



GENERAL TRADING TERMS AND CONDITIONS OF FULL CIRCLE SOLAR (PTY) LTD

REGISTRATION NO: 2013/183413/07

2022

1. GENERAL

- 1.1. These terms and conditions govern all transactions entered into between Full Circle Solar (Pty) Ltd (registration number: 2013/183413/07) (“the Company”) and the Customer [the purchaser of any goods supplied by the Company (“the goods”)] and shall take precedence over any other terms and conditions which may be contained in any of the Customer’s documentation.
- 1.2. The Customer shall be deemed to have agreed to these terms and conditions upon placing an order with the Company, entering into any transaction with the Company and/or upon acceptance of any of the Company’s quotations.

2. ORDERS

- 2.1. Orders by the Customer shall constitute irrevocable offers to purchase the goods in question from the Company and shall be capable of acceptance by the Company expressly, impliedly or by the Company’s conduct.
- 2.2. The Customer shall bear the risk of any errors or misunderstandings arising from oral orders.
- 2.3. Any orders purported to be made by or on behalf of the Customer shall be deemed to have been made with the necessary knowledge and authorisation of the Customer, which authorisation the Company need not prove and the Customer shall be bound to any such orders made and will be deemed to have knowledge of and have accepted these terms and conditions.

3. RISK & OWNERSHIP

- 3.1. Risk in the goods will pass to the Customer on the date of delivery but ownership in the goods shall remain vested in the Company until the full purchase price for such goods is paid to the Company.
- 3.2. While any amount is owed by the Customer to the Company in respect of any goods, the Customer shall be obliged to keep the goods concerned free of any lien, hypothec, encumbrance and/or attachment and will notify all third parties of the Company’s ownership of the goods.
- 3.3. The Company shall have the right to remove and/or recover the goods from the Customer or any third party placed in possession of the goods through the customer, at the Customer’s expense, in the event of non-payment, and for such purpose the Customer hereby irrevocably authorises the removal and/or recovery of such goods and indemnifies the Company against any and all claims, including claims for costs, whether direct, indirect or consequential, made by any person against the Company arising out of the aforesaid removal and/or recovery.



#### 4. PAYMENT

- 4.1. The Customer shall effect payment to the Company on or before delivery/collection and no goods shall be released until all monies have cleared into the Company's bank account. Cheques are not accepted as a method of payment.
- 4.2. No discounts may be claimed or taken unless the Company has agreed to such discount in writing and the Customer shall have effected payment timeously.
- 4.3. The Customer shall be liable to pay the Company any taxes and/or levies applicable to the goods at the then prevailing rate. If any payments due to the Company are subject to withholding tax, the Customer shall pay the Company an additional amount so that the Company receives the full payment that is due to it.
- 4.4. Unless otherwise expressly agreed in writing, all payments are to be in South African Rand.
- 4.5. The Customer carries any risk associated with or arising from the method to effect payment to the Company. The Customer shall be liable for the bank charges associated with any cash deposits and shall reimburse the Company in respect of such costs prior to delivery.
- 4.6. The Customer shall not be entitled, for any cause whatsoever, to withhold, deduct from or defer any amount due by it to the Company. All payments shall be free of exchange and set off. However, the Company shall be entitled, at its sole discretion, to set off any amounts that it owes to the Customer against any amounts that the Customer owes to the Company and such set off shall be effective as soon as the Company notifies the Customer in writing of the set off.
- 4.7. The Company may appropriate all payments from the Customer to any outstanding amounts as it, in its sole discretion, deems fit.
- 4.8. The Customer must notify the Company of any error in any invoice submitted to it by the Company within 14 (fourteen) days from the date of the invoice concerned, failing which the invoice will be deemed to be free of any errors.

#### 5. PRICES

- 5.1. Unless the Company provides the Customer with a written quotation, which the Customer accepts within the period for which the quotation is valid, the price of the Company's goods will be the Company's official list price at the date of delivery of the Goods.
- 5.2. The Company reserves its right to vary any quoted price by adding thereto the increased costs to it of any goods prior to the date of delivery of such goods and the Customer will be notified in writing by the Company of such increase.
- 5.3. Where prices are based upon a currency other than the South African Rand, any fluctuations in the exchange rate of such currency against the Rand, between the date of the Customer's order and the date of the Company's invoice, shall be passed onto the Customer who shall be liable for payment thereof.



