

# Platform Terms and Conditions of Use

Updated December 2019



## Platform Terms and Conditions of Use

between the Parties:

UPowr Pty Ltd (“**us**”, “**we**” or “**our**”); and

The person or entity registered on the Customer portal of the Platform or the recipient of a Quote from us (“**the Customer**”, “**You**” or “**you**”).

# 1. Platform Terms and Conditions of use

- (a) These Platform Terms and Conditions of Use govern your use of the Platform and are available when you log into the UPower platform (Agreement).
- (b) This Agreement sets out the terms on which we agree to give you access to use of the Platform to obtain a quote(s) for products and services offered on the Platform. Other terms and conditions are contained in the Privacy Policy and any subsequent PV Terms and Conditions of Sale (available at [www.upowr.co](http://www.upowr.co)) also form part of our agreement with you.
- (c) Your use of the Platform is conditional on, and constitutes, your agreement to be bound by this Agreement.
- (d) This Agreement will be updated from time to time. By continuing to use the Platform and or on acceptance of our Quote, you will be deemed to have accepted the updated terms.

## 2. Services

- (a) We partner with energy retailers to create quotes for solar energy supply and installation and other related products and services. We provide access to a network of selected energy product and services through the Platform allowing Customers to obtain quotes on the basis of certain information made available to us.
- (b) The Platform comprises a web-based application through which:
  - (i) in the Customer portal, the following **Services** are available:
    - (A) a Customer may sign-in to receive information regarding products and services which may be available;
    - (B) a Customer may provide feedback on intercom with the UPower team;
    - (C) the Customer may enter more detailed information such as a pre installation survey, to help inform the Quote; and
    - (D) the Platform uses information provided by the Customer and Suppliers as well as energy usage and other data to calculate prices, charges to provide the Customer with a Quote.

- (c) You acknowledge and agree that:
  - (i) if you decide to buy a product or service via the Platform, we charge a fee to you (**Service Fee**) for administration, maintenance and facilitation of the Platform, which will be displayed as a cost component in a Quote, the amount or percentage of which amount is subject to change.
  - (ii) products and services quoted on the Platform are not representative of all the products and services available in the market (including from our participating Suppliers).
  - (iii) at certain times, not all Suppliers and Suppliers' offers may be available.
  - (iv) not all possible Suppliers of products and services participate on the platform.
  - (v) in the provision of quotes to Customers and the facilitation of the purchase of selected energy products and services, the Platform only has reference to those Suppliers in its panel who offer relevant services in the Customer's location.
  - (vi) Service availability and choice may vary depending on your location.

## 3. Accessing and using the Platform

- (a) By signing in as a Customer on the Platform:
  - (i) you agree to the terms and conditions of this Agreement; and
  - (ii) you represent and warrant that You are a Customer.
- (b) You acknowledge that we have entered into this Agreement and agreed to provide the Services in reliance on the representation and warranties made by you under this Agreement.
- (c) In order to access the Customer portal of the Platform, each Authorised User will require a unique user name and password, to be kept confidential.
- (d) You acknowledge and agree that:
  - (i) any software or hardware (including computers, computer systems or other communications devices) that you use to access the Platform or use the Services is in your sole responsibility and control, must be properly functioning, free from viruses, bugs, malicious codes or other threats that may result in disruption and connected to the Internet in order for the Services to be provided;

- (ii) we are not responsible in any way for your Internet network, including its set-up, maintenance and cost (including data usage costs) associated with your use of the Services;
- (iii) the operation and availability of the Platform is dependent on the availability and functioning of certain services including telecommunication and web-based chat services. We do not control these services and are not responsible for these services or the effect on the Platform; and
- (iv) we may be required to test or maintain the Platform and associated equipment, hardware and software used to provide the Services from time to time, which may result in downtime or suspension of the Services. To the extent permitted by Law, we have no liability for any Loss whatsoever arising from or in connection with such testing or maintenance actions.

