IBC SOLAR

Have sun!

GENERAL TERMS AND CONDITIONS OF IBC SOLAR South Africa (Pty) Ltd.

(Version: January 2023)

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IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT AND COLOUR TO THIS TEXT WHICH CONTAINS PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF THE COMPANY OR OF ANY OTHER PERSON AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY THE CUSTOMER AND/OR (III) MAY IMPOSE AN OBLIGATION ON THE CUSTOMER TO INDEMNIFY THE COMPANY OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY THE CUSTOMER. THESE PROVISIONS ARE VERY IMPORTANT AND THE CUSTOMER MUST ENSURE THAT THEY READ THEM CAREFULLY AND THAT THEY UNDERSTAND THEM CLEARLY.

1. GENERAL

1.1 All contracts are exclusively subject to the **Company's** terms and conditions of delivery and sale. The **Company** rejects any terms and conditions of the **Customer** to the contrary or deviating from the **Company's** terms and conditions unless it has expressly consented thereto in writing.

1.2 The terms and conditions set out herein cancel all previous issues, terms and conditions.

1.3 These terms and conditions, as re-issued or revised by the **Company** from time to time, apply to all orders placed with the **Company** and such orders are subject to acceptance by the **Company** and shall be deemed to be made subject to these terms and conditions.

1.4 No qualification or condition contained in any order form, acknowledgement of order or otherwise, shall from part of the contract of sale or override these terms unless expressly agreed to in writing by the **Company**.

1.5 Price lists issued by the **Company** from time to time, are for information purposes only and do not constitute offers of sale.

1.6 The **Company** reserves the right to refuse an order and acceptance on the part of the **Company** will only be deemed to have occurred on delivery of the **Goods**.

1.7 Due to variables such as quantity, size, packaging, marketing etc., invoiced prices may differ from advertised prices.

2. DEFINITIONS

Unless such meaning in inconsistent with the context, the following terms shall, throughout this **Agreement**, have the meanings respectively ascribed to them, namely:

2.1 **"Agreement"** shall mean these General Terms and Conditions;

2.2 **"Company"** shall mean IBC Solar South Africa (Pty) Ltd (registration number 2016/355765/07);

2.3 **"Contract"** shall mean the agreement entered into between the Company and the Customer for the sale and delivery of Goods;

2.4 **"Contract Price"** shall mean the price of the **Goods** as set out in the Invoice;

2.5 **"Contract Specification"** shall mean the specification or other description of the **Goods** on the Invoice;

2.6 **"Customer"** shall mean the person or legal entity with whom an agreement is entered into for the sale of the **Goods**;

2.7 **"Delivery Note"** shall mean a note on which is reflected at least the invoice number, delivery instruction note number, net and gross weights and numbers of bags/packages/cartons or other containers in which the Goods are supplied.

2.8 **"Goods"** shall mean the goods and/or services as described more specifically in the Invoice;

2.9 **"Tax Invoice"** shall mean the invoice document of the **Company** whereon an invoice number, full particulars of the **Customer**, **Contract Price**, **Contract Specification** and the date of order of the **Goods** by the **Customer** shall appear;

2.10 **"Order"** shall mean the order placed by the Customer with the Company for the purchase of specific Goods and/or services;

2.11 **"Order Confirmation" or "ProForma Invoice"** shall mean the written confirmation of the Company acknowledging receipt of a Customer's order;

2.12 **"POPI"** shall mean the Protection of Personal Information Act 4 of 2013.

3. INTERPRETATION

In this Agreement unless the context otherwise requires –

3.1 The singular shall import and include the plural and vice versa;

3.2 Words indicating one gender shall import and include other genders;

3.3 Words indicating natural persons shall import and include juristic and artificial persons;

3.4 The headnotes to this **Agreement** are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate;

3.5 Where any numbers of days are prescribed in this **Agreement**, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

3.6 If any doubt or conflict arises where figures are referred to in numerals and in words, the figure in words shall prevail;

3.7 Should there be any conflict or inconsistency between this **Agreement** and other agreement/s concluded between the Parties, then the terms and conditions of this **Agreement** shall prevail;

3.8 The rights and obligations of any Party arising from this **Agreement** shall devolve upon and bind its successors-in-title;

3.9 If any provision in a definition contained in this **Agreement** is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it only appears in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the **Agreement**;

3.10 This **Agreement** shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

3.11 The rule of construction that this **Agreement** shall be interpreted against the Party responsible for the drafting or preparation of this **Agreement** shall not apply. The same applies to the schedules or annexures.

4. OFFER AND SUBJECT MATTER OF THE CONTRACT

4.1 Any offers, whether verbal or written, shall always be subject to change and non-binding, unless they are expressly designated as binding or contain a certain acceptance period.

4.2 **Orders or ProForma Invoices** respectively shall only become legally binding if they are confirmed in writing within a defined period or executed as agreed with the **Customer's consent** (= conclusion of the contract).

