

WEBSITE TERMS AND CONDITIONS

These terms and conditions apply to your use of the website at www.myenergystore.com.au (**Website**) provided by **Energy Storage Australia Pty Ltd (ACN 619 756 393)** (**we, us or our**), and to the entire contents of the Website. Please read them carefully before using the Website.

By accessing any part of the Website, you will be deemed to have accepted these terms and conditions in full, and they will constitute a legally binding contract between us and you. Accordingly, if you do not agree with any part or all of these terms and conditions, do not use the Website.

1. Changes to these terms and conditions

We may change these terms and conditions at any time by posting the changes on the Website. You are responsible for informing yourself of any changes by regularly viewing this section of the Website. If you access or use the Website after any changes are posted, you are taken to have agreed to those changes.

2. Licence to use Website

We grant you a non-exclusive licence to use the Website, subject to these terms and conditions. We may terminate this licence at any time and without notice to you.

3. Intellectual property

- (a) All content included in or on the Website (including, but not limited to, text, design, graphics and code and any arrangement of those things) is owned by or licensed to us and is protected by copyright, trademark, and other laws in Australia and various other countries. The trade marks displayed on the Website are owned by or licensed to us, or are otherwise properly used by us, and many of those trade marks are registered in Australia and a number of other countries around the world. We do not grant you any express or implied right to use, reproduce, modify, create derivative works from, upload, transmit or distribute that content, any of those trade marks or any other intellectual property.
- (b) You may only view, print and download extracts from the Website for your own personal use and not for commercial use. You do not have permission to copy, reproduce, republish, store in or on any public or private electronic retrieval system, up-load, post, communicate, transmit or distribute in any way any of the contents of the Website for public or commercial purposes without our prior written consent.

4. Availability and restrictions

- (a) While we normally try to make the Website available 24 hours a day, we are not liable if for any reason the Website is unavailable at any time or for any period. Access to the Website may be suspended temporarily and without notice to you in the case of a system failure, required maintenance or repair or for reasons beyond our control.
- (b) ESA shall, from time to time, define the access criteria, at its discretion, to services deemed available for registered users. ESA may permit access to these services subject to satisfaction of the criteria in force at the relevant time.

- (c) Any access identification information issued to the user is to be treated as confidential and for use in the context of the content and functionality offered as per these terms.
- (d) ESA reserves the right to introduce fee-based services that are accessible either through the Website or software operating on its services at any time. Any of the web-sites fee-based services may be subject to its own separate ordering processes and legal terms and conditions.
- (e) If ESA introduces fee-based services, Your access to parts of the Website may be restricted.

5. Changes to the Website

- (a) ESA reserves the exclusive right to change, add or delete the design and content of the website or discontinue publishing its services on a temporary, permanent or indefinite basis.
- (b) You agree that no prior notice is required for ESA exercising these rights and in the event of this occurring the user is not entitled make any claims for compensation, damages or any other type.

6. Your material and conduct

- (a) Other than your personal information, which is covered by our privacy policy (available for viewing on the Website), any material you transmit or post to the Website will be taken to be non-confidential and non-proprietary. We have no obligations with respect to such material. We and our associated entities and business partners will be free to copy, disclose, distribute, incorporate and otherwise use such material and all data, images, sounds, text and other things embodied in it for any commercial or non-commercial purposes
- (b) You are prohibited from posting or transmitting to or from the Website any material:
 - (i) that is threatening, defamatory, obscene, indecent, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance to, or inconvenience for, us or any other person; or
 - (ii) for which you have not obtained all necessary licences and/or approvals; or
 - (iii) which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability or otherwise be contrary to the law of, or infringe the rights of any third party in, any country in the world; or
 - (iv) which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).
- (c) You are also not permitted, without first obtaining the express written permission of ESA, to upload any data or content to the website other than the data sent via equipment supplied by ESA for its intended equipment use.
- (d) You may not misuse the Website (including, without limitation, by hacking).

