

OPR Solar Limited (trading as OPR Solar & OPR Solar Canterbury)
Terms of Trade

1.	Definitions and interpretation	2.	Terms
1.1	In these Terms of Trade (Terms):	2.1	Any order from the Customer for the supply of Goods and/or Services, and/or the Customer's acceptance of the Quote, shall constitute the Supplier's acceptance of these Terms. The Supplier may decline any order for Goods and/or Services at its sole discretion.
1.1.1	Contract means these Terms together with any a document evidencing or describing the Goods and/or the Services, including any Quote and Order Confirmation.	2.2	Except as expressly modified in an Order Confirmation, these Terms apply in respect of every supply of Goods and/or Services by the Supplier to the Customer and are deemed incorporated into each Contract.
1.1.2	Customer means the person named in the Quote or Order Confirmation to whom the Goods and/or Services are to be supplied by the Supplier.	2.3	In the case of any conflict between these Terms and any document, order or terms and conditions produced by the Customer, these Terms will prevail.
1.1.3	Goods means any goods supplied by the Supplier to the Customer as set out in an Order Confirmation.	2.4	These Terms may only be amended with the Supplier's prior written consent. The Guarantor(s) will become bound to these Terms as soon as the Guarantor(s) agree(s) in writing to these Terms by signing the Quote, either manually through a wet-ink signature or electronically signing the Quote.
1.1.4	Guarantor(s) means the person(s) (if any) named in the Quote (or otherwise) who agrees to guarantee the obligations of the Customer.	3.	Prices
1.1.5	Order Confirmation means any written or electronic confirmation sent by the Supplier to the Customer confirming that the Supplier has received the Customer's order for Goods and/or Services and that the Supplier accepts the order, or any written acceptance by the Customer of a Quote (whether by signing the Quote or providing any other form of written or electronic acceptance of the Quote).	3.1	The Customer shall pay to the Supplier in respect of all Goods and Services supplied by the Supplier to the Customer the Price applicable to such Goods and Services.
1.1.6	PPSA means the Personal Property Securities Act 1999.	3.2	Unless otherwise specified in a Quote, all Prices are exclusive of all applicable taxes (goods and services tax) assessed or levied in connection with the supply of the Goods and/or Services, which shall be paid by the Customer in addition to the Price.
1.1.7	Price means the price payable by the Customer to the Supplier for Goods and/or Services, being:	3.3	If the Supplier's costs increase (including but not limited to increases in fuel, materials, labour or other direct operational costs), the Supplier may increase the Price to reflect the additional costs incurred by the Supplier in providing the Goods and/or delivering the Services. Any such adjustment shall be limited to the amount necessary to recover the Supplier's increased costs.
1.1.7.1	the amount set out in a Quote or Order Confirmation; or	3.4	Any additional concrete works, drilling, excavation, or other groundworks required due to unforeseen or unsuitable ground conditions (as determined in the Supplier's sole discretion) are expressly excluded from the Price. Where such conditions are encountered, the Supplier may carry out the necessary additional works and the Customer agrees that all such additional works shall be on-charged including labour, materials, plant and any subcontractor charges, and paid by the Customer in addition to the Price.
1.1.7.2	if no Quote is provided in relation to an Order Confirmation, the Supplier's usual price at that time for the relevant Goods or Services or such other price as advised by the Supplier to the Customer.	4.	Invoicing and Payment
1.1.8	Property means the property, premises, site, or location where the Services are to be provided by the Supplier for the Customer.	4.1	The Customer must pay the Supplier's invoices (including any progress invoices which the Supplier may issue at its sole discretion) on the 20th of the month following the date of the invoice, unless otherwise specified in the relevant Order Confirmation. The Supplier may require the Customer to make payment in full, or in part by way of a deposit, prior to delivery of any Goods and/or commencement of any Services.
1.1.9	Quote means any quotation provided by the Supplier to the Customer for the supply of Goods and/or Services.	4.2	Payment of all invoices shall be made by the Customer without any set off or deduction.
1.1.10	Related Company has the meaning in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate).	4.3	Any amount not paid when due shall be subject to default interest at 15% per annum determined and compounded daily from the date payment is due until the date payment is made. Without limiting any other right or remedy the Supplier may have, the Supplier may suspend delivery of any Good or Services if the Customer fails to pay an invoice when due or is otherwise in breach of these Terms.
1.1.11	Services means any services supplied by the Supplier to the Customer as set out in an Order Confirmation.	4.4	If the Customer in good faith disputes any portion of an invoice, the Customer shall pay the undisputed portion of the invoice on the due date in full and shall submit a documented claim for the disputed amount prior to the relevant invoice due date, which shall be resolved in accordance with clause 16.7.
1.1.12	Supplier means OPR Solar Limited (NZ Company Number 8915568) or OPR Solar Canterbury Limited (NZ Company Number 9379407) (as specified in a Quote or Order Confirmation).		
1.2	In these Terms:		
1.3			
1.3.1	a reference to "the Supplier" includes any Related Company of the Supplier;		
1.3.2	a reference to a person includes a corporation, association, firm, company, partnership, individual or government or local body; and		
1.3.3	the terms "after acquired property", "at risk", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the meanings given to them under, or in the context of, the PPSA.		