4.3 The **ProForma Invoice** is valid for 7 (seven) calendar days.

4.4 The Company reserves the right to change confirmed prices and void the **ProForma Invoice** Validity if the exchange rate deviates by more than 0.50 ZAR per EUR or USD.

4.5 The written **Order Confirmation** or **ProForma Invoice** shall, including these General Terms and Conditions, determine the type, scope and time of delivery or service. The **ProForma Invoice** fully represents all the agreements between the Company and its customers with regard to the subject matter of the contract. Verbal assurances made by the Company before conclusion of the Contract are not legally binding and verbal arrangements are replaced by the **ProForma Invoice**, unless it is expressly stated therein that they continue to apply and are binding.

4.6 Additions or modifications to the agreements made, including these General Terms and Conditions, must be made in writing to be valid. Transmission by means of fax or e-mail, if these were sent with read confirmation, shall suffice to comply with the written form requirement.

4.7 Information from the Company on the object of the supply or service (e.g. dimensions, tolerances, technical data) as well as the Company's representations of the same (e.g. drawings; illustrations) are only approximately applicable, unless its applicability for the purpose contractually envisaged requires precise conformity. These are not guaranteed characteristics, but descriptions or identifications of the supply or service. Differences which are customary in the trade which are the result of legal provisions or which represent technical improvements, as well as the replacement of components with parts of equivalent value, are permissible in so far as they do not affect the applicability for the purpose contractually envisaged.

4.8 Assurances of characteristics or guarantees of quality and durability must be agreed separately in writing.

5. PRICES

5.1 Unless stated otherwise on the **ProForma Invoice**, prices are in Rand and include VAT (Value Added Tax), packaging and delivery to the address specified by the **Customer** on the **Order**.

5.2 However, pricing shall be exclusive of freight, customs, insurance, assembly and other additional costs. These costs shall be shown separately on the **Invoice**.

5.3 The **Company** is entitled to charge a surcharge for small order volumes as a flat fee for additional expenses such as but not limited to packing and picking. Such surcharge will be shown on the **ProForma Invoice.**

5.4 The **Company** shall retain the title to and intellectual property in all offer documents; these may not be made available to third parties without the **Company's** express written consent.

5.5 The **Company** reserves its rights to effect price changes from time to time without prior notification to the Customer. The onus shall be on the Customer to remain informed of the prices of the Company.

5.6 Notwithstanding the stated price on the **ProForma Invoice**, the **Contract Price** shall, at all material times, be subject to any increase of material, labour, foreign exchange rates, costumes, duties, surcharges, taxes, packing and storage and the **Company** shall endeavour, where reasonably possible, to inform the **Customer** in advance of any anticipated increases.

5.7 The **Company** reserves the right to request the **Customer** to furnish a deposit or bank guarantee which is acceptable to the **Company**. SHOULD SUCH DEPOSIT NOT BE PROVIDED AS REQUESTED THEN THE **COMPANY** SHALL HAVE THE RIGHT TO CANCEL THE ORDER WITHOUT INCURRING ANY LIABILITY ON THE PART OF THE **COMPANY**.

5.8 The **Company** reserves its right to charge a storage fee on any items which have not been collected or could not be delivered within 10 (ten) calendar days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the **Customer's** conduct. The storage fee shall be 0.5% (zero point five percent) of the order value for every week that the Goods are stored by the Company.

6. PAYMENT TERMS

6.1 Once an **Order** has been placed by the **Customer** with the **Company**, the **Company** will issue an **Order Confirmation** or a **ProForma Invoice** respectively.

6.2 Payment in full of the **ProForma Invoice** is required prior to delivery unless agreed otherwise. A **Tax Invoice** will be issued to the **Customer** upon dispatch of goods or delivery.

6.3 Unless agreed otherwise in writing, payments must be made net and without deduction, bank charges are to be borne by the **Customer.**

6.4 Off-setting against counter-claims of the **Customer** or the retention of payments on the basis of such claims are strictly prohibited and claims of the **Customer** shall be dealt with separately.

6.5 If the **Customer** falls into arrears, interest on arrears shall be levied at the prime interest rate prevailing at the time plus 5% (five percent).

6.6 If the **Customer** has a credit with the **Company** and does not offset such credit with future orders or doesn't provide proof of bank details for repayment within five (5) working days after a corresponding e-mail request by the **Company**, the **Company** is entitled to void such credit in its favour up to a value of 200 ZAR.

6.7 The **Company** is entitled to make outstanding deliveries or provide outstanding services only against advance payment or the provision of security, if after the conclusion of the **Contract**, it learns about circumstances which are likely to considerably reduce the **Customer's** credit worthiness and due to which the payment of the **Company's** outstanding accounts receivable under the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk.

