

## 1. DEFINITIONS

- 1.1 In these Terms:
- (a) "Application" means the Application for a Credit Account with EcoCentral Ltd attached to these Terms.
  - (b) "Credit Account" means the trade credit account established in the name of the Customer by EcoCentral Ltd.
  - (c) "Credit Limit" means the dollar amount of credit to be made available to the Customer by EcoCentral Ltd under the Credit Account, as notified by EcoCentral Ltd to the Customer from time to time.
  - (d) "Credit Term" means the term over which the Credit Account will remain open, as determined by EcoCentral Ltd.
  - (e) "Customer" