PowerOptimal Standard Terms and Conditions

Version 5. Effective date: 2026/11/17

1. Nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of PowerOptimal or the CLIENT in terms of the Consumer Protection Act, Act 68 Of 2008 as amended (“CPA”).

1.1 ***The Agreement contains terms and conditions which appear in similar text style to this clause and which:***

1.1.1 ***may limit the risk or liability of PowerOptimal or a third party; and/or***

1.1.2 ***may create risk or liability for the Client; and/or***

1.1.3 ***may compel the Client to indemnify PowerOptimal or a third party; and/or***

1.1.4 ***serves as an acknowledgement, by the Client, of a fact.***

1 . 2 ***The Client’s attention is drawn to these terms and conditions because they are important and should be carefully noted.***

PART I

2. INTERPRETATION

In these Terms and Conditions, unless the context clearly indicates a different intention, an expression which indicates any gender includes the other genders; a natural person includes a company or other type of entity and vice versa; the singular includes the plural and vice versa;

2.1 the following words have the following meanings –

2.1.1 **“Assessment”** means the assessment of, amongst other things, (i) the Client’s electricity bills and the electrical landscape of the Premises; and (ii) the billing procedure used by the Client’s electricity supplier; as well as an analysis of the Client’s electricity demand, which may be carried out under and in accordance with an Assessment Agreement, or at PowerOptimal’s own cost;

2.1.2 **“Assessment Agreement”** means the agreement entered into by the Parties either before or at the same time as these Terms and Conditions governing the particular details of the Assessment for the Client;

2.1.3 **“Client”** means an existing or potential client as identified in the Transaction Document;

2.1.4 **"Confidential Information"** means any information or data which by its nature or content is confidential and/or belongs to PowerOptimal and/or any third party, or which is provided or disclosed in confidence; and which PowerOptimal or any person acting on its behalf may disclose or provide to the Client or which may come to the knowledge of the Client by any means. PowerOptimal’s Confidential information includes (ii) information relating to PowerOptimal’s business activities, business relationships, the Product, services and Staff; (iii) PowerOptimal's technical, scientific, commercial, financial and market information and trade secrets; (iv) (vi) PowerOptimal's plans, designs, drawings, functional and technical requirements and specifications; (vii) information concerning faults or defects in the Product or in PowerOptimal’s systems, plant or equipment or the incidence of such faults or defects; (viii) contracts which PowerOptimal has entered into ; and (ix) any and all methodologies, formulae and related information and trade secrets in PowerOptimal's business and industrial processes. The determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, case law or legislation related to copyright, patent, trademarks or otherwise;

2.1.5 **"Contract Documents"** means these Terms and Conditions, and all annexures hereto;

2.1.6 **"Defective"**, in relation to the Product means (i) that the Product is unsafe; (ii) that there is a failure, defect or hazard in relation to the Product; or (iii) inadequate instructions or warnings have been provided to the Client about any hazard arising from or associated with the use of the Product;

2.1.7 **“Domain Name”** means PowerOptimal’s web domains, including: poweroptimal.com and elonsmartwater.com;

2.1.8 **“Effective Date”** means the date shown in any Transaction Document as the date on which the Product would be supplied to the Client;

2.1.9 “**Know-How**” means know-how relating to analysis and assessment of electricity bills, error identification and correction of electricity bills, as well as related information, methodologies and databases;

2.1.10 **“Installation (Commissioning) Date”** means the date on which the Product is first energised and configured at the Premises, as recorded by the earliest reliable of: (i) PowerOptimal’s installation database; (ii) the Product’s on-

board first-energise timestamp; or (iii) the app/portal first-connect timestamp. Where the Product is installed but the Client only takes occupation of the Premises later, and occupation occurs within 6 (six) months of installation, the Installation (Commissioning) Date is deemed to be the date of occupation, upon presentation of a certificate of occupation by the Client.

2.1.11 **“Losses"** means all losses, liabilities, damages and claims, and all related costs and expenses (including legal charges on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties);

2.1.12 **“Manuals”** means any manuals, training materials, reports and other documentation relating to the installation and use of the Product;

2.1.13 "**Parties**" means the parties to this Agreement, being PowerOptimal and the Client;

2.1.14 **“Products”** means any product/s created and developed by PowerOptimal from time to time which are supplied to the Client under these Terms and Conditions;

2.1.15 **“PowerOptimal”** means PowerOptimal (Pty) Ltd with registration number 2012/099947/07;

2.1.16 **“PowerOptimal Intellectual Property”** means the Software, Manuals, Trade Marks, Know-How, Domain Name and any other intellectual property of whatever nature which PowerOptimal has created or creates in the future in relation to the Products;

2.1.17 **“Premises”** means the premises nominated by the Client at which the Product is installed;

2.1.18 **“Price”** means the price payable by the Client to PowerOptimal in exchange for the supply of the Product and the performance of the Services, which may include/exclude the cost of performing the Assessment (as agreed in writing with PowerOptimal), excluding the installation cost and the costs referred to in clauses 14.3 and 15;

