

**ELEKTROBANK 14 TERMS AND CONDITIONS OF TRADE & WARRANTY**  
**EMPOWER ENERGY PTY LTD (ABN 34 124 294 855)**

## 1. Definitions

**Authorised Installer** means an installer suitably qualified and experienced in the installation of products of the same nature as the Product or otherwise approved by Empower Energy.

**Australian Consumer Law** means the Australian Consumer Laws in the Competition and Consumer Act 2010 (Cth).

**Collection Address** means the address specified in the Product Order Form as the address at which the Product will be available for collection.

**Collection Date** means the estimated date for collection of the Product as set out in the Product Order Form.

**Customer** means the person/s buying the Product from Empower Energy as specified in the Product Order Form.

**Deposit** means the amount identified in the Product Order Form.

**Empower Energy** or **we** means Empower Energy Pty Ltd (ABN 34 124 294 855).

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Price** means the price of the Product identified in the Product Order Form.

**Product** means the Product as specified in the Product Order Form.

**Product Order Form** means the order form accompanying these Terms and Conditions of Trade.

**Terms** means the Product Order Form, these terms and conditions of trade and includes the warranties.

**Reseller** means a supplier authorised by Empower Energy to re-sell the Product.

## 2. Acceptance

The Customer accepts and is immediately bound by these Terms if the Customer places an order for the Product, pays any Deposit or signs the Product Order Form.

## 3. Price and Payment

- 3.1. An order for the Product will not be accepted or placed by Empower Energy until the Product Order Form is signed and a Deposit (if required in the Product Order Form) has been paid in full to Empower Energy and such funds have cleared.
- 3.2. The balance of the Price is payable by the Customer to Empower Energy within two weeks of the Collection Date of the product by or on behalf of the Customer, unless otherwise agreed in writing. If the balance is not paid within two weeks of the Collection Date, the order will be cancelled, and the Deposit forfeited.
- 3.3. Unless required by law, we do not refund or exchange if you change your mind.
- 3.4. Unless otherwise stated, the Price does not include GST. In addition to the Price, the Customer must pay to Empower Energy an amount equal to any GST which Empower Energy is required to pay for supply of the Product. The Customer must pay any GST, without deduction or set-off, at the same time and on the same basis as the Customer pays the Price.
- 3.5. The Customer must pay any taxes or duties applicable to the Product.

#### **4. Collection of Product**

- 4.1. The Customer is responsible for arranging collection of the Product from the Collection Address.
- 4.2. The Customer must collect (or arrange collection of) the Product from the Collection Address on the Collection Date (or such other date as Empower Energy advises the Customer that the Product is available for collection).
- 4.3. Empower Energy is not obliged to release the Product to anyone other than the Customer, an Authorised Installer introduced by Empower Energy (where requested on the Product Order Form) or a person authorized in writing by the Customer to Empower Energy to collect the Product.
- 4.4. Empower Energy may charge a reasonable fee for storage if the Product is not collected by the Collection Date.
- 4.5. Empower Energy is not obliged to release the Product where any amount payable in relation to the Product remains outstanding.
- 4.6. If more than one Product is ordered, Empower Energy may require the Customer to collect the Products separately if the Products are not available at the same time.
- 4.7. The Customer or its agent must inspect and check the Product at the time of collection including for defects or incorrect item. Products may not be returned once collected, except in accordance with the warranties set out in these Terms, or as required by law.
- 4.8. Any Collection Date or time or date given by Empower Energy for collection of the Product is an estimate. The Customer must accept the Product when available, even if the Product is not available for collection on the Collection Date. Empower Energy is entitled to sell the Product where the Product is not collected within a reasonable time after the Collection Date. Other than as required under any applicable law, Empower Energy will not be required to refund any amount paid by the Customer and Empower Energy will not be liable for any loss or damage incurred by the Customer, as a result of the Product not being available on the Collection Date or any other date.