## 4. Quotes

- (a) The content of any Quote and other information you provide on the Customer portal to us is the sole responsibility of and is controlled by you. You must only upload information to the Customer portal that is true, accurate, complete and up-to-date. We may terminate this Agreement immediately under clause 18 if you breach your obligations to upload information in accordance with this clause 4(a).
- (b) We, our employees, contractors and Suppliers who use the Platform may access, view, use or rely on the information provided by you on the Platform. You represent and warrant that all information you upload to the Platform complies with clause 4(b).
- (c) A Quote will include the following:
  - (i) The estimated savings per Customer, including forecasted system production graphs and other financial information;
  - (ii) hardware costs, installation costs, STC point of sale discount, and the UPowr service fee; and
  - (iii) pass through charges, which may reflect third party costs (e.g. connection charges) which are passed through to Customers and are based on the information you have provided and assumptions we make about how those third-party costs may be likely to be calculated. These costs are not guaranteed or fixed and may vary from for each Customer site.
- (d) On the Platform you may also review Supplier information.

- (e) We may bundle the pricing on the Quote in any way we deem suitable.

## 5. Estimate of Equipment Performance

The Customer acknowledges and agrees that:

- (a) any Estimate of Equipment Performance provided to the Customer by the Supplier or us is an estimate only of how the Equipment may perform and will not constitute a representation or warranty by the Supplier or us that the Equipment will perform as stated in the Estimate of Equipment Performance; and
- (b) various factors can impact how the Equipment may perform, including but not limited to manufacturer defects, weather conditions, electricity grid faults, performance issues and particular site conditions.

## 6. Accepting a Quote

You acknowledge and agree that:

- (a) by choosing to proceed with a Quote via the Platform, you are providing your written, informed consent to enter into a Contract with UPowr based on the pricing and other information as set out in the Quote and the Platform's Terms and Conditions of Use, and the UPowr Solar PV Sale and Installation Agreement; and
- (b) the Platform will notify a Supplier of your choice for processing through the Supplier portal. The Supplier may view your details and contact you directly.

## 7. Payment

- (a) You must pay the Payment via the Platform in accordance with the Quote, and such Payment will be held by us and released in accordance with the terms of this Agreement.
- (b) Once the Contract is agreed:
  - (i) the Supplier and Customer may vary the Contract via the Platform only.
- (c) Once the Supplier is satisfied, acting reasonably, that it has fulfilled all obligations in accordance with the Contract, the Supplier must provide notice to us via the Platform.

- (d) Once we receive confirmation from the Supplier (via the Platform) that the Contract has been completed, or if we are satisfied the Contract has been completed, we will charge the remaining balance owed by you.
- (e) If there is a disagreement between you and a Supplier, you will need to resolve any disagreement in accordance with the terms of your Contract.
- (f) Unless indicated otherwise, all amounts payable or the value of consideration provided under this agreement are stated inclusive of GST. If GST is or will be payable on a supply made under or in connection with this agreement, to the extent that the consideration otherwise provided for that supply is stated to be exclusive of GST:
  - (i) the consideration otherwise provided for that supply is increased by the amount of that GST; and
  - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand.

## 8. Information disclaimer

- (a) The Platform provides service support via a messaging or similar service. These services are provided to assist and enhance the user experience on the Platform only. To the extent permitted by Law, we do not take any responsibility for the information exchanged and communications.
- (b) The Platform uses information provided by third parties which may change frequently. We make no representation as to the truth, accuracy, completeness or reliability of the information available on the Platform, including the information provided by Suppliers or any reports or notifications to you.
- (c) We may remove or delete any comment, message, rating or feedback that we determine in our absolute discretion is not suitable for publication or inclusion on the Platform, including if we determine it may:
  - (i) be inflammatory, unreasonable or obscene;
  - (ii) not be civil or respectful of others;
  - (iii) include any material or encourage any conduct that would break the law.