2.1.19 **“Prime”** means Standard Bank’s publicly quoted prime rate per annum ruling from time to time;

2.1.20 **“Proposal”** means the proposal compiled by PowerOptimal following the completion of an Assessment of what Products the Client requires to reach its particular goals;

2.1.21 **“Quote”** means the written quote issued by PowerOptimal to the Client, which sets out the Price, and which is valid for a period as indicated on it from the date of being issued to the Client;

2.1.22 "**Services**" means the services, functions and responsibilities to be performed by PowerOptimal in relation to the Product, as contracted for by the Client, and as defined in the applicable Transaction Document;

2.1.23 **“Software”** means the specialized suite of computer programs and software, developed by or on behalf of PowerOptimal and/or licensed by PowerOptimal, and which is owned exclusively/ to which PowerOptimal holds the exclusive license, and which is embedded in the Product;

2.1.24 "**Staff**" means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;

2.1.25 **“Trademarks”** means any trademarks which belong to PowerOptimal, whether registered or unregistered;

2.1.26 "**Transaction Documents**" means, where applicable, the Assessment Agreement, the Proposal, the Quote and any other documents relating to the supply of the Product and/or the Services by PowerOptimal to the Client under these Terms and Conditions;

2.2 any important wording which gives rights to or imposes obligations on a Party and is in any of the definitions in this clause 2 or somewhere else in these Terms and Conditions, will be given effect to as if it were important wording in the body of these Terms and Conditions;

2.3 words and expressions defined in any clause will, unless the application of any such word or expression is limited to that clause, have that meaning throughout these Terms and Conditions;

2.4 other than the terms that are defined in clauses 2.62.12 and 2.14, defined terms in these Terms and Conditions in title case will be given their meaning as defined, while the same terms appearing in lower case will be interpreted in accordance with their plain English meaning. Where a term is defined in a particular clause then that term will have the same meaning throughout these Terms and Conditions, unless it is clear from the clause in question that the term so defined has limited application to that clause;

2.5 a reference to any legislation is to the legislation as at the Effective Date and as amended or substituted from time to time;

2.6 reference to "days" means calendar days unless qualified by the word "business", in which case a "business day" is any day other than a Saturday, Sunday or public holiday as documented by the government of the Republic of South Africa from time to time. Any reference to "business hours" means the hours between 08h30 and 16h30 on any business day. Any reference to time is based on South African Standard Time;

2.7 reference to day/s, month/s or year/s is to Gregorian (civil) calendar day/s, month/s or year/s

2.8 unless specifically otherwise provided, any number of days will be determined by excluding the first and including

the last day or, where the last day falls on a day that is not a business day, the next business day;

2.9 where figures are referred to in numbers and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a different intention;

2.10 no wording in these Terms and Conditions will be interpreted to the disadvantage of a Party due to the fact that such Party structured, drafted or introduced such wording;

2.11 the expiry or termination of these Terms and Conditions will not affect any wording in these Terms and Conditions which provide that they will carry on after expiry or termination or which of necessity must continue to have effect after expiry or termination, despite that the clauses themselves do not expressly provide for this;

2.12 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not limit the general meaning of the wording that comes before it.

2.13 any reference in these Terms and Conditions to "these Terms and Conditions" or any other agreement or document means a reference to “this Agreement” or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time;

2.14 these Terms and Conditions include the attachments, which attachments will have the same force and effect as if they were in the body of this Agreement. In this Agreement the word "clause" or "clauses" and "annexe" or "annexes" refer to clauses of and annexes/attachments to these Terms and Conditions.

3. Structure of these Terms and Conditions

3.1 These Terms and Conditions apply to all clients of PowerOptimal in respect of the supply of the Product, whether the Client purchases the Product as a consumer (as defined in the Consumer Protection Act, 2008 — the “CPA”) for residential use, or as a commercial client (including for installation in property developments, for resale to end consumers, or for other commercial purposes). Where any specific clause is by its nature applicable only to commercial clients (including the retention of title, insurance and early-termination penalty clauses below), this is indicated in the relevant clause. Where a Client is a “consumer” as defined in the CPA, nothing in these Terms and Conditions limits or excludes any right or remedy that the Client has under the CPA; to the extent of any conflict between these Terms and Conditions and the CPA, the CPA prevails.

3.2 To avoid any doubt, ***any departure from these Terms and Conditions must be specifically identified and recorded as such*** in order to be effective against either Party.

3.3 These Terms and Conditions consist of two parts, namely:

3.3.1 Part I, being the definitions and preliminary;

3.3.2 Part II, being the general terms and conditions;

3.4 These Terms and Conditions will take preference over any other documents signed or to be signed between the Parties and in the event of a conflict, these Terms and Conditions will prevail.

4. TRANSACTION DOCUMENT(S)

A Transaction Document can only amend these Terms and Conditions in relation to the subject matter of such Transaction Document and only if the Transaction Document states which clause(s) of these Terms and Conditions must be amended and also states that it is the intent of the Parties to amend such clause(s). Also, such amendment must be in writing and signed by both the Parties.

