
Solajoule Terms & Conditions

1. Definitions

- 1.1 "SOLAJOULE " means Solajoule Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of SOLAJOULE Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods and/or Services supplied by SOLAJOULE to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between SOLAJOULE and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with SOLAJOULE's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SOLAJOULE.

3. Change in Control

- 3.1 The Client shall give SOLAJOULE not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SOLAJOULE as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At SOLAJOULE's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SOLAJOULE to the Client; or
 - (b) SOLAJOULE's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of fifteen (15) days.
- 4.2 SOLAJOULE reserves the right to change the Price if a variation to the Goods per SOLAJOULE's original quotation is requested and/or necessitated. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties detected and discovered in the course of work and/or as a result of increases to SOLAJOULE in the cost of materials and labour) will be charged for on the basis of SOLAJOULE's revised quotation. Payment for all variations must be made in full prior to their time of completion.
- 4.3 At SOLAJOULE's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client prior to the date of delivery of the Goods or any other date/s as may be determined by SOLAJOULE in its sole discretion , which may be:
 - (a) upfront prior to the Goods being delivered and/or collected and/or the start date of any agreed Services at the place of work or site per the quote;
 - (b) on delivery/completion of the Goods;
 - (c) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SOLAJOULE .
- 4.5 Payment may be made by cash or, credit card (plus a surcharge of up to two percent (1.5%) of the Price), or by a specified method as agreed to in writing between the Client and SOLAJOULE.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SOLAJOULE an amount equal to any GST SOLAJOULE must pay for any supply by SOLAJOULE under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at SOLAJOULE's address; or
 - (b) SOLAJOULE (or SOLAJOULE's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At SOLAJOULE's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged, then SOLAJOULE shall be entitled to charge a reasonable fee for re-delivery and/or storage and/or deliver and leave the goods at the Client's premises at the address provided to SOLAJOULE.

5.4 SOLAJOULE may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by SOLAJOULE to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and SOLAJOULE will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Client upon installation. In the case of Goods and products purchased, risk of damage to or loss such Goods and products passes to the Client upon delivery of such products in whatever form such delivery may take place.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SOLAJOULE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SOLAJOULE is sufficient evidence of SOLAJOULE's rights to receive the insurance proceeds without the need for any person dealing with SOLAJOULE to make further enquiries.

6.3 If the Client requests SOLAJOULE to leave Goods outside SOLAJOULE's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

6.4 The Client acknowledges that variations of texture, colour, shade and grain are inherent in all products. While every effort will be taken by SOLAJOULE to match texture, colour, shade and grain of product, SOLAJOULE shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in texture, colour, shading or grain between batches of product or sale samples and the final product supplied.

6.5 The Products are not guaranteed against crazing, cracking, chipping or scratching.

6.6 The Client acknowledges that it is the Client's responsibility to check quantities, with an on-site measurement before commencing purchase and/or installation of any of the Goods. Measurements taken off plans or the Client's figures by SOLAJOULE are approximate only and no responsibility is taken for their accuracy.

6.7 If the Client orders an insufficient number of Goods and products, then SOLAJOULE will take no responsibility for any variation of texture, colour and shade in further batches supplied to the Client or the inability to supply the Goods at all.

6.8 SOLAJOULE will accept no responsibility for Goods that have already been installed.

7. Access

7.1 In the event of an installation, the Client shall ensure that SOLAJOULE has clear and free access to the work site at all times to enable them to undertake the works. SOLAJOULE shall not be liable for any loss or damage to the site unless due to the gross negligence of SOLAJOULE.

8. Title

8.1 SOLAJOULE and the Client agree that ownership in the Goods shall not pass until:

- (a) the Client has paid SOLAJOULE all amounts owing to SOLAJOULE; and
- (b) the Client has met all of its obligations to SOLAJOULE.

8.2 Receipt by SOLAJOULE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared and recognized.

8.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 8.1:

- (a) that the Client is only a bailee of the Goods and must return the Goods to SOLAJOULE immediately on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SOLAJOULE and must pay to SOLAJOULE the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SOLAJOULE and must pay or deliver the proceeds to SOLAJOULE on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SOLAJOULE and must sell, dispose of or return the resulting product to SOLAJOULE as it so directs.

- (e) the Client irrevocably authorises SOLAJOULE to enter any premises where SOLAJOULE believes the Goods are kept and recover possession of the Goods.
- (f) SOLAJOULE may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SOLAJOULE .
- (h) SOLAJOULE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

9. Security and Charge

- 9.1 In consideration of SOLAJOULE agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies SOLAJOULE from and against all SOLAJOULE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SOLAJOULE's rights under this clause.

