

GENERAL TERMS OF USE FOR ELON SMART TRIAL USERS

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause of this Agreement. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any gender include all others;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 the following terms shall have the meanings assigned to them in this clause 1.2 and cognate expressions shall have corresponding meanings, namely:

1.2.1 "**Agreement**" means these general terms, read together with the special terms;

1.2.2 "**Applicable Law**" means any law, by-law, ordinance, proclamation and/or statutory regulation which the Parties are required to observe by reason of the provision of the Product, use of or business relating to the Product and matters incidental thereto, including, but not limited to, any present or future legislation, measure, requirement, order, ordinance, rule, guideline, practice, concession, or request issued by any relevant authority, government body, agency or department, which is applicable to this Agreement;

1.2.3 "**Confidential Information**" means the terms and conditions of this Agreement, and any other information disclosed by one Party to the other, including, but not limited to, information regarding each Party's products, services, product designs, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, pre-release products and any other information which the Receiving Party knows or reasonably ought to know

is confidential, proprietary or trade secret information of the Disclosing Party;

1.2.4 **"Disclosing Party"** means the Party that disclosed Confidential Information;

1.2.5 **"Effective Date"** has the meaning given to it in the Schedule;

1.2.6 **"Intellectual Property"** means:

1.2.6.1 current and future patents, source codes, copyrights, trademarks, designs or models, trade patterns, trade names and any other type of intellectual property, including the know-how, of the Product and Software, as at the Signature Date;

1.2.6.2 any improvements after the Signature Date to any of the intellectual property referred to in clause 1.2.6.1, unless expressly indicated in writing to be excluded for purposes of this Agreement;

1.2.6.3 any further copyrights, trademarks, designs or models, trade patterns, trade names and any other type of intellectual property, including know-how, which we may make available to you after the Signature Date;

1.2.6.4 the New Intellectual Property; and

1.2.6.5 Product Data;

1.2.7 **"New Intellectual Property"** means any Intellectual Property created as a result of this Agreement, and expressly includes the Product Data and any other Intellectual Property rights pertaining to it;

1.2.8 **"Personal Information"** means personal information as defined in POPIA, being information that may be used to directly or indirectly identify a natural and juristic person, and includes, but is not limited to, the names, surnames, email addresses, identifying numbers, contact details, photograph and location;

1.2.9 **"PowerOptimal"** means PowerOptimal (Pty) Limited;

1.2.10 **"Product"** means the PowerOptimal Elon Smart Hot Water System, which includes a smart thermostat that enables water heater monitoring and

- control and solar PV power supply, including where applicable, the Software;
- 1.2.11 "**Product Data**" means any and all data shared, received, disclosed or recorded in any manner by you for purposes of this Agreement;
- 1.2.12 "**POPIA**" means the Protection of Personal Information Act 4 of 2013, and any regulations, notices and directives published in terms of the act, as amended from time to time;
- 1.2.13 "**Receiving Party**" means the Party that received Confidential Information;
- 1.2.14 "**Signature Date**" means the date of the last signature of this Agreement;
- 1.2.15 "**Site**" means the location where the Product will be installed by us and used by you, being the address specified in the special terms or in clause 3.5 below;
- 1.2.16 "**Software**" means the computer programs, software and functionality and all other Intellectual Property constituting and/or relating to the Product in its entirety;
- 1.2.17 "**Termination Date**" means the date on which this Agreement is terminated, in accordance with its terms;
- 1.2.18 "**we**" means Kwikot Haier SA (Pty) Limited; and
- 1.2.19 "**you**" means the trial user of the Product;
- 1.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.4 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.5 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own

conflicting definitions and defined terms in the special terms will have the same meaning in these terms;

- 1.6 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.7 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.8 any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be; and
- 1.9 any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

2. INTRODUCTION

- 2.1. We hold the rights to market and sell the Product to the South African market.
- 2.2. We wish to run a trial period project to test and evaluate various aspects of the Product with the aim of product improvement on a continuous basis. In terms of this project, selected trial users have been identified to use and test the Product once installed at a Site, with the expectation being that these trial users will provide feedback on the Product in respect of performance, usability, and any potential improvements required.
- 2.3. The Parties therefore agree that we will deliver and install the Product to the Site and you will use the Product on the terms of this Agreement during the Term.

3. DELIVERY AND INSTALLATION

- 3.1. We shall deliver and install the Product at the Site at our own costs, at a convenient time agreed with you. We make use of accredited professional installers to install the Product on our behalf and will ensure an installation in a safe manner that complies with all Applicable Laws.
- 3.2. You agree to allow the appointed installer all required access to install the Product and will ensure a safe environment for installation.