PART II

5. Duration

5.1 These Terms and Conditions will start on the date of receipt by PowerOptimal of written acceptance of the Quote and will continue for the period identified in the applicable Transaction Document. If the Transaction Documents do not specify a period, then these Terms and Conditions will continue until the Parties have finished performing their obligations under the Contract Documents.

5.2 If these Terms and Conditions are not signed by the Client by the EffectiveDate, and the Product has been supplied to the Client, then the Client will be deemed to have accepted these Terms and Conditions and all Transaction Documents, and will be bound to these Terms and Conditions.

5.3 ***These Terms and Conditions provide for the early termination of the relationship between the Parties by PowerOptimal under certain circumstances. Such early termination may be in relation to particular Transaction Documents, or the entire relationship between the Parties.***

6. ASSESSMENT

6.1 PowerOptimal may, in certain instances, in its discretion, carry out an Assessment.

6.2 Where PowerOptimal carries out an Assessment, the Client must sign an Assessment Agreement.

7. supply of the Product

7.1 The Client hereby appoints PowerOptimal to supply and install the Product and perform the Services, in exchange for the Price.

7.2 PowerOptimal hereby agrees to supply the Client with and install the Product and perform the Services, in exchange for the Price.

7.3 PowerOptimal will only supply the Product once it has received written acceptance of the Quote from the Client.

8. SERVICES

PowerOptimal will render the Services to the Client, and the Client will accept and pay for such Services in line with these Terms and Conditions.

9. DELIVERY, INSTALLATION and the passing of risk

9.1 The Product will be delivered to the Client and installed as soon as reasonably possible after the Quote is accepted, or as soon as reasonably possible after any delivery date has been agreed between the Parties.

9.2 Whilst every effort will be made by PowerOptimal to deliver and install the Product on a specified date and/or time, **the Client will not have any claim against PowerOptimal if it does not deliver and/or install the Product by any specified date or time**.

9.3 The Product will be installed in accordance with PowerOptimal's instructions and directives relating to the particular Product purchased by the Client. Unless otherwise arranged with and agreed to in writing with PowerOptimal, the installation will be carried out by PowerOptimal and/or or an electrician duly appointed by PowerOptimal. Where PowerOptimal agrees to the Client appointing its own electrician to install the Product, then:

9.3.1 such installation will be entirely at the risk and expense of the Client; and

9.3.2 **the Client will not have any claim against PowerOptimal due to the installation of the Product by such electrician appointed by the Client and/or any defect/failure due to faulty installation.**

9.4 Delivery and the passing of ownership and risk in the Product will be deemed to have taken place when the Product is handed to the Client or the Client's employee or nominated agent at the Premises. The signature of any employee or nominated agent of the Client on PowerOptimal's delivery note or statement will, on the face of it, constitute proper delivery of the Product.

9.5 If the Client fails to take delivery of the Product ordered, or in any way delays such delivery, then the risk in and to the Product will immediately pass to the Client.

10. OWNERSHIP AND RETENTION OF TITLE

10.1 This clause does not apply where the Client is a "consumer" as defined in the CPA and the Transaction Document is a single, full-payment-on-delivery purchase.

10.2 Until PowerOptimal has received payment in full of all sums owed to it on any account by the Client, whether arising out of these Terms and Conditions or any other contract, legal and beneficial title in and to the Product will remain with PowerOptimal, and is referred to in this clause 10 and in clause 11 below as "**Retained Goods**".

10.3 Retained Goods are at the Client's risk, and the Client must keep the Product safe and in good condition.

10.4 The Client's use and enjoyment of the Product will terminate immediately if any of the following events:

10.4.1 the Client is placed under judicial management or in liquidation, whether provisional or final;

10.4.2 the Client compromises or attempts to compromise any of its liabilities with its creditors generally or any class of its creditors;

10.4.3 the Client breaches or threatens to breach in the performance of its obligations generally, or stops or threatens to stop carrying on business or is deemed to be unable to pays its debts;

10.4.4 the Client commits any act or omission which would, in the case of an individual, be deemed to be an act of insolvency in terms of section 8 of the Insolvency Act;

10.4.5 if anything similar to the events or circumstances mentioned above takes place anywhere other than the Republic of South Africa.

10.5 PowerOptimal may, at any time on giving reasonable advance notice, enter the Premises for the purpose of (i) inspecting the Retained Goods and identifying them as PowerOptimal's property; and (ii) to the extent that the Product is still classified as "Retained Goods" on the termination of these Terms and Conditions, removing them on termination of these Terms and Conditions. The Client authorises PowerOptimal to enter the Premises for these purposes, which authority cannot be withdrawn.

10.6 The Client is not entitled to remove or relocate Retained Goods from the Premises without advance written approval of PowerOptimal, which approval PowerOptimal is entitled to withhold in its entire discretion.

11. INSURANCE

11.1 This clause does not apply where the Client is a “consumer” as defined in the CPA and the Transaction Document is a single, full-payment-on-delivery purchase.

