

Sale of Goods Terms

Agreed terms

1. Contract

GT agrees to sell the Goods to the Customer only on these Sale of Goods Terms and the Quote ("Contract"), not any other terms. Accordingly, the provision of any terms by the Customer prior to or subsequent to or after GT providing its Quote with these Sale of Goods Terms will not bind GT, will be of no legal effect and will not constitute a contract or part of the Contract irrespective of any act of GT or any employee, agent or contractor of GT, including execution of any document incorporating (including by reference) any term or terms.

2. Goods

2.1 Supply of Goods

In addition to clause 1, GT agrees to sell the Goods to the Customer, and the Customer agrees to buy the Goods, on the following basis:

- (a) GT will have unencumbered title to the Goods at the Delivery Point;
- (b) the Goods will be as described on the Quote;
- (c) the Goods will be used for the Purpose only; and
- (d) the Customer will pay the Price in respect of each of the Goods delivered.

2.2 Warranties

- (a) GT warrants to the Customer that the Goods:
 - (i) comply with Law;
 - (ii) will be as described on the Quote;
 - (iii) will be fit for the Purpose;
 - (iv) will be free from defects at the time of delivery other than any defects that are readily apparent, to which the Customer is made aware, or which are not identified within three months of the date of delivery.
- (b) To the extent permitted by Law, the Quote and these Sale of Goods Terms comprise the entire agreement between GT and the Customer in respect of the subject matter of the Contract, and consistent with this:
 - (i) GT does not intend to be bound by, and will not be bound by, any terms (including any condition or warranty) put forward by the Customer;
 - (ii) GT gives no warranty, express or implied, other than as provided in **clause 2.2(a)**; and
 - (iii) no term (including any condition or warranty) will be implied into, and no remedy or right will arise other than as expressly provided for in, this Contract.
- (c) To the extent permitted by Law, any remedy or right conferred by Law and any term implied by Law, including but not limited to any Sale of Goods Legislation or any other Law relating to sale of goods or the 1980 United Nations Convention on Contracts for the International Sale of Goods, is excluded.
- (d) To the extent permitted by Law, other than in respect of death or personal injury to any person and as provided for in **clause 4** in respect of any defective Goods or Goods not being as described, GT is not liable to the Customer for any breach of contract, breach of any duty of care (including the tort of negligence) or otherwise, including in respect of any damage, liability or loss or cost or expense that is of an economic or financial nature, including any increased cost, any liability to any third party, including for breach of contract, any loss of business, business opportunity or contract, any loss of goodwill, any loss of profit or any loss of revenue.

3. Delivery of, risk in and title to Goods

3.1 Delivery of Goods

- (a) GT will make the Goods available for collection during Business Hours by the Customer or the Customer's transport contractor at the Delivery Point.
- (b) The Customer is responsible for all costs and expenses and risks associated with the collection and transportation of the Goods from the Delivery Point to the point of use.

3.2 Risk in the Goods

- (a) Risk in the Goods passes to the Customer upon collection of the Goods at the Delivery Point and GT presenting a document acknowledging delivery of Goods.
- (b) The Customer is a bailee of the Goods until it has paid for the Goods in full.

3.3 Title to the Goods

- (a) Title to the Goods, Goods packaging and Goods containers passes to the Customer on the payment of the Price, in full, for those Goods.
- (b) The Customer acknowledges that GT owns the Goods delivered until the payment of the Price, in full, and that for these purposes GT has a security interest that it may register pursuant to the Personal Properties Securities Act 2009 (Cth).
- (c) The Customer must at its expense dispose of Goods packaging, Good's containers and Goods (other than the Goods referred to in clause 4(a)).