6.8 THE **CUSTOMER** HEREBY AUTHORISES THE **COMPANY** TO PERFORM OR OBTAIN ANY INFORMATION FROM A REGISTERED CREDIT BUREAU. THE **CUSTOMER** FURTHER ACKNOWLEDGES THAT THE FAILURE TO PAY ANY AMOUNTS OWED IN TERMS OF THE **AGREEMENT** MAY CAUSE AN ADVERSE LISTING OF THE **CUSTOMER** BY THE **COMPANY** WITH REGISTERED CREDIT BUREAUS.

6.9 The **Company**, at its discretion, shall appropriate the payments made in terms of this **Agreement**, firstly to any costs then to any interest outstanding and thereafter to the capital amount outstanding from time to time, or at the **Company's** sole discretion.

6.10 IT IS SPECIFICALLY RECORDED AND AGREED THAT THE **CUSTOMER** WAIVES ALL CLAIMS AGAINST THE COMPANY FOR ANY DAMAGES OR LOSSES THAT IT MAY SUFFER AS A RESULT OF THE REFUSAL OF THE COMPANY TO SELL GOODS TO THE CUSTOMER IN THE EVENT OF AN OVERDUE ACCOUNT, OR IN CONNECTION WITH ANY OTHER DISPUTE WHATSOEVER ARISING OUT OF LATE PAYMENT FOR GOODS.

7. DELIVERY

7.1 Deliveries are made to the address specified by the **Customer** on the **Order**.

7.2 Signature by the **Customer** or by any representative or employee of the **Customer** of the **Company's Delivery Note** and/or **Tax Invoice**, shall be regarded as acceptance by the **Customer** that the **Goods** reflected in such **Delivery Note** and/or **Tax Invoice** have been properly and completely delivered.

7.3 Periods and deadlines announced by the **Customer** in advance shall always be only approximate unless a fixed term or a fixed deadline is expressly assured or agreed. In so far as shipment has been agreed, delivery terms and delivery deadlines refer to the time of handover to the forwarding agent, freight carrier or other third party commissioned for the transport.

7.4 WHILST EVERY EFFORT WILL BE MADE TO DISPATCH AND DELIVER THE **GOODS** AS ADVISED, THE **COMPANY** DOES NOT GUARANTEE DISPATCH AND/OR DELIVERY ON ANY SPECIFIC DATE AND SHALL NOT BE LIABLE FOR ANY DAMAGES INCLUDING CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY THE **CUSTOMER** AS A RESULT OF ANY DELAYS IN THE DELIVERY OF THE **GOODS** THAT MAY OCCUR, SAVE TO THE EXTENT THAT THE **COMPANY** MAY BE LIABLE FOR ANY LOSSES IN TERMS OF SECTION 47 OF THE CONSUMER PROTECTION ACT 68 OF 2008 AS AMENDED.

7.5 The **Customer** shall not be entitled to cancel any order by reason of such delay. IF UPON DELIVERY OF THE **GOODS**, THE **CUSTOMER** FAILS, REFUSES OR NEGLECTS TO TAKE DELIVERY OF THE **GOODS**, THE **CUSTOMER** SHALL NEVERTHELESS BE LIABLE TO PAY THE **CONTRACT PRICE** AND THE RELEVANT MONTHLY STORAGE COSTS AND THE **CUSTOMER** SHALL FORFEIT ANY DEPOSITS PAID TO THE **COMPANY**.

7.6 Should the **Company** be prevented in performing any of its obligations as a result of Force Majeure, or any cause whatsoever beyond the control of the **Company**, the **Company** shall be entitled, at its option, to cancel the **Agreement** or to suspend performance of its obligations thereunder and SHALL NOT BE LIABLE WHATSOEVER FOR ANY LOSS OR DAMAGE, CONSEQUENTIAL OR OTHERWISE, RESULTING FROM SUCH INABILITY TO PERFORM ITS OBLIGATIONS, CANCELLATION OR SUSPENSION.

7.7 If the **Goods** are not accepted by the **Customer** in whole or in part five (5) days after the confirmed delivery deadline, or in the case of deliveries on call, including for partial quantities, if the **Goods** are not requested within five (5) days of the confirmed availability deadline, the **Company** shall be entitled to optionally push the **Customer's** order to the next availability date, i.e. following stipulation and expiry of a reasonable period of grace, to dispose of the object of delivery in whole or in part and to supply the **Customer** with a reasonable longer lead time or to store the **Goods** and charge a storage fee of 0.5% (zero point five percent) of the Order value for every week that that the **Goods** are stored by the **Company**, or following expiry without effect of a reasonable period of grace to cancel the **Order** in whole or in part, the **Company** may charge a cancellation fee of 5% (five percent) of the value of the cancelled **Order**. The right to assert and provide evidence of higher or lower storage costs is reserved by the **Company**.

7.8 Should the **Customer** postpone delivery of the **Order** for a second time, where a confirmed delivery date was agreed, the **Company** shall be entitled to charge the **Customer** a processing fee of R1,500.00 (one thousand Rand) per instance. If the postponement(s) induced by the **Customer** leads to an overall delay of the respective delivery of more than 28 (twenty eight) days, the **Company** shall be entitled to exercise its options pursuant to clause 7.7 above.