- (d) To the extent permitted by Law, we accept no liability for:
  - (i) any errors in, or omissions from, any information referred to or made available on the Platform; and
  - (ii) any liability for any Loss suffered or incurred by you or any person arising from or in connection with you or that person placing any reliance on the information or its accuracy, completeness, currency or reliability.

## 9. Customer's acknowledgements

You acknowledge and agree that you must make and rely on your own enquiries and investigations regarding the assumptions, uncertainties and contingencies which may affect your energy consumption, energy prices, contracts, quotes, terms and conditions or any other information provided by us or Suppliers.

## 10. Data and consents

- (a) By using the Platform, you agree and provide your consent to us obtaining, collecting, using and generating data and information:
  - (i) uploaded by you to the Platform and provided by Supplier's in relation to you; and
  - (ii) related to your energy generation and consumption, net export of electricity and any other data that may be transmitted or generated via any digital meter from your energy retailer or metering data provider, including that which has been collected or recorded prior to the acceptance date of these terms ([Data](#)).
- (b) By using the Platform, you consent to:
  - (i) the provision of Data to us, our employees and contractors;
  - (ii) our ownership of this Data;
  - (iii) us contacting you regarding Data in order to alert you of issues or problems associated with any Data, the Services or the Platform, including to recommend products or services to address these issues or recommending products or services to you via the Platform; and
  - (iv) our use and sharing this Data with third parties, including our contractors, Government Agencies, Suppliers and other Customers of the Platform. For example, any feedback you provide on the Platform being disclosed by us to the relevant Supplier.

- (c) You agree:
  - (i) the consents provided by you under clause 11(c) regarding Data continue even if we cease to provide the Services;
  - (ii) we may notify third parties of your consent to allow us to receive, use and share Data as necessary to operate the Platform; and
  - (iii) to complete or sign documents provided to you confirming your consent under clause 11(c).
- (d) You agree to keep all information made available on the Platform confidential and to only use that information for the purposes of receiving Services provided by us. You must not disclose any confidential information to a third party without our consent.

## 11. Privacy

We may:

- (a) use your Personal Information to promote and market services to you on an ongoing basis, including by telephone and electronic means, unless you opt out;
- (b) disclose your Personal Information to third parties outside Australia as set out in the Privacy Policy, and you acknowledge that while these third parties will often be subject to privacy and confidentiality obligations:
  - (i) they may not always comply with those obligations or those obligations may differ from Australian privacy laws;
  - (ii) we will not be accountable for the third party and you may not be able to seek redress under the Privacy Act 1988 (Cth); and
  - (iii) the third party may be subject to foreign laws which might compel further disclosures of Personal Information (e.g. to Government Agencies); and
- (c) otherwise collect, use and disclose your Personal Information in accordance with our Privacy Policy, which is available on our website or on request.

## 12. Intellectual Property

- (a) Intellectual Property owned by a Party at the commencement of the Agreement remains the property of that Party. Any Intellectual Property developed or created during the performance of the

Agreement (including for the avoidance of doubt any feedback, ratings or comments made on the Platform) vests in us immediately upon its creation and you assign all right, title and interest in such Intellectual Property to us and will do any further acts or execute any documents required by us to effect such assignment.

- (b) You must not, and must ensure Authorised Users do not, breach an obligation to another person in respect of Intellectual Property Rights or infringe any Intellectual Property Rights of another person.

