



Fulcrum3D

WIND SOLAR FUTURES

86 Reserve Rd
ATARMON, NSW 2064

CUSTOMER STANDARD TERMS AND CONDITIONS

TERMS

1. Applicable Terms

The purchase by Customer of the material, equipment, components, products, supplies, goods and documentation (“**Product**”) and delivery of data, information, reports or similar (“**Services**”) is expressly governed by these Terms, including any attached addendums (“**Terms**”).

Notwithstanding any provisions of any applicable law (including common law), any additional or different Terms set forth in Customer’s request for quotation or proposal, purchase order, purchase order acknowledgment or similar writings or correspondence (irrespective of the date of the same) are not binding upon Fulcrum3D unless specifically assented to in writing by an authorized representative of Fulcrum3D.

Customer’s purchase order shall constitute an acceptance of the quotation or proposal of Fulcrum3D of which these Terms form a part, even if the purchase order provides otherwise and/or does not reference the Fulcrum3D quotation or proposal.

QUOTATIONS AND PRICES

2. Quotations

Each quotation is valid for 30 calendar days from its date unless otherwise stated in the quotation, or revoked prior to the issuance of Customer’s purchase order. Prices stated in a quotation take precedence over any list price.

3. List Prices

Unless otherwise specified in a quotation, prices will be the list prices in effect at the time of order and freight will be prepaid and added to the invoice.

All list prices are subject to change without notice. In the event of a price change, the effective date of the change will be the date shown on the revised list price. However, where a price change is made by issuing a revised quotation, letter or public announcement, the effective date may be given as part of the announcement.

PAYMENT AND DELIVERY

4. Terms of Payment

Unless otherwise stated in the quotation, payment shall be apportioned as follows:

- Product payment terms are 75% on placing orders, 25% on delivery;
- Extended warranty charges are payable 12 months in advance;
- Services relating to delivery of data or equipment maintenance are payable 12 months in advance; and
- other Services are payable 50% on commencement and 50% on completion.

Payment terms are 30-days. If “bill to” address is outside of Australia, or if credit is not pre-approved, pre-payment is required.

Acceptance of an order is subject to credit verification. If, in the judgment of Fulcrum3D, the financial condition of Customer at any time prior to delivery is reasonably called into question, then Fulcrum3D may require payment in advance or cancel without any liability or obligation, any outstanding order whereupon Fulcrum3D shall be entitled to receive reasonable cancellation charges.

If delivery is delayed by Customer, final payment shall become due on the date Fulcrum3D is prepared to make delivery. Fulcrum3D are entitled to charge storage fees if delivery is delayed by Customer.

If payments are not made when due, Customer shall pay, in addition to overdue payment, a late charge equal to the greater of 1.5% per month or the highest applicable rate allowed by law on all such overdue amounts.

5. Taxes

The price quoted by Fulcrum3D for the Product or Services does not include any Federal, state or local tax including any VAT/GST, property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable. Unless otherwise specifically stated by Fulcrum3D in a quotation, (i) payment by Fulcrum3D of any such taxes shall be for the account of the Customer and shall be immediately reimbursed by Customer to Fulcrum3D; and (ii) where Customer is located outside of Australia (i.e. an export sale from Fulcrum3D), the Customer shall pay all customs duties or taxes, customs broker fees or costs, as well as all other non-Australian taxes of any type whatsoever.

6. Delivery

Unless otherwise agreed to in writing, all shipments of Product are ex works, and any shipment or transportation costs, applicable taxes, duties or fees are borne by the Customer. No allowance will be made in lieu of transportation if the Customer accepts shipment at the factory, or the warehouse or freight station.

Where delivery is to a site nominated by Customer, Customer shall make available to Fulcrum3D suitable site access for 2WD vehicles towing a trailer.

Unless specified in the Fulcrum3D quotation, Fulcrum3D will not participate in any settlement of claims for concealed or other shipment damage. To the extent that the Fulcrum3D quotation provides for Fulcrum3D’s intervention in this regard, the Customer must unpack immediately and, if damage is discovered, must: (i) retain shipping container and packing material. (ii) notify the carrier of any apparent damage in writing on carrier’s delivery receipt and request the carrier to make an inspection. (iii) notify the Fulcrum3D location from which shipment originated within 72 hours of delivery. (iv) send Fulcrum3D a copy of the carrier’s inspection report.

7. Export Controls

The obligation on Fulcrum3D to deliver the Product to the Customer is conditional upon Customer obtaining prior any required export or import license(s) that any applicable laws or regulations may require.

8. Testing and Acceptance of Product

Testing of the Product before shipment is carried out in accordance with Fulcrum3D's routine factory test procedures and at Fulcrum3D's cost.

In the event that the Customer requires additional tests beyond Fulcrum3D's standard factory tests, Customer shall bear the cost of the same. As far as circumstances allow, such additional tests shall be carried out in Fulcrum3D's factory. If it is found from one of the aforementioned tests, that the Product does not meet the specifications of the order, the Customer will allow Fulcrum3D a reasonable opportunity for Fulcrum3D to remedy any test related deficiency. Upon the Customer's request, Fulcrum3D shall provide test reports for the Product, with Customer paying any incidental costs or administrative fees associated with such request.

Customer has a reasonable time after receipt of the product to inspect and reject or accept the product. In any event, acceptance will be deemed to have occurred no later than 30-days after shipment.

USE OF PRODUCTS

9. Product Notices

Customer shall provide any user of the Product (including its employees and the employees of any End User) all Fulcrum3D supplied Product and patent notices, warnings, instructions, recommendations and similar materials ("**Product Materials**"). Under no circumstances shall Customer remove or allow removal of any such information which may be affixed to the Product or to the related materials shipped with the Product.

10. Limitations on Use

Customer shall use, and shall ensure any 3rd party uses, the Products solely for the intended use and in the manner described in the Product Materials. Customer shall ensure that the Products are used safely and in accordance with all applicable laws.

11. Installation

Customer shall ensure that installation of the Product complies at all times with the reasonable written installation requirements provided by Fulcrum3D. Customer is responsible for confirming the installation location is suitable for operation of the Product, including any communication systems required for effective use of the Product.

CUSTOMER RENTAL OR LEASE OF PRODUCTS

12. Righter to Rent or Lease

Fulcrum3D acknowledges the Customer's right to rent or lease the Products purchased by the Customer to third parties.

13. End User Notice

Where Customer rents, leases or (other than through sale or transfer of that product) makes available a Product for use by a third party, the Customer shall notify Fulcrum3D in writing the name and contact details of that third party and the period during which the Product has been made available to that third party ("**Usage Period**"), and for that period the third party shall be an "**End User**".

14. Actions of End User

Customer is responsible for ensuring any End User complies with the requirements of clauses 9, 10 and 11 as if the End User was a Customer and any breach of those clauses by the End User is deemed to be a breach of those clauses by the Customer.

15. End User Data

Fulcrum3D may provide the Customer Data to the End User with respect to the Usage Period and the Customer Data shall be taken to be transferred by the Customer to the relevant End User in respect of the Usage Period.

16. End User Rights and Obligations

For the duration of the Usage Period:

- (i) Fulcrum3D extends the rights granted to the Customer under the Relevant Clauses such that they are equally granted to the End User; and,
- (ii) Customer accepts responsibility for actions taken (or not taken) by the End User in relation to the Relevant Clauses as if they were actions taken (or not taken) by the Customer,

where the Relevant Clauses are:

- Clause 31 - Two-way Confidentiality
- Clause 32 - Intellectual Property
- Clause 33 - Embedded Software
- Clause 34 - Reverse Engineering

17. Warranty and Liability for End User

Notwithstanding any other provision of these Terms, Fulcrum3D offers no warranty to the End User and the warranties outlined in these terms are solely for the benefit of the Customer.

Fulcrum3D is not under any circumstances liable to any End User for any costs, damages or losses resulting from or in relation to the agreement formed by these Terms, the Product or the Services and Customer shall indemnify Fulcrum3D for any such costs, damages or losses.

Customer accepts responsibility with respect to and is liable for any actions taken or not taken by an End User in relation to the agreement formed by these Terms, the Product or the Services as if they were taken by the Customer.