11.2 The Client must, for the period that these Terms and Conditions are in effect, have and maintain in force enough insurance to cover Retained Goods, as follows:

11.2.1 For fire and allied perils and theft;

11.2.2 there will be no subrogation against PowerOptimal, its agents or representatives under these insurances, whether mentioned in these Terms and Conditions or not, and taken out by or maintained by the Client.

11.2.3 The Client must, on demand, provide proof of (i) such insurance policy(ies); and (ii) its insurer's knowledge of the undertakings contemplated in clause 11.1 above.

12. GRANT OF LICENCE

PowerOptimal grants to the Client a limited, reversible, non-exclusive, non-transferrable right (where applicable) to use the Software, at the Premises, for the period that these Terms and Conditions are in effect.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 The Client acknowledges and agrees that the right, title and interest in and to the PowerOptimal Intellectual Property vests in PowerOptimal, and unless these Terms and Conditions state that the Client will obtain any rights in the PowerOptimal Intellectual Property, the Client will not acquire any rights (proprietary or otherwise) therein.

13.2 To avoid any doubt, ownership of the PowerOptimal Intellectual Property will not at any stage pass to the Client, even though the Client may obtain ownership of the Product under these Terms and Conditions.

13.3 If the Client becomes aware of any violation of any of the rights (including intellectual property rights) of PowerOptimal, or any claim or legal proceedings which may in any way affect any of the rights (including any intellectual property rights) of PowerOptimal, then it must (i) immediately inform PowerOptimal in writing and provide it with all details of such violation, claim or legal proceeding known to it; and (ii)give reasonable help to investigate such violation, claim or legal proceedings and in any legal proceedings which arise from such violation.

14. DUTIES OF THE CLIENT

14.1 The Client must (i) give PowerOptimal access to the Premises, and such other equipment and facilities; and (ii) provide PowerOptimal with such help, as may be needed by PowerOptimal, in order to effectively perform its duties and obligations in terms of the Transaction Documents.

14.2 The Client must, as quickly as possible bring to PowerOptimal’s attention any circumstances which may impact upon the Client’s performance of its duties and obligations in terms of the Contract Documents.

14.3 The Client must immediately inform PowerOptimal (i) if it intends to buy or install additional equipment or appliances at the Premises; or (ii) of any other fact or circumstances which could affect all or some of these Terms and Conditions, including which could have the result of changing the payments to be made in terms of these Terms and Conditions (so as to assist PowerOptimal in issuing a revised quote to cater for these circumstances).

15. installation and other costs

15.1 The Client will be required to pay the costs of installing the Product at the Premises, as well as any other costs, expenses and liabilities mentioned in these Terms and Conditions, including without limitation, cables, wiring, fittings and other items which are required to effect the installation.

15.2 If, during the course of installing and/or supplying the Product, it transpires that additional work, consumables and/or deliverables are required which could not have been reasonably foreseen at the time of performing the Assessment and/or issuing the Quote, then PowerOptimal will be entitled to quote the Client for such additional work, consumables and/or deliverables at that time.

16. the price

16.1 In exchange for the supply of the Product, the Client agrees to pay PowerOptimal the Price.

16.2 All payments will be COD (Cash on Delivery) unless alternative payment terms are specified in the Quote or agreed between the Parties in writing. This may include the signature by the Client of an Instalment Sale Agreement.

16.3 Payment of any amount must be made without any delay, deduction, withholding or set-off.

16.4 PowerOptimal will not accept any payments made by cheque.

16.5 If any payments are to be made in instalments (as specified in the Quote or in an agreement between the Parties to this effect), or, where the Client is a commercial client, and is required to pay for connectivity and server data collection, then the Client will be required to sign the Debit Order Authority Form.

16.6 If the Client wants to cancel the Debit Order Authority Form, such cancellation will not cancel these Terms and

Conditions. Any cancellation of these Terms and Conditions can only take place in accordance with the requirements of these Terms and Conditions.

16.7 If any amount which is due by the Client to PowerOptimal is not paid, PowerOptimal has the right, in addition to any other rights in these Terms and Conditions and at law, to (i) switch off the Product, in which case PowerOptimal will use its best efforts to give the Client warning of this intended action; or (ii) remove the Product from the Premises, and the Client agrees to such actions, and also agrees to providing PowerOptimal with access to the Premises in order to remove the Product.

16.8 Any amount falling due for payment by the Client to PowerOptimal will bear interest at the rate of Prime plus 2% from due date until date of payment, calculated and payable monthly in advance. If such interest is not paid in full by the Client, it will be added to the principal sum, and the total will form the whole debt, which will then bear interest in the same way as set out above. In the case of a dispute as to the rate of interest, a certificate in writing by a manager or accountant of PowerOptimal will be enough evidence to prove the rate of interest.

17. WARRANTY ON THE Product

17.1 If the Product is found to be Defective, the Client will be entitled to a repair or replacement of it within 2 (two) years of the Installation (Commissioning) Date of the Product. We will accept a warranty claim notified to us within 14 (fourteen) days after expiry of the warranty period, provided the underlying defect arose during the warranty period; claims notified after this 14-day grace period will not be entertained. ***Where the Client is a consumer as defined in the CPA, then the Client will be entitled to such remedies as are made available under the CPA in relation to the return of goods***. All claims in this regard must be accompanied by an original tax invoice.