4. Defective Goods and not as described

- (a) Within 5 Business Days after collection of the Goods, if any of those Goods are defective or are not as described on the Quote, by notice, in writing, to GT, the Customer may reject those Goods subject to the Customer substantiating the alleged defect by sufficient proof and Total Energies Marketing Asia-Pacific Middle East PTE. LTD. agreeing the Goods are defective.
- (b) If the Customer does not reject the Goods in accordance with **clause 4(a)**, the Customer will be treated as having accepted the Goods.
- (c) If the Customer rejects the Goods in accordance with **clause 4(a)**, and those Goods are defective or not as described, or if a defect in the Goods was not apparent or could not have been determined within 5 Business Days after collection of the Goods, but arises within 3 months following the collection of the applicable Goods, by notice, in writing, to GT, the Customer may request GT:
 - (i) to make good those Goods (at no cost to the Customer); or
 - (ii) to replace those Goods with new Goods (at no cost to the Customer, other than the payment of the Price in respect of the new Goods to the extent that the Price was not paid made in respect of the rejected Goods).
- (d) GT shall determine at its sole discretion whether it makes good any defective Good or whether the defective Good is replaced with a new Good.
- (e) The Customer must at its expense return any defective Good that is replaced by a new Good to the Delivery Point.
- (f) To the extent permitted by Law, the remedies and rights of the Customer in this **clause 4** are the exclusive and sole remedies of the Customer arising from, in connection with, in relation to and in respect of defective Goods or Goods that are not as described on the Quote, and the consequences thereof, and the Customer waives any remedy or right it might otherwise have.

5. Price and payment

5.1 Price

- (a) GT will provide an invoice upon request by the Customer to supply the Goods detailed on the Quote subject to the request for GT to provide an invoice being received with confirmation of the Customer's purchase order number prior to the Expiry Date on the Quote.
- (b) Unless otherwise detailed on the Quote, the Customer must pay the Price to GT in respect of the Goods prior to collection of the Goods at the Delivery Point.

5.2 Payment

- (a) Subject to **clause 5.3(d)**, the Customer must pay the invoiced amount:
 - (i) prior to collection of the Goods at the Delivery Point; or
 - (ii) as detailed on the Quote after the date of the applicable invoice and each invoice must be paid in full, without counter-claim, deduction, set-off or withholding.

5.3 GST

- (a) Any reference in this **clause 5.3** to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined in the GST Law.
- (b) The consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) other than as provided under this **clause 5.3**. Any amount stated in this Contract (other than an amount referred to in **clause 5.3(f)**) relevant to determining a payment to be made by a Party, is a reference to that amount expressed on a GST exclusive basis.
- (c) To the extent that GST is payable in respect of any supply made by a Party (**GST Supplier**) under this Contract, the consideration under this Contract for that supply is increased by an amount equal

to the GST Exclusive Consideration multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount payable under **clause 5.3 (c)** to the GST Supplier at the same time as the GST Exclusive Consideration is required to be paid.

- (d) The GST Supplier must issue to the recipient, before the time of payment of consideration for the supply, an invoice that constitutes a tax invoice under the GST Law, that will, as applicable, enable the recipient to claim any tax credits for the GST in respect of supplies to which the invoice relates.
- (e) If an adjustment event occurs in relation to any taxable supply made under this Contract, the GST Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under **clause 5.3(c)**, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (f) If any Party is entitled to recover any amount in respect of any loss, cost, expense or outgoing incurred in connection with this Contract, then that amount must first be reduced by an amount equal to any input tax credit to which the Party making recovery is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with **clause 5.3(c)**.

6. Termination

6.1 Termination

- (a) GT may terminate this Contract if the Customer does not pay the Price, in full, in respect of any the Goods or is insolvent (within the meaning of the Corporations Act).
- (b) Upon a request to supply the Goods pursuant to **clause 5.1(a)**, if GT is unable to provide the Goods for any reason, GT will provide notice of such to the Customer and the Customer may within 5 Business Days of receipt of the notice, by written notice to GT terminate the Contract.