## 13. Our liability

- (a) You may be entitled to statutory consumer guarantees under the Australian Consumer Law in connection with our supply of the Services under this Agreement. Nothing in this Agreement is intended to exclude, restrict or modify the application of those guarantees.
- (b) Subject to sub-clause (a), and to the extent permitted by Law:
  - (i) all guarantees, conditions and warranties, express or implied, by law, custom or otherwise are excluded and our liability for any Loss arising from a breach of such guarantees, conditions and warranties, or this Agreement, is limited to the supply of Services again or the payment of the cost of having such Services supplied again;
  - (ii) we will not be liable for any Loss which you pay, suffer, incur or are liable for any reason, including as a result of delay, negligence or any act, advice, matter or thing done or permitted or omitted to be done by us, our employees, contractors or agents in any way connected with or arising out of this Agreement, except to the extent that the Loss is caused or contributed to by the Gross Negligence, Wilful Misconduct or fraudulent acts or omissions of us, our employees, contractors or agents;
  - (iii) you will be liable for and you indemnify us against any Loss which we pay, suffer, incur or are liable for in connection with any breach of this Agreement, or negligence, by you or as a result of us exercising our rights under this Agreement, except to the extent that the Loss is caused or contributed to by the Gross Negligence, Wilful Misconduct or fraudulent acts or omissions of us, our employees, contractors or agents; and
  - (iv) notwithstanding any other provision of this Agreement, neither Party will be liable to the other

Party for any Consequential Loss in any way connected with or arising out of this Agreement.

- (c) Without limiting clause 16(a) and to the extent permitted by Law, we have no liability and make no representations to you in respect of:
  - (i) any Supplier (the quality, type, suitability, behaviour, acts or omissions of any Supplier or any feedback you provide regarding a Supplier);
  - (ii) any matters arising from or in connection with any Contract or arrangements that a Supplier pursues or has with you (including any marketing activities, information requirements, claims, default, breach or failure to provide energy services); and
  - (iii) any disruption or damage which may be caused to any software or hardware (including computers, computer systems or other communications devices) or any information stored on any such software or hardware, arising from or in connection with the use of the Platform or any virus, bug, malicious code or other security threat.
- (d) You are entitled to an express warranty from the Supplier which will comply with the Australian Consumer Law (the [Express Warranty](#)). The Express Warranty will be included in a Welcome Pack provided to you by the Supplier.
- (e) We (via the Platform) will assist you to liaise with the Supplier to make claims under the Express Warranty, at your option and subject to the terms, exclusions and limitations set out in the Express Warranty.

## 14. Amendments and variations

- (a) We may modify, upgrade or make other changes to the Platform and the Services from time to time in our absolute discretion.
- (b) We may amend this Agreement from time to time by notice to you on the Platform or otherwise. If you do not agree to the amendments, we are not obliged to provide the Services to you and you may terminate the Agreement prior to being provided the Services.

## 15. Termination

- (a) You may terminate this Agreement at any time providing us with a notice via the Platform. Termination of this Agreement will not affect any

Contracts entered before such termination or any accrued rights and obligations under this Agreement.

- (b) We may terminate this Agreement or suspend your account (and any related accounts) and your access to the Platform at any time, for any reason, and without advance notice. If we do so, it's important to understand that you don't have a contractual or legal right to continue to use our Platform, for example, to buy on our websites or mobile apps. We may refuse our Platform services to anyone, at any time, for any reason.
- (c) Clauses 10 (Data and Consent), 11 (Privacy), 12 Intellectual Property, and 13 (Our Liability) survive the expiry or termination of this Agreement.

## 16. General

- (a) If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Agreement.
- (b) This Agreement is governed by and construed in accordance with the laws of New South Wales and each Party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.
- (c) We may assign or novate this Agreement to any person by providing you with at least 14 days' written notice without any requirement to obtain your prior consent and you agree to provide us with all reasonable assistance requested by us to effect the assignment or novation.
- (d) Any communication in connection with this Agreement must be in writing by Electronic Means and is taken to be received on the earlier of:
  - (i) receipt of deliver confirmation; or
  - (ii) the day of transmission, unless otherwise notified that deliver of the communication as unsuccessful or delayed.

