



1300 BUY CMS

TERMS AND CONDITIONS

1. Definitions

1.1 The following words have the following meaning:

- (a) “Buyer” means the buyer (or any person acting on behalf of and with the authority of the Buyer) as described on the Application for Trade Account, any quotation or other form approved by the Seller.
- (b) “Seller” means Carbon Management Solutions Pty Ltd (CMS) and any of its related entities.
- (c) “Authorised Persons” means any representative, associate, officer, employee, agent or subcontractor of Carbon Management Solutions Pty Ltd (CMS).
- (d) “Goods” means any or all of the products supplied by Carbon Management Solutions Pty Ltd (CMS).
- (e) “Services” means any services conducted by Carbon Management Solutions Pty Ltd (CMS).
- (f) “Price” means the price payable for the goods and/or services as set out in the Quote.

2. Offer, Acceptance & Cancellations.

2.1 All price quotes expire thirty (30) days after the date of the quote unless otherwise agreed in writing.

2.2 Purchase orders for Goods/Services will constitute an offer by the Buyer to the Seller. Any amendments to the purchase order must be approved by the Seller in writing.

2.2 Any instructions received by the Seller from the Buyer for the supply of Goods/Services shall constitute acceptance of these terms and conditions. Upon acceptance of these terms and conditions, the terms and conditions are binding and can only be amended with the written consent of the Seller.

3. Supply & Delivery

3.1 The costs of delivery are in addition to the Price. The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

3.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written or verbal notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including but not limited to, any loss of profits) up to the time of cancellation. The Seller will not be liable for delays in service delivery caused by matters beyond its control. Extensive delays caused by the Buyer hindering the Seller will entitle the Seller to charge a further “delay fee” which must be paid before the Seller is obliged to deliver the Goods.

3.3 The Buyer must check all components have been received and report any misgivings to the Seller within 48 hours of taking receipt of the Goods, time being of the essence. Any discrepancies reported after this time will not be considered.

4. Payment Terms

4.1 At the Seller’s sole discretion the Price shall be either:

- a) As indicated on invoices provided by the Seller to the Buyer in respect of Goods and Services supplied; or
- b) The Seller’s quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller’s quotation in writing within thirty (30) days.
- c) GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.



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4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. At the Seller's sole discretion a deposit may be required.

4.3 Payment for the Goods will be stated on the invoice or any other forms. If no time is stated then payment shall be cash on delivery. Payment must be made by cheque, EFT, BPAY, direct deposit or MasterCard/Visa. Payments for orders accepted in Australia shall be made in Australian Dollars.

4.4 In the event that credit terms are offered, the Buyer authorises the Seller to:

- a) Obtain from a credit reporting agency a credit report containing personal information about the Buyer and its Guarantors pursuant to Section 18K(1)(b) of the Privacy Act;
- b) Obtain a report from a credit reporting agency and other information in relation to the Buyer's commercial credit activities. The Buyer understands the information can be used for the purposes of assessing creditworthiness.

4.5 Any invoices not paid when due, may attract a \$50 fee excluding GST.

4.6 Any cost incurred for debt recovery will be passed on in full to the Buyer.

5. Risk & Ownership of Goods

5.1. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. Or the Buyer may refuse to accept delivery of the goods, if the goods are damaged in transit. When the Buyer accepts the Goods from delivery as "in good condition," the Buyer then takes responsibility and ownership for those goods received.

5.2 The Seller retains a lien, security interest and right of possession in the Goods and Services until the Buyer makes full payment of all sums outstanding at which time the Seller shall transfer full title to the Buyer. Until such time as ownership of the Goods passes from the Seller to the Buyer the Seller may give notice to the Buyer to return the Goods. If the Buyer fails to return the Goods, the Seller may enter upon the Seller's land and premises as an invitee and repossess the Goods without claim from the Buyer.

5.3 Where the Buyer and or Guarantor own real property or any other assets capable of being charged (the "security property") they jointly and severally charge their interest in the security property to the Seller to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and the Guarantors acknowledge and agree that the Seller shall be entitled to lodge a caveat or such other security document as the Seller may deem necessary.

6. Buyer Acknowledgment

6.1 The Buyer acknowledges that the Goods/Services are bought relying solely upon the Buyer's skill and judgement.

6.2 The Buyer acknowledges that the Seller has not made any warranty or representation, express or implied in relation to the Goods or Services, including whether they are suitable for a particular purpose (whether such purpose was made known to the Seller or not), unless provided in writing.

6.3 The Buyer acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Goods/Services are and will remain the property of the Seller (or its supplier, where such rights are owned by that supplier).

6.4 The Buyer acknowledges and agrees that these terms and conditions are in full force and effect and are incorporated into every order.

6.5 The Buyer takes responsibility for placing the order of required equipment, once an order for the equipment has been placed and a sales order has been forwarded to the Buyer, any subsequent changes requested by the Buyer may be charged an administration fee of \$50 excluding GST.

