

**Jarden Australia Environmental Products Spot Physical Terms and Conditions (based on the Environmental Products Spot Physical Terms and Conditions (September 2024 edition) published by the Australian Financial Markets Association Ltd**

**1 Definitions**

Defined terms shall have the meaning set out in the Contract Note and as set out below and in the case of any inconsistency the meaning in the Contract Note prevails to the extent of the inconsistency. 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 Environmental Product Characteristics”** means the attributes specified as the “Agreed Environmental Product Characteristics” for that Environmental Product in the Contract Note, if any.

**“Business Day”** means any day, which is not a Saturday or Sunday, on which commercial banks are open for general business in Sydney Australia.

**“Buyer’s Registry Account”** means the account set out in the Contract Note and established and maintained by the Buyer (or any nominee identified in the Contract Note or otherwise approved in writing by the Seller) at the relevant registry into which the holding and transfer of the relevant Environmental Product is to be recorded.

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

$$[(SPP - FP) * BRC Shortfall] + IB \text{ where:}$$

**SPP** is the price (per Unit) (the **“Spot Purchase Price”**) that the Buyer, acting in a commercially reasonable manner, does pay or determines that it would pay or would have paid, in each case, in an arm’s length transaction entered into on the Delivery Date (or, if that would not be commercially reasonable, the earliest Business Day following the Delivery Date as would be commercially reasonable) (the Delivery Date or such other Business Day if applicable being the **“Relevant Date”**) for a number of Comparable Environmental Products equal to the BRC Shortfall to be Delivered on the Relevant Date or, if later, the Business Day on which those Comparable Environmental Products would be Delivered in accordance with prevailing market practice under a spot transaction entered into on the Relevant Date;

**FP** is the Fixed Price (per Unit) as set out in the Contract Note;

**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 (per Unit).

**“CER”** means a certified emission reduction as defined in section 4 of the Registry Act and transferable under section 34 of the Registry Act.

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

**“Claim”** means any net zero, carbon neutral or other claim made by the Buyer or any subsequent transferee to have offset their emissions.

**“Clean Development Mechanism”** means the mechanism as defined under Article 12 of the Kyoto Protocol.

**“Comparable Environmental Products”** means, in respect of an Environmental Product:

- (i) an Environmental Product that meets the attributes (if any) specified in the Contract Note as the “Comparable Environmental Product Characteristics”; or
- (ii) if no such attributes are specified, an Environmental Product issued under the same Scheme with materially similar “Agreed Environmental Product Characteristics” or such other attributes as the parties may agree; or
- (iii) if the relevant Environmental Product is an ACCU or SMC, if no such attributes are specified as “Comparable Environmental Products Characteristics” or “Agreed Environmental Product Characteristics”, any ACCU or SMC,

in each case as determined in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result by (1) in respect of the Seller’s Replacement Cost, the Seller, and (2) in respect of the Buyer’s Replacement Cost, the Buyer.

**“Deliver”** is defined as follows. An Environmental Product is taken to be Delivered (and **Deliver, Delivers, Deliverable** and **Delivery** will be construed accordingly) when:

- (i) if “Retirement” does not apply in respect of this Contract, the Environmental Product is actually transferred and received in the Buyer’s Registry Account in accordance with each applicable Relevant Act; or
- (ii) if Retirement applies in respect of this Contract, by no later than the Delivery Date:
  - (A) the Seller has instructed the relevant registry to and made reasonable efforts to ensure that the registry does, in accordance with the applicable Relevant Act:
    - (aa) irrevocably Retire the relevant Environmental Products in accordance with the Retirement procedures specified by the relevant rule of the Scheme; and

(bb) record the relevant Environmental Products as Retired or otherwise cancelled in the name of the Buyer on the registry;

(B) the Seller has notified the registry of any information reasonably requested by the Buyer in accordance with clause 2(e) in connection with the Retirement of the Environmental Products; and

(C) those instructions and that notification have been given in a manner which is effective to facilitate the Retirement of the relevant Environmental Products in accordance with the Retirement procedures specified by the relevant rules of the Scheme.

