

TERMS AND CONDITIONS FOR TEM ONLINE CARBON OFFSET PLATFORM

Effective as of 24 May 2023

1 Introduction

- 1.1 These Terms and Conditions (**Terms**) govern the conditions upon which you (**Buyer**) may access and use the Tasman Environmental Markets Australia Pty Ltd (**TEM**) online carbon offset platform and any related assets, software or websites (**Platform**) to submit orders to purchase a specified quantity of carbon credits (**Credits**) at the price listed on the Platform (**Order**).
- 1.2 TEM has created the Platform to provide a venue for Buyers to find and learn about Credits, and to place Orders to purchase Credits from select projects located around the world.
- 1.3 These Terms constitute a legally binding contract between the Buyer and TEM, which the Buyer:
- (1) expressly accepts by electronically signing these Terms—which occurs when the Buyer clicks any prompt on the Platform which reads 'I have fully read, understand, and agree to be bound by these Terms and Conditions'; or
 - (2) is deemed to accept by engaging in any of the following conduct:
 - (a) accessing or using the Platform;
 - (b) creating a Buyer user account on the Platform (**Account**);
 - (c) placing an Order; or
 - (d) otherwise purchasing any Credits.
- 1.4 The Buyer acknowledges and agrees that these Terms may be updated by TEM from time to time. TEM will make any updated Terms available on the Platform and may send a notice of any such updates to the email address specified on the Account of the Buyer. If the Terms have been updated, the Buyer will be prompted to accept the updated Terms in the manner described in clause 1.3(1) when placing an Order for Credits.
- 1.5 These Terms take effect and apply on and from the effective date specified at the top of these Terms.

2 Orders

- 2.1 Buyers with an Account may use the Platform to place Orders to purchase a specified quantity of Credits at the price listed on the Platform (**Price**).
- 2.2 Upon receipt of an Order, TEM may accept the Order by way of TEM issuing the Buyer with an invoice for the quantity of Credits specified in the Order at the Price (**Invoice**).

- 2.3 If TEM provides an Invoice to the Buyer, TEM will do so by providing it in at least one or more of the following manners, as determined by TEM in its sole discretion:
- (1) making the Invoice accessible to be viewed by the Buyer from their Account; or
 - (2) sending the Invoice to the email address specified on the Account of the Buyer.
- 2.4 TEM reserves the right to accept or reject any Order, in whole or in part, in its sole and absolute discretion.
- 2.5 Subject to clause 2.6, once TEM accepts an Order, TEM will reserve the relevant Credits on the Platform so that they cannot be purchased or retired by any other party.
- 2.6 If TEM has accepted an Order, and:
- (1) If some or all of the Credits are simultaneously reserved, or are otherwise out of stock, such that they are no longer available to be retired by TEM in favour of the Buyer, TEM will cancel or vary the Order to the extent necessary; and
 - (2) If the Buyer fails to make payment of the Invoice by the time specified in clause 3.1, the Order may be cancelled by TEM.
- 2.7 For the avoidance of doubt, TEM will notify the Buyer in writing if any Order is varied or cancelled after an Order has been accepted by TEM.
- 2.8 If an Order is cancelled or varied by TEM, TEM shall not be liable to the Buyer for any direct or indirect damage or loss (including consequential loss) the Buyer may suffer in connection with the cancellation, deferral or variation of the Order.
- 2.9 The Buyer may not cancel or vary any Order accepted by TEM without the prior written consent of TEM.
- 3 Payment**
- 3.1 The Buyer shall pay each Invoice issued by TEM within three (3) Business Days of receipt.
- 3.2 Each Invoice shall be paid by means of direct electronic transfer into TEM's bank account, as specified on the Invoice. Payment occurs when the amount specified on the Invoice is credited to TEM's bank account as fully cleared funds.
- 3.3 Where the total price of an Order is less than \$5,000, TEM may (but is not obliged to) allow the Buyer to pay the Invoice with a credit card via Stripe or any other payment service nominated in writing by TEM from time to time.
- 3.4 Any payments made by the Buyer pursuant to these Terms or any Invoice must be in Australian dollars. The parties further agree that:

- (1) if any payment is made to TEM in any other currency, TEM may accept or reject the payment in its sole discretion and, if it is accepted, may charge the Buyer such administrative and currency exchange fees as are required to convert the currency into Australian dollars or are otherwise reasonable in the circumstances;
- (2) if any currency conversion process results in a shortfall, the Buyer will immediately pay the outstanding balance; and
- (3) if any currency conversion process results in an excess, TEM will refund the excess to the Buyer (less any charges or fees referred to in clause 3.4(1)).