- (e) Third party access to the Website requires express prior consent from You and any such third parties agree to be bound by terms.
- (f) Where You log in and gain access to a third party's data on the Website, You acknowledge these terms and have obtained express prior consent for access to the services (for example, a family member assisting a new customer on login). Where a third party has accessed the Website or any related software, You agree to indemnify ESA for all claims made by third parties in connection to a use not covered in the agreement of the use of the services.
- (g) ESA reserves the right to request deny access to any third party. The right to exclude registered users from using services remains with ESA and may be exercised in the event You are unable to demonstrate You are authorised by the respective third party. In this event, no claim can be made against ESA regarding continued use.
- (h) In response to suspicious data misuse or loss, ESA may take certain measures to counter these and You may incur restricted or excluded access to the services and system. Misuse of data includes, but is not limited to, the unauthorised sharing of data, illegal or criminal use, hacking, uploading unauthorised or unrequested messages such as spam to the website.

7. Cookies

- (i) A "cookie" is a small text file placed on your computer by a web server when you access a web site. The cookie identifies the computer being used, but not individual user. Like many other websites, the Website uses cookies to make a record of your visit to the Website, and will record the following information:
 - (i) your server address;
 - (ii) your top level domain name;
 - (iii) the date and time of access to the Website;
 - (iv) the pages accessed and documents downloaded;
 - (v) the previous web site visited; and
 - (vi) the type of browser software in use.
- (j) We use this information for various purposes including statistical purposes, but in each case, the information collected cannot be used to identify you personally.
- (k) You may be able to disable cookies on your web browser, but doing so may limit your ability to use the Website fully.

8. Disclaimer

- (a) The contents of the Website are intended to provide general information only and are not to be relied on by you, or for any particular purpose.
- (b) While we try to ensure that the information we post on the Website is correct, we do not warrant the accuracy, currency, completeness or usefulness of that information.

9. Exclusion and limitation of our liability

- (a) You expressly agree that use of this Website is at your sole risk.
- (b) We exclude all warranties and guarantees in connection with the Website and your use of it. For the avoidance of doubt, this exclusion includes an exclusion of:
 - (i) all conditions and warranties implied by custom, the general law or statute, and for loss or damage suffered by you in connection with:
 - (A) the use, inability to use or the results of use of the Website or of any websites linked to the Website or the material on such websites; or
 - (B) viruses that may infect your computer equipment, software, data or other property on account of your access to, use of, or browsing or using the Website or any websites linked to the Website, or your downloading of any material from the Website or any websites linked to the Website; and
 - (ii) any loss, cost, expense, damages or liability, including but not limited to loss of data, loss of profits or any other direct, indirect, special or consequential loss or damage, whether arising from negligence, breach of contract or otherwise and whether foreseeable or not, suffered or incurred by you or any other person in connection with any of the matters or circumstances described in clause 9(b)(i),
 except for any warranties or guarantees, or any such loss, cost, expense, damages or liability, which may not be excluded by force of the *Competition and Consumer Act 2010* (Cth) or similar legislative provision.
- (c) Our liability under any guarantee, condition or warranty implied or stipulated by the *Competition and Consumer Act 2010* (Cth) or similar legislative provision which may not be excluded but which may be limited in any of the following ways, is limited at our option to:
 - (i) in the case of goods supplied by us:
 - (A) the replacement of goods or the supply of equivalent goods;
 - (B) the repair of goods; or
 - (C) the refund of the price paid by you for goods; or
 - (ii) in the case of services supplied by us (including the provision or as part of the Website):
 - (A) the supply by us of the services again; or
 - (B) the refund of the price paid by you for the services.