- 3.3. Should you experience any concern with the installation process, you must raise the concern directly with us and not engage any installer directly.
- 3.4. We shall test the installation and confirm to you once installed correctly, which would indicate the commencement date of this Agreement.
- 3.5. Should you move from the initial Site of installation, and we agree to move the Product, you and us will work together in good faith to move the Product to your new Site. We shall however have the option to cancel the Agreement immediately on notice, should we in its sole discretion determine that it is not viable to move the Product to the new Site and in which case you will not have any claim against us in this regard.

4. KWIKOT HAIER SA OBLIGATIONS

We shall:

- 4.1. deliver and install the Product, free from defects, and in a manner compliant with all Applicable Laws;
- 4.2. provide training and user materials, manuals and guides to you;
- 4.3. provide adequate information on the required data to be recorded, the manner in which to record and the time periods within which to record such data;
- 4.4. provide technical support on the usage of the Product;
- 4.5. repair or replace a faulty or defective Product at its own costs during the Term, provided the fault or defect was not caused by your or any third party's (excluding the installer) acts or omissions;
- 4.6. process all your Personal Information in compliance with Applicable Laws and as set out in clause 6 below.

5. TRIAL USER OBLIGATIONS

You agree to:

- 5.1. only use the Product for personal and residential purposes and on the terms as set out in this Agreement;
- 5.2. comply with all manufacturer's instructions and materials referred to in clause 4.2 above;
- 5.3. not remove or attempt to remove the Product from the Site;
- 5.4. apply due diligence and care in using the Product not to cause any damage or malfunctioning of the Product;

- 5.5. keep the Product insured during the Term and take all necessary steps required by its insurer in this regard;
- 5.6. record all required information and data in the prescribed manner and to submit updated and correct data at all times, acknowledging that we will use the data submitted for the purposes of enhancing and further development of the Product and its functionality;
- 5.7. provide feedback on the Product's performance, usability, and make suggestions for improvement to the extent applicable, also including the use and functionality of the mobile application used to manage the Product and Software;
- 5.8. be available for quarterly meetings to provide specific feedback in an in-person manner through electronic meetings.

6. WARRANTIES

- 6.1. We provide a manufacturing warranty of the Product.
- 6.2. You warrant that you are not prohibited in law or contract (including without limitation employment or consultancy contracts) to enter into this Agreement.

7. DATA PROTECTION AND PRODUCT DATA

- 7.1. We, and PowerOptimal, shall process all Personal Information received as a result of this Agreement, in compliance with POPIA.
- 7.2. We, and PowerOptimal, shall only use the Product Data and any Personal Information for purposes as set out in this Agreement.
- 7.3. Any queries in respect of Personal Information can be directed to our information officer at admin@poweroptimal.com.

8. NO REMUNERATION

- 8.1. You agree to provide the Product Data free of charge and that you will not receive any remuneration for participating in the project.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. We confirm that PowerOptimal has licensed us to provide the Product and Software to you on the terms of this Agreement. We warrant to you that PowerOptimal is the owner of the Intellectual Property, and they own all right, title, and interest in the Product and own all Intellectual Property pertaining to it.
- 9.2. You agree that you will not obtain any Intellectual Property rights pertaining to the Product, Software, New Intellectual Property or the Product Data, and any

improvements, derivatives, new versions, modification, upgrades or the like of the Product, will be the sole and exclusive property of PowerOptimal.

- 9.3. You hereby irrevocably transfer, convey and assign to PowerOptimal all of your right, title, and interest in and to any Intellectual Property rights resulting from this Agreement, including the Product Data.
- 9.4. PowerOptimal shall have the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary protections with respect to the Product, any improvements or modifications and all Intellectual Property rights attached to it, expressly including the New Intellectual Property and the Product Data. You agree to execute such documents, render such assistance, and take such other action as PowerOptimal may request, to apply for, register, perfect, confirm, and protect PowerOptimal's Intellectual Property rights therein, including its rights in the New Intellectual Property.

10. CONFIDENTIALITY

- 10.1. For purposes of this Agreement, "Confidential Information" means the terms and conditions of this Agreement, and any other information disclosed by one party to the other ("**Disclosing Party**"), including, but not limited to, information regarding each Party's products, services, product designs, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, pre-release products and any other information which the party receiving the information ("**Receiving Party**") knows or reasonably ought to know is confidential, proprietary or trade secret information of the Disclosing Party.
- 10.2. The Receiving Party is obliged to treat all of the Confidential Information as confidential. In addition, the existence and terms of this Agreement shall not be disclosed by any Party to any third party without the written consent of the other Party, except as may be required by law.
- 10.3. The Receiving Party may use the Confidential Information exclusively in relation to this Agreement.
- 10.4. The Receiving Party shall only disclose Confidential Information to its employees and contractors who:
 - 10.4.1. have a need to access such Confidential Information solely for purpose of this Agreement; and