## 17. Definitions

In this Agreement:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria;

**Claim** means, in respect of a person, any claim, allegation, cause of action, proceeding, liability, suit or demand

made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

**Clean Energy Regulator** means the independent statutory authority established by the Clean Energy Regulator Act 2011;

**Consequential Loss** in respect of a person means any:

- (a) loss of (or loss of anticipated) use, generation, contract, goodwill, reputation, opportunity, production, revenue, income, profits, business and savings or business interruption Loss or third party property damage, whether or not it was foreseeable;
- (b) indirect or consequential Loss of any kind;
- (c) special or punitive damages; and any liability to a third party, or any Claim brought against that person by a third party, and any costs or expenses in connection with the Claim,

but excludes any amount that is expressly stated to be payable by one Party to another under this Agreement.

**Contract** means a contract between you and us for the supply of goods or services or software as a service (as relevant) by the us to you;

**Customer** means your company, organisation, partnership or business (excluding a trust or trustee of a trust) that you register on the Platform;

**Data** has the meaning given in clause 10;

**Electronic Means** means any form of electronic communication including:

- (a) email to an agreed email address;
- (b) short message service or multi-media message service to an agreed telephone number;
- (c) a message delivered via a communication method available in the Platform; or
- (d) a method of actively indicating acceptance provided in the Platform (including, for example, by clicking a button or link marked "I accept" in the Platform).

**Equipment** means any equipment that may be acquired by the Customer on the Platform.

**Estimate of Equipment Performance** means the average of kWh expected to be produced daily by the Equipment, calculated based on consumption data and taking into account losses in efficiency reasonably expected to be incurred by the Equipment.

**Express Warranty** has the meaning given in clause 13(d);

**Gross Negligence** means serious negligence amounting to reckless disregard, whether consciously or not, of the consequences of the relevant act or omission.

**Intellectual Property** means all present and future rights conferred by Law in or in relation to copyright, trademark, patent, design, symbols, logos, business and domain names, semiconductor, confidential information, product information, moral, trade secret and other like rights whether arising by common law or by statute or any right to apply for registration under a statute in respect of those or like rights and whether registrable, registered or patentable. These rights include:

- (a) all right in all applications to register these rights;
- (b) all renewals and extensions of these rights;
- (c) all rights in the nature of these rights;
- (d) any right to have confidential information kept confidential; or
- (e) any other intellectual or industrial property rights recognised by Law,

and include such rights in relation to all our software, applications, platforms, systems or processes, any information generated by any of them (including reports and notifications) and any other material provided to you by us.

**Internet** means an available and reliable internet connection capable of allowing access to the Platform the purposes of providing and using the Services;

**Loss** means any loss, Claim, damage, liability, payment, charge, obligation, cost or expense however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

**Party** means each Party listed at the beginning of this document;

**Personal Information** means, where collected, accessed or generated by or on our behalf in connection with this Agreement, 'personal information' as defined in the Privacy Act 1988 (Cth);

**Platform** means the digital, web-based platform operated by us which includes user functions for Customers to provide information and request quotes (via a Customer portal) and Suppliers to upload, update and review information (via a Supplier portal), available on [www.upowr.co](http://www.upowr.co)

**Payment** means the payment(s) into our account at the agreed Contract price for the products and services (including any variation made via the Platform);

**Privacy Policy** means our Privacy Policy available at [www.upowr.co](http://www.upowr.co) as updated from time to time;

**Quote** means the pricing information and other relevant information regarding the products or services available via the Platform;



**Service Fee** has the meaning given in clause 2(c);

**Services** has the meaning given in clause 2(b)(i);

**UPowr Solar PV Sale and Installation Agreement** means the UPOWR terms and conditions for supply of goods or supply of services [www.upowr.co](http://www.upowr.co) as amended from time to time.

**Supplier** means a Supplier that uses the Platform and is capable of, and willing to, provide services to Customer on the Platform;

**Welcome Pack** means the pack of materials provided to the Customer upon the delivery and installation of Equipment to the Customer as required by the Clean Energy Council.

**Wilful Misconduct** means any intentional conduct, act or omission undertaken or omitted to be undertaken having had regard to, or with conscious or reckless indifference to, any foreseeable Loss, injury or other harmful or detrimental consequences arising from such conduct, act or omission.