#### **5. Installation**

- 5.1. If requested by the Customer (such as on the Product Order Form), Empower Energy may introduce the Customer to an Authorised Installer for the purposes of the Customer arranging installation of the Product directly with the Authorised Installer. Any installation will be on terms agreed between the Customer and the Authorised Installer. The Customer acknowledges that the Authorised Installer is not an agent or employee of Empower Energy and that Empower Energy is not responsible for, nor is it in any way liable for, services provided by the Authorised Installer.
- 5.2. The Customer is solely responsible for:
  - (a) arranging (at its own cost) installation of the Product in a location suitable for the installation and operation of the Product in accordance with any manufacturer's specifications and these Terms; and
  - (b) payment of any fees and charges relating to installation of the Product directly to the Authorised Installer in accordance with the Authorised Installer's terms of trade.
- 5.3. Notwithstanding any other clause in these Terms, the Customer is solely responsible for ensuring:
  - (a) safe access to the Premises and the Product is maintained at all times;
  - (b) the installation location, the Product and their surrounds are at all times kept clean and free of obstructions and debris, vegetation, plant matter, vermin and insects; and
  - (c) the Product and Product's router is connected to the internet at all times (internet access to be supplied by the Customer at their own expense).

## **6. Risk**

- 6.1. Risk in the Product passes to the Customer at the time the Customer or its agent collects the Product from the Collection Address or otherwise takes possession of the Product. If the Product is collected in parts, title to each part passes to the Customer when the Customer or its agent collects the Product from the Collection Address or otherwise takes possession of the part.
- 6.2. Empower Energy is not responsible for any loss or damage to the Product which occurs during or after the collection of the Product, unless otherwise expressly stated in these Terms.
- 6.3. The Customer is responsible for insuring the Product on and from collection.

## **7. Title**

- 7.1. Title to the Product shall not pass to the Customer until:
  - (a) The Customer has paid Empower Energy the Price and any other amounts owing to Empower Energy; and
  - (b) The Customer has performed all its obligations to Empower Energy under these Terms.
- 7.2. Until ownership of the Product passes to the Customer:
  - (a) the Customer is the bailee of the Product and must return the Product to Empower Energy on request;
  - (b) the Customer must not sell, dispose of, or otherwise part with possession of the Product and if the Customer does sell, dispose or parts with possession of the Product, the Customer holds the proceeds of the Product on trust for Empower Energy and must pay the proceeds to Empower Energy on demand; and
  - (c) the Customer must not encumber the Product;
  - (d) the Customer irrevocably authorises Empower Energy to enter any premises where Empower Energy reasonably believes the Product are kept to recover possession of the Product; and
  - (e) Empower Energy may recover possession of any Product in transit.

## **8. PPSA**

- 8.1. In this clause 'financing statement', 'security agreement' and 'security interest' have the meanings given to them by the PPSA.
- 8.2. The Customer agrees that these Terms constitute a security agreement for the purposes of the PPSA and clause 7 creates a security interest in favour of Empower Energy in respect of all Product supplied by Empower Energy to the Customer.
- 8.3. The Customer undertakes to do all things necessary to allow Empower Energy to register, maintain, update and enforce its security interest in the Product and will pay on demand Empower Energy's reasonable costs in connection with anything required to be done under this clause.
- 8.4. The Customer waives its right under s157 to receive a PPSA verification statement.
- 8.5. To the extent entitled by law, the Customer agrees that sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply.

## **9. Default**

- 9.1. If the Customer breaches any obligation under these Terms, Empower Energy may withhold supply of Product to the Customer; and
- 9.2. If an amount payable to Empower Energy is not paid when due; the Customer becomes insolvent; or a receiver, administrator, liquidator or similar person is appointed to the Customer or any asset of the Customer, then Empower Energy may cancel all or any part of a Customer's order which remains unfulfilled and all amounts owing to Empower Energy shall, whether or not due for payment, become immediately payable.
- 9.3. The Customer is liable for interest on overdue amounts which shall accrue daily from the payment due date until the date of payment, at a rate of 2.5% per calendar month.

## **10. Cancellation**

- 10.1. Empower Energy may cancel any order at any time before title to the Product passes to the Customer under clause 7 by giving written notice to the Customer and upon such cancellation Empower Energy will repay to the Customer the Deposit and any other amount paid by the Customer for the Product.
- 10.2. If the Customer cancels an order for the Product, the Customer forfeits the Deposit and shall be liable for any loss incurred by Empower Energy as a direct result of the cancellation.

