



TERMS AND CONDITIONS (“Ts & Cs”)

IMPORTANT CONSUMER PROTECTION ACT NOTICE

These Ts & Cs have been prepared in accordance with the Consumer Protection Act, 68 of 2008 (“the CPA”).

The CPA applies to these Ts & Cs, except if the Client is a juristic person whose annual turnover or asset value is greater than R 2 million at the signature date (or such amended threshold from time to time).

Your specific attention is drawn to the following clauses of these Ts & Cs which may: limit the risk or liability of Greenflash; constitute an assumption of risk or liability by the Client; which impose an obligation on the Client to indemnify Greenflash for any cause; and which require the Client to acknowledge a particular fact.

- i. Clause 1.1. concerning the determination of the Completion Date;
- ii. Clause 3.3. concerning the obligation to make payment under protest by the Client and failing same, the bar to pursuit of any dispute in respect of the Installation and/or defence in any litigation;
- iii. Clause 4, concerning the passing of risk, your obligations to secure insurance, and the retention of ownership of the equipment and/or the Installation pending your final and complete payment to Greenflash;
- iv. Clause 6.3, concerning the condition of the Installation and its performance;
- v. Clause 7.2, concerning the reasonableness of the forfeiture or roukoop in the event of cancelation of these Ts & Cs due to your breach;
- vi. Clause 10, if applicable, where you personally and jointly assume the risk and liability of the Client

TAKE NOTE OF THESE PROVISIONS AND ENSURE THAT YOU UNDERSTAND AND COMPREHEND THEIR FULL CONTENT, MEANING AND EFFECT BEFORE ACCEPTING THESE Ts & Cs AND TAKE NOTE THAT ALTHOUGH THESE PROVISIONS HAVE BEEN HIGHLIGHTED, THE REMAINING PROVISIONS OF THESE Ts & Cs MUST ALSO BE READ AND UNDERSTOOD AND ANY PROVISION WHICH IS NOT CLEAR, UNDERSTANDABLE, OR WHERE THE CONTENT, MEANING AND EFFECT OF WHICH IS NOT UNDERSTOOD BY YOU, SHOULD BE CLARIFIED BEFORE SIGNING.

1. DEFINITIONS

This document is a legal agreement and you by accepting it have agreed to be bound by the below Terms and Conditions (“the Ts & Cs”) and the following words shall have the following meanings:

- 1.1 “**Completion**” means the date, in Greenflash’s sole and absolute discretion, when the Installation is *switched on*, as advised by Greenflash to the Client in writing (as opposed to and not the later dates upon which, for e.g., the ECOC is provided, or all Client warranty documentation finally in place);
- 1.2 “**the Client**” means the person or legal person identified in the Proposal;

- 1.3 “**Greenflash**” means Greenflash Energy Pty Ltd, a private company incorporated as such under the laws of South Africa, having Registration Number 2020/068029/07, represented herein by S A Buchalter, Sole Director and accordingly authorised;
- 1.4 “**Greenflash’s account**” means Greenflash’s bank account as follows:
- | | | |
|--------------|---|---------------------------|
| Account name | : | Greenflash Energy Pty Ltd |
| Bank | : | Standard Bank |
| Branch | : | Knysna |
| Account No | : | 10128613988 |
- 1.5 “**the Installation**” means the sourcing, supply and/or installation of the solar system solution and related components and equipment at the Site, as detailed and described more fully in the Proposal;
- 1.6 “**the parties**” means Greenflash and the Client;
- 1.7 “**Proposal**” means Greenflash’s detailed proposal describing the Client’s accepted solar solution and installation, including the component parts and equipment to be sourced, supplied and/or installed by Greenflash at the Site, the specifications of same and the total costs payable by the Client to Greenflash, which forms an integral part of these Ts & Cs;
- 1.8 “**the signature date**” means the date the Client accepts the Proposal and these Ts & Cs; and
- 1.9 “**the Site**” means the property where the Installation is to take place as recorded in the Proposal.

2. **SALE AND INSTALLATION**

Greenflash agrees to undertake the Installation for the Client at its specific instance and request, subject to these Ts & Cs.

