CONTRACT FOR SPOT PURCHASE/SALE OF AUSTRALIAN CARBON CREDITS

**CONTRACT DETAILS**

|  |  |
| --- | --- |
| 1. Trade Date:
 | [\*\**insert date*\*\*] |
| 1. Seller:
 | [\*\**Insert details*\*\*][\*\**Insert address*\*\*] |
| 1. Buyer:
 | [\*\**Insert details*\*\*][\*\**Insert address*\*\*] |
| 1. Australian Carbon Credit:
 |  ACCUs  |
| 1. Quantity:
 | [\*\**Insert number* \*\*] of Units of the Australian Carbon Credit |
| 1. Fixed Price:
 | A$[\*\**Insert price\*\**]per Unit of the Australian Carbon Credit, exclusive of GST.  |
| 1. Creation Period:
 |  ACCUs: [Issued during / before the end of \*\**insert if relevant*\*\*] or [\*\**No creation period applies*.\*\*]. |
| 1. Agreed Carbon Credit Characteristics:
 | *[\*\*insert\*\*]**[For example, \*\*An* ACCU * [from \*\**Insert Project Name and Project ID* \*\*] /
* [with a project methodology \*\* *Insert Project Methodology* e.g. *for a Vegetation Regeneration Project [Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013]/[ Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013]* \*\*] /
* [from \*\**Insert project type e.g. Agricultural / Carbon capture and Storage / Energy efficiency / Facilities / Industrial Fugitives / Landfill and alternative waste treatment / Mining, oil and gas / Savanna Burning / Transport / Vegetation / Vegetation - Regeneration*\*\*]
* [excluding \*\**Insert Excluded Projects, if any \*\**]
 |
| 1. Comparable Carbon Credit Characteristics:
 | [\*\**insert\*\**] |
| 1. Payment Date:
 | [\*\**Insert number*\*\*] Business Days [\*\**before/after*\*\*] the Delivery Date. [\*\**or\*\* the Delivery Date\*\**] |
| 1. Delivery Date:
 | [\*\**Insert date on which the Sold Australian Carbon Credit must be Delivered to the Buyer*\*\*] and if this date is not a Business Day the next Business Day after that date. |
| 1. Business Day:
 | [\*\**insert the place(s) to be specified\*\**] |
| 1. Buyer’s Registry Account:
 | [\*\**Insert details of the Buyer’s registry account or a nominee of the Buyer* \*\*] |
| 1. Seller’s Account:
 | [\*\**Insert details*\*\*] |
| 1. Default Interest Rate:
 | [*\*\*Insert the following or other agreed rate\*\**] [4%] above the RBA Cash Rate |
| 1. Settlement Disruption Longstop Date:
 | [*The date that is [\*\*insert number\*\*] Business Days’ following the occurrence of the relevant Settlement Disruption Event*.] / [*none specified*] |
| 1. Jurisdiction:
 | [*\*\*insert jurisdiction for governing law\*\**] |

This Contract comprises the Contract Details above and the Australian Carbon Credit Spot Physical Terms and Conditions (### 2023 edition) published by the Australian Financial Markets Association Ltd, which are deemed to be incorporated in this Contract.

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of **SELLER**by its authorised representative: |  | **SIGNED** for and on behalf of **BUYER**by its authorised representative: |
| Name *(print)* |  | Name *(print)* |

## Definitions

Defined terms shall have the meaning set out in the Contract Details and as set out below and in the case of any inconsistency the meaning in the Contract Details prevails. Reference to legislation or rules includes reference to that legislation or rule as amended or replaced from time to time, and any applicable regulations made thereunder.

“**ACCU**” means a Kyoto Australian carbon credit unit within the meaning of the CFI Act, issued under Division 2 of Part 11 of the CFI Act and transferable under Division 3 of Part 11 of the CFI Act.

“**Agreed Carbon Credit Characteristics**” means the attributes specified as the “Agreed Carbon Credit Characteristics” in the Contract Details, if any.

**“ANREU”** means the Australian National Registry of Emissions Units**.**

“**Applicable Act**” means for a Sold Australian Carbon Credit the Relevant Act as well as in the case of ACCUs the Registry Act.

“**Applicable Registry**” in respect of ACCUs means the ANREU.