WARRANTY AND REPAIRS

18. Product Warranty

Fulcrum3D warrants to the Customer that the Product manufactured by it will be of the kind described in its specification, will be of Acceptable Quality, and will be free of defects in workmanship and material.

Obligations under this warranty are limited to repairing or replacing (including with refurbished goods of the same type), at Fulcrum3D's factory, any part or parts which Fulcrum3D's examination shows to be defective. In the event the Product under warranty is not repairable, Fulcrum3D reserves the right to supply an alternate, substantially functional equivalent product.

19. Acceptable quality

Products are of acceptable quality if a reasonable consumer would consider they are: safe, durable and free from defects; acceptable in appearance and finish; and, fit for all the purposes for which goods of that kind are commonly supplied ("**Acceptable Quality**").

20. Product Warranty Limitations

Unless otherwise agreed to in writing, Fulcrum3D labelled Products are warranted against defects in materials and workmanship for a period of twelve (12) months from the date of delivery, provided they are shipped back to the factory for repair. Repairs made at the factory are likewise warranted for six (6) months from the date the repaired product is delivered, or for the remainder of the Product's original warranty (whichever is longer). Any repair or replacement undertaken in accordance with this warranty shall not otherwise serve to renew or extend the Fulcrum3D warranty coverage herein.

Warranties only apply to Products subject to normal use and service. The Fulcrum3D warranty obligation shall also be void as it relates to any nonconformity resulting from a defect due to the Customer's design specifications, the operation of the Product under abnormal conditions or contrary to specifications or instructions of Fulcrum3D and industry standard practices; or where such use results in excessive wear and tear (beyond normal); or where modifications, alterations or repairs have been made by Customer or a third party without the consent of Fulcrum3D.

In connection with the warranty obligations herein, in no event will Fulcrum3D be responsible for gaining access to the Product; the cost of removal of the defective Product from its related system, and the cost of its reinstallation in such system; the disassembly, reassembly and/or transportation of the Product or its parts to or from the place of installation; Customer labour costs; site and/or ancillary equipment costs; and all transportation costs to and from Fulcrum3D's plant or repair shop. These costs shall be borne exclusively by the Customer. The Customer shall not return or dispose of any Product or part thereof with respect to which it intends to make a claim under the foregoing warranty, without the express prior written authorization of Fulcrum3D.

Products supplied by Fulcrum3D but manufactured by others are warranted only to the extent of the manufacturer's warranty provided with that product. Fulcrum3D warrants that the Product supplied hereunder will be delivered free of any and all rightful claims, demands, liens or encumbrances. In the event of a breach of this warranty, Customer shall promptly notify Fulcrum3D and Fulcrum3D, at its expense, will defend the title to any affected Product or part thereof and if unsuccessful will promptly provide to Customer, at no cost, replacement parts or equipment which comply with this warranty.

21. Product Warranty on Resale

Customers purchasing for resale, must indicate to Fulcrum3D the third party purchaser of the Products in order to ensure that the warranty is transferred to the third party purchaser.

22. Customer Data Warranty

Notwithstanding any other provision of these Terms, Fulcrum3D shall not be liable for any loss, error or inaccuracy of or in any Customer Data whether or not that loss, error or inaccuracy is as a result of the failure of a Product or Service or the failure of a Product or Service to perform in accordance with the specifications.

23. Performance Warranty

Where a written performance warranty is provided with a Product that performance warranty is included as part of this warranty.

24. Exclusive Warranty

There are no warranties, obligations, liabilities, consequential damages, or other liabilities on the part of Fulcrum3D except for this warranty covering the repair or replacement of defective Products or replacement of Services (or part thereof).

The express warranties set forth in this article are exclusive and no other warranties of any kind, whether statutory, oral,

written, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, or warranties arising from course of dealing or usage of trade, shall apply. The Customer's exclusive remedies and Fulcrum3D's only obligations arising out of or in connection with the Product or Services, whether based on warranty, contract, tort (including negligence) or otherwise, shall be those stated herein.

Fulcrum3D's repair or replacement obligations set forth herein are the Customer's exclusive remedy for any failure of Fulcrum3D to meet the material and workmanship standards set forth in Fulcrum3D's specifications.