**"Delivery Time"** means 2.00 p.m. Australian Eastern Standard Time (AEST).

**"Environmental Product"** means any of ACCUs, CERs ESCs, RFCs, GRECs, LGCs, PRCs, STCs, SMCs, VEECs, VERS and VCUs.

**"ESC"** means an energy savings certificate created in accordance with the requirements of Division 7 of part 1 of Schedule 4A to the NSW ESA and duly registered under Division 9 of Part 1 of Schedule 4A to the NSW ESA.

**"Gold Standard"** means the international, voluntary carbon offset standard which issues carbon offsets for verified projects and is governed by the "Gold Standard for the Global Goals", being a suite of governing documents covering eligibility requirements for project registration and certification, methodology approval process and emission reduction calculation methods.

**"GREC"** means an LGC created in accordance with the requirements of the Program in respect of a generator accredited under the Program and which is capable of being used to claim eligible Green Power generation in accordance with the Program.

**"Green Power"** takes its meaning from the Program.

**"Kyoto Protocol"** means International treaty signed in 1997 that operationalises the UNFCCC by committing signatories to limit and reduce greenhouse gas emissions in accordance with agreed individual targets

**"LGC"** means a large-scale generation certificate created under Subdivision A of Division 4 of Part 2 of the REC Act, duly registered under Division 5 of Part 2 of the REC Act and transferable under Division 6 of Part 2 of the REC Act and also includes certificates created under the REC Act which are to be treated as LGCs under the transitional provisions.

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

**"NSW ESA"** means the *Electricity Supply Act 1995* (NSW).

**"PRC"** means a peak reduction certificate created in accordance with the requirements of Division 6 of Part 2 of Schedule 4A to the NSW ESA and duly registered under Division 8 of Part 2 of Schedule 4A to the NSW ESA.

**"Program"** means the National GreenPower Accreditation Program in force from time to time established by various government agencies collectively known as the "National GreenPower Steering Group".

**"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)".

**"REC Act"** means the *Renewable Energy (Electricity) Act 2000* (Cth).

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

**"Relevant Act"** means in the case of: (i) ESCs, RFCs and PRCs – the NSW ESA; (ii) GRECs – the REC Act and the Program; (iii) LGCs or STCs – the REC Act; (iv) VEECs – the VEET Act; (v) ACCUs, the CFI Act, the Registry Act and the NGER Act; (vi) SMCs – the Registry Act and the NGER Act, (vii) CERs- the Registry Act and the Clean Development Mechanism; (viii) VERS-the Gold Standard and (ix) VCUs -the VCS.

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

**"Retire", "Retired" and "Retirement"** means the permanent removal of an Environmental Product from circulation pursuant to each applicable Relevant Act.

**"RFC"** means a renewable fuel certificate created in accordance with the requirements of Division 6 of Part 3 of Schedule 4A of the NSW ESA and duly registered under Division 8 of Part 3 of Schedule 4A of the NSW ESA prior to the applicable Delivery Date.

**"Scheme"** means in the case of: (i) GRECs – the Program; (ii) ACCUs, CERs SMCs, ESCs, PRCs, RFCs, LGCs, STCs and VEECs – the Relevant Act; (iii) VERS the Gold Standard and (iv) VCUs the VCS.

**"Seller's Replacement Cost"** means, in respect of a failure of the Buyer to accept Delivery of a number of Units (that number being the **"SRC Shortfall"**), an amount equal to:

$$[(FP - SSP) * SRC Shortfall] + IS$$

**FP** is the Fixed Price (per Unit) as set out in the Contract Note;

**SSP** is the price (per Unit) (the **"Spot Sale Price"**) that the Seller, acting in a commercially reasonable manner, does receive or determines that it would receive or would have received, in each case, in an arm's length transaction entered into on the Delivery Date (or, if that would not be commercially reasonable, the earliest Business Day following the Delivery Date as would be commercially reasonable) (the Delivery Date or such other Business Day if applicable being the **"Relevant Date"**) for a number of Comparable Environmental Products equal to the SRC Shortfall to be Delivered on the Relevant Date or, if later, the Business Day on which those Comparable Environmental Products would be Delivered in accordance with prevailing market practice under a spot transaction entered into on the Relevant Date;

**IS** is interest at the Default Interest 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 (per Unit) 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 Environmental Product 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 Environmental Product**” means the Quantity of the Environmental Product, satisfying the Creation Period requirement and having the Agreed Environmental Product Characteristics.