3. **CONSIDERATION AND MANNER OF PAYMENT**

- 3.1 The total consideration payable by the Client to Greenflash for the Installation is recorded in the Proposal and, unless otherwise agreed in writing, is payable as follows:
- 3.1.1. a deposit equal to **80 percent (%)** of the total Purchase Price (including any VAT thereon) which is payable on the signature date. This payment is a suspensive condition to these Ts & Cs; and
- 3.1.1 the balance (being the total Purchase Price less the deposit paid by the Client) which is payable on invoice on Completion.
- 3.2 All payments by the Client to Greenflash shall be made in full, timeously, without deduction or set-off for any reason and only in Greenflash’s account as defined in these Ts & Cs.
- 3.3 Without derogating from the foregoing: if the Client disputes **any** aspect of the Installation or invoice for **any** reason the Client nonetheless agrees to on demand pay the full amount of the invoice under protest and until such time as this is paid the Client is barred from any further pursuit of its disputes in any forum and/or barred from raising its disputes as any defence against Greenflash in any litigation, including expressly but not limited to, for purposes of granting summary judgement.
- 3.4 Payment(s) by the Client shall be deemed to have been received by Greenflash only when such payment is reflected as available in Greenflash’s account and capable of transacting with.

4 **RISK, INSURANCE & OWNERSHIP**

- 4.1 All risk in respect of any component of Installation passes from Greenflash to the Client on the date any component is first delivered to the Site.
- 4.2 The Client records their express understanding and agreement it is their sole risk and responsibility must ensure that the Installation is adequately insured for its own account, from first delivery aforesaid, during the Installation and after completion.
- 4.3 Notwithstanding delivery, the passing of risk or Completion, it is the parties' express intention that the Installation shall not attach to the Site and shall remain movable property owned exclusively by Greenflash, who shall have an unrestricted right of retention in respect of same until such time as the Client has fulfilled **all** its obligations to Greenflash in these Ts & Cs.

5 **ELECTRICAL CERTIFICATE OF COMPLIANCE ("ECOC")**

- 5.1 Greenflash shall provide the Client with an ECOC in respect of the Installation (only), within 30 days of Completion or, if clause 5.2 is applicable, within 30 days the date the Client provides Greenflash the electrical compliance certificate referred to therein.
- 5.2 The Client records their express understanding that Greenflash is unable to provide an ECOC in respect of the Installation if there is no current up to date and valid electrical compliance certificate in respect of the Site. If this is the case then the Client shall be solely liable for all costs, including any remedial works, to procure such an electrical compliance certificate in respect of the Site first, to enable Greenflash to perform in terms of clause 5.1 above thereafter.

6 **UNDERTAKINGS, WARRANTIES & GUARANTEES**

- 6.1 Greenflash undertakes to the Client that Greenflash will, after payment of the deposit, order the component parts and equipment in respect of the Installation and, with due consideration to availability, schedule the Installation at their earliest reasonable availability and thereafter work diligently to complete the Installation without undue delay, in a fair and workmanlike manner.
- 6.2 Greenflash shall furnish the Client with all documents relating to any manufacturer warranties or guarantees vis-à-vis the Installation, and the Client shall be responsible (where applicable) to register such warranties as may be available to it with the manufacturer(s) concerned.
- 6.3 It is recorded that the Client has been expressly informed that:
 - 6.3.1 the Installation is installed in accordance with the specifications in the Proposal and the Installation is supplied in such condition and circumstances. The Client has expressly agreed to accept the Installation in this condition; and
 - 6.3.2 Greenflash cannot guarantee the exact final performance of the Installation due to multiple factors affecting performance outside of Greenflash's control and/or unique to the Site or Installation, such as but not limited to load resistance, sunlight intensity (module, direction, and tilt), cell temperature, shading, soiling, module mismatch, inverter conversion losses and/or solar cell structure.
- 6.4 Greenflash's instructions are that, unless recorded otherwise by them in writing, the Installation is not to be altered or modified in any manner or form after the Installation completion date.
- 6.5 If, after the Client has exhausted its remedies in terms of any manufacturer warranty/ies (if applicable) and provided that the Installation is only serviced or repaired by Greenflash, or a party recommended or instructed by Greenflash to the Client in writing, Greenflash warrants

that the Installation is free of defects in material and workmanship under normal designed use, wear and tear excepted, for a period of 12 months calculated from the completion date.

6.6 This warranty is limited and only applies when any averred defective part(s) is returned by the Client, at their expense, to Greenflash or to a service agent stipulated by Greenflash in writing, for inspection, repair or replacement as the case may be.

6.7 The warranty provided for in this clause 6 shall not apply if and for so long as the Client is indebted to Greenflash in any amount in terms of these Ts & Cs, or if the Client disputes its indebtedness to Greenflash, whether or not mediation, arbitration or litigation has been embarked upon or is pending or not.