10. Defects, Warranties and Returns, Competition and Consumer Act 2010 As Amended (CCA)

- 10.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify SOLAJOULE in writing of any evident defect and damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SOLAJOULE to inspect the Goods.
- 10.2 SOLAJOULE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees per the CCA
- 10.3 Except as expressly set out in these terms and conditions or in respect of the Non- Excluded Guarantees, SOLAJOULE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SOLAJOULE's liability in respect of these warranties is limited to the extent permitted by law.
- 10.4 If the Client is a consumer within the meaning of the CCA, SOLAJOULE's liability is limited to the extent permitted by section 64A of Schedule 2 as amended.
- 10.5 If SOLAJOULE is required to replace the Goods under this clause or the CCA, but is unable to do so, SOLAJOULE may at its sole discretion refund the money or a portion thereof the Client has paid for the Goods.
- 10.6 If the Client is not a consumer within the meaning of the CCA, SOLAJOULE's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by SOLAJOULE in SOLAJOULE's sole discretion; and/or
 - (b) limited to any warranty to which SOLAJOULE is entitled, if SOLAJOULE did not manufacture the Goods; or
 - (c) otherwise negated absolutely.
- 10.7 Subject to this clause 10, returns and/or refunds will only be accepted in all instances provided that:
 - (a) the Client has complied with the provisions of clause 10.1; and
 - (b) SOLAJOULE has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost; and
 - (d) the Goods are returned in as close a condition to that in which they were delivered.
- 10.8 Notwithstanding clauses 10.1 to 10.7 SOLAJOULE shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) any defects or damage after installation of any of or part of the Goods at any sites and/or premises;
 - (c) the condition of the Client's equipment, gates, and/or any other points onto and/or at which the Goods are installed and/or erected;
 - (d) any external factors relating to radio interferences and/or any other frequency interferences which impact on the Goods;
 - (e) the Client using the Goods for any purpose other than that for which they were designed;
 - (f) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (g) the Client failing to follow any instructions or guidelines provided by SOLAJOULE;
 - (h) fair wear and tear, any accident, or act of God.
- 10.9 Notwithstanding anything contained in this clause if SOLAJOULE is required by statutory law to accept a return then SOLAJOULE will only accept a return on the condition imposed by that law.

11. Default and Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of one and a half percent (1.5%) per calendar month (and at SOLAJOULE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

- 11.2 If the Client owes SOLAJOULE any money the Client shall indemnify SOLAJOULE from and against all costs and disbursements incurred by SOLAJOULE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SOLAJOULE's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies SOLAJOULE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SOLAJOULE may suspend or terminate the supply of Goods to the Client. SOLAJOULE will not be liable to the Client for any loss or damage the Client suffers because SOLAJOULE has exercised its rights under this clause.
- 11.4 Without prejudice to SOLAJOULE's other remedies at law SOLAJOULE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SOLAJOULE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SOLAJOULE becomes overdue, or in SOLAJOULE's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client is about to or becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12. Cancellation

- 12.1 SOLAJOULE may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SOLAJOULE shall repay to the Client any money paid by the Client for the Goods. SOLAJOULE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by SOLAJOULE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for Goods made to the Client's specifications, or for non- stocklist items, will definitely not be accepted once installation or production has commenced, or an order has been placed or resources have been allocated to the Goods

13. Privacy Act 1988 As Amended

- 13.1 The Client agrees for SOLAJOULE to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by SOLAJOULE.
- 13.2 The Client agrees that SOLAJOULE may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Client consents to SOLAJOULE being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988 as amended).
- 13.4 The Client agrees that personal credit information provided may be used and retained by SOLAJOULE for the following purposes (and for other purposes as shall be agreed between the Client and SOLAJOULE or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by SOLAJOULE, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 13.5 SOLAJOULE may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 13.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that SOLAJOULE is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than thirty (30) days or for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of SOLAJOULE, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured;
- (h) that credit provided to the Client by SOLAJOULE has been paid or otherwise discharged.

14. Unpaid SOLAJOULE's Rights

- 14.1 Where the Client has left any Goods with SOLAJOULE for repair, modification, exchange or for SOLAJOULE to perform any other service in relation to the Goods and SOLAJOULE has not received the whole of any moneys owing to it by the Client, SOLAJOULE shall have, until all moneys owing to SOLAJOULE are paid:
 - (a) a lien on the Goods; and
 - (b) the right to retain or sell the Goods.
- 14.2 The lien of SOLAJOULE shall continue despite the commencement of proceedings, or judgment for any moneys owing to SOLAJOULE having been obtained against the Client.

15. Construction Contracts Act 2004

- 15.1 At SOLAJOULE's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 15.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

16. General

- 16.1 The failure by SOLAJOULE to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SOLAJOULE's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which SOLAJOULE has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 16.3 SOLAJOULE shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SOLAJOULE of these terms and conditions (alternatively SOLAJOULE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods as quoted and/or invoiced to the Client).
- 16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SOLAJOULE nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 SOLAJOULE may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that SOLAJOULE may amend these terms and conditions at any time. If SOLAJOULE makes a change to these terms and conditions, then that change will take effect from the date as set within such amended terms and conditions. The Client will be bound to the terms and conditions prevailing as at the date the quotation is accepted by the Client.
- 16.7 SOLAJOULE shall be 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.
- 16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorizations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.