7.9 Unless otherwise agreed in writing, delivery and passing of risk in the **Goods** shall be deemed to have taken place, whichever is earliest –

- 7.9.1 when the **Company** advises the **Customer** in writing that the **Goods** are ready for collection; or
- 7.9.2 upon handover of the **Goods** (determined by the commencement of the loading process) to the forwarding agent or carrier or to any other third party in charge of carrying out the shipment to the **Customer**; or
- 7.9.3 upon delivery of the **Goods** to the address specified by the **Customer** on the **Order**.

7.10 If shipment or handover is delayed due to circumstances caused by the **Customer**, the transfer of risk to the **Customer** shall take place on the day the **Company** is ready to dispatch the **Goods** and has notified the **Customer** hereof.

8. PLACE OF PERFORMANCE, SHIPPING, PACKAGING, ACCEPTANCE

8.1 The place of performance for all obligations under this **Agreement** is South Africa, unless agreed otherwise. If the **Company** is also responsible for installation, the place of performance is the place where installation is to take place.

8.2 The shipping method and packaging shall be selected at the discretion of the **Company**.

8.3 The shipment shall only be insured against theft, breakages, transport, fire or water damage or other insurable risks at the express request of the **Customer** and at the **Customer's** own cost.

8.4 If acceptance has to take place, the **Goods** shall be deemed to have been accepted if –

- 8.4.1 the delivery, and the installation, if the **Company** is also responsible for installation, has been completed;
- 8.4.2 the **Company** informs the **Customer** about this with an indication of the assumed acceptance as defined herein and has requested the **Customer's** acceptance;
- 8.4.3 10 (ten) working days have passed since the delivery or installation of the **Goods**;
- 8.4.4 where the **Customer** has begun using the **Goods** (e.g. commissioning of the plant), 6 (six) working days have passed since the delivery or installation of the **Goods**; and
- 8.4.5 the **Customer** has failed to declare acceptance within this period for a reason other than a defect notified to the **Company**, which prevents or substantially affects using the **Goods**.

9. RETURNS AND RETURN POLICY

9.1 The **Customer** may not return to the **Company** any **Goods** for any reason whatsoever unless:-

- 9.1.1 the **Company** has agreed in writing to accept such return and to the conditions of such return;
- 9.1.2 the **Goods** are being returned in accordance with the provisions of clauses 10 and 10.4 below;

9.1.3 the **Goods** were intended to satisfy a particular purpose communicated to the **Company** prior to the purchase thereof and have been found not to satisfy the purpose for which they were intended, within 10 (ten) business days of delivery and the **Company** has been notified of this within that time period;

9.2 Returned **Goods** will not be accepted by the **Company** if:

9.2.1 they were not supplied or invoiced by the **Company**;

9.2.2 they are not returned in their original packaging and are in a perfect, re-saleable condition;

9.2.3 the net value of the **Goods** is less than R2,000.00 (two thousand Rand); and/or

9.2.4 the **Goods** were not purchased by the **Customer** directly from the **Company**; and/or

9.2.5 the delivery date for the **Goods** was more than 30 (thirty) calendar days ago; and/or

9.2.6 the **Goods** are not in a saleable condition (e.g. goods no longer included in the **Company's** official price list, components or products made to measure or tailor-made especially for the **Customer**, which have since been subjected to technical changes); and/or

9.2.7 the **Goods** are expressly identified as being excluded from this returns policy; and/or

9.2.8 the returns procedure set out in clause 9.3 below has not been followed.

9.3 If a **Customer** would like to return **Goods**, it must first ask the **Company's** order processing department in writing whether a return is possible, specifying the product number, the quantity ordered, the delivery note and invoice number. The **Company** will then decide whether the **Goods** can be returned and either consent to or reject the return in writing.

9.4 If the **Company** consents to the return of the **Goods**, the **Goods** must be returned by the **Customer** within 7 (seven) calendar days from the date of notification by the **Company** that the **Goods** can be returned. Such return will be the responsibility of the **Customer** and at the **Customer's** own risk and expense.

9.5 Should the following occur, the return of the **Goods** will be not be accepted by the **Company** and the **Goods** will be sent back to the **Customer** at the **Customer's** own risk and expense:

9.5.1 if the **Goods** are received after the 7 (seven) calendar days period referred to in clause 9.4 above;

9.5.2 if the **Goods** are sent to the **Company** without carriage costs paid;

9.5.3 if the **Goods** are sent to the **Company** without the prior consent of the **Company**;

9.5.4 if it appears that the **Goods** do not comply with the provisions of clause 9 above;

9.5.5 if it appears that the **Goods** fall within the exclusions as outlined in clause 9.2 above.

9.6 The **Customer** will bear the risk of proper transportation (including correct pallet size), deterioration, damage and loss until the returned **Goods** are received by the **Company**.