Correction of any non-conformity in the manner and for the period of time provided herein shall fully insulate Fulcrum3D from any liability under this warranty section, whether the claims of the Customer are based in contract, tort (including negligence and strict liability), indemnity or any other legal theory with respect to or arising out of the Product or the Services.

LIABILITY, RISK AND LOSS

25. Force Majeure

Notwithstanding any other provision of the Terms, Fulcrum3D shall not be liable for failure to perform or for delay in performance due to any cause beyond its reasonable control, including, but not limited to: acts of God; acts or omissions which are substantially attributable to the Customer; unusually severe or harsh weather conditions; fire; flood; hurricanes; tornadoes; strikes or other labour difficulties; any act or failure to act or delay in acting on the part of any governmental authorities, including the issuance or failure to issue government permits and/or export or re-export permits or licenses; changes in laws; riots; epidemics; quarantine restrictions; war, insurrection or riot; acts of a civil or military authority; illegal attacks on its information technology systems including unauthorized access, change or destruction of any of its information technology systems; title and environmental issues; embargoes; fuel or energy shortage; blockades; transportation delays or accidents; faulty castings or forgings; inability to obtain necessary labour, materials or manufacturing facilities from usual sources; and delays of subcontractors (each of which is a "Force Majeure Event").

In the event of delay in performance due to any of the foregoing causes, the date of delivery or time for completion will be extended by a period of time equal to the greater of: (i) the time reasonably necessary to overcome the effect of such delay; or (ii) the time equal to the period of the delay.

26. Limitation of Liability

The total, aggregate and cumulative liability of Fulcrum3D (including hereinafter for purposes of this Section 26, its affiliates, parent company, shareholders, subsidiaries, officers, directors, employees, agents, assigns and their respective predecessors and successors) to the Customer, whether by indemnity, or in contract, guaranty, warranty, tort (including negligence and/or strict liability), by statute, or under any other legal theory, shall in no event exceed the purchase order value of the specific Product or Services in question.

Fulcrum3D shall under no circumstances be liable to Customer, whether by indemnity, or in contract, guaranty, warranty, tort (including negligence and/or strict liability), by statute, or under any other legal theory for (a) any special, incidental, indirect or consequential damages or losses of any nature, or (b) for loss of profit, loss of production, loss of contract, loss of revenue, loss of use, cost of replacement power or temporary equipment (including additional expenses incurred in using existing facilities); claims or damages of Customers; cost of money; loss of investment opportunity; loss of business opportunity; increased operating costs; financing costs; or government fines, penalties or sums due, in each

case even if Customer has advised Fulcrum3D in advance of the possibility of such damages or losses.

Fulcrum3D is not under any circumstances liable to Customer for punitive damages, nor may any arbitrator(s) or court of law award punitive damages against Fulcrum3D.

No action, regardless of form, arising out of the transactions or subject matter of this contract may be brought by Customer more than one (1) year after the cause of action has accrued.

Fulcrum3D shall be entitled to the payment of its attorneys' fees, consultants' fees and costs and expenses in the event that Fulcrum3D is forced to defend a legal action by Customer which claim(s) is covered and/or precluded by this Section.

The remedies of the Customer set forth herein are exclusive with respect to the Product and Services and include anything done in connection with the Product and Services.

27. Delay Damages

Fulcrum3D, unless specifically stated in the quotation, shall not be responsible for delay damages to the Customer caused by Fulcrum3D's failure to timely deliver the Product. If Fulcrum3D has specifically accepted the possibility of compensating the Customer for its delay damages in its quotation, the limitations set forth in that quotation shall apply or, failing any limitations, the limit shall be 15% of the purchase order value of the specific Product in question.

Fulcrum3D shall under no circumstances be liable for late delivery damages to Customer where such late delivery has been caused by a Force Majeure Event, a suspension of the work, a change order or modification to the Product or Services requested by Customer, or any other act or omission of the Customer or its agents, contractors or subcontractors which has contributed to or resulted in the delay in question.

28. Product Transfer

In the event Customer transfers to a third party the Product or any right or interest therein, Customer agrees to indemnify, defend and hold Fulcrum3D harmless from any and all liability of Fulcrum3D to such transferee or any subsequent transferee in excess of what Fulcrum3D's liability would have been if such transferee had been bound by these Terms in the same manner as Customer.