6.2 Effect of termination

- (a) On termination of this Contract pursuant to **clause 6.1** the Customer must pay to GT any amount due and payable under this Contract as at the date of termination, and GT may collect or require the return of the Goods at the Customer's expense.
- (b) Termination of this Contract will not affect the rights, powers, remedies, obligations, duties and liabilities of either Party under this Contract which have accrued to the date of termination, which rights, powers, remedies, obligations, duties and liabilities will continue to be enforceable.

6.3 No other right of termination

Notwithstanding any rule of Law to the contrary, neither Party may terminate, rescind or treat as repudiated this Contract or any rights under this Contract other than, as expressly provided for in this Contract.

6.4 Termination by Customer

Where the Contract is terminated pursuant to **clause 6.1(b)** the Customer indemnifies GT against any liability, loss or damage which it may incur, arising as a result of GT not being able to provide the Goods.

7. Liability

7.1 Exclusion of Liability

Notwithstanding any other provision of this Contract, GT is not liable to the Customer for any breach of this Contract or breach of any duty of care (including in relation to the duty of care in negligence or bailment) or otherwise including in relation to:

- (a) any financial or economic loss, including loss of profit, loss of revenue, loss of use, loss of agreement, loss of goodwill or loss of business opportunity;
- (b) any special damage or Loss;
- (c) any new or increased costs and expenses, including financing, capital or operating costs;
- (d) any failure to achieve any actual or anticipated saving in relation to any cost or expense;
- (e) any incidental, indirect or consequential Loss; or
- (f) any Loss resulting from any liability of the Company to any third person howsoever and whensoever arising, to the extent permitted by law, any liability arising under or by virtue of statute.

7.2 Overall Liability

Notwithstanding anything else in this Contract, the total cumulative liability of GT to the Customer arising from or in connection with, the performance (or non-performance) of its obligations under this Contract including in contract, tort or otherwise at law regardless of the fault, negligence, breach of this Contract, breach of any duty (statutory or otherwise) or strict liability of GT and relating to any cause of action is limited to the amount detailed in the Quote

8. Disputes

8.1 Notice of Dispute

If any dispute arises, by notice, in writing, a Party may notify the other Party of the dispute giving details of the nature of the dispute.

8.2 Meeting of Representatives

Within 5 Business Days after a notice of dispute has been given under **clause 8.1**, each Party will ensure that its representative meets by telephone with a representative of the other Party to attempt to resolve the dispute.

8.3 Legal proceedings

If the representatives do not resolve the dispute within 10 Business Days after notice of dispute has been given under **clause 8.1**, either Party to the dispute may commence legal proceedings.

9. Notices and other communications

9.1 Service of notices

Each notice, consent or other communication under this Contract (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered, sent by prepaid post or transmitted electronic mail (email) to the recipient's Address for Notices.

9.2 Effective on receipt

A Notice given in accordance with **clause 9.1** takes effect when taken to be received (or at any later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, at 8.30 am on the fourth Business Day after the date of posting if sent within Australia; or
- (c) if sent by email, when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address.
- (d) If the delivery, receipt or transmission is not on a Business Day or is after 4.30 pm on a Business Day, the Notice is taken to be received at 8.30 am on the next Business Day.

10. Assignment

10.1 No assignment

The Customer may not assign, sub-license, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right under this Contract or transfer any obligation or liability under this Contract.

10.2 Assignment by way of security

GT may assign by way of security, mortgaging, charging and otherwise creating security in favour of any of the lenders, financiers or other credit providers (or any agent or trustee) over GT' right, title and interest in, under or derived from this Contract.

11. General

11.1 Amendment

This Contract may be amended, modified, varied or supplemented if each Party agrees, in writing, expressly to that amendment, modification, variation or supplementation, but not otherwise.

11.2 Waiver

A single or partial exercise or waiver by any Party of any right or remedy does not prevent any other exercise of that remedy or right or the exercise of any other remedy or right by that Party.