## 6. DELIVERY OF GOODS

- 6.1. The date of delivery of the goods will be deemed to be the date when the goods are collected or delivered to the Customer's nominated delivery address or the date on which the Company notifies the Customer that the goods are available for collection. Any third party who accepts delivery or who collects the goods from the Company will be deemed to be the Customer's agent and it shall not be necessary for the Company to prove the authority of such person, who shall be deemed to have been duly authorised for such purpose.
- 6.2. The Company may effect delivery in one or more instalments.
- 6.3. The Customer warrants that the signatory to any tax invoice, delivery note or any other documentation of the Company made out in the name of the Customer is duly authorised to bind the Customer in relation to the transaction and shall be accepted as proof of such indebtedness, delivery and that the goods are received in good order or such other fact, unless the Customer proves otherwise.
- 6.4. The Company will endeavour to deliver the goods to the Customer within a reasonable period. The Customer shall not be entitled to cancel any order by reason of any delay and the Company shall not be liable for any damages for failure to timeously effect delivery of the goods for any reason.
- 6.5. The Customer must inspect the goods on delivery. Unless the Customer notifies the Company in writing within 7 (seven) days of the date of delivery that the goods delivered are defective, short delivered, damaged or not in accordance with the order, the Company shall not be liable for any of the aforesaid discrepancies, provided that receipt of the aforesaid written notice shall only constitute proof of notification and not an admission of the discrepancy.
- 6.6. Once the Company has satisfied itself of the validity of the Customer's complaint, it will determine, in its absolute discretion, the manner in which it resolves such complaint.

## 7. RETURNS

- 7.1. Goods sold by the Company are sold voetstoots.
- 7.2. Goods are not returnable unless with the written consent of the Company.
- 7.3. Should the Company in its absolute discretion elect to accept return of any goods, it will furnish the Customer with written notification and the goods must be immediately returned to the Company with the corresponding invoice, undamaged, unopened, clean and saleable. The risk in the goods shall remain with the Customer until the goods are received by the Company.
- 7.4. The Company reserves the right to levy a handling fee in respect of any such returned goods.

## 8. USE OF THE GOODS

The Customer shall ensure that the Goods are operated in accordance with the instruction manuals supplied with the goods and shall provide training to any third parties who come into



contact with the goods. The Customer shall further ensure that all warnings displayed on the goods and/or their packaging at the time of delivery, shall not under any circumstances be removed, defaced or obscured and the Customer shall contractually pass such obligations to any third party recipient of the goods. The Customer indemnifies the Company against any loss or claim resulting from the Customer's breach of this clause.

## **9. WARRANTIES**

- 9.1. The warranty in respect of the goods is limited to the manufacturer's warranty and the manufacturer, in its absolute discretion, shall elect how to give effect to the warranty.**
- 9.2. The Customer must utilise an approved installer of the Company's in order to enjoy protection under the warranty. Neither the Company, nor the Manufacturer, shall be liable under the warranty in circumstances where the Goods have been installed by anyone other than an approved installer of the Company. That installer must issue a COC (Certificate of Compliance) for the installation.**
- 9.3. Save for what is expressly set out in this agreement, to the maximum extent permitted by law, the Company makes no warranties of whatsoever nature, whether express or implied, in respect of the goods, whether relating to their marketability, quality and/or fitness for any particular use or purpose.**
- 9.4. Any advice, recommendations or assistance provided by the Company concerning the use, design, application or operation of the goods shall not be construed as representations or warranties of any kind and such information is accepted by the Customer at the Customer's own risk and without any obligation or liability to the Company. It is the Customer's sole responsibility to determine the suitability of the goods for the use in the Customer's application(s). Failure by the Company to make recommendations, give advice or provide assistance shall not give rise to any liability to the Company.**
- 9.5. The Company makes no warranties of any nature whatsoever in respect of the qualification, ability and/or workmanship of any contractor or person which the Company may refer the Customer to in respect of the installation and/or commissioning of any goods purchased from the Company or for any other reason whatsoever.**

## **10. LIMITATION OF LIABILITY AND INDEMNITY**

- 10.1. The Company will not be liable for any indirect, consequential or special loss or damages of any nature whatsoever and howsoever arising which may be suffered by the Customer or any third party, as a result of or in connection with any transaction entered into between the Company and the Customer.**
- 10.2. The liability of the Company for damages, if any, shall not exceed the total price paid or due to be paid by the Customer for the Goods that form the subject matter of such claim.**
- 10.3. The above exclusions and limitations of liability shall apply regardless of how the loss or damage may be caused and whether based in contract, delict or otherwise.**