3.5 The Buyer acknowledges and agrees that TEM is not liable to Retire Credits pursuant to any Order unless and until payment of the relevant Invoice is received in full in the manner described in this clause 3 of these Terms.

4 Credit Retirement

4.1 Once an Order is accepted by TEM and the Invoice is paid by the Buyer in accordance with clause 3 of these Terms, the Credits purchased by the Buyer will be Retired by TEM on the Registry in accordance with the Scheme Rules and the Registry Rules in the following manner:

- (1) TEM will publicly Retire the Credits in the Registry in accordance with the Registry Rules:
 - (a) such that they will not be available for purchase by any other buyer; and
 - (b) to display words substantively corresponding with the following "Retired on behalf of TEM's online clients for the period of [DD/MM/YY] through [DD/MM/YY]."
- (2) TEM will issue a generic certificate of Retirement (**Certificate**) to the Buyer (which may be downloaded by the Buyer in PDF format) that details the Credits Retired on behalf of the Buyer in that calendar month as described in clause 4.2 of these Terms.

4.2 Subject to clause 4.3 and unless otherwise specified by TEM in writing, the Retirement of purchased Credits contemplated by clause 4.1 shall occur:

- (1) on a date nominated by TEM, in its sole discretion, in the next calendar month following the calendar month in which the Invoice is paid; and
- (2) in a bundle alongside all other Orders received by TEM in the calendar month in which the Order specified in clause 4.2(1) above was submitted.

4.3 Where the Buyer has purchased a company-specific retirement certificate, the Retirement of purchased Credits contemplated by clause 4.1 shall occur:

- (1) within 10 business days of Invoice payment by the Buyer; and
- (2) in isolation of other Orders received by TEM.

5 Ledger

- 5.1 TEM will maintain an internal ledger on the Platform that details the volume of Credits which have been Retired for the Buyer in accordance with clause 4 (**Internal Ledger**). The Internal Ledger will record the amount of Credits Retired, the Buyer that the Credits were Retired on behalf of, and the projects that the Credits were issued in relation to. The Internal Ledger will not include any financial information of the Buyer. TEM may make this Internal Ledger available to relevant external parties, as determined by TEM in its sole discretion, such as Climate Active.
- 5.2 TEM will maintain a public client list on the Platform, being a streamlined and consumer-friendly version of the Internal Ledger (**External Ledger**). The External Ledger will detail the following:
- (1) the Buyer's name;
 - (2) the projects the Buyer has purchased Credits in relation to;
 - (3) the volume of Credits the Buyer has purchased for each such project (measured in tonnes of carbon emissions saved);
 - (4) the date of Retirement for each Credit; and
 - (5) the Certificate (for that month).

6 Refunds

- 6.1 The Credits purchased by Buyers and Retired by TEM in accordance with clause 4 cannot be recirculated or resold and are therefore non-refundable.

7 TEM Warranties

- 7.1 TEM warrants that, at the time of acceptance of the Order and at the time of Retirement pursuant to clause 4, the Credits:
- (1) have been created, and will be Retired, in accordance with the requirements of the Scheme Rules and the Registry Rules;
 - (2) are owned by TEM with full legal and beneficial title; and
 - (3) are free and clear of any security interest, claim, lien or encumbrance of any kind.
- 7.2 Notwithstanding anything to the contrary in these Terms:
- (1) TEM does not warrant or represent that the Buyer's use of the Platform will be uninterrupted or error free; and
 - (2) TEM does not make any specific promises or undertake any responsibility or liability in relation to:
 - (a) the availability of Credits on the Platform;
 - (b) the reliability, capability, or qualifications of any project or certification body listed on the Platform; or

- (c) the information and assessments received in good faith from third parties and displayed on the Platform or elsewhere by TEM including, but not limited to, project developers and/or project participants.

8 Buyer Warranties

8.1 By placing an Order the Buyer warrants and represents that:

- (1) they have read the relevant project listing, including its description, and the specifications of the Credits before submitting the Order;
- (2) all information they provide pursuant to these Terms is true, accurate, complete and up-to-date in every material respect (including any information they provide specifying whether they are a wholesale or retail client);
- (3) if they are a natural person—they are 18 years of age or older and legally capable of transacting with TEM in accordance with these Terms;
- (4) if they are a body corporate—they are duly incorporated and registered in the place of their incorporation and are authorised and capable of transacting with TEM in accordance with these Terms;
- (5) they will comply with all Applicable Laws and any other terms and conditions, policies and guidelines notified to them by TEM in writing; and
- (6) they understand they cannot (and they will not attempt to) sell, resupply, assign or transfer any Credits they purchase, or any benefits associated with the same, to any third party.