9.7 The **Company** will record all accepted returns by way of a credit note. The net value of the **Goods**, minus a processing fee amounting to 10 % of the net value of the **Goods**, will be refunded for the returned **Goods**. The credit note will be accounted against the **Customer's** next invoice. No credit note amounts will be paid out in monetary form.

9.8 Accepted returns for **Goods** which are commissioned and invoiced but not dispatched yet, will be recorded by way of a credit note by the **Company** minus a processing fee amounting to 3 % of the net value of the **Goods.** Clause 9.7 applies accordingly.

9.9 This returns policy may be extended or modified by the **Company** at any time.

10. DEFECTS

10.1 A PRE-CONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE **CUSTOMER** IN TERMS OF THE **AGREEMENT** IS THAT A **CUSTOMER** INSPECTS THE **GOODS** UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES WRITTEN NOTICE OF ANY VISIBLE DEFECTS WITHOUT UNDUE DELAY AFTER THE INSPECTION OR OF HIDDEN DEFECTS AFTER THEIR DISCOVERY, SPECIFYING THE DEFFECT. THIS SHALL ALSO APPLY TO INCORRECT DELIVERIES OR ITEMS IN INSUFFICIENT QUANTITIES BEING DELIVERED. NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF 10 (TEN) DAYS.

10.2 If the **Customer** notifies the **Company** of such defects, the **Customer** shall arrange for a fact-finding investigation as soon as possible. The results shall be forwarded to the **Company** directly.

10.3 SHOULD THERE BE AN ALLEGATION THAT ANY **GOODS** ARE UNSAFE OR DEFECTIVE, THE **COMPANY** SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE **GOODS'** CHARACTERISTIC, FAILURE, DEFECT OR HAZARD DID NOT EXIST IN THE **GOODS** AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE **CUSTOMER** BY THE **COMPANY**. THEREFORE, IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 10 ABOVE, IT WILL BE REGARDED AS SUFFICIENT (PRIMA FACIE) PROOF THAT NO DEFECTS WERE PRESENT AT THE TIME OF DELIVERY AND THAT THE **GOODS** WERE DELIVERED IN ACCORDANCE WITH THE **AGREEMENT**.

10.4 In the event that the **Company** receives notification in terms of clause 10 above and it is satisfied that the **Goods** are defective or do not conform to specifications, then the **Company** will, at the **Company's** election, replace such quantity of **Goods** with an equal quantity of **Goods** or refund the applicable portion of the purchase price to the **Customer** against return of the defective portion of the **Goods** (the return to be made at the Company's risk and expense).

10.5 The **Company** shall not be liable where –

10.5.1 the carriage costs increase because the **Goods** are located at a place other than that of the place of intended use; or

10.5.2 the **Goods** have been transported out of South Africa.

11. RETENTION OF TITLE / RESERVATION OF OWNERSHIP

11.1 Notwithstanding delivery of the **Goods** sold to the **Customer**, the ownership in the **Goods** sold in terms of this **Agreement** shall remain vested in the **Company**, or any cessionary to whom the Company may cede its rights, until the full purchase price and any other amounts due by the **Customer** have been paid together with any interest or other costs due to the **Company** arising out of this **Agreement**.

11.2 Furthermore, the **Company** reserves ownership of retained **Goods** until the **Customer** has paid any further payments due in terms of this **Agreement** of whatever nature.

11.3 In the event that the **Customer** defaults in payment, he shall deliver the **Goods** to the **Company** upon receipt of notice by the **Customer** from the **Company**, without undue delay.

11.4 The **Company** may elect, without detracting from other remedies which may be available to it, to continue with the **Agreement** or to cancel it and cancel the sale of any further **Goods** to the **Customer** and to rely on the provisions of this clause to repossess those **Goods** sold and delivered by the **Company** to the **Customer** or to claim specific performance for all the **Customer's** obligations, whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the **Company's** rights to claim damages.

11.5 The **Company's** request for repossession and repossession itself shall not be construed as rescission from the **Agreement**. After repossession of the delivered items the **Company** shall be authorised to realise the same. The realisation proceeds shall be set-off against the **Customer's** liabilities, less appropriate realisation costs. The **Company** may also realise the repossessed **Goods** by selling them by private contract.

11.6 The **Customer** undertakes to handle the delivery items with care; in particular, he is obliged to insure them adequately at the reinstatement value against damage caused by fire, water, and theft at his expense.

11.7 In case of attachments or other interventions by third parties, the **Customer** shall inform the **Company** in writing without undue delay. The **Customer** shall be liable to the **Company** for the judicial and extra-judicial costs of any necessary action pursuant to third party legal actions.

11.8 In processing or transforming the **Goods**, the **Customer** shall invariably be acting for the **Company** and on its behalf. If the **Goods** are processed with other items not belonging to the **Company**, the **Company** shall acquire joint title to the new thing in the same proportion as the value of the delivered item bears to the other processed items at the time of the processing. In all other cases, the new thing having resulted from the processing shall be governed by the same provision as the **Goods**. The reservation of title shall remain effective in this regard.