5. Delivery

5.1 Notwithstanding any obligation on the Supplier to carry out Services (if any), delivery of Goods shall be made at the place indicated in the relevant Contract or, if no place is indicated in the Contract, delivery shall be made to such other place as is notified to the Supplier by the Customer in writing.

5.2 Any Quote relating to the time for delivery of Goods or completion of Services or any part thereof are estimates only and not commitments. The Supplier shall not be bound by, or liable for a failure to comply with, any such Quote.

5.3 The Supplier may deliver Goods by instalments. If the Customer fails to pay for an instalment (if applicable) on the due date, the Supplier may suspend deliveries of the other instalments and the provision of any Services.

6. Installation

6.1 Where a Contract provides for installation of Goods (or other Services) to be carried out by the Supplier, the Customer shall:

6.1.1 provide suitable access to the Property that the Supplier will need in carrying out the Services;

6.1.2 ensure that the Property is in a proper condition for the installation;

6.1.3 provide all necessary services and amenities to enable the Supplier to carry out the Services; and

6.1.4 maintain adequate insurance against loss, damage, costs and expenses which may be suffered or incurred as a result of or during the installation, and provide the Supplier with evidence of such insurance if requested.

7. Title and Risk

7.1 Risk of any loss or damage to the Goods shall be borne by the Customer from the date of delivery of the Goods in accordance with clause 5.1 but ownership of the Goods shall not pass to the Customer, until all money the Customer owes to the Supplier has been paid in full.

7.2 Risk of any damage to the Goods arising out of any installation or other Services carried out at the Property shall be borne by the Customer except damage caused by the negligence of the Supplier, its employees, agents or contractors in carrying out the Services, which damage shall be the responsibility of the Supplier.

8. Personal Property Securities Act 1999 (PPSA)

8.1 The Customer grants a security interest to the Supplier in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to the Supplier from time to time, and for the performance by the Customer of all the Customer's other obligations to the Supplier from time to time.

8.2 The Customer shall do all things that the Supplier reasonably requires to ensure the Supplier has a perfected security interest in all the Goods and purchase money security interest in each part of the Goods to the extent of the purchase price for that part and the Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

8.3 The Customer shall, if requested by the Supplier, reimburse the Supplier for all costs and/or expenses incurred or payable by the Supplier in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the relevant Contract.

8.4 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.

8.5 The Customer agrees that:

8.5.1 if, at any relevant time, the Supplier does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Customer and the Supplier will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by deletion of the words "with priority over all secured parties") is reinstated and contracted back into; and

8.5.2 nothing in sections 114(1)(a), 133 or 134 of the PPSA shall apply to any Contract, or the security under any Contract, and the Customer waives its rights under sections 116, 120(2), 121, 125–127, 129, and 131 of the PPSA.

8.6 To the extent any Goods that have been installed in or on the Property do not comprise personal property, the Customer grants to the Supplier a charge over the Property as security for payment for the Goods and for any other amounts owing by the Customer to the Supplier from time to time, and for the performance by the Customer of all the Customer's other obligations to the Supplier from time to time.

9. Warranty

9.1 To the fullest extent permitted by law:

9.1.1 the Supplier does not make any representation or warranty of any kind whether express or implied regarding the Goods or the Services; and

9.1.2 all implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose are excluded.