17.2 The warranty in clause 17.1 does not extend to: (a) damage caused through abuse, misuse, improper use, improper testing, negligence, accident, alteration, tampering or repair by a third party, or ordinary wear and tear; (b) damage caused by lightning; (c) damage caused by power outages, load shedding or electrical surges; (d) damage caused by the chemical or electrochemical effects of water; (e) any defect in wiring, electrical connections or plumbing which does not form part of the Product at the time of original supply; (f) fragile or cosmetic items, consumable items, and minor variances from nominal features that have no significance to the Product's value or fitness for purpose; (g) exceptional environmental conditions, inappropriate operating conditions, or the Product having come into contact with unsuitable materials; (h) transport damage where transport was not arranged by us, improper installation or assembly, improper use, use within a non-domestic environment (where the Product is supplied as a residential unit), poor maintenance, or failure to observe operating instructions; (i) poor system performance attributable to the design or condition of the broader installation — including (by way of example) an insufficient number of solar PV modules, poor module orientation or tilt, shading, the presence of a hot-water circulation system, or undersized cabling; (j) faults caused or contributed to by use of the Product with components that do not comply with the relevant SANS / IEC standards or with our published compatibility list; (k) faults caused by electromagnetic interference exceeding the Product's tested electromagnetic immunity level (refer to the Product specification sheet); (l) faults arising or worsened because the Client failed to take corrective action within 21 (twenty one) days of written notification from us identifying conditions that need to be rectified; (m) any opened thermal fuse — the opening of a thermal fuse due to an empty geyser or other defect not caused by the Product is not a manufacturing defect and is treated outside the warranty; we may, on request, undertake a best-efforts repair if the Product is returned to our facility at the Client's cost; (n) any accessories or additions which do not constitute the main body of the warranty agreement; or (o) any defect in respect of which PowerOptimal has made a determination under clause 17.5.4. The warranty will not apply if repairs or other interventions are performed by persons not authorised by us, if the Product is fitted with non-original spare parts, extras or accessories, or in the event of physical or verbal abuse towards any member of our staff. To the maximum extent permitted by applicable law, in no event shall PowerOptimal be liable for any special, incidental, indirect or consequential damages arising out of or in connection with the use, malfunction or inability to use the Product, including (without limitation) damages for water damage to surrounding property, loss of business profits, loss of revenue, loss of use, or interruption to hot water supply. The Client hereby indemnifies PowerOptimal for the costs of defending any action against it that arises from any of the circumstances described in this clause.

17.3 Replacement units: Where we replace the Product (whether with a new or refurbished Product), the replacement carries only the unexpired portion of the original warranty period, including any unexpired portion of an active extended warranty. The replacement does not commence a new warranty period.

17.4 Return Merchandise Authorisation (RMA): All warranty claims are on a return-to-PowerOptimal basis. The Client must obtain a Return Merchandise Authorisation (RMA) number from PowerOptimal before returning any Product. PowerOptimal may refuse to inspect or repair any Product returned without a valid RMA number, or charge a return-handling fee where the returned Product is found not to be defective.

17.5 Certificate of Compliance – solar PV and other DC sources

17.5.1 Where the Product is installed in, or connected to, an electrical installation that includes solar PV modules or any other DC source, the Client must ensure that a valid Certificate of Compliance, issued by a registered person in terms of the Electrical Installation Regulations, 2009, and covering the Product and the DC installation connected to it, exists for that installation.

17.5.2 Wherever the electrical installation of the Product is later changed – for example, the addition or extension of solar PV, the addition of new circuits, or any other change to the Product installation requiring electrical work – the Client must ensure that a supplementary Certificate of Compliance covering that change is issued.

17.5.3 The Client must supply a copy of the Certificate of Compliance and any supplementary Certificate of Compliance (a) with any warranty claim, and (b) within 14 days of a written request from PowerOptimal.

17.5.4 If the Client fails to comply with clauses 17.5.1 to 17.5.3, PowerOptimal will assess, acting reasonably and with reference to its inspection of the Product and any available device data, whether the defect was caused or worsened by the electrical installation or by the unrecorded change. If PowerOptimal so determines, it may decline the warranty

claim and may treat the warranty (including any extended warranty) as invalid. PowerOptimal will notify the Client of its decision and the reasons for it in writing, and will consider any information the Client provides in response within 14 days.

17.5.5 Nothing in this clause limits any right a consumer has under sections 55 and 56 of the Consumer Protection Act, 2008.

17.6 Installers: Where we suggest, recommend or list an electrical contractor or installer, we do so as a convenience to the Client only. Such installers are independent third parties and are not employed, controlled or warranted by PowerOptimal. We accept no liability for the acts or omissions of any installer, and the Client engages any installer at the Client's own risk.