“**SMC**” means a safeguard mechanism credit unit issued in accordance with Subdivision A of Division 4A of Part 3H of the NGER Act and transferable under Part 4 of the Registry Act.

“**STC**” means a small-scale technology certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P of Division 4 of Part 2A of the REC Act duly registered under Division 5 of Part 2 of the REC Act and transferable under Division 6 of Part 2 of the REC Act.

“**Surrender Date**” means the date (if any) on which the Sold Environmental Product must be surrendered, relinquished or acquitted under or for the purposes of the applicable Scheme (including for the purposes of avoiding a penalty charge or fine).

“**Unit**” means, in relation to an Environmental Product, one certificate (except for ACCUs where it means one ACCU and SMCs where it means one SMC).

“**VCU**” means a verified carbon unit which has been verified and issued in accordance with the VCS.

“**VCS**” means the verified carbon standard administered by Verra and governed by the following documents:

- (a) the VCS Program Guide, which describes the rules and requirements governing the VCS program;
- (b) the VCS Standard, which provides the requirements for the development, validation, monitoring and verification of projects; and
- (c) the VCS Methodology Requirements, which provides the rules for developing new VCS methodologies.

“**VEEC**” means a certificate created under Division 3 of Part 3 of the VEET Act and registered and transferable under Division 4 of Part 3 of the VEET Act.

“**VEET Act**” means the *Victorian Energy Efficiency Target Act 2007* (Vic).

“**VER**” means a voluntary emission reduction which is Gold Standard verified.

## 2 Sale and Purchase

- (a) Physical settlement (and not cash settlement) is applicable to this Contract.
- (b) On the Delivery Date the Seller must Deliver the Sold Environmental Product to the Buyer in accordance with the terms of this Contract by the Delivery Time.
- (c) The Seller must perform or cause to be performed all steps required to Deliver the Sold Environmental Product to the Buyer’s Registry Account under the Relevant Act, including without limitation, any mandatory notification of the transfer of the Sold Environmental Product under the Relevant Act to effect such transfer or Retiring any Units in accordance with the instructions provided by the Buyer.
- (d) The Buyer must perform or cause to be performed all steps required to accept the Delivery of the Sold Environmental Product under the Relevant Act, including, without limitation, any mandatory acceptance of the transfer of that Environmental Product under the Relevant Act to effect acceptance of such transfer or

providing any information for the Retirement of the Units.

- (e) If “Retirement” applies in respect of this Contract, in the Contract Note:
  - (A) any information required by the relevant registry under the Relevant Act in order for the Environmental Products to be Retired must be specified; and
  - (B) information that is capable of being recorded in accordance with the format requirements of the relevant registry under the Relevant Act in respect of the Retirement of the Environmental Products may (but need not) be specified; and
- (f) If “Retirement” applies in respect of this Contract, the Buyer may request, acting reasonably, that the Seller provide such evidence of the Retirement as is customary for the market and the Seller will provide such evidence to the extent reasonably practicable to do so.
- (g) If “Retirement” applies in respect of this Contract, each party acknowledges and agrees that, upon a Sold Environmental Product being recorded by the relevant registry in accordance with the Relevant Act as Retired, to the extent possible under each applicable Relevant Act:
  - (i) all legal and beneficial title held by such party in that Environmental Product shall be extinguished; and
  - (ii) no further transfer of that Environmental Product may be made and that Environmental Product shall become non-transferable.