9.2 Unless otherwise required by law, the Customer's sole remedies are limited to repair or replacement of any defective Goods or reperformance of any portion of the Services.

9.3 The Supplier shall not be obliged to carry out any work nor be under any liability under this clause 9 for so long as the Customer is in default in relation to any obligation (including as to payment) under any Contract.

9.4 If the Supplier is required under these Terms or by law to repair any defective Goods, the repair shall be undertaken at such place as the Supplier may reasonably specify and the Customer shall be responsible for delivery of the defective Goods to and from such place of repair.

9.5 If Goods or any components thereof are not manufactured by the Supplier, clause 9.1 shall not apply to such Goods or components and the Supplier shall not be liable in respect of any defects in such Goods or components. Where the manufacturer or supplier of such Goods or components provides any warranty, the Supplier (to the extent it is reasonably able to do so) shall make such warranty available to the Customer.

10. Termination

10.1 Any Contract between the Supplier and the Customer can only be terminated by a Party giving the other Party not less than 10 working days written notice (or such lesser period agreed by the Parties in writing). Immediately upon such termination, to the extent permitted at law, the Customer shall pay to the Supplier compensation for any costs incurred by the Supplier, or loss suffered by the Supplier (including all expenses and labour) caused directly or indirectly by cancellation by the Customer).

11. Default

11.1 If:
11.1.1 the Customer:

(a) defaults in the due payment of any moneys payable to the Supplier, or in the due performance of any of its other obligations, whether under any Contract or otherwise; or

(b) commits any act of bankruptcy, enters into any composition or arrangement with creditors or (in the case of a company) does any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Customer or if a receiver is appointed in respect of all or any of its assets; or	13.2	terms and conditions shall contract out of or limit the application of those Acts.
11.1.2 any other event which the Supplier reasonably considers may materially adversely affect the ability of the Customer to perform any of its obligations under any Contract,	13.3	Where the Customer is "in trade" within the meaning of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 (as applicable), the Supplier and the Customer agree to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14 of the Fair Trading Act 1986.
the Supplier may, without prejudice to any other rights or remedies, at its option:	13.4	Where a Customer is in trade and has agreed to contract out of the Consumer Guarantees Act 1993 and relevant provisions of the Fair Trading Act 1986 (Acts), the Customer acknowledges that it is fair and reasonable that the Parties contract out of the Acts.
11.1.3 require all moneys outstanding to be immediately due and payable and enforce the security interest created by clause 8;	13.4	Where the Supplier is supplying Goods and/or Services to the Customer other than for business purposes, the provisions of clauses 13.2 to 13.4 will have no effect and the provisions of the Consumer Guarantees Act 1993 and the full provisions of the Fair Trading Act 1986 will apply.
11.1.4 suspend all Contracts in which case the Supplier shall not be obliged to perform any of its obligations under any Contract during the period of suspension (including delivery of any Goods). Any suspension shall not prevent the Supplier from terminating any Contract during the period of suspension;	14.	Guarantee and indemnity
11.1.5 enter upon the Customer's premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by the Customer; and/or	14.1	The Guarantor(s) jointly and severally unconditionally guarantee to the Supplier the due and punctual payment by the Customer of all outstanding moneys, and agree to keep the Supplier fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the moneys hereby guaranteed, including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
11.1.6 terminate all or any Contracts.	14.2	As between the Guarantor(s) and the Supplier the liability of the Guarantor(s) shall be deemed to be that of principal debtor. This guarantee and indemnity is in addition to and not in substitution for any other security or right which the Supplier may have with respect to the Customer's indebtedness and may be enforced against the Guarantor(s) without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
11.2 The Customer shall pay all costs incurred by the Supplier in the recovery or attempted recovery of outstanding moneys and enforcement of these Terms, including all legal fees.	14.3	The liability of the Guarantor(s) shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
11.3 Payments shall be applied in reduction of amounts owing by the Customer in such order as the Supplier determines.	14.3	The liability of the Guarantor(s) shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
12. Liability	14.4	This guarantee and indemnity is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customer's credit account (and any other obligations the Customer may have with respect to any Contract) have been fully paid, satisfied or performed.
12.1 The total liability of the Supplier to the Customer under or in connection with any Contract will not in any circumstances exceed the Price for the relevant Goods and/or Services received by the Supplier in the 12 months prior to the event giving rise to the liability.	15.	Privacy
12.2 The Supplier will not be liable for any loss of profits, or any consequential, indirect or special damage or damage or injury of any kind suffered by the Customer or any Related Company, employee, agent, director or officer of the Customer.	15.1	The Customer and the Guarantor(s) (if applicable) authorise the Supplier (or the Supplier's agent) to:
12.3 The Supplier shall not be responsible for any damage whatsoever caused in the event that the Customer incorrectly operates or services the Goods or uses or adapts the Goods in any way in a manner not intended by the Supplier.	15.1.1	collect, retain and use any personal information of the Customer and the Guarantor(s) (if applicable) (as defined in the Privacy Act 2020), for the purpose of performing any Contract, including for the purpose of assessing the Customer's and/or the Guarantor's (if applicable) creditworthiness; and
12.4 The Customer will indemnify the Supplier against:	15.1.2	disclose personal information about the Customer and/or Guarantor(s) whether collected by the Supplier from the Customer and/or Guarantor(s) directly or obtained by the Supplier from any other source for the purposes of performing any Contract, and to any other credit provider or any credit reporting agency or any debt collection agency for the purposes of providing a credit reference, debt collection or notifying a default by the Customer and/or Guarantor.
12.4.1 any claim by the Customer's employees, contractors, agents or other persons in respect of any loss, damage or injury arising from any defect in or non-compliance of any Goods and/or Services or in respect to any other matter whatsoever; and	15.2	Where the Customer and the Guarantor(s) are a natural person the authorities (under clause 15.1) are authorities or consents for the purposes for the Privacy Act 2020.
12.4.2 any liability or cost incurred by the Supplier as a result of any breach by the Customer of any provision of any Contract or any unauthorised use of the Goods.	15.3	The Customer and the Guarantor(s) shall have the right to request the Supplier for a copy of its personal information retained by the Supplier and the right to request the Supplier to correct any of its incorrect personal information held by the Supplier.
13. Consumer Guarantees Act and Fair Trading Act	16.	General
13.1 Subject to clause 13.2, where the Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986 apply, nothing in these	16.1	If any provision of any Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed

	from the relevant Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality or application of any other provision of the Contract.		
16.2	Any notice to be given pursuant to the terms of any Contract shall be in writing addressed to the party to whom it is given and left at or sent by e-mail or pre-paid post to the address of such party (as notified by the parties from time to time) and shall be deemed to be served on the day so left or transmitted by e-mail or on the fifth day after it is so posted.		Mediators' Institute of New Zealand Inc (AMINZ), or any other mediation agreement agreed by the parties and the mediator. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within seven days of reference to mediation as set out above, the mediator will be selected and his/her fee determined by the President for the time being of AMINZ (or any suitable replacement organisation). Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.
16.3	All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of the Supplier.	16.8	Each Contract is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
16.4	Neither party (Affected Party) will be liable for any delay or for any failure to fulfil its obligations under any Contract (except with respect to any payment obligations) if the failure or delay arises directly or indirectly from or as a consequence of any cause or circumstance beyond the reasonable control of the Affected Party.	16.9	The Supplier may vary these Terms at any time by notice in writing to the Customer. Any such variation shall take effect from acceptance of the first order for Goods and/or Services following a notice of variation being provided to the Customer.
16.5	Neither the Customer nor the Guarantor(s) shall assign or purport to assign (whether in whole or in part) its rights or interests under any Contract without the prior written consent of the Supplier.	16.10	Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent or principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.
16.6	The Customer and the Guarantor(s) authorise the Supplier to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to the Customer or the Guarantor(s) (as applicable) and the Customer and the Guarantor(s) authorise each such source to provide to the Supplier any information about the Customer or the Guarantor(s) (as applicable).	16.11	To the extent any confidential information is provided by the Supplier to the Customer and/or the Guarantor(s) the Customer and the Guarantor(s) (as applicable) must keep that information confidential.
16.7	The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. The Supplier may, at its option, require the Customer and/or the Guarantor(s) (as applicable) to submit to mediation with assistance of a qualified mediator. Any mediation must be conducted in accordance with the Mediation Protocol of the Arbitrators' and	16.12	The failure of the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's future right to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's future right to enforce that provision.