18. Warranties AND UNDERTAKINGS BY THE CLIENT

In addition to any other obligations of the Client contained in these Terms and Conditions, the Client ***warrants and undertakes that:***

18.1 ***it is aware of the nature and the limitations of the Product;***

19. INDEMNITIES

19.1 ***The Client hereby indemnifies and holds harmless PowerOptimal, its successors and assigns, from any and all Losses arising from or in connection with any claim or action arising from the Client's:***

19.1.1 ***failure to observe or perform any duties or obligations in accordance with these Terms and Conditions, any law, license, certificate, authorisation and/or consent;***

19.1.2 ***any breach by the Client of the warranties in clause 18;***

19.1.3 ***failure to observe or adhere to any warning labels and/or instructions pertaining to the Product;***

19.1.4 ***Any third party claim, not due to a fault of PowerOptimal, related to the installation of the Products.***

20. DISCLOSURE OF PERSONAL INFORMATION

20.1 The Client may be required to provide PowerOptimal with personal information.

20.2 Whilst PowerOptimal will, in general, use such personal information anonymously, the Client understands and agrees that such personal information is to be used for the purposes of:

20.2.1 monitoring performance of the Product;

20.2.2 conducting case studies regarding the use of the Product by each Client; and

20.2.3 connecting data regarding the Client's use of the Product with the billing by the Client's electricity service provider.

20.3 PowerOptimal undertakes that any personal information provided by the Client to it will be held securely and in accordance with applicable laws.

20.4 The Client confirms that all personal information provided to PowerOptimal is accurate and complete. The Client further agrees to update such information if it changes at any time, ***failing which, PowerOptimal will not be liable for any inaccuracies or lack of completeness of such information, or any resulting failure to properly perform its obligations under these Terms and Conditions****.*

21. 21A. Software, app and data — End User Licence Terms

21.1 Licence: PowerOptimal grants the Client a personal, limited, non-exclusive, non-transferable, revocable licence to use the PowerOptimal app, customer portal and any firmware embedded in the Product, solely in connection with the Client's lawful use of the Product. The Client must not reverse engineer, decompile, modify or attempt to extract the source code of the firmware, app or portal except to the extent permitted by law.

21.2 Account and password security: The Client is responsible for keeping their account credentials, app sign-in details and any device password (where applicable) secure and confidential. PowerOptimal is not responsible for any loss arising from unauthorised access to the Client's account where that access is the result of credentials being compromised on the Client's side.

21.3 Carbon credits and environmental attributes: Any carbon credits, renewable energy certificates, or other environmental attributes generated, attributed or attributable to the use of the Product (including avoided-grid-energy attribution) are owned by PowerOptimal. The Client assigns to PowerOptimal any rights it may have in such attributes by reason of using the Product. PowerOptimal may, at its discretion, share value derived from such attributes with Clients via published programmes.

21.4 Data we collect from the Product: Telemetry, configuration and event data is collected from the Product to enable safety functions, warranty validation, performance monitoring and product improvement. Aggregated and anonymised data may be used by PowerOptimal without restriction. Personal information is handled per PowerOptimal's privacy

policy, available at https://docs.poweroptimal.com/books/terms-conditions-and-policies.

22. Confidentiality

22.1 The Client acknowledges the great importance of the Confidential Information to PowerOptimal and, where applicable, third party owners of such information, and recognises that PowerOptimal and/or third party owners may suffer severe harm or loss if such information is disclosed or used otherwise than in accordance with the Contract Documents.

22.2 The Client will not:

22.2.1 except as allowed for in the Contract Documents, not to disclose or publish any Confidential Information in any way, for any reason or purpose without the advance written approval of PowerOptimal and provided that if the Confidential Information is owned by a third party, the Client must get the approval of such third party;

22.2.2 to restrict the distribution of the Confidential Information to only those of the Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Client must initiate, maintain and monitor internal security procedures reasonably acceptable to PowerOptimal to prevent unauthorised disclosure by the Staff;

22.2.3 to take all practical steps, both before and after disclosure, to ensure that the Staff who are given access to Confidential Information understand the secret and confidential nature of such information.

22.2.4 except as allowed for in the Contract Documents, not to use, employ, exploit or in any other way use the Confidential Information for any purpose whatsoever without the advance written approval of PowerOptimal and provided that if the Confidential Information is owned by a third party, the Client must get the approval of such third party.

22.3 All Confidential Information disclosed by PowerOptimal to the Client or which otherwise comes to the knowledge of the Client, is:

22.3.1 owned by PowerOptimal or where applicable, the relevant third party owner; and

22.3.2 not to give any rights in such Confidential Information to the Client.

22.4 The Client must protect the Confidential Information in the way that a reasonable person protecting his own Confidential Information would.

23. BREACH

23.1 If the Client commits a breach of any part of the Contract Documents and fails to correct it within 14 (fourteen) days of notice, should a shorter period be reasonable in the circumstances, PowerOptimal will be entitled, in addition to any other rights and remedies that it may have in terms of the Contract Documents or otherwise, to terminate any or all Contract Documents without prejudice to any claims which PowerOptimal may have for damages against the Client.