#### "**Australian Carbon Credit**” means the Australian carbon credit specified in the Contract Details.

“**Business Day**” means any day, which is not a Saturday or Sunday, on which commercial banks are open for general business in: (i) the place(s) specified as a Business Day in the Contract Details; or (ii) if no such place is specified, the capital cities in the State or Territory of the address of the Seller and Buyer specified in the Contract Details.

“**Buyer’s Registry Account**” means the Buyer’s account at the Applicable Registry set out in the Contract Details.

“**Buyer’s Replacement Cost**” means, in respect of a failure of the Seller to Deliver a number of Sold Australian Carbon Credits (that number being the “**BRC Shortfall**”) an amount equal to:

[(SPP – FP) \* BRC Shortfall] + IB where:

SPP is the price (per Unit) (the “**Spot Purchase Price**”) that the Buyer, acting in a commercially reasonable manner, does or would, in its determination, pay in an arm’s length transaction entered into on the first Business Day after the Delivery Date for a number of Sold Australian Carbon Credits, or if not able to be sourced, Comparable Carbon Credits equivalent to the BRC Shortfall to be Delivered on the Business Day on which those Sold Australian Carbon Credits or Comparable Carbon Credits would be Delivered in accordance with prevailing market practice under a spot transaction entered into on the first Business Day after the Delivery Date;

FP is the Fixed Price as set out in the Contract Details; and

IB is interest at the Default Interest Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination under clause 7(a)) on an amount equal to the product of the BRC Shortfall and an amount equal to the excess, if any, of the Spot Purchase Price over the Fixed Price (.

“**CFI Act**” means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

“**Comparable Carbon Credits**” means, in respect of an Australian Carbon Credit:

1. an Australian Carbon Credit that meets the attributes (if any) specified in the Contract Details as the “Comparable Carbon Credit Characteristics”; or
2. if the relevant Australian Carbon Credit is an ACCU, if no such attributes are specified as “Comparable Carbon Credits Characteristics” or “Agreed Carbon Credit Characteristics”, any ACCU with the same Creation Period.

#### “**Deliver**” means when a Sold Australian Carbon Credit is actually transferred and received in the Buyer’s Registry Account in accordance with the Applicable Acts (and **Deliver**, **Delivers**, **Deliverable** and **Delivery** will be construed accordingly).

“**NGER Act**” means the *National Greenhouse and Energy Reporting Act 2007* (Cth).

“**RBA Cash Rate**” means on any day, the rate most recently published by the Reserve Bank of Australia as its “RBA Interbank Overnight Cash Rate (AONIA)”.

“**Registry Act**” means the *Australian National Registry of Emissions Units Act 2011* (Cth).

“**Relevant Act**” means in the case of: ACCUs, the CFI Act and the NGER Act.

"**Requirements under the Scheme**” means a party satisfying the applicable warranties in clauses 9(b) and 9(c).

“**Scheme**” means in the case of: ACCUs, the Relevant Act.

“**Seller’s Replacement Cost**” means, in respect of a failure of the Buyer to accept Delivery of a number of Sold Australian Carbon Credits (the “**SRC Shortfall**”), an amount equal to:

[(FP – SSP) \* SRC Shortfall] + IS

**FP** is the Fixed Price as set out in the Contract Details;

**SSP** is an amount equal to the price (per Unit) (the “**Spot Sale Price**”) the Seller, acting in a commercially reasonable manner, does or would, in its determination, receive in an arm’s length transaction entered into on the first Business Day after the Delivery Date for a number of Sold Australian Carbon Credits or, if not able to be sourced, Comparable Australian Carbon Credits equal to the SRC Shortfall to be Delivered on the first Business Day after the Delivery Date or, if later, the Business Day on which those Australian Carbon Credits would be Delivered in accordance with prevailing market practice under a spot transaction entered into on the first Business Day after the Delivery Date; and

**IS** is interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination under paragraph 7(b) on an amount equal to the product of the SRC Shortfall and an amount equal to the excess, if any, of the Fixed Price over the Spot Sale Price.

#### “**Settlement Disruption Event**” means an event beyond the control of the party affected as a result of which the Sold Australian Carbon Credit cannot be Delivered in accordance with clause 2.