10. Release and indemnity

You hereby:

- (a) release and forever discharge us and our officers, employees, agents and contractors from any and all claims, actions, disputes, demands, proceedings,

accounts, interest, costs (whether or not the subject of a court order), expenses and liabilities of whatever nature and however arising which you may now have or at any time thereafter might have or, but for these terms and conditions, might have had against us or our officers, employees, agents or contractors arising out of or in any way connected with or incidental to the use or misuse of the Website (including in relation to any communication which you upload to the Website);

- (b) covenant in favour of us and our officers, employees, agents and contractors not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 10(a); and
- (c) irrevocably indemnify us and our officers, employees, agents and contractors against any claim, liability, loss or expense arising out of or in any way connected with or incidental to:
 - (i) the use or misuse of the Website by you or your officers, employees, agents or contractors, or authorised, enabled or facilitated by you or your officers, employees, agents or contractors; and
 - (ii) any breach of any of these terms and conditions by you.

11. Website links

- (a) Links to third party websites on the Website are provided solely for your convenience. If you use these links, you leave the Website. We have not reviewed all of these third party websites and do not control, and are not responsible for, these websites or their content or availability. We therefore do not endorse or make any representations about them or any material found there or any results that may be obtained from using them. If you decide to access any of the third party websites linked to the Website, you do so entirely at your own risk.
- (b) You may not create links to the Website without our prior written consent.

12. Conflicts with other parts of Website

If there is any inconsistency or conflict between any of these terms and conditions and anything stated in any other part of the Website, unless expressly stated otherwise, these terms and conditions prevail to the extent of the inconsistency or conflict.

13. Unenforceable terms

If any provision of these terms and conditions is held by a court to be invalid or unenforceable, the invalidity or unenforceability will not affect the balance of these terms and conditions.

14. Governing law and jurisdiction

These terms and conditions are governed by the law in force in Victoria, Australia. We and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts. You irrevocably waive any right you might have to claim that those courts are an inconvenient forum and any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum.

15. Updates

ESA reserves the right to update these terms of use at any time. ESA will endeavour, to the extent possible, to notify You of the update in a timely manner by electronic or other means. These changes may be made for legal, practical or improvement purposes. By continuing to access any part of the Website, You will be deemed to have accepted any updated terms of use in operation as at the date of Your access.

16. Definitions

In these Terms, unless the context otherwise requires:

- (a) **Access Identification** means any specified user identifiers and/or passwords;
- (b) **Intended Equipment Use** means data relating to the system being monitored that is uploaded to the website via equipment supplied by ESA
- (c) **Services** means products, services, data, data management provided by ESA (including those sold through ESA's approved sales partners) accessed through the website;
- (d) **Systems** means to the collection, storing, processing, management, reporting and presentation of energy technology devices and systems;
- (e) **User** includes the system owner, operator, installer or third party acting on their behalf; and
- (f) **Website** means www.myenergystore.com.au and other related websites including monitoring portal.

17. Declaration of Protection of Data

- (a) ESA treat personal and private data extremely seriously and treat this content with the strictest adherence to the *Privacy Act 1988* (Cth). The data collected will be treated highly confidentially and will not be passed on to any third party without your express permission.
- (b) The data that ESA records and stores includes basic user identifier and customer data (e.g. address, name, DOB, user name, password) and system and connection data - relating to Photovoltaic (PV) system and location characteristics, PV components, device, operating system, IP address.
- (c) Data collected is used so ESA can process the agreement and provide services. Data may also be used internally to assist with analysis and general research aiming to improve future product offerings generally and specifically to you. No personal data will be passed on to third parties without your express permission.
- (d) Your personal data will only be visible by the parties you share your access information to and ESA. We suggest that you should change your password after providing temporary consent to third parties (such as installers, maintenance personnel).
- (e) ESA also collects non-personal data (anonymous data) so it does not identify specific persons or users. ESA may collect and utilise this general data for any purpose such as observing irradiation data and associated solar system

performances and forecasting. Any use of data requiring legal consent will be sought from you.

- (f) Our site may use Google Analytics to which may also use cookies on your device – you can refuse the use of cookies by selecting certain browser settings – but this may have an effect on the full functionality of the website.