9 GST

9.1 If a party (for the purposes of this clause 9, the **Supplier**):

- (1) is liable to pay goods and services tax (**GST**) on a supply made by it under these Terms;
- (2) certifies to the party receiving the goods or services (for the purposes of this clause 9, the **Recipient**) that it has not priced the supply to include GST; and
- (3) issues a valid tax invoice to the Recipient,

then the Recipient agrees to pay to the Supplier an additional amount equal to the consideration provided for the supply multiplied by the prevailing GST rate:

- (4) if the tax invoice is issued prior to its due date, on the specified due date; or
- (5) if the tax invoice is issued on or after its due date, within 10 days after the issue of the tax invoice.

9.2 The Supplier agrees to issue a valid adjustment note within 7 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.

9.3 All references in this clause 9 have the same meaning as provided in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10 Withholding Tax

10.1 If the Buyer is required by law to withhold an amount in respect of tax from a payment to be made to TEM because TEM has not quoted its ABN, the withholding and payment of that amount to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to TEM. In the event that the Buyer pays an amount to TEM without withholding an amount in respect of tax, TEM indemnifies the Buyer for any loss suffered as a result of failing to withhold.

11 Privacy and Data Protection

11.1 TEM takes the protection of personal data very seriously and is committed to protecting the privacy of Buyers and providing a safe online experience.

11.2 TEM may collect the personal information of Buyers in relation to the subject matter of these Terms and any conduct thereby contemplated. All personal information and other data collected by TEM will be collected in accordance with TEM's privacy policy (<https://www.online.tasmanenvironmental.com.au/privacy-policy/>) (**Privacy Policy**).

11.3 By creating an Account, using the Platform or otherwise taking any action pursuant to these Terms, the Buyer acknowledges and agrees that they have read the Privacy Policy and that they consent to the collection, storage, use and disclosure of their personal information in the manner described in the Privacy Policy.

11.4 The Buyer further acknowledges that TEM may be required by law to conduct background checks on the Buyer from time to time. The Buyer agrees to use their best endeavours to assist TEM in carrying out any such obligations on background check requirements.

12 Copyright

12.1 The Buyer acknowledges and agrees that the images, information and other assets related to each project listed on the Platform may only be used by the Buyer when referencing their purchase of Credits on the Platform through TEM. This right is granted to the Buyer only in its personal capacity and cannot be assigned, licensed, sub-licensed, novated or otherwise transferred to any other party without the prior written consent of TEM.

12.2 The Buyer further agrees to ensure that any reference described in clause 12.1 which is made by the Buyer, in any medium or channel:

- (1) will credit TEM;
- (2) will only be made within a limited period of 12 months beginning on the date of the relevant Certificate; and
- (3) will not involve any project information or images being archived by a third party.

12.3 The Buyer further agrees to ensure that any reference described in clause 12.1 which is made by the Buyer and which involves any Arnhem Land Fire Abatement (**ALFA**) carbon offset project images, information and other assets, in any medium or channel:

- (1) will only be made in relation to specific reference to the Buyer's purchase of Credits in respect of an ALFA project;
- (2) will credit both TEM and the photographer David Hancock;
- (3) will only be made within the limited period of 12 months beginning on the date of the relevant Certificate; and
- (4) will not involve any project information or images being archived by a third party.

12.4 Notwithstanding clause 12.3, TEM partners are welcome and encouraged to share information with stakeholders pertaining to their purchase of ALFA carbon offset units and the positive benefits the projects deliver. However, in order to ensure the projects are accurately and respectfully represented, and the image rights of Aboriginal people are maintained, each individual application of these materials, including text-only representation of the projects, must receive written approval by TEM.

13 Intellectual Property

- 13.1 The names TEM, Tasman Environmental Markets, and any phrase, logo, trade mark, copyright, software, trade secrets, designs and any other intellectual property rights owned, used by or licensed to TEM are the intellectual property of TEM (**Intellectual Property**) and may not be used by the Buyer or any other party without TEM's prior written consent.
- 13.2 The Buyer agrees that TEM has the right to take action against the Buyer for any misuse or misappropriation of any Intellectual Property that is not expressly authorised or permitted by TEM in writing or that is otherwise false, deceptive, or misleading. Such action may include, but is not limited to, terminating the Buyer's Account or ability to use the Platform or purchase Credits for such period of time as TEM considers appropriate, in its sole discretion, or TEM taking legal action against the Buyer under applicable law.

