practice, unless the Buyer provides specific alternative instructions in the Purchase Order and these are accepted by Soluna Australia. Any additional costs incurred by Soluna Australia as a result of such special packaging and/or shipping requests will be borne exclusively by the Buyer.

Risk of loss and title

Unless otherwise stated in the Purchase Order, risk of loss for the Products will transfer to the Buyer upon delivery of the Products to the documented delivery point.

Soluna Australia warrants that it has unencumbered title in and ownership of the Products and that the Products are free of any liens, charges and encumbrances, and Soluna Australia will supply the Products to the Buyer on that basis.

Soluna Australia remains the sole and absolute owner of all Products supplied to the Buyer until the price for all Products has been received in full by Soluna Australia from the Buyer and subject always to the provisions of the *Personal Property Securities Act 2009* ('PPSA'). Title in the Products will pass to the Buyer upon Soluna Australia receiving payment in full of the price for all Products supplied to the Buyer.

Security interest

PPSA

- (a) If Soluna Australia determines that this Agreement (or a transaction in connection with it) is or contains a security interest, the Buyer agrees to promptly do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) that is reasonably requested by Soluna Australia and which is reasonably necessary for the purposes of:
- (i) ensuring that the security interest is enforceable, perfected (including, where possible, by 'control' (as defined in the PPSA) in addition to registration) and otherwise effective, or
 - (ii) enabling Soluna Australia to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Soluna Australia, or
 - (iii) enabling Soluna Australia to exercise rights in connection with the security interest, but only to the extent of the security interest created.
- (b) The Buyer agrees:
- (i) to provide at least 10 business days' notice of any change to its name, or any other information that might affect the details recorded in any financing statement registered by Soluna Australia, and
 - (ii) not to change its place of business to a jurisdiction outside of Australia.
- (c) Everything that Soluna Australia is required to do under this clause is at Soluna Australia's expense, and the Buyer will not be responsible for any costs or expenses incurred or payable in relation to registering, maintaining or releasing any security interest, financing statement or financing charge statement or giving any notice in relation to a security interest.
- (d) Soluna Australia and the Buyer agree that, to the extent they may be excluded by law:
- (i) sections 142 and 143 of the PPSA are excluded and Soluna Australia need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the Buyer by Soluna Australia after the date of this Agreement, and
 - (ii) neither Soluna Australia nor any receiver need give any notice required under any provision of the PPSA (except section 135 or pursuant to clause 21.1(b)(i) above).
- (e) This clause applies despite any other clause in the Agreement.

Deliveries

Deliveries will be in accordance with the written shipping instructions of the Buyer, as set out in the Purchase Order, which may be modified by Soluna Australia's acceptance, based on the general availability of Products. Delays in delivery due to reasons beyond the control of Soluna Australia (such as, for example, *force majeure*) or events that temporarily make it considerably more difficult or impossible for Soluna Australia to effect delivery of Products (including, for example, strikes, lockouts or official directives) will entitle Soluna Australia to defer delivery of the Products ordered by the period of the impediment plus an appropriate preceding period. If, due to the existence of such an event, it becomes apparent to Soluna Australia that delivery of the Products will not occur within the forecast delivery schedule, Soluna Australia will notify the Buyer of this and the delivery timeframe will be extended until the event causing the delay has terminated, plus a period of no more than 30 calendar days. Soluna Australia will not be liable for any cost or damage arising from early or late delivery. Notwithstanding the foregoing, if Soluna Australia cannot meet total demand for Products by Soluna Australia customers, Soluna Australia may allocate the available quantity of Products in the manner it deems most equitable in making partial shipments or cancelling shipments and may give preference to the earliest commitments made among Soluna Australia customers. A Buyer may cancel any order for such partial or cancelled shipments by providing written notice to Soluna Australia within 3 calendar days of receipt of notification from Soluna Australia regarding the anticipated delivery of such partial shipment of Products or order cancellation. Payment for such orders will become due within 30 days of the delivery of each partial order in accordance with the payment terms set forth herein.

Intellectual property and use

The Buyer acknowledges, understands and agrees that while the Buyer is purchasing the physical embodiment of the Products, Soluna Australia retains sole and exclusive ownership of all intellectual property rights and know-how embodied within and related to such Products. Except for the limited right to market, distribute and sell the Products, the Buyer is not granted and has no rights in or to any such intellectual property and, except where specifically permitted by law, shall not, directly or indirectly, modify, reverse engineer or disassemble the Products. The Buyer further acknowledges and agrees that it is solely liable for any claims of patent, trademark or intellectual property infringement that may arise as a result of using or integrating the Products in combination with other materials, equipment or processes. In the event that the Buyer wishes to obtain Products for the Buyer's own internal use, the Buyer must enter into a separate agreement with Soluna Australia.