- 10.4.2. have been advised of the obligations of confidentiality and are under obligations of confidentiality substantially similar to those set out in this Agreement.
- 10.5. The Receiving Party shall have no obligation to retain as confidential any information which:
 - 10.5.1. was legally in its possession or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party;
 - 10.5.2. is, or subsequently becomes, legally and publicly available without breach of this Agreement; or
 - 10.5.3. is legally obtained by the Receiving Party from a third Party source without any obligation of confidentiality.
- 10.6. Subject to the provisions of clause 10.5, the confidentiality obligations of the Receiving Party shall be perpetual and will survive the termination or expiry of this Agreement.
- 10.7. The Receiving Party may disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides the Disclosing Party:
 - 10.7.1. prior written notice of such obligation; and
 - 10.7.2. the opportunity to oppose such disclosure or obtain a protective order.

11. EXCLUSION OF LIABILITY

Subject to clause 12 below, neither Party will under any circumstances, be liable to the other Party for any direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind, penalties, actions, judgements, suits, expenses, disbursements, fines or other amounts which a Party may sustain or suffer as the result of, whether directly or indirectly, any act or omission in the course of or in connection with the implementation of this Agreement or in the course of the discharge or exercise by the Parties or their employees, agents, professional advisors or delegates of their obligations or rights in terms of this Agreement or the termination of this Agreement for any reason.

12. INDEMNITY

Each Party hereby indemnifies and holds harmless the other Party (including its shareholders, its directors and employees, in whose favour this constitutes a stipulation capable of acceptance in writing at any time) against any claim by any third party for any costs, damages (including, without limitation, direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind), penalties, actions,

judgements, suits, expenses, disbursements, fines or other amounts arising, whether directly or indirectly, from a breach of this Agreement by a Party.

13. BREACH

If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach to the extent that it is capable of being remedied, within 5 (five) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

14. EFFECT OF TERMINATION

When the Agreement terminates for any reason, you must immediately stop using the Product and provide all Product Data (whether interim or in final format), documentation, records and information pertaining to the Agreement in all formats to us. PowerOptimal shall own all Product Data.

15. ARBITRATION

15.1. Other than in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:

15.1.1. the interpretation of;

15.1.2. the carrying into effect of;

15.1.3. any of the Parties' rights and obligations arising from;

15.1.4. the termination or purported termination of or arising from the termination of; or

15.1.5. the rectification or proposed rectification of,

this Agreement, or out of or pursuant to this Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.

15.2. That arbitration shall be held:

15.2.1. with only the Parties and their representatives present;

15.2.2. at Cape Town.

- 15.3. It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 15.4. The arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 15.5. The arbitrator shall be an impartial admitted attorney or advocate whether practising or non-practising of not less than 10 (ten) years standing appointed by the Parties or, failing agreement by the Parties within 14 (fourteen) days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the President for the time being of the Western Cape Legal Practice Council (or its successor body in the Western Cape), following which the Parties shall immediately appoint such person as the arbitrator. If that person fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 15.6. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 15.7. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 15.8. The provisions of this clause 15 are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 15.9. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on the due date and/or fails to appear at the arbitration.
- 15.10. The arbitrator's award shall be final and binding on the Parties.
- 15.11. The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing shall be borne by the Parties in equal shares and shall be recoverable, as costs in the cause under the provisions of any award. The Parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the Parties in equal shares, upon receipt of invoices.

16. GENERAL

- 16.1. Entire agreement: this Agreement constitutes the whole agreement between the parties relating to the subject matter.

- 16.2. Law and jurisdiction: this Agreement and all obligations connected to it or arising from it will be governed and interpreted in terms of the laws of the Republic of South Africa.
- 16.3. No waiver: the failure of any party to insist upon or enforce strict performance of this Agreement, or to exercise any right under it will not be construed as a waiver or relinquishment of a party's right to enforce any such provision or right in any other instance.
- 16.4. Assignment: You agree not to outsource, cede or assign your rights or obligations to any third party without our prior written consent. We may outsource, cede or assign our rights and obligations.
- 16.5. Relationship between the parties: the Parties agree that neither Party is a partner or agent of the other Party and neither Party will have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party.
- 16.6. No representation: to the extent permissible by law, no party will be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 16.7. Severability: any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.
- 16.8. No stipulation: no part of this Agreement shall constitute a stipulation in favour of any person who is not a party to it unless the provision in question expressly provides that it does constitute such a stipulation.
- 16.9. Notices:
- 1.9.1 We select our physical address as set out on our website and <insert> as our email address for the service of all formal notices and legal processes in connection with this Agreement.
- 1.9.2 You select the address of the Site as your physical address and the email address provided in the special terms as your email address for the

service of all formal notices and legal processes in connection with this Agreement.

- 1.9.3 Service via email will be accepted in all cases where notice is required unless alternative service is required by law. Service via email is deemed to be received at the time and day of sending.