14 Termination

- 14.1 Any material breach of these Terms by the Buyer, which for the avoidance of doubt shall include the Buyer engaging in fraud or supplying false or misleading information, may result in TEM taking any one or more of the following actions, as determined by TEM in its sole discretion:
- (1) terminating the Buyer's Account;
 - (2) restricting the Buyer's access to the Platform (for a specified period of time, which may be permanent); and
 - (3) taking legal action against the Buyer.

15 Dispute Resolution

- 15.1 If a party claims that a dispute or difference has arisen in connection with these Terms, any payment or Order thereunder, or the supply by TEM of any Credits (**Dispute**), then that party must give notice to the other party identifying the nature of the Dispute and providing details and particulars (**Dispute Notice**).

- 15.2 Within 10 Business Days of the Dispute Notice, representatives of each party must meet to endeavour to resolve the matter in good faith acting reasonably.
- 15.3 If the Dispute remains unresolved after a period of 20 Business Days from the delivery of the Dispute Notice (or such other period as is agreed between the parties), either party may refer the Dispute to the respective chief executive officers (or equivalent) of each party who will endeavour to promptly meet to resolve the matter in good faith acting reasonably.
- 15.4 If the Dispute remains unresolved after 10 Business Days from the date the Dispute is referred by a party to the chief executive officers (or equivalent) of the parties, either party may refer the Dispute for determination by an expert (**Expert**).
- 15.5 If the Dispute is referred for determination by an Expert pursuant to clause 15.4:
- (1) an Expert shall be appointed by mutual agreement of the parties or, if the parties cannot agree, shall be appointed by the Australian Commercial Disputes Centre in accordance with 15.7; and
 - (2) neither party may commence court proceedings (except proceedings seeking interlocutory relief) in relation to the Dispute until the earlier of:
 - (a) the completion of the mediation process; or
 - (b) the date which is 20 Business Days after the Dispute was referred to mediation.
- 15.6 A party wishing to refer the Dispute pursuant to clause 15.4 must give written notice of the proposed reference to the other party.
- 15.7 The Expert appointed pursuant to clause 15.1 is not bound by the rules of evidence and must:
- (1) be an expert in the field relevant to the Dispute;
 - (2) act as an expert and not as an arbitrator; and
 - (3) determine how the Dispute is heard or assessed.
- 15.8 The determination of the Expert, in the absence of manifest bias or error, is final and binding upon the parties.
- 15.9 Unless the Expert otherwise determines, the parties must pay the Expert's remuneration in equal shares. The parties otherwise shall bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Expert.
- 16 Limitation of Liability**
- 16.1 To the maximum extent permitted by law, TEM excludes liability to the Buyer for direct or indirect damage or loss (including consequential loss) arising in relation to any conduct undertaken by either party pursuant to these Terms, including in relation to the fulfilment or non-fulfilment of any Order, at common law, in equity or under any statute or ordinance.

16.2 To the extent that TEM is not permitted to exclude its liability in the manner described in clause 16.1, TEM's maximum liability shall (to the maximum extent permitted by law) be limited to the lower of:

- (1) the Price; or
- (2) the amount received by TEM in relation to the relevant Order.

17 Anti-Bribery, Anti-Corruption and Anti-Money Laundering

17.1 Neither TEM or the Buyer nor (so far as each such party is aware) any of their directors, officers or employees, or Associated Persons, or any other person acting on their behalf have engaged in any activity or conduct that has resulted or will result in a violation of:

- (1) any Anti-Corruption and Anti-Money Laundering Laws; and
- (2) any other Applicable Law relating to economic or trade sanctions.

17.2 Without prejudice to any other rights a party may have under these Terms or otherwise if any event, change or circumstance in respect of a party shall occur or arise (other than an event, change or circumstance constituting or giving rise to a breach of these Terms by such party) and which has or is reasonably likely to constitute a breach of clause 17.1 in respect of such party, then the other party shall be entitled, by notice in writing to the first party to suspend or terminate these Terms but the occurrence of such an event, change or circumstance shall not give rise to any right to damages or compensation.