## **11. Privacy Act 1988**

- 11.1. The Customer agrees that personal information about the Customer (including any credit information) as well as other information and data about the Product including the Customer's use of the Product, may be used and retained by Empower Energy or its related entities for the purposes of providing the Product, marketing the Product, developing the Product, developing other products, developing the Empower Energy business, processing payment instructions, managing the Customer's credit account and the collection of amounts outstanding in relation to the Product including by a third party debt collector.
- 11.2. The Customer agrees that Empower Energy may disclose credit reporting information relating to credit provided to the Customer for payment of Product pursuant to these Terms to a credit reporting body for the purposes of obtaining a credit reporting information about the Customer; and allowing a credit reporting body to create or maintain a credit reporting information records about the Customer.
- 11.3. The credit information that may be disclosed under this clause 11 includes the Customer's personal particulars; details of the credit; credit eligibility information, Credit Reporting Bureau (CRB) derived information, repayment history information, information on any amounts overdue by more than sixty (60) days and for which debt collection action has been started; information on any overdue amounts that have been remedied; and information that, in the opinion of Empower Energy, the Customer has committed a serious credit infringement.
- 11.4. The Customer consents to Empower Energy obtaining credit reporting information from a credit reporting body about the Customer in relation to credit sought or provided by Empower Energy pursuant to these Terms.
- 11.5. The Customer agrees that Empower Energy may, to the extent permitted under the Privacy Act 1988, exchange certain credit reporting information about the Customer with a credit reporting body.

## 12. Warranty

- 12.1. Nothing in this Warranty is intended to exclude, restrict or modify any warranty or customer guarantee that cannot be excluded under the Australian Consumer Law.
- 12.2. Except as expressly set out in these Terms, or if applicable under the Australian Consumer Law:
- (a) Empower Energy makes no warranties or representations as to the quality or suitability of the Product.
  - (b) If Empower Energy is required to replace the Product, Empower Energy may elect to refund any amounts paid to Empower Energy for the Product.
- 12.3. To the extent permitted by law, Empower Energy shall not be liable for any defect or damage caused, contributed by or arising from the Customer failing to properly maintain or store the Product; installation of the Product other than in accordance with the manufacturer's instructions; using the Product for a purpose other than that for which they were designed; continuing to use the Product after a defect became apparent; failing to follow any instructions or guidelines provided by Empower Energy or the manufacturer; or any damage to the Product caused by wear and tear or an act of God.
- 12.4. If Empower Energy is required by law to accept return of the Product, then Empower Energy will only accept return of the Product on the conditions imposed by that law. Otherwise, Empower Energy reserves the right to elect to accept non-defective Product for return in which case Empower Energy may require the Customer to pay reasonable handling and transport costs.
- 12.5. To the extent permitted by law, any cost of removal, delivery, transport and handling relating to a return, repair or replacement of Product is at the Customer's expense.

## 13. Limitation of Liability

- 13.1. To the extent permitted by law:
- (a) Empower Energy excludes all liability and shall not be responsible to the Customer for:
    - i. any loss, damage claim or other amount incurred by the Customer as a result of Empower Energy exercising its rights under these Terms; or
    - ii. any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Empower Energy of these Terms.
  - (b) Any liability of Empower Energy to the Customer is limited to the Price of the Product;
- 13.2. Empower Energy is not liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond its reasonable control.

## 14. General

- 14.1. No delay or failure by Empower Energy to enforce any provision of these Terms shall be treated as a waiver of that provision.
- 14.2. If any provision of these Terms is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.
- 14.3. These Terms are governed by the laws of New South Wales, Australia and the parties submit to the jurisdiction of the courts of that state and their appellate courts.
- 14.4. The Customer may not set-off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Empower Energy nor withhold payment of any invoice because part of that invoice is in dispute.
- 14.5. The Customer agrees that Empower Energy may amend these Terms at any time by giving notice to the Customer.
- 14.6. These Terms together with the Product Order Form constitute the entire agreement between the parties and supersede all other documents and communications between the parties in respect of the subject matter of these Terms.

