

MASTER SALE AND PURCHASE AGREEMENT

AGREEMENT

The Seller agrees to sell, and the Buyer agrees to buy, Certificates on the terms of this Agreement.

TERMS OF THIS MASTER SALE AND PURCHASE AGREEMENT

1 SCOPE

- 1.1 The Seller and the Buyer wish to enter into one or more transactions for the sale and purchase of Certificates (each a **Trade**). Each Trade will be effected by the parties signing a Certificate Order.
- 1.2 This master sale and purchase agreement (**Agreement**) governs each Trade and forms part of each Certificate Order entered into between the Seller and the Buyer. Each Certificate Order forms a separate agreement between the Seller and the Buyer (**Sale Contract**).

2 INTERPRETATION

- 2.1 **Definitions:** In the Agreement and each Sale Contract, the following terms have the stated meaning:

Agreement: has the meaning given in clause 1.2.

Certificate: an NZECS energy certificate that is tracked within the NZECS Registry that describes and certifies the renewable production attributes (including zero emissions or otherwise) of a megawatt hour (MWh) of a specified Energy Type.

Certificate Order: an order for Certificates that references this Agreement, is signed by both parties and that at minimum includes: (a) the quantity of Certificates sold; (b) the Certificate Price and the Total Cost; (c) both the Buyer's and the Seller's legal name and contact details; (d) the Production Year or Years; and (e) the delivery and payment method. A template Certificate Order is attached at Exhibit A.

Certificate Price: the price per Certificate set out in the Certificate Order.

Closed Production Year: a Production Year that has been closed and NZECS tracking (issuance, transfer and redemption) can no longer be changed. A Production Year is typically closed on the 30 April following the Production Year.

Confidential Information: the terms and conditions of the Agreement and any information that is not public knowledge and which is obtained from the other party during, or in connection with, the Agreement.

Energy Type: the type of energy referred to in a Certificate, may be electricity or gas (biomethane from anaerobic digestion or hydrogen from electrolysis).

Force Majeure: an event that is beyond the reasonable control of a party, excluding: (a) an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; and (b) a lack of funds for any reason.

Losses: claims, damages, liabilities, losses, costs and expenses (including in relation to any claim made by a third person).

NZBCI: New Zealand Body for Certificate Issuance Limited, company number 6864793.

NZECS: means the system operated by NZBCI and known as the New Zealand Energy Certificate System through which Certificates certifying the characteristics and origin of electricity generation or gas production can be tracked (issued, transferred and redeemed).

NZECS Registry: the electronic registry used by NZBCI to administer the NZECS and provide issuance, transfer and redemption services for Certificates.

Production Year: Varies by Energy Type. For electricity, a 12-month period starting 1 April. For gas, a 12-month period starting 1 October.

Quantity: the number of Certificates set out in the Certificate Order.

Sale Contract: has the meaning given in clause 1.2.

Total Cost: the cost for the total Quantity of Certificates set out in the Certificate Order.

Trade: has the meaning given in clause 1.1.

Trade Date: the trade date set out in the Certificate Order or any other date that the parties agree in writing.

2.2 Interpretation: In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words importing the singular include the plural and vice versa; and
- c a reference to:
 - i a **party** to this Agreement includes that party's permitted assigns;
 - ii **including** and similar words do not imply any limit;
 - iii a **clause** is a clause to this Agreement;

- iv unless otherwise specified in the Certificate Order, a monetary amount is a reference to New Zealand dollars; and
- v a **statute** includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and

- e to the extent of any conflict, the documents that comprise a Sale Contract take precedence in the descending order of priority:
 - i the Certificate Order; and
 - ii the Agreement.

3 TRADES

- 3.1 **Pre-payment:** Unless the parties have elected *invoice* or *other* as the payment method in the Certificate Order:
 - a on the Trade Date, the Buyer must pay the Total Cost to the Seller electronically in cleared funds without set off or deduction; and
 - b within 5 working days of the receipt of the Total Cost electronically in cleared funds under the relevant Certificate Order without set off or deduction, the Seller must deliver the Quantity of Certificates to the Buyer.
- 3.2 **Invoice:** If the parties have elected *invoice* as the payment method in the Certificate Order:
 - a on the Trade Date, the Seller must deliver the Quantity of Certificates to the Buyer; and
 - b within 10 working days following receipt of the Seller's invoice (or such other payment period as is specified in the Certificate Order), the Buyer must pay the Total Cost to the Seller electronically in cleared funds without set off or deduction.
- 3.3 **Other:** If the parties have elected *other* as the payment method in the Certificate Order, the timing of payments and delivery of the Certificates will be as set out within the Certificate Order.
- 3.4 **Failure to deliver:** If the Seller fails to transfer all or part of the Quantity of Certificates in accordance with the terms of the Sale Contract, and such failure is not remedied within 10 working days or is not excused by an event of Force Majeure or the Buyer's non-performance, the Seller must:
 - a pay the Buyer as compensation for damages for each undelivered Certificate, the amount, if positive, by which the price per Certificate at which the Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market, exceeds the Certificate Price; and
 - b refund to the Buyer the Certificate Price received from the Buyer for each undelivered Certificate.