12. WARRANTIES AND REPRESENTATION

12.1 Unless otherwise agreed or stated in the product specification, the standard warranty period is 24 (twenty four) months for the **Company's** brand products calculated from tax invoice date.

12.2 For all other products, the manufacturer's warranty terms and conditions apply.

12.3 Deliveries of used items shall not be covered by a warranty for material defects.

12.4 Save as aforesaid, the **Company** makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. The **Company** specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labelling and/or transport of hazardous **Goods**. No warranty shall apply to shipping damage, damage caused by improper installation or improper wiring, including incorrect electrical voltage, **Goods** that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or **Goods** that have been subjected to improper maintenance, abuse, misuse, abnormal usage, or accident.

12.5 THE **CUSTOMER** WARRANTS THAT IT SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE **GOODS** SOLD HEREUNDER AND THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY AND HOLD THE **COMPANY** HARMLESS FROM ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT ON THE PART OF THE **CUSTOMER** OR FROM ANY FAILURE OF THE **CUSTOMER** TO COMPLY WITH THE TERMS OF THIS WARRANTY.

12.6 Specifications, illustrations and the like remain the property of the **Company** and may only be used for the purpose specified in the **Agreement** and must be returned upon the request of the **Company**.

12.7 WHILST THE **COMPANY** SHALL TAKE ALL REASONABLE STEPS TO ENSURE THAT THE **GOODS** SOLD AND DELIVERED TO THE **CUSTOMER** IN TERMS HEREOF ARE MANUFACTURED IN ACCORDANCE WITH THE **CUSTOMER'S** SPECIFICATIONS, THE **COMPANY** DOES NOT WARRANT THAT THE SAID **GOODS** WILL BE FIT FOR THE SPECIFIC PURPOSE FOR WHICH THE **CUSTOMER** INTENDS TO USE THE SAID **GOODS**, AND THE **CUSTOMER** ACCORDINGLY ABSOLVES THE **COMPANY** FROM ANY LIABILITY WHATSOEVER AS A RESULT OF THE SAID **GOODS** NOT BEING FIT FOR THE PURPOSE FOR WHICH THE **CUSTOMER** INTENDS TO USE THE SAID **GOODS**, UNLESS THE **CUSTOMER** HAS SPECIFICALLY INFORMED THE **COMPANY** IN WRITING OF THE PARTICULAR PURPOSE FOR WHICH THE **CUSTOMER** WISHES TO ACQUIRE THE **GOODS** OR THE USE TO WHICH THE **CUSTOMER** INTENDS TO APPLY THOSE **GOODS** AND THE COMPANYAGREES TO SUPPLY SUCH **GOODS**.

12.8 THE **COMPANY** SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE CUSTOMER OR BY THIRD PARTIES, ANY OTHER DISREGARD OF INSTALLATION AND OPERATING INSTRUCTIONS OR OF GENERALLY ACCEPTED TECHNICAL RULES AND NORMAL OPERATIONAL WEAR AND TEAR.

13. LIMITATION OF LIABILITY

13.1 IN NO EVENT SHALL THE **COMPANY**, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING PUNTITIVE DAMAGES OR ATTORNEYS' FEES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF THE **CUSTOMER** OR ITS CLIENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, LOSS OF INCOME OR USE OF **GOODS** OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE **AGREEMENT**, EXCEPT IN THE CASE OF PERSONAL INJURY OR PROPERTY DAMAGE WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.

13.2 TO THE EXTENT THE **CUSTOMER** INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE **GOODS** IN ITS OWN **GOODS** OR THE **GOODS** OF ANY THIRD PARTY, THE **COMPANY** SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE **GOODS** OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY **GOODS** CONTAINING SUCH **GOODS**, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVEABLE BY THE **CUSTOMER**. THE **CUSTOMER** ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM HANDLING, POSSESSION, USE, RE-SALE OR DISPOSAL OF THE **GOODS**.

13.3 ANY ACTION BY THE **CUSTOMER** OR BREACH OF THE **AGREEMENT** BY THE **CUSTOMER** OR ANY OTHER CAUSES OF ACTION OF THE **CUSTOMER** EXPRESSLY ALLOWED UNDER THE **AGREEMENT** MUST BE COMMENCED WITHIN 1 (ONE) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

14. BREACH

14.1 In the event that:

14.1.1 the **Customer** breaches any condition contained in these terms and conditions and fails to pay any amount due and payable on the due date, and having failed to rectify such breach or outstanding payments within 10 (ten) days of having been requested to do so in writing by the Company;

14.1.2 the **Customer** dies or ceases to exist;

14.1.3 the Customer's estate is placed under provisional or final liquidation or sequestration, or provisional or final judicial management as the case may be,

then, and in that event, the **Company** shall, without retracting from other remedies which may be available to it, be entitled to cancel this **Agreement** and cancel the sale of any **Goods** to the **Customer** without notice the **Customer** and to rely on the provisions of this clause to repossess those **Goods** sold and delivered by the **Company** to the **Customer** or to claim specific performance of all the **Customer's** obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the **Company's** rights to claim damages.