29. Title and Risk of Loss

Risk of loss and transfer of title to the Product shall pass to the Customer upon delivery of such Product or part or as otherwise stated in these Terms.

CONFIDENTIALITY AND INTELLECTUAL PROPERTY

30. Confidentiality of Terms

These Terms are confidential between Fulcrum3D and Customer and only Customer's employees, contractors and/or agents with a "need to know" shall be privy to these Terms. Under no circumstances shall Customer reveal the content of these Terms to a competitor of Fulcrum3D.

31. Two-way Confidentiality

Customer and Fulcrum3D each agree that it will preserve and protect the confidentiality of any non-public confidential information obtained from the other (or its representatives) during the delivery of the Products and provision of the Services, and subject to any other provision of these Terms, will only use that information for the purposes of performing its obligations as outlined in these Terms.

Without limiting the generality of the foregoing, Customer and Fulcrum3D each agree: to hold confidential information of the other party in the strictest confidence; not to use such information other than in the course of delivery of the Products

and provision of the Services; not to release or disclose such information to any other person except as required by law; and not to copy such information, except as authorised by the other party or as expressly provided for in these Terms.

32. Intellectual Property

The sale by Fulcrum3D of the Product ordered hereunder does not convey to Customer any of Fulcrum3D's intellectual property, including, but not limited to: Patents, copyrights, trademarks, trade secrets, designs, software, algorithms, artwork or other proprietary rights, except Customer's (including any End User's) non-exclusive right to use such intellectual property solely for the purpose of, and only to the extent necessary for, use of the Product or Services purchased hereunder in accordance with Fulcrum3D's published specifications or user documentation.

33. Embedded Software

With respect to computer programs and algorithms embedded in Product sold to Customer hereunder ("**Embedded Software**"), Fulcrum3D grants to Customer (and any End User for the Usage Period) a perpetual, worldwide, nonexclusive license to use the Embedded Software solely as embedded in, and for execution on the specific Product originally purchased by Customer from Fulcrum3D (the "**Fulcrum3D Equipment**"). Product purchase documents, paper or electronic user documentation, and/or particular licenses purchased by Customer may specify additional limits to Customer's use of the Embedded Software. Customer's use of the Embedded Software shall be subject to all such limitations and purchase of all applicable licenses. Customer shall not transfer the license granted hereby or possession of the Embedded Software except as part of the Fulcrum3D Equipment, such transfer being subject to all of the restrictions contained herein. Fulcrum3D may terminate this license upon written notice to Customer for violation of any of the terms of the foregoing license. Fulcrum3D retains ownership of all right, title and interest (including copyright) in and to the Embedded Software.

Nothing in the agreement to which these Terms apply ("**Agreement**") constitutes a transfer or conveyance of any right, title or interest in the Embedded Software, except the limited right to use it as provided herein. The licensor(s) of third party software embedded in the Fulcrum3D Equipment shall be third party beneficiary(ies) of this Agreement, and each and every such third party licensor shall have the right to enforce this Agreement in its own name as if it were Fulcrum3D.

34. Reverse Engineering

Customer shall not, and shall ensure that its employees, End Users (including their employees) and other third parties do not, copy, replicate or reverse engineer, in whole or in part, any of Fulcrum3D's Products for any purpose whatsoever.

Customer shall not, and shall ensure that its employees, End Users (including their employees) and other third parties do not: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Embedded Software by any means whatever, or disclose any of the foregoing; (ii) modify, incorporate into or with other software, or create a derivative work of any part of the Embedded Software; (iii) attempt to circumvent any limits or other license, timing or use restrictions that are built into the Embedded Software; (iv) remove any proprietary notices, labels, or marks on or in any copy of the Fulcrum3D Equipment in which Embedded Software is embedded; (v) use any 'locked' or 'key-restricted' feature, function, service, application, operation, or capability without first purchasing the applicable license(s) and obtaining a valid key from Fulcrum3D, even if such feature, function, service, application, operation, or capability is enabled without a key; (vi) use the Embedded Software on non-Fulcrum3D equipment; (vii) use the Embedded Software in any manner

other than as expressly provided herein; or (viii) copy the Embedded Software.