The Seller's obligations under this clause 3.4 are the Buyer's sole remedies against the Seller for failure to deliver Certificates.

- 3.5 **Failure to pay:** If the Buyer fails to pay all or part of the Total Cost in accordance with the terms of this Agreement, and such failure is not remedied within 10 working days or is not excused by the Seller's non-performance, the Buyer must:
 - a pay the Seller as compensation for damages, for each unpaid Certificate, the amount, if positive, by which the Certificate Price exceeds the price at which the Seller is or would be able to sell the Certificate to other third party buyers acting in a commercially reasonable manner; and
 - b return the unpaid Certificates to the Seller.

The Buyer's obligations under this clause 3.5 are the Seller's sole remedies against the Buyer for failure to pay for Certificates.

- 3.6 **Title:** Title to each Certificate sold under a Certificate Order passes to the Buyer on the later of: (a) delivery of the Certificate by the Seller to the Buyer; and (b) payment in full by the Buyer to the Seller of the Certificate Price for the Certificate.

4 WARRANTIES

- 4.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement and each Sale Contract which, when signed, will constitute binding obligations on the warranting party.
- 4.2 **Seller warranties:** The Seller warrants that at the time that title to a Certificate passes to the Buyer:
 - a to the best of the Seller's knowledge, the Certificate was validly issued under the NZECS;
 - b it has the right to sell the Certificate; and
 - c the Certificate is sold free from any third party charge or encumbrance.
- 4.3 **No warranty for use in a program:** The Seller makes no warranty that the Certificate is fit, or qualifies, for use in or under any:
 - a domestic or international law, rule or regulation that requires a stated amount or minimum proportion or quantity of energy that is sold or used by specified persons to be produced from renewable energy sources;
 - b renewable energy, emissions reduction or product reporting rights program, scheme or organisation, or other similar program with respect to which exists a market;

- c registry or reporting scheme for environmental attributes,

with the sole exception of the NZECS.

4.4 Breach of warranty:

- a If a Certificate does not meet any warranty under clause 4.2, the Certificate does not relate to a Closed Production Year, and the Buyer notifies the Seller that it requires a refund:
 - i the Seller will refund to the Buyer the Certificate Price received by the Seller for the Certificate; and
 - ii once the Seller has refunded the Certificate Price, the Buyer, or the Participant acting on behalf of the Buyer, will:
 - (1) if the Certificate has not been redeemed, transfer the Certificate back to the Seller; or
 - (2) if the Certificate has been redeemed, contact NZBCI to request it reverse the redemption of the Certificate, and subject to the redemption of the Certificate being reversed, transfer the Certificate back to the Seller.
- b The Seller's obligation under clause 4.4a is the Buyer's sole remedy against the Seller for breach of warranty.

4.5 Exclusions:

- a To the maximum extent permitted by law, the Seller's warranties are limited to those stated in this clause 4.2. Any other condition or warranty (including any warranty under the Contract and Commercial Law Act 2017) is excluded.
- b The Buyer agrees and represents that it is acquiring the Certificates for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Certificates, the Agreement or any Sale Contract.

5 PRICE AND PAYMENT

5.1 Invoicing:

- a The Seller will provide the Buyer with valid GST invoices for the amounts payable under the Sale Contract.
- b Unless agreed otherwise, the Certificate Price excludes GST, which the Buyer must pay on taxable supplies under a Sale Contract.

- 5.2 **Costs:** Each party will bear its own costs and expenses incurred in connection with the Agreement and the execution of the Trade.

6 CONFIDENTIALITY

- 6.1 **Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:

- a always keep confidential the Confidential Information of the other party; and
- b ensure that any personnel or professional advisor to whom a party discloses other party's Confidential Information are aware of, and comply with, the provisions of this clause 6.1.

- 6.2 **Disclosure required:** The obligations of confidentiality in clause 6.1 do not apply to any disclosure:

- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- b to the extent required by law (including under the rules of any stock exchange);
- c of Confidential Information which:
 - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - ii was rightfully received from a third party without restriction or without breach of the Agreement; or
- d by either party if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that that party enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

- 6.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

7 INDEMNITY

- 7.1 **Indemnity:** Each party indemnifies the other party and its personnel against all Losses arising, with respect to a Certificate, from any event, act or circumstance first occurring or existing during the period when control and title of that Certificate was vested in the indemnifying party.

- 7.2 **Indemnity exclusions:** The indemnity in clause 7.1 does not apply to the extent that Losses are directly caused by the indemnified party's fraud, gross negligence or wilful misconduct.