- 10.4.** The Customer hereby indemnifies the Company and holds it harmless against any claim, damage, loss, cost or expense of whatsoever nature, made against the Company or the Customer by any third party arising from or associated with the goods supplied by the Company to the Customer, the use, operation or storage of the goods by the Customer or any third party, the Customer's representations given to third parties in respect of the goods.
- 10.5.** If the goods or any part of them are to be supplied in accordance with specifications, measurements or other instructions furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against the Company for any loss or damage sustained by the Customer or any third party as a result of any error, discrepancy or defect in those specifications, measurements or other instructions, or if the goods in question are not suitable for the purpose for which they are required, whether that purpose was known to the Company or not, and the Customer hereby indemnifies the Company in this regard and waives any claims against the Company related thereto.
- 10.6.** The Company accepts no responsibility for any damage caused to any goods purchased from it or otherwise, and caused by any contractor in the installation and/or commissioning of such goods, whether or not the Customer was referred to the Contractor by the Company or not, and the Customer hereby indemnifies the Company in respect of such damages and holds the Company harmless against any claims in this regard.
- 10.7.** The Company shall not be liable for any error in any of its documentation or on its website and the Customer hereby waives any claim it might have had against the Company in this regard. In addition, the Company shall be entitled and hereby reserves its right to correct any such error, whether prior to or after acceptance of any order placed by the Customer with the Company by amending its documentation and/or website content.
- 10.8.** Notwithstanding any of the above, the Company does not exclude or limit its liability, if any, for any matter for which it would be prohibited from doing so in law.
- 11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**
- 11.1.** The Company is the owner of all intellectual property rights in respect of any goods that the Company manufactures. The Customer shall not at any time acquire any right or title in or to the intellectual property rights of the Company or those of the manufacturer of any of the goods which the Company supplies.
- 11.2.** The Customer shall not at any time use, exploit or disclose any of the Company's confidential information as to the methods of manufacture, plans, drawings, price lists, documents or any other information relating to the goods.

**12. BREACH**

If the Customer fails to adhere to these terms and conditions in any respect whatsoever, or fails to pay any amount on its due date, or suffers any civil judgment being taken or entered against it, or commits an act of insolvency, or is placed under sequestration, liquidation, judicial



management or debt counselling (whether provisional or final, voluntary or compulsory) or takes steps or steps are taken against it to commence business rescue proceedings, or it makes or attempts to make any general offer of compromise with any of its creditors, the Company shall, without prejudice to any other remedies that it has available to it, be entitled to:-

- 12.1. suspend or cease performance of its obligations to the Customer until the Customer's breach has been remedied; and/or
- 12.2. summarily cancel the sale of any goods to the Customer or claim specific performance of all of the Customer's obligations whether or not such obligations have fallen due for performance; and/or
- 12.3. repossess any goods which have not been paid for; and/or
- 12.4. exercise its lien over any of the Customer's property in its possession or under its control, in all events without prejudice to the Company's right to claim damages.

### 13. FORCE MAJEURE

- 13.1. The Company will not be liable to the Customer for failing to perform its obligations as a result of an act of God or any cause beyond its control.
- 13.2. Subject to the provisions hereof, in the event of delays in delivery or performance caused by a force majeure event or the Customer, the estimated date of delivery or performance shall be extended by the period of time the Company is actually delayed.

### 14. LEGAL PROVISIONS

- 14.1. All transactions between the Customer and the Company, including the interpretation and/or enforceability of these terms and conditions shall be governed by and decided upon in accordance with the laws of the Republic of South Africa.
- 14.2. The Company has the sole option to refer any dispute arising from or in connection with this Agreement to arbitration, which arbitration will bind both the Customer and the Company. The arbitration will be held in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA").
- 14.3. Either party shall be entitled to institute action in the Magistrate's Court, notwithstanding that the amount of its claim exceeds the jurisdiction of such Court. This provision shall not preclude either party from instituting action against the other in any other competent court with jurisdiction.
- 14.4. A certificate issued by any manager of the Company, whose authority, appointment and signature it shall not be necessary to prove, that certifies any indebtedness of the Customer to the Company, delivery of the Goods to the Customer or any other fact shall be accepted as proof of such indebtedness or delivery or such other fact, unless the Customer proves otherwise.
- 14.5. A party that successfully enforces or defends its rights under this agreement shall be entitled to recover from the other party all legal costs incurred by the successful party on the scale as between attorney and client, including costs of Counsel on brief, tracing agent's costs and collection commission.
- 14.6. No relaxation or indulgence by either party shall prejudice or be deemed to be a waiver of that party's rights in terms hereof.



- 14.7. Each provision in these terms and conditions is severable, the one from the other. If any provision is found to be defective, unlawful or unenforceable for any reason, the remaining provisions shall continue to be of full force and effect.
- 14.8. The Customer shall not be entitled to cede its rights or assign its obligations under this Agreement. However, the Company shall be entitled to cede its rights or assign its obligations under this Agreement, without notice to the Customer and such cessionary shall be entitled to enforce its rights hereunder against the Customer.