“**Settlement Disruption Longstop Date**” means (i) the date described in the Contract Details as the “Settlement Disruption Longstop Date”; or (ii) if no such date is specified, the date that is the earlier of: (A) four Business Days before the Surrender Date (if any), and (B) four Business Days after the Delivery Date, in each case, following the occurrence of the relevant Settlement Disruption Event.

“**Sold Australian Carbon Credit**” means the Quantity of the Australian Carbon Credit, satisfying the Creation Period requirement and having the Agreed Carbon Credit Characteristics.

"**Surrender Date**” means the date (if any) on which the Sold Australian Carbon Credit must be surrendered, relinquished or acquitted under or for the purposes of the applicable Scheme.

“**Unit**” means in relation to ACCUs, one ACCU.

## Sale and Purchase

#### Physical settlement (and not cash settlement) is applicable to this Contract.

#### On the Delivery Date the Seller must Deliver the Sold Australian Carbon Credit to the Buyer in accordance with the terms of this Contract.

#### The Seller must perform or cause to be performed all steps required to transfer the Sold Australian Carbon Credit to the Buyer’s Registry Account under the Applicable Act.

#### The Buyer must perform or cause to be performed all steps required to accept the transfer of the Sold Australian Carbon Credit in the Buyer’s Registry Account under the Applicable Act.

## Settlement Disruption Event

#### Subject to clause 3(b), if a Settlement Disruption Event prevents Delivery of some or all of the Sold Australian Carbon Credits (“**Affected Carbon Credits**”) on the Delivery Date, then the Delivery Date for those Affected Carbon Credits will be the first succeeding Business Day on which Delivery of the Affected Carbon Credits can take place and if the Payment Date specified falls after the Delivery Date, the Payment Date will be extended by a corresponding number of days in respect of the Affected Carbon Credits.

#### If a Settlement Disruption Event is continuing on the Settlement Disruption Longstop Date, then either party may terminate this Contract upon written notice to the other party, without liability to any party.

## Transfer Fees

All expenses of the transfer and Delivery of a Sold Australian Carbon Credit (including stamp duty and registration fees) will be payable by the Buyer. If the Seller is required by the Applicable Act to pay any transfer fee or other similar expense associated with the transfer of the Sold Australian Carbon Credit, the Buyer shall reimburse such expense on demand.

## Payment

#### The Seller must issue the Buyer with a valid tax invoice for an amount equal to the Fixed Price multiplied by the Sold Australian Carbon Credit (“**Payment Amount**”).

#### The Buyer must pay to the Seller the Payment Amount by transferring the Payment Amount to the Seller’s Account on the Payment Date.

#### If on the Delivery Date, there is a BRC Shortfall or SRC Shortfall (each a “**Unit Shortfall**”), the Buyer’s obligation to pay the Payment Amount pursuant to clause 5(a) shall be reduced by an amount equal to the Unit Shortfall multiplied by the Fixed Price and the Seller shall adjust the tax invoice accordingly (or as otherwise agreed). Clause 7 will apply in respect of the Unit Shortfall .

#### All payments under this Contract shall be made by direct bank transfer in immediately available funds without any deduction or withholding, except to the extent expressly permitted under this Contract

## Interest

Interest at the Default Interest Rate is payable by the payor to the payee on any late payment, from (and including) the date that payment is due until (and excluding) the date that payment is made.

## Failure to Deliver

#### If the Seller fails to Deliver a number of Units of the Sold Australian Carbon Credit to the Buyer on the Delivery Date (“**BRC Shortfall**"), other than as a result of a Settlement Disruption Event or the failure of the Buyer to comply with either clause 2(d) or the Requirements under the Scheme, then the Buyer may, if the failure is continuing, by written notice to the Seller, terminate the parties’ obligations with respect to the number of Units not Delivered on the Delivery Date and if the Buyer does so, the Seller must pay to the Buyer an amount equal to the Buyer’s Replacement Cost (if a positive number), adjusted to take into account any amount paid by the Buyer to the Seller for any Australian Carbon Credits that have been paid for and not Delivered, such payment to be made by the Seller to the Buyer no later than one Business Day after receiving the invoice for the amount to be paid to the Buyer.