23.2 To avoid any doubt, all Contract Documents will terminate when these Terms and Conditions terminate.

24. TERMINATION FOR CONVENIENCE

PowerOptimal may terminate these Terms and Conditions or any Transaction Document(s) in whole or in part for convenience and for no reason at any time by giving the Client at least 30 (thirty) days' advance written notice, specifying the termination date. PowerOptimal will not be liable to the Client due to such termination.

25. PENALTY FOR EARLY TERMINATION BY THE CLIENT

25.1 This clause does not apply where the Client is a "consumer" as defined in the CPA and the Transaction Document is a single, full-payment-on-delivery purchase.

25.2 ***If the Client terminates or tries to terminate these Terms and Conditions earlier than it is due to terminate in terms hereof, then:***

25.2.1 ***the balance of instalments which the Client would have been required to pay during the remainder of these Terms and Conditions will become immediately due and payable to PowerOptimal;***

25.2.2 ***PowerOptimal will be entitled to remove the Product from the Premises, and the Client will provide PowerOptimal with access to the Premises for such purposes; and***

25.2.3 ***the provision of all Services under these Terms and Conditions will immediately stop.***

26. LIMITATION OF LIABILITY

26.1 ***Despite any conflicting wording in the Contract Documents, but in line at all times, with applicable laws, PowerOptimal will not be liable for any Losses as a result of:***

26.1.1 ***the Client or any other person, including any electrician appointed by the Client as contemplated***

in clause 9.3handling, storing, installing, using or otherwise dealing with the Product in a way which does not comply with: (i) warning labels or instructions for installation or use; (ii) the purpose which the Product is designed for; and (iii) the normal and proper way that the Product is meant to be handled, stored, installed, used or otherwise dealt with;

26.1.2 ***any malfunction, non-performance or lowering of performance of the Product caused by or resulting directly or indirectly from any alterations, attachments, tampering with or relocation of the Product which is not approved in writing by PowerOptimal, it being understood that the Client will be entirely responsible for resulting violation, injury to person or damage to property and the Product;***

26.1.3 ***modifications, repairs or replacements or attempted modifications, repairs or replacements not performed by PowerOptimal or not approved by PowerOptimal in writing before such modifications, repairs or replacements are made or attempted to be made by any other party, including the Client;***

26.1.4 ***any changes or modifications to the Product which are required due to any technical or regulatory changes introduced by the appropriate regulatory authorities;***

26.1.5 ***causes external to the Product such as failure or fluctuation of electrical power, including load shedding (unless the Product is specifically designed to assist in the management of load shedding).***

26.2 ***Subject to applicable laws, PowerOptimal will under no circumstances whatsoever,(including due to its negligent acts or omissions or those of its servants, agents or contractors or other persons who law PowerOptimal may be liable for), be liable for any indirect, incidental, special, or consequential Losses of any kind however it may be caused , suffered by the Client, its directors and/or servants, including any loss of profits, revenue, economic loss, loss of operation time, corruption or loss of information and/or loss of contracts, arising from or related to the Product and/or the use of the Software and/or Products.***

26.3 ***Subject to clauses 25.1 and 25.2, and subject to applicable laws, PowerOptimal's liability for any loss or damages arising out of or relating to the Contract Documents (including in connection with the performance or omission by PowerOptimal of its obligations and duties under the Contract Documents) will be limited to the price paid by the Client as at the date on which the incident which gave rise to such Loss occurred.***

27. MEDIATION AND ARBITRATION

27.1 All disputes arising out of or relating to the Contract Documents, including disputes about the meaning or interpretation of any part of the Contract Documents, must first be resolved or attempted to be resolved by the Parties through good faith discussions within 30 (thirty) days of the dispute having been declared by any of the Parties;

27.2 Subject to clause 26.1 being exhausted, any dispute will be referred to an independent Advocate with not less than 10 years' experience with the Johannesburg Bar, of PowerOptimal's choice;

27.3 The arbitrator will act as an expert and not an arbitrator and will not be bound to the rules of arbitration under the arbitration laws for the time being in force in the Republic of South Africa;

27.4 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict (court order which will require a Party to do or not do something), damages or a penalty or otherwise as he in his entire discretion decides it appropriate and to deal as he decides with the question of costs.

27.5 Any award made by the arbitrator:-

27.5.1 will be capable of being taken on appeal to a court with authority;

27.5.2 may be made an order of any court with authority;

27.5.3 nothing in this clause 26 will prevent either party from obtaining intermediate relief (short term assistance) on an urgent basis from a court with authority, whilst awaiting the decision of the arbitrator.

28. addresses where legal notices may be sent

28.1 The Parties select the following addresses as their respective addresses where legal notices may be sent, or such other address as may be notified by either Party to the other:

28.1.1 PowerOptimal:

88 12th Avenue, Kleinmond, 7195.

28.1.2 The Client:

(a) Where PowerOptimal has issued a Quote or entered into a Transaction Document directly with the Client – the address contained in such Quote or Transaction Document; or

(b) Where the Product or Services have been purchased or supplied through an authorised distributor, reseller, or merchant – the principal place of business or registered office of the Client, as provided in the purchase order, invoice, or registration documentation supplied to PowerOptimal (whether directly or via such distributor, reseller, or merchant).