18 Governing Law

18.1 These Terms are governed by the law of the State of Victoria.

18.2 Each party submits to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

19 Assignment

19.1 These Terms and any rights or obligations thereunder may not be assigned, licensed, sub-licensed, novated or otherwise transferred without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

19.2 Notwithstanding clause 19.1, a party may at any time, without requiring the consent of any other party, assign, license, sub-license novate or otherwise transfer these Terms and any rights or obligations thereunder to a Related Body Corporate.

20 Definitions

20.1 In these Terms, unless the contrary intention appears:

- (1) **ACCU** means an 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;

- (2) **Anti-Corruption and Anti-Money Laundering Laws** means Australia's international sanctions, anti-money laundering and anti-bribery and corruption legislation, including but not limited to the *Charter of the United Nations Act 1945* (Cth), *Autonomous Sanctions Act 2011* (Cth), *Autonomous Sanctions Regulations 2011* (Cth), *Anti Money Laundering and Counter Terrorism Financing Act 2006* (Cth), *Proceeds of Crime Act 2002* (Cth) and the *Criminal Code Act 1995* (Cth);
- (3) **Applicable Law** means all legally binding treaties, statutes, laws (statutory, common or otherwise), ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any regulatory agency or arbitrator that apply to the Credits, these Terms or to a party;
- (4) **Associated Person** means, in relation to a company, a person (including any employee, agent or subsidiary) who performs (or has performed) services for or on behalf of that company;
- (5) **Business Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business in Victoria;
- (6) **CCR Act** means the *Climate Change Response Act 2002* (NZ);
- (7) **CER** means the Certified Emissions Reductions issued under the Clean Development Mechanism;
- (8) **CFI Act** means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth);
- (9) **Clean Development Mechanism** means the mechanism defined in Article 12 of the Kyoto Protocol;
- (10) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (11) **Emissions Reduction Fund** means the emissions reduction fund operated through the CFI Act;
- (12) **Gold Standard** means the standard founded by Worldwide Fund for Nature and other NGOs for the verification and certification of emission reduction projects;
- (13) **KACCU** 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;
- (14) **Kyoto Protocol** means the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which entered into force on 16 February 2005;
- (15) **LGC** means a large-scale generation certificate created under Subdivision A of Division 4, Part 2 of the REC Act registered under Division 5, Part 2 of the REC Act and transferable under Division 6, 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;
- (16) **NZU** means a New Zealand Unit within the meaning of the CCR Act;
- (17) **REC Act** means the *Renewable Energy (Electricity) Act 2000* (Cth);

- (18) **Registry** means the electronic database system for the holding, transfer, Retirement and cancellation of Credits issued in accordance with the Scheme Rules.
- (19) **Registry Rules** means any relevant decisions, guidelines, modalities and procedures made in connection with the operation of the Registry.
- (20) **Related Body Corporate** has the meaning given to that term in the Corporations Act;
- (21) **Retire, Retires** and **Retirement** means the permanent removal of a Credit from circulation in the Registry, pursuant to the Scheme Rules and the Registry Rules.
- (22) **Scheme Rules** means the following in relation to each unit type:

Unit Type	Source of Scheme Rules
Certified Emissions Reductions (CERs)	the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the decisions of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol that relate to the Clean Development Mechanism.
Kyoto ACCUs (KACCUs)	CFI Act
New Zealand Units (NZUs)	CCR Act
Verified Emissions Reductions (VERs)	any relevant decisions, guidelines and procedures made pursuant to the Gold Standard.
Verified Carbon Units (VCUs)	any relevant decisions, guidelines and procedures made pursuant to the Verified Carbon Standard.
Large Scale Generation Certificates (LGCs)	REC Act

- (23) **United Nations Framework Convention on Climate Change** means the United Nations Framework Convention on Climate Change, which entered into force on 21 March 1994;
- (24) **VCU** means a unit issued by VERRA, being a unit relating to an environmental benefit, generated from a project or programme and carried out under and in accordance with the Verified Carbon Standard;

- (25) **VER** means a unit issued under the Gold Standard equal to one metric tonne in carbon dioxide equivalent reduced, avoided, removed or sequestered by a project or programme of activity, as measured, reported and verified in accordance with the Gold Standard Scheme Rules;
- (26) **Verified Carbon Standard** means the standard administered by VERRA which enables the validation of greenhouse gas projects and programs, and the verification of emission reductions and removals; and
- (27) **VERRA** means the not-for-profit organization incorporated in the District of Columbia, USA, whose registered office is at 1090 Vermont Ave, NW, Suite 910, 20005.