## 15. PRODUCT WARRANTY

- 15.1. **Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.**
- 15.2. Nothing in these Terms is intended to exclude, restrict or modify any warranty or customer guarantee which cannot be excluded under the Australian Consumer Law.
- 15.3. This limited warranty applies to the Product supplied by Empower Energy to the Customer and installed by an Authorised Installer in accordance with these Terms. This Warranty is also for the benefit of an End User where the Product has been installed by an Authorised Installer in accordance with these Terms.
- 15.4. The benefit of this warranty is in addition to any other rights and remedies of a consumer under a law applying to the goods and services to which the warranty relates.
- 15.5. Subject to the exclusions and limitations in these Terms including under clause 15.7 Empower Energy warrants that the Product will retain at least 70% of the Capacity (as defined in clause 15.6) for the Warranty Period when used and installed in accordance with manuals and instructions provided by Empower Energy or the manufacturer.
- 15.6. For the purpose of this Warranty:
- “Capacity”** means an initial rated capacity of 15.4kWh determined:
- i. at a battery temperature of 25°C;
  - ii. at 3kW of power; and
  - iii. with all other components disconnected from the Product’s battery.
  - iv. At a depth of discharge of 90% according to the BMS (13.86kWh initial energy measured)
  - v. Power and energy measured from the battery DC side
- “Purchase Date”** means the date on which title to the Product passes to the Customer under these Terms.
- “Warranty Period”** means the period commencing on the Purchase Date until:
- i. 10 years from the Purchase Date; or
  - ii. the Product reaching an energy throughput of 45MWh.
- “End User”** means the person who buys a Product directly from a Customer, where that Customer is a Reseller.
- 15.7. The warranty in clause is excluded where:
- (a) the Product is subjected to temperatures or conditions in excess of 45°C or below -10°C; or
  - (b) the energy throughput of the Product exceeds 45MWh.
- 15.8. Empower Energy’s liability under the warranty is limited, at Empower Energy’s election, to repair, replacement, or refund (as determined under clause 15.9). The period of warranty applying to any repaired or replaced Product will be the remainder of the Warranty period applying to the original Product (prior to the replacement or repair) and no additional or separate Warranty will apply to the replaced or repaired Product.
- 15.9. Where Empower Energy elects to provide a refund, the amount of the refund will be calculated as follows:
- (a) 100% of the Price for a warranty claim made any time before the date which is 2 years from the Purchase Date;
  - (b) 75% of the Price for a warranty claim made during the period which is after 2 years up to 4 years from the Purchase Date;

- (c) 50% of the Price for a warranty claim made during the period which is after 4 years up to 6 years from the Purchase Date;
- (d) 25% of the Price for a warranty claim made during the period which is after 6 years up to 8 years from the Purchase Date;
- (e) 10% of the Price for a warranty claim made during the period which is after 8 years up to 10 years from the Purchase Date;

For avoidance of doubt, no refund will be provided for a warranty claim made after 10 years from the Purchase Date.

15.10. Where the Customer wishes to make a warranty claim, it must notify Empower Energy in writing of the claim and provide Empower Energy with access to the Product so that Empower Energy can undertake testing of the Product's Capacity to verify the claim. Any such testing will be conducted in accordance with Empower Energy's testing procedures. Empower Energy may charge a testing fee, which will be refunded if the Product's capacity does not meet the Capacity warranty in this clause 15. To make a warranty claim, you must comply with these Terms and contact Empower Energy Pty Ltd ([www.empowerenergy.com.au](http://www.empowerenergy.com.au)) in writing at: Unit 23, 10-18 Orchard Rd, BROOKVALE NSW 2100, or by email [empower@empowerenergy.com.au](mailto:empower@empowerenergy.com.au) and include details of fault, product name, location of premises, and contact information. Our contact phone number is (0)2 8745 8821.

15.11. In addition to the limitations in clause 12.3 and 13 of the Terms and clause 15.7 above, to the extent permitted by law, the warranty under clause , Empower Energy shall not be liable for any defect or damage caused, contributed by or arising from:

- (a) transporting, handling, maintaining or storing the Product other than in accordance with any instructions applying to the Product (including manufacturer's instructions);
- (b) the Product being subjected to temperatures or conditions outside the temperatures and conditions specified by the manufacturer or Empower Energy in respect to the Product;
- (c) installation or use of the Product other than in accordance with any use and installation instructions applying to the Product including any manufacturer's instructions;
- (d) installation of the Product or any modification, alteration, disassembly of the Product by any person other than an Authorised Installer;
- (e) failure of the Customer to keep the location at which the Product is installed, the Product and their surrounds clean and free of obstructions, vegetation, plant matter, vermin and insects; or
- (f) external influences including power failure, surges, fluctuating current, lightning, flood, water penetration, fire, lightning, accidental breakage or physical force.