7 BREACH

7.1 Should the Client –

7.1.1 fail or be unable to pay any amount owing by the Client timeously; or

7.1.2 commit any breach of any terms or conditions of these Ts & Cs and fail to remedy such breach within 7 (seven) days of receipt of a written notice from Greenflash to remedy such breach;

Greenflash, without prejudice to any other rights which it may have or remedies which may be available to it, may regard any portion of the Purchase Price owing in terms of these Ts & Cs as due and payable immediately, and may issue summons therefore in any competent court, without any further notice or demand to the Client or, without prejudice to any other rights which Greenflash may have, Greenflash shall be entitled to cancel these Ts & Cs and to retain any amount of the Purchase Price already paid as *rouwkoop* or liquidated damages.

7.2 The Client specifically acknowledges and agrees that, considering the custom nature of the Installation, high demand and constrained supply of components, fluctuations in exchange rates and lost business opportunities and/or investments by Greenflash in/of equipment, capital, expertise, labour, time, and related resources the amount of the *roukoop* or liquidated damages is fair and reasonable.

7.3 In the event of either party instituting legal action against the other party for any breach of these Ts & Cs then the unsuccessful party in such proceedings shall be liable to pay the successful party's legal costs on an attorney and own client scale, including but not limited to attorneys or advocate's fees, disbursements, interest or collection charges.

8 DOMICILIUM CITANDI ET EXECUTANDI

For all purposes of these Ts & Cs the parties choose the addresses in the Proposal as their legal addresses ("domicilium citandi et executandi") for all purposes under these Ts & Cs. Any notice in terms of these Ts & Cs must be in writing and sent by registered post or delivered by hand to physical address recorded, or sent by email to the email address recorded and dispatch via such modes shall be deemed to constitute the giving of notice without further requirement.

9 DISPUTE RESOLUTION: MEDIATION AND ARBITRATION

This dispute resolution clause in its entirety (the clause) constitutes an agreement of indefinite duration, independent of the "Proposal". Any dispute, controversy or claim (the dispute) between any of the parties howsoever arising out of or in connection with these Ts & Cs or the clause either during its currency or thereafter shall, unless precluded by law, be determined as follows:

9.1 First, through facilitative mediation conducted by a mediator in accordance with a procedure to be determined by the mediator appointed by agreement between the parties or failing agreement within 7 calendar days from the request for such agreement, by the Association of Arbitrators (Southern Africa) NPC (the Association) on application by any of the parties.

- 9.2 Second, in the event of the parties for any reason failing to resolve their dispute through mediation within 30 calendar days from the date of appointment of a mediator, then the dispute shall be determined by arbitration in Knysna before a single arbitrator appointed by agreement between the parties or, failing agreement within 7 calendar days from the request for such agreement, by the Association on application by any of the parties. The arbitral referral in its entirety shall be governed by the Restricted Representation Arbitration Rules for the Conduct of Arbitrations of the Association current at the time of appointment of the arbitral tribunal.

10 JURISTIC PERSONS

Where the Client is a juristic person (such as a company, trust or close corporation) then the person who signs the Proposal on behalf of the Client warrants that he is duly authorised to do so and bind the Client; and binds himself personally as surety and co-debtor, without limitation, condition precedent or exception in respect of all the Client's obligations to Greenflash in terms of these Ts & Cs.

11 GENERAL PROVISIONS

- 11.1 The provisions of these Ts & Cs supersede all prior agreements, representations, communications, negotiations, and understandings between the parties concerning the subject matter of these Ts & Cs.
- 11.2 These Ts & Cs constitutes the whole agreement between the parties and no amendment or cancellation or substitution hereof or any portion hereof shall be of any force or effect whatsoever unless such amendment or cancellation or substitution is reduced to writing and signed by both parties.
- 11.3 The parties shall not, without the prior written approval of the other party, assign, cede, delegate, transfer or in any other way alienate or dispose of any right or obligation under these Ts & Cs to any other person.
- 11.4 Any relaxation, indulgence or delay (collectively referred to as "Indulgence") by either party in exercising, or any failure by a party to exercise any right under these Ts & Cs shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right.
- 11.5 Whenever possible, each provision of the Ts & Cs shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of the Ts & Cs is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of the Ts & Cs, all of which shall remain in full force.
- 11.6 In terms of section 45 of the Magistrate's Court Act the parties hereby consent to the jurisdiction of the Knysna Magistrate's Court, notwithstanding the amount involved.
- 11.7 A certificate under the signature of Greenflash or their agent or attorney (the appointment or qualification or authority of the person signing on behalf of Greenflash need not be proved) as to the amount owing by the Client and that the date for payment of such amount has arrived shall be binding upon the Client and *prima facie* proof of the amount of their indebtedness to Greenflash in terms of these Ts & Cs and valid and enforceable as a liquid document against the Client for the purposes of obtaining Provisional Sentence or Summary Judgment against them.