Inspection and acceptance

Not later than 15 calendar days following receipt of any of the Products, but in all events prior to any use or processing thereof, the Buyer will notify Soluna Australia of any discrepancies between the quality (as ascertainable upon visual inspection only) of the Products ordered and those actually delivered ('Defects') or between the quantity of the Products ordered and those actually delivered. If the Buyer does not provide such notice to Soluna Australia within the foregoing time period, or if the Buyer uses or processes the Products, such Products shall be deemed to have been conclusively received and accepted by the Buyer without Defects, and shall constitute full waiver of such claims by the Buyer. In the event that the Buyer identifies discrepancies between the quantity or quality of the Products ordered and those actually delivered within the foregoing time period, the Buyer shall promptly notify Soluna Australia thereof in writing. Upon validation of such claim, Soluna Australia will take further measures and provide the Buyer with instructions in order to resolve any such discrepancy.

Warranty*

Soluna Australia provides warranty coverage for Products purchased. Such warranty coverage, which is set out on the downloads page at www.soluna.com.au/downloads, is governed by the terms and conditions set out therein.

Indemnity

The Buyer shall be solely responsible for, and shall indemnify Soluna Australia from and against, all actions, causes of action, damages, losses, injury, costs, expenses and liabilities whatsoever arising out of or by virtue of any claim in respect of:

- any misuse, abuse, negligence or failure to maintain the Products as specified by Soluna Australia;
- any modifications, alterations or attachments to the Products that were not undertaken by Soluna Australia or pre-authorized in writing by Soluna Australia;
- any failure to observe applicable safety regulations governing the proper use of the Products;
- installation or operation of the Products other than in strict conformance with Soluna Australia's instructions, including, without limitation, failure to ensure sufficient ventilation for the Products;
- modification or disassembly of the Products in any way without Soluna Australia's prior written consent, and
- use of the Products in combination with items, articles or materials not authorised in writing by Soluna Australia.

Limitation of liability

To the maximum extent permitted by applicable law, Soluna Australia will be liable to the Buyer only for direct damages actually incurred by the Buyer and only up to a maximum amount equal to the purchase price for the Products that caused such damages, and the Buyer hereby releases Soluna Australia and its affiliates from all other claims and liabilities, including, without limitation:

- any special, indirect or consequential damages, including lost profits, lost revenues, failure to realise expected savings or other commercial or economic losses of any kind, even if Soluna Australia has been advised, or had reason to know, of the possibility of such damages;
- any liability arising in tort or otherwise, whether or not arising out of Soluna Australia's negligence, and all losses or damages to any property or any personal injury or economic loss or damage caused by the connection of Products to any other device or system, and
- any damage or injury arising from, or as a result of, misuse, abuse or incorrect installation, integration or operation of the Products by persons not authorised by Soluna Australia.

Termination

Soluna Australia may terminate this Agreement with immediate effect in any of the following events.

- The Buyer breaches this Agreement or any other of its obligations to Soluna Australia and fails to remedy such breach (if capable of cure) within 30 calendar days of receiving notice thereof from Soluna Australia.
- Where any bankruptcy, insolvency, liquidation, reorganisation or similar proceeding is commenced with respect to the Buyer, or the Buyer is adjudged a bankrupt or becomes insolvent.
- The Buyer makes an assignment for the benefit of, or proposes an arrangement with, its creditors, or a receiver or similar person is appointed in respect of all or any part of the Buyer's assets. Upon termination of this Agreement for any of the events indicated above, Soluna Australia will be released from any further obligations to the Buyer, including without limitation the Product Warranty and monitoring or other services, which will end upon the effective date of termination.

Miscellaneous

Entire agreement

This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement.

Amendment and waiver

No amendment, supplement, consent or waiver, express or implied, to or of any provision of this Agreement will be effective unless expressed in writing and signed by the parties hereto, and then only in the specific instance and for the specific purpose given.

Severability

If any provision of this Agreement is found by any court or arbitrator to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected thereby.

Assignment

The Buyer may not assign or transfer this Agreement, or any of its rights or obligations, without Soluna Australia's prior written consent, which consent may be withheld at Soluna Australia's sole discretion.

Independent contractors

The parties are independent contractors, and nothing contained in this Agreement shall give any party the right to bind the other party.

Force majeure

Soluna Australia shall not be in breach of any of its obligations under this Agreement where a failure to perform, or a delay in performance, is due wholly or in part, directly or indirectly, to the occurrence of any act of God, acts of governmental bodies or agencies foreign or domestic, sabotage, fire, terrorism, floods, earthquakes, explosions or other catastrophes, accidents, freight embargos, delays occasioned by carriers, delays of a supplier of Soluna Australia, strikes, lockouts, labour unrest, labour shortages, manufacturing breakdowns or other event beyond the control of Soluna Australia.

Notices

All notices shall be in writing to the postal or email address indicated in the Quotation and/or Purchase Order. Notices will be deemed to have been accepted 3 calendar days after delivery by international courier, or 2 calendar days following transmission by email (with receipt confirmed) or 7 calendar days after delivery by registered mail.

Governing law

This Agreement and all Purchase Orders issued shall be governed by and construed in accordance with the laws of Western Australia. This Agreement is drawn up solely in the English language, which will be the only language recognised in all documents and communications between the parties.

Company name

Approved and agreed by the Buyer's authorised signature

Name and title of signatory (*print in capitals*)

Date