15. REMEDIES

15.1 The **Customer's** exclusive remedy for shortage of the **Goods**, damage or defective **Goods** (whether or not occurring as a result of the **Company's** alleged negligence) or any other cause of action arising out of the **Agreement**, including breach of warranty, is expressly limited to replacement of non-conforming **Goods** or payment of an amount not exceeding the purchase price of the **Goods** for which damages are claimed, at the **Company's** option.

15.2 The **Customer** shall have no right to set-off, to withhold payment or to make a reduction in price.

15.3 The **Customer's** remedy of replacement or refund is available only if non-conformance was not caused by the **Customer** or by accident, fire or other hazard.

16. INDEMNITY

The **Customer** agrees to indemnify, hold harmless and defend the **Company** and the **Company's** directors, officers, employee's and agents, and the directors, officers, employees and agents of any of the **Company's** parent, subsidiary or related company from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of the **Goods** by the **Customer**, except that such claims, suits, losses, damages, costs, fees or expenses must have arisen or resulted from any grossly negligent or wrongful act or omission of the **Company**.

17. LEGAL ACTION

In the event of the **Company** instructing attorneys in regard to any breach by the **Customer** of any of the terms and conditions of this **Agreement**, then the **Customer** shall pay all such legal costs on the scale between Attorney and own client, including any costs incidental to such action instituted against the **Customer**.

18. CERTIFICATE OF INDEBTEDNESS

18.1 A certificate under the hand of the Managing Director or any other duly authorised director of the **Company** as to the existence and the amount of the **Customer's** indebtedness to the **Company**, as well as the amount of any interest accrued thereon, and as to any other fact, matter or thing relating to the **Customer's** indebtedness to the **Company**, shall be accepted as sufficient (prima facie) proof of the contents and accuracy thereof and of the amount of the **Customer's** indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the **Customer** in any competent Court and shall be valid and constitute a liquid document for such purposes.

18.2 Furthermore, it shall not be necessary to prove the appointment of the person signing such a certificate and it shall be deemed to be sufficient, particularly for the purpose of any action or any other proceeding instituted by the **Company** against the **Customer**.

19. JURISDICTION

19.1 The Parties consent to the jurisdiction of the Magistrate's Court to determine any action or proceedings which may arise under or in connection with this **Agreement**.

19.2 In the event that a dispute of a purely technical/engineering nature arises, then the **Company** may elect to refer the matter to arbitration, which arbitration shall be conducted in accordance with the Arbitration Act 42 of 1965 as amended. The arbitrator's decision will be final.

19.3 This **Agreement**, as well as the relationship between the **Company** and the **Customer** is governed by the laws of the Republic of South Africa.

20. SEVERABILITY

If any of the provisions of this **Agreement** are held to be invalid, the validity of the remainder of the provisions of this **Agreement** shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if this **Agreement** did not contain the invalid provision(s) and to this end the provisions of this **Agreement** and the application thereof are hereby declared to be severable.

21. NOTICES AND DOMICILIA

21.1 Any notice to be given to the Parties in terms of this **Agreement** shall be in writing and delivered by hand during ordinary business hours or e-mailed to info@ibc-solar.co.za or posted by prepaid registered post to the addresses mentioned hereunder, which addresses the Parties choose as their domicilium citandi et executandi for all purposes arising out of this **Agreement**.

21.2 The **Company**: Unit 408, The Point Centre, 76 Regent Road, Sea Point, 8060, Cape Town, South Africa.

21.3 The **Customer**: The delivery address as reflected on the face of the latest **Delivery Note** issued to the **Customer**.

21.4 The parties may choose such other address within the Republic of South Africa by written notice to the other.

22. CESSION

22.1 The **Customer** hereby irrevocably and in his own interest (in rem suam) cede, pledge, assign, transfer and make over unto and in favour of the **Company**, all of its rights, title, interest, claim and demand in and to all claims/debts/book debts of whatsoever nature and description and howsoever arising which the **Customer** may now or at any time hereafter have against all its debtors without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the **Customer** to the **Company** from whatsoever cause or obligation howsoever arising which the **Customer** may be or become bound to perform in favour of the **Company**.

22.2 In the event of prior deeds of cession, this cession shall operate as a cession of all the **Customer's** reversionary rights.

22.3 The **Company** is hereby irrevocably empowered by the **Customer** to do all things necessary to give effect to the terms of this cession.

23. PROCESSING OF PERSONAL INFORMATION

23.1 The **Customer's** privacy is very important to the **Company** and the **Company** will use reasonable efforts in order to ensure that any information, including Personal Information, provided by the **Customer**, or which is collected from the **Customer** or third parties, is stored in a secure manner.

23.2 The **Customer** agrees to give, where applicable, honest, accurate and current information about their selves to the **Company** and to maintain and update such information when necessary.