7. Warranties

7.1 Goods under warranty (subject to clause 8):

- a) Goods manufactured by the Seller are subject to the warranties which are set out in the Quote or product documentation.
- b) Goods manufactured by parties other than the Seller are subject to the manufacturer's warranties which are set out in the Quote or product documentation.
- c) In relation to Goods manufactured by parties other than the Seller, the Seller will if requested seek to assign the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- d) Notifications of defects must be made in writing to the Seller within the specified warranty period.
- e) The Seller has a 'back to base' warranty for parts that will be assessed and repaired or replaced within reasonable time frame.
- f) The Seller will arrange freight transport for Goods back to the Sellers site for testing by manufacturer; however the Buyer may need to contract an electrician to remove any parts and shut down the system safely. Once system components have been evaluated and a report drawn, the Seller will inform the Buyer on the solution.

7.2 Services under warranty (subject to clause 8)

- a) Where the Seller provides a service call, the Seller warrants that if there is a defect in the works and such defect is due to the Seller's defective workmanship which is reported to the Seller within three (3) months of the date of service (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.

7.3 Warranty denial

In the event the Buyers warranty claim is denied, the Buyer will be invoiced for any costs involved in assessing the Buyers claim. In addition to clause 10 the Buyers warranty may be denied for the following reasons:

- a) The warranty period has expired
- b) The Goods prove to be working normally under testing
- c) The Goods have been tampered with and seals have been broken
- d) Improper transportation and delivery
- e) Application beyond the scope of safety standards (AS4777&AS3100 etc)

8. Warranty Exclusions

8.1 The warranties set out in clause 7 will no longer be valid if:

- a) Anyone other than the Seller or other Carbon Management Solutions Pty Ltd Authorised Person works on (including repairing, altering or upgrading) the Goods at any time
- b) The Buyer fails to properly maintain the Goods
- c) The Buyer fails to follow any instructions or guidelines provided by the Seller
- d) The Goods are used for any other application than those specified in the quote or order form
- e) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user

8.2 The warranties set out in clause 9 do not cover:

- a) Repaired breaks or any joins to sensor wire or any damage caused to sensor wire;
- b) Normal fair wear and tear
- c) Any malicious damage or abuse
- d) Damage caused by vermin, animals or pests
- e) Corrosion, oxidization, discolouration by mould or the like

- f) Damage caused by 'acts of God', improper voltage or power surges, accidents or other acts (lightning, water damage etc) beyond the Sellers reasonable control
- g) The inverter being tampered with and opened
- h) Damage created by spills, liquid, dust, incorrect storage near inverter preventing appropriate ventilation
- i) Repairs and replacement outside manufacturers time

9. Limitation of Liability

9.1 The Seller will not be liable to the Buyer for any indirect or consequential damages including loss of profits, revenue or data arising out of it in relation to the supply of Goods or Services, even if the Seller knew or should have known of the possibility of such loss or damage and whether damages are claimed in contract, tort (including negligence) or statute.

9.2 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these terms by any statute. The liability of the Seller for a breach of a condition or warranty implied into these terms by the Trade Practices Act, 1974 is limited at the option of the Seller:

- a) If the breach relates to goods, to the replacement of the goods or the supply of equivalent of goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired.
- b) If the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

10. Insolvency

If the Buyer becomes or takes any steps to be declared insolvent or bankrupt, or have a receiver, administrator, liquidator, trustee or similar official appointed then:

- a) The Buyer must notify Carbon Management Solutions Pty Ltd immediately
- b) All amounts outstanding by the Buyer to the Seller immediately become due and payable; and
- c) If the Seller incurs debts for collecting money owed by the Buyer, the Buyer will be charged for these recovery costs

11. Termination

11.1 Where the Buyer:

- a) Makes default in any payment or breaches any of these terms; or
- b) Becomes unable to pay its debts as and when they fall due; or
- c) Commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up.

11.2 The Seller may without prejudice to any of its rights or remedies by notice to the Buyer:

- a) Suspend further supply and require payment in advance for future supply;
- b) Recover possession of any Goods for which payment has not been made;
- c) Terminate all or any purchase orders for Goods or Services which have been accepted by the Seller;
- d) Claim immediate payment of all moneys due by the Buyer in respect of all Goods and Services which will be deemed immediately due and payable.



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12. Intellectual Property

12.1 The Buyer acknowledges and agrees that the Buyer does not own (and that any agreement between the Buyer and the Seller in relation to the Goods and Services does not transfer ownership of) any intellectual property rights (including, without limitation, copyright, trademarks, registered designs, patents and know how) in or in conjunction with or relating to the Goods and Services.

12.2 You must not alter, remove or in any way tamper with any of the intellectual property rights of Carbon Management Solutions Pty Ltd.

13. General

13.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

13.3 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.

13.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's notice.

13.5 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.

13.6 Neither the Seller or the Buyer shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

13.7 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

13.8 The Seller and the Buyer agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "commercial in confidence" means information in any form but does not include information that is already in the public domain.