8 LIABILITY

- 8.1 **Maximum liability:** The maximum aggregate liability of each party under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the price paid or payable for the Certificates to which the liability relates.
- 8.2 **Unrecoverable loss:** Except for the Buyer's liability to pay the Certificate Price for each Certificate, neither party is liable to the other for any loss of profit, data, savings, business, revenue, and/or goodwill, or any indirect, consequential or incidental loss or damage arising under or in connection with the Agreement.
- 8.3 **Unlimited liability:** Clauses 8.1 and 8.2 do not apply to limit either party's liability for:
- a fraud or wilful misconduct; or
 - b under the indemnity in clause 7; or
 - c breach of clause 6.2.
- 8.4 **No liability for the other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that such failure is directly attributable to the other party failing to comply with its obligations under the Agreement, or to the negligence or misconduct of the other party or its personnel.
- 8.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

9 TERMINATION AND SUSPENSION

- 9.1 **Termination rights:** Either party may, by notice to the other party, immediately terminate the Agreement or a Sale Contract if the other party:
- a breaches any material provision of the Agreement or a Sale Contract and the breach is not:
 - i remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied;
 - b has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or

- c is unable to perform a material obligation under the Agreement or a Sale Contract for 30 days or more due to Force Majeure.

- 9.2 **Material provision:** A failure by the Buyer to pay any amount due, or a failure by the Seller to deliver any Certificate, in accordance with its obligations under the Sale Contract is a breach of a material provision for the purposes of clause 9.1a.
- 9.3 **Consequences of expiry or termination:** Expiry or termination of the Agreement or a Sale Contract does not affect each party's rights and obligations accrued before the termination or expiry date.
- 9.4 **Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 6, 7, 8, 9.3, 9.4 and 10 continue in force.

10 GENERAL PROVISIONS

- 10.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement or a Sale Contract to the extent caused by Force Majeure, provided that the affected party:
- a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best endeavours to overcome the Force Majeure; and
 - c continues to perform its obligations as far as practicable.
- 10.2 **Rights of third parties:** No person other than the Seller and the Buyer has a right to a benefit under, or to enforce, the Agreement or a Sale Contract.
- 10.3 **Waiver:** To waive a right under the Agreement or a Sale Contract, that waiver must be in writing and signed by the waiving party.
- 10.4 **Independent contractor:** The parties are independent contractors. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement or any Sale Contract.
- 10.5 **Notices:** A notice given by a party under the Agreement or a Sale Contract must be delivered via email to an email address notified by the other party for this purpose. If the notice is notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive of the other party.
- 10.6 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement or a Sale Contract does not affect the legality, enforceability or validity of the remaining provisions of the Agreement or a Sale Contract.

- 10.7 **Variation:** Any variation to the Agreement or a Sale Contract must be in writing and signed by both parties.
- 10.8 **Entire Agreement:** The Agreement and each Sale Contract sets out everything agreed by the parties relating to the supply of the Certificates and supersedes and cancels anything discussed, exchanged or agreed prior to the Agreement's or the Sale Contract's start. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement or a Sale Contract that is not expressly set out in this Agreement or the Sale Contract, and no such representation, warranty or agreement has any effect from the Agreement's or the Sale Contract's start (as applicable). Without limiting the previous sentence, the parties agree that sections 9, 12A, and 13 of the Fair Trading Act 1986 do not apply.
- 10.9 **Assignment:** Neither party may assign or transfer any right or obligation under the

Agreement or a Sale Contract without the prior written approval of the other (not to be unreasonably withheld). The first party remains liable for its obligations under the Agreement or a Sale Contract despite any approved assignment or transfer.

- 10.10 **Law:** The Agreement and each Sale Contract is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with the Agreement.
- 10.11 **Counterparts:** The Agreement and each Certificate Order may be signed in counterparts, each of which constitutes an original and all of which constitute the same document. A party may enter the Agreement or a Sale Contract by signing and sending (including email) a counterpart copy of the Agreement or Certificate Order (as applicable) to the other party.

EXHIBIT A

TEMPLATE CERTIFICATE ORDER

- This Certificate Order is governed by and forms part of the Sale and Purchase Agreement between the Buyer and Seller dated on or about [insert date] (**Agreement**) and sets out the details of the proposed transactions. Capitalised terms used and not defined in this Certificate Order have the meanings given to them in the Agreement.
- The Seller agrees to provide, and the Buyer agrees to buy, the Quantity of Certificates set out in this Certificate Order on the terms of the Agreement.
- Certificates are typically sold by NZECS Registrants and purchased by NZECS Participants. However, Certificates can be sold or bought by an Energy User, in which case the Energy User must use the services of a NZECS Participant to act on its behalf to transact certificates on the NZECS Registry. In such situations, this Certificate Order requires the details of the NZECS Participant to be recorded including the applicable NZECS account number.