#### If the failure to Deliver occurs as a result of the failure of the Buyer to accept Delivery of a number of Units (“**SRC Shortfall**”) including arising from the Buyer’s failure to comply with either clause 2(d) or the Requirements under the Scheme, the Seller may, if the failure is continuing, by written notice to the Buyer, terminate the parties’ obligations with respect to the number of Units not Delivered on the Delivery Date and if the Seller does so, the Buyer must pay to the Seller an amount equal to the Seller’s Replacement Cost (if a positive number), adjusted to take into account any amount paid by the Buyer to the Seller for any Australian Carbon Credits that have been paid for and not Delivered, such payment to be made by the Buyer to the Seller no later than one Business Day after receiving the invoice for the amount to be paid to the Seller.

#### Notwithstanding a failure to Deliver under paragraphs 7(a) and (b), for the avoidance of doubt in the event of a partial delivery, the Buyer must pay to the Seller on the Payment Date an amount equal to the Fixed Price (per Unit) multiplied by the number of Units (if any) that the Seller Delivers to the Buyer on the Delivery Date.

#### Except to the extent included in the Buyer’s Replacement Cost or the Seller’s Replacement Cost neither party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise, for any business interruption or loss of use, profits, contracts, production or revenue or for any consequential or indirect loss or damage of any kind however arising for a failure to Deliver under this clause 7.

## Title

Title to a Sold Australian Carbon Credit Delivered in accordance with this Contract will transfer to the Buyer when the Sold Australian Carbon Credit is received in the Buyer’s Registry Account.

## Warranties

#### The Seller warrants that, at the time it Delivers the Sold Australian Carbon Credit to the Buyer under this Contract that:

##### to the best of its knowledge having made reasonable and proper enquiries the Sold Australian Carbon Credit has been issued in accordance with the applicable Scheme and satisfies the Creation Period requirement and Agreed Carbon Credit Characteristics for the Sold Australian Carbon Credit; and

##### it has full legal and beneficial title to the Sold Australian Carbon Credit and it transfers the same free and clear of any security interest, claim, lien or encumbrance of any kind.

#### The Buyer warrants that at the time of Delivery to the Buyer, it (or its nominee) has a valid and operational Buyer Registry Account to receive the Sold Australian Carbon Credit to be Delivered to the Buyer under this Contract.

#### At the time of Delivery of the Sold Australian Carbon Credit the Buyer and Seller each warrant to the other that:

##### it will conduct its affairs so as not to give any person having authority to do so, reason to block, suspend, refuse, reject or cancel the transfer (whether in whole or in part) of the Sold Australian Carbon Credit; and

##### it will comply with the Applicable Acts to the extent necessary to permit the Delivery by it or its acceptance of the Delivery of the Sold Australian Carbon Credit.

## GST

If a party (the "**supplier**"):

#### is liable to pay goods and services tax (“**GST**”) on a supply made by it under this Contract; and

#### issues a valid tax invoice to the recipient,

#### then the recipient agrees to pay to the supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate (without deduction or set off):

#### if the tax invoice is issued prior to the due date for payment, on the due date for payment; or

#### if the tax invoice is issued on or after the due date for payment, within ten days after the issue of the tax invoice.

The supplier agrees to issue a valid adjustment note within seven days of becoming aware that the actual amount of GST payable by it on the supply differs from the amount paid by the recipient. Payment adjustments must then be made between the parties within two Business Days to reflect the actual amount of GST payable.

All references have the same meaning as provided in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

## Withholding tax

If the Buyer is required by law to withhold from a payment to be made to the Seller it must:

#### make those deductions or withholdings (or both);

#### pay the full amount deducted or withheld as required by relevant law;

#### give the Seller a receipt for each payment; and

#### increase its payment to the Seller to an amount which will result in the Seller receiving the full amount which would have been received if no deduction or withholding has been required, except where the deduction or withholding:

##### arises under or in connection with FATCA; or

##### it can be lawfully avoided by the Seller providing the Buyer with its Australian Business Number.

#### In this clause 11 FATCA means the *Foreign Account Tax Compliance Act* provisions, sections 1471 through 1474 of the United States Internal Revenue Code (including any regulations or official interpretations issued, agreements entered into or non-US laws enacted with respect to those provisions).

## Governing law and jurisdiction

This contract is governed by the law of the jurisdiction specified in the Contract Details. Each party submits to the non-exclusive jurisdiction of the courts in that jurisdiction and courts of appeal from those courts.