## 3 Settlement Disruption Event

- (a) Subject to clause 3(b), if a Settlement Disruption Event prevents Delivery of the Sold Environmental Product on the Delivery Date, then the Delivery Date will be the first succeeding Business Day on which Delivery of the Sold Environmental Product 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.
- (b) 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.

## 4 Transfer Fees

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

## 5 Payment

- (a) The Seller must, where GST is applicable, issue the Buyer with a valid tax invoice for an amount equal to the Fixed Price multiplied by the Sold Environmental Product (“**Payment Amount**”).

- (b) The Buyer must pay to the Seller the Payment Amount by transferring the Payment Amount to the Seller's Account on or before the Payment Date.
- (c) 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.
- (d) 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

## 6 Interest

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

## 7 Failure to Deliver

- (a) If the Seller fails to Deliver a number of Units of the Sold Environmental Product 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 previously paid by the Buyer to the Seller for any Environmental Products that have been paid for and not Delivered, with such payment to be made by the Seller to the Buyer no later than one Business Day of receiving the invoice for the amount to be paid to the Buyer.
- (b) 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 previously paid by the Buyer to the Seller for any Environmental Products that have been paid for and not Delivered, with such payment to be made by the Buyer to the Seller no later than one Business Day of receiving the invoice for the amount to be paid to the Seller.
- (c) 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.
- (d) 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.

## 8 Title

If "Retirement" does not apply in respect of this Contract, title to the Sold Environmental Product Delivered in accordance with this Contract will transfer to the Buyer when the Sold Environmental Product is received in the Buyer's Registry Account.

## 9 Warranties and general

- (a) The Seller warrants that, at the time it Delivers the Sold Environmental Product to the Buyer under this Contract that:
  - (i) to the best of its knowledge having made reasonable and proper enquiries the Environmental Product has been issued in accordance with the applicable Scheme and satisfies the Creation Period requirement and Agreed Environmental Product Characteristics for the Sold Environmental Product; and
  - (ii) it has full legal and beneficial title to the Sold Environmental Product and it transfers the same free and clear of any security interest, claim, lien or encumbrance of any kind.
- (b) The Buyer warrants that, unless "Retirement" applies in respect of this Contract, at the time of Delivery to the Buyer, it (or its nominee) has a valid and operational Buyer's Registry Account to receive the Sold Environmental Product to be Delivered to the Buyer under this Contract.
- (c) At the time of Delivery of the Sold Environmental Product the Buyer and Seller each warrant to the other that:
  - (i) 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 Environmental Products to be Delivered under this Contract; and
  - (ii) it will comply with the Relevant Act relating to the Sold Environmental Product to be Delivered under this Contract.
- (d) Once a Sold Environmental Product has been Retired, the Buyer:
  - (i) shall not exercise or purport to exercise any right under, or interest in, or otherwise use, that Environmental Product;
  - (ii) acknowledges that no person has any further right to take the benefit of that Environmental Product;
  - (iii) shall have no recourse to the Seller in respect of any Claims which are erroneously made by the Buyer in respect of that Environmental Product and the Seller shall bear no liability for any erroneous Claims made by the Buyer in respect of that Environmental Product; and
  - (iv) shall not make any Claim in relation to that Environmental Product to the extent that the Claim is inconsistent with a Claim specified in the instructions provided to the Seller under this contract and recorded on the relevant registry, other than in the context of claiming the benefit of having offset its emissions in connection with that Environmental Product.

## 10 GST

If a party (the "supplier"):

- (a) is liable to pay goods and services tax ("GST") on a supply made by it under this Contract; and
- (b) 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):

- (c) if the tax invoice is issued prior to the due date for payment, on the due date for payment; or
- (d) 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) unless the context makes it clear that a different meaning is intended.

## 11 Withholding tax

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

- (a) make those deductions or withholdings (or both);
- (b) pay the full amount deducted or withheld as required by relevant law;
- (c) give the Seller a receipt for each payment; and
- (d) 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:
  - (i) arises under or in connection with FATCA; or
  - (ii) it can be lawfully avoided by the Seller providing the Buyer with its Australian Business Number.
- (e) 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).

## 12 Governing law and jurisdiction

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