A notice, request, demand, or determination under the Contract Documents—

(i) delivered by hand, will be deemed to have been properly given when delivered during ordinary business hours; or

(ii) sent by registered mail to the relevant domicilium address, will be deemed to have been properly given on the 7th (seventh) day after posting, evidenced by a registered mail receipt.

Either Party may change its domicilium address by giving written notice of such change to the other Party, which change will take effect seven (7) days after receipt of such notice. A notice, request, demand and determination under the Contract Documents (i) delivered by hand will be deemed to have been properly given when delivered by hand during ordinary business hours; or (ii) delivered by mail when mailed in a properly addressed envelope to a responsible person at the receiver's address set out above by registered mail, which delivery will be evidenced by the registered mail receipt;

29. FORCE MAJEURE (unforeseeable circumstances)

29.1 Neither Party will be liable for any failure to fulfil its obligations under the Contract Documents if, and to the extent that, such failure is caused by any circumstances beyond its reasonable control.

29.2 Should either Party be unable to fulfil its obligations under the Contract Documents for a period of 90 (ninety) days, due to circumstances beyond its reasonable control, as recorded in clause 28.1, then such Party must, as soon as it becomes aware that such circumstances are likely to cause a delay or suspension of the Contract Documents, give written notice to the other Party, estimating the length of such delay. However, the Party claiming a force majeure event (unforeseeable circumstance)must, to the extent possible:

29.2.1 use its reasonable endeavours to terminate the circumstances causing the force majeure (unforeseeable circumstance); and

29.2.2 should the force majeure (unforeseeable circumstance) come to an end, immediately give notice to the other Party that it has ended.

29.3 If the force majeure event (unforeseeable circumstance)has a permanent effect, affecting the fulfillment of all or part of a Party's obligations under the Contract Documents, then either Party can terminate the Contract Documents immediately by giving written notice of such termination to the other Party.

30. General

30.1 The Contract Documents will be binding on the Parties and any third party that acquires PowerOptimal or to whom these Terms and Conditions are transferred. The Client will not be entitled to cede, assign, sub-contract or otherwise transfer any rights or obligations contained in any or all Contract Documents without the advance written approval of PowerOptimal. PowerOptimal, in its entire discretion, may cede, assign, sub-contract or otherwise transfer any rights and/or obligations under any or all Contract Documents without the approval of the Client which will include, , a company or other type of entity which acquires all or almost all of the assets of PowerOptimal.

30.2 If any of the terms and conditions of the Contract Documents are held to be invalid, unlawful or unenforceable, such terms and conditions can be removed from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition which is held to be invalid can be changed so as to make it valid, the Parties agree to negotiate an amendment to remove the invalidity.

30.3 No change, waiver (surrender) or discharge (release) of the terms and conditions of the Contract Documents will be valid unless it is in writing and signed by an authorised representative of the Party against which such change, waiver (surrender) or discharge (release) is sought to be enforced. Any such change, waiver (surrender) or discharge (release) will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party to exercise any right, power or privilege under the Contract Documents will operate as a waiver (surrender) of the Contract Documents. No single or partial exercise of any right, power or privilege will prevent any other or further exercise of the Contract Document or the exercise of any other right, power or privilege.

30.4 The Contract Documents will be governed by and interpreted in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating to the Contract Documents will be determined in accordance with such law.

30.5 The Contract Documents constitute the whole of the agreement between the Parties relating to the subject matter of those documents and unless the Contract Documents allow for it, no amendment, alteration, addition, variation or agreed cancellation will be of any force or effect unless it is in writing and signed by the Parties or their duly authorised representatives.

30.6 The Parties agree that there are no other terms or conditions to the Contract Documents, whether oral or written.

30.7 The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party can make or enter into binding agreements of any nature on behalf of the other Party.

30.8 Any provision of the Contract Documents, which contemplates performance or observance after any termination or expiry of the applicable Contract Documents, will survive any termination or expiration of the applicable Contract Documents and continue in full force and effect.

30.9 Each Party agrees that, in its respective dealings with the other Party under or in connection with the Contract Documents, it will act in good faith.

30.10 Each Party will bear and pay its own costs of or associated with the drafting, preparation and execution of the Contract Documents.

31. AI ASSISTANT DISCLAIMER

31.1 The information provided by any artificial intelligence (AI) assistant or automated digital service operated by or on behalf of PowerOptimal, including but not limited to those available on its websites, is for general guidance only. Such information does not constitute professional, technical, or safety advice.

31.2 Because PowerOptimal’s products involve electricity and water, users must always exercise caution and refer to the official manuals or consult a qualified technician for all installation, maintenance, or repair work.

31.3 PowerOptimal, its directors, employees, or agents will not be liable for any damage, injury, loss, or other consequence arising from reliance on or use of information provided by any AI assistant or automated service.

★Created 2026-07-07 06:17:00 UTC by Sean Moolman
✎Updated 2026-11-17 02:59:03 UTC by Sean Moolman