23.3 The **Company** may process the **Customer's** Personal Information during the course of various activities, including, without limitation, the following –

23.3.1 the carrying out and operation of the **Company's** business;

23.3.2 to comply with applicable law, the **Company's** legal obligations and to protect its legitimate business interests;

23.3.3 compliance with statutory and regulatory requirements in respect of the storage and maintenance of documents and information;

23.3.4 to comply with valid requests for information, including subject access and requests in terms of the Promotion of Access to Information Act 2 of 2000;

23.3.5 to comply with information requests by regulators or bodies lawfully requesting the information;

23.3.6 internal purposes such as training and monitoring;

23.3.7 for the purposes of, or in connection with, actual or threatened legal proceedings or establishment, exercise or defence of legal rights;

23.3.8 compliance with applicable law and fraud prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including, but not limited to, safeguarding against, and the prevention of threats to, public security;

23.3.9 to any relevant third party acquirer(s), in the event that the **Company** sells or transfers all or any portion of its business or assets (including, but not limited to, in the event of a reorganization, dissolution or liquidation);

23.3.10 relationship management and marketing purposes in relation to the **Company's** business (including, but not limited to, the development and improvement of its business), for accounts management and for marketing activities in order to establish, maintain and/or improve the **Company's** relationship with the **Customer** and with the **Company's** service providers; and

23.3.11 statistical purposes;

23.3.12 transfer of information to the **Company's** service providers and other third parties; or

23.3.13 recruitment.

23.4 The **Company** may collect or obtain Personal Information about the **Customer** –

23.4.1 directly from the **Customer**;

23.4.2 in the course of the **Company's** business relationship with the **Customer**;

23.4.3 in the course of providing the **Company's** products and services to The Customer or The Customer's organisation;

23.4.4 when the **Customer** makes the **Customer** Personal Information public;

23.4.5 when the **Customer** vist and/or interacts with the **Company's** website or its various social media platforms;

23.4.6 when the **Customer** registers to use any of the **Company's** products or services including but not limited to newsletters or other promotional material;

23.4.7 when the **Customer** interacts with any third party content or advertising on the **Company's** website; or

23.4.8 when the **Customer** visits the **Company's** offices.

23.5 The **Company** may also receive Personal Information about the **Customer** from third parties (e.g. law enforcement authorities, public databases, etc.)

23.6 The **Company** may transfer the **Customer's** Personal Information to recipients outside of the Republic of South Africa, provided that the country to which the data is transferred has adopted a law that provides for an adequate level of protection substantially similar to POPI, the third party undertakes to protect the Personal Information in line with applicable data protection legislation and the transfer is necessary in order to provide the **Company's** products and services.

23.7 The **Customer** acknowledges that any information supplied to the **Company** is provided voluntarily. By submitting any information to the **Company** in any form the **Customer** further acknowledges that such conduct constitutes an unconditional, specific and voluntary consent to the processing (including storage) of such information by the **Company** in terms hereof and/or under any applicable law in the manner contemplated in clause 3 above, which consent shall, in the absence of any written objection received from the **Customer**, be indefinite and/or for the period otherwise required in terms of any applicable law.

23.8 Unless the **Customer** has consented, the **Company** will not sell, exchange, transfer, rent or otherwise make unavailable any personal information about the **Customer** (such as name, address, email address, telephone or fax number) to other parties and the Customer's indemnify us from any unintentional disclosures of such information to unauthorised persons.

23.9 The **Customer** acknowledges and agrees that some data provided by the **Customer** to the Company may constitute Personal Information. The manner in which the Company deals in and with Personal Information is contained in its Privacy Policy, published on its website and available on request.

24. GENERAL

24.1 This **Agreement** constitutes the entire agreement between the Parties and no representation by either of the Parties or their agents, whether made prior or subsequent to the signing of this **Agreement**, shall be binding on either of the Parties unless done in writing and signed by the Parties hereto.

24.2 No variation, alteration or consensual cancellation of this **Agreement** or any of the terms thereof, shall be of any force or effect, unless done in writing and signed by the Parties hereto.

24.3 No waiver or abandonment by either Party of any of its rights in terms of this **Agreement** shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.

24.4 No indulgence, extension of time, relaxation or latitude which any Party may show, grant or allow to another shall constitute a waiver by a Party of any such Party's rights and such Party shall not be prejudiced or stopped from exercising any of its rights against any Party which may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any Party arising from this **Agreement** shall devolve upon and bind its successors-in-title.

24.5 The Parties agree that they will do all things and sign all documents necessary to give effect to the terms of this **Agreement** and to all transactions deriving therefrom.

25. WARNING

25.1 Certain of the Goods sold may, by its very nature, cause serious injury or death if not correctly used. It is therefore imperative that the operating manual and/or directions of use as provided by the manufacturer and/or the Company be strictly followed and adhered to.

25.2 It is the duty of the Customer to ensure that he is in possession of the applicable operating manual and/or directions of use.

Have sun!

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