11.3 Severance

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

11.4 Governing law and jurisdiction

- (a) This Contract is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

12. Force Majeure

GT shall not be responsible for damages caused by delays, failure to perform in whole or in part any obligations hereunder, or non-compliance with any of the conditions hereof when such delay, failure or non-compliance is due to or results from a case of Force Majeure. For the purpose of this condition, "Force Majeure" means causes beyond the reasonable control of GT, including, without limitation, acts of God, fires, war (declared or undeclared), embargoes, accidents, the case of industrial action, strikes, labour disputes, any circumstances at any of GT premises or depots, restricting the availability of products, acts in compliance with requests of any governmental authority or person reporting to act thereof, or any similar causes.

13. DEFINITIONS & INTERPRETATION

Address for Notices means in the case of:

- (a) GT:
 - (i) 14/20 Kearns Crescent, Ardross, WA 6153; or
 - (b) notices@greentechfuel.com.au
- (i) the address and/or email address detailed on the Quote; or
- (ii) other address and/or email address notified in writing.

Business Day means:

- (a) in respect of receipt of any Notice pursuant to **clause 8**, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place to which the Notice is sent; and
- (b) in respect of any other purpose, a day that is not a Saturday, Sunday, bank holiday or public holiday in the State of Western Australia.

Business Hours means from 8.30am to 4.30pm on a Business Day.

Contract has the meaning given to it in **clause 1**.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the person or entity detailed on the Quote.

Delivery Point means the delivery point detailed in the Quote.

Expiry Date means the date detailed on the Quote upon which the quotation offer expires and is no longer valid.

Goods means the goods as described on the Quote.

GST means goods and services tax and includes any replacement or subsequent similar tax.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GT means GreenTECH Fuel Pty Ltd (ABN 11 617 655 633).

Law means any law or any legal requirement, including at common law and in equity, any statute or regulation enacted or made by any legislative body in Australia.

Party means either GT or the Customer.

Price means the product of the Quantity and Unit Price set out on the Quote plus any applicable GST (if the quantity delivered is less than Quantity set out on the Quote then quantity delivered shall apply for the purpose of the calculation).

Purpose means the purpose for which goods equivalent to the Goods are normally used and there are no equivalent goods the purpose for which the Goods were designed.

Quantity means the quantity of Goods detailed on the Quote.

Quote means the form with the heading "Quote" provided with these Sale of Goods Terms.

Sale of Goods Legislation means each of the following:

- (a) *Sale of Goods Act 1923* (NSW);
- (b) *Sale of Goods Act 1896* (Qld);
- (c) *Sale of Goods Act 1895* (SA);
- (d) *Sale of Goods Act 1896* (Tas);
- (e) *Goods Act 1958* (Vic);
- (f) *Sale of Goods Act 1895* (WA);
- (g) *Sale of Goods Act 1954* (ACT); and
- (h) *Sale of Goods Act 1972* (NT).

13.2 Interpretation

In this Contract:

- (a) any document (including this Contract) is a reference to that document as amended, modified, varied or supplemented;
- (b) any reference to any legislation, any provision in any legislation or any definition or meaning in any legislation, is a reference to any amendment, consolidation, modification, re-enactment or replacement of that legislation and, any statutory and subordinate instruments made under it;
- (c) any **person** (including any Party) may be construed to include any individual, the estate of any individual, trust, association, joint venture, partnership, body corporate or entity, government,

statutory authority, body or entity, and any legal representative of that person, any successor or assign of that person and any person substituted by novation for that person;

- (d) no rule of construction will be applied to the disadvantage of a Party on the basis that it put forward this Contract or the applicable drafting;
- (e) headings are for ease of reference only and do not affect interpretation;
- (f) the words **include**, **includes** or **including** are to be construed without limitation;
- (g) any time is to local time in Perth, Western Australia; and
- (h) "\$" or "dollars" or "AUD" is a reference to the lawful currency of Australia.