35. Customer Data

All data generated by Customer or any End User in its use of the Product, together with all reports and data delivered in performance of the Services (“**Customer Data**”) is owned by Customer. Customer may transfer that Customer Data to any party including an End User, and is deemed to transfer that Customer Data in respect of a Usage Period to an End User as set out in clause 15.

Customer hereby gives, and shall procure that any End User gives, Fulcrum3D an irrevocable, non-exclusive, worldwide license to use Customer Data for its internal purposes, including for validation of performance of its Products, improvement of its Products, determining operating performance of its Products and producing and publicly disclosing information regarding validation or performance of its Products.

Fulcrum3D may use 3rd party services for the processing, storage, backup and transmission of Customer Data but otherwise may not release Customer Data to any third party (other than as necessary for performance of the Services, or to an End User) without the written consent of Customer.

TERMINATION AND CANCELLATION

36. Termination by Customer

A charge of 20% of the net purchase price shall be applied to cancellation of any formally acknowledged order. When Customer ordered modifications are being made and an order cancellation is received, the additional charges will be applied to cover cost of the modifications accrued to date of the cancellation. Notwithstanding the foregoing, Customer will not be able to terminate or cancel its order if such intended termination or cancellation is within **four (4) weeks** of the projected delivery date of the Product; in such case, Customer will be fully bound and obligated to Fulcrum3D in accordance with these Terms and the agreed upon price terms.

37. Suspension by Customer

Any orders held, delayed or rescheduled at the request of the Customer will be subject to the prices and conditions of sale in effect at the time of the release of the hold or the reschedule. Any such order held, delayed or rescheduled beyond a reasonable period of time will be treated as a Customer termination.

38. Delayed Shipment

When the Product is ready for shipment but the Customer halts or delays shipment, Fulcrum3D shall submit an invoice for the Product payable upon receipt thereof and shall, upon written notice to the Customer, store such products. In such event, the following conditions shall apply: Notwithstanding any other provision of these Terms, risk of loss of the product shall pass to the Customer upon moving such product to storage. All expenses incurred by Fulcrum3D in connection with the storage of the Product, including demurrage, the cost of preparation for storage, storage charges, insurance if placed and handling charges shall be payable by the Customer upon submission of invoices by Fulcrum3D.

39. Cancellation by Fulcrum3D

Fulcrum3D shall have the right to cancel any order at any time by written notice for any material breach of the contract or these Terms by Customer.

GENERAL PROVISIONS

40. No Set Off

Under no circumstances shall Customer withhold any monies due Fulcrum3D for the Product or otherwise, for the purpose of offsetting or discharging any obligations which Fulcrum3D may have to Customer or which the Customer may have to its Customers.

41. No Strict Construction Against the Drafter

In the event of any ambiguity or inconsistency in these Terms, said terms will be given their literal or intended meaning and will not be strictly construed against or to the detriment of the drafter.

42. Severability

Should any provision of these Terms be found to be in violation of law, the remainder of these Terms shall continue to be in full force and effect.

43. Waiver

Any waiver by Fulcrum3D of strict compliance with these Terms shall only be deemed valid where it is evidenced in writing by an authorized officer of Fulcrum3D; furthermore, Fulcrum3D's failure to enforce any provisions of these Terms shall not be construed as a waiver of Fulcrum3D's right thereafter to enforce each and every such provision.

44. Survival

All rights and obligations contained in these Terms, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of a Product order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns, including, but not limited to: Sections 1, 5, 9, 10, 11, 13, 15, 16, 17, 18, 20, 22 - 27, 33-39 of these Terms.

45. No Assignment

Neither these Terms nor any rights, interest or benefits of Customer hereunder may be assigned by Customer to any other party without the express prior written consent of Fulcrum3D.

46. Privacy

Fulcrum3D is committed to the protection of personal information in compliance with National and International Privacy Laws and in particular the Australian Privacy Amendment Act 2001.

47. Dispute Resolution and Applicable Law

These Terms and any contract for the delivery of the Products and Services are governed by the laws of the State of New South Wales, without regard to its conflict of laws provisions, and the parties agree to exclusive jurisdiction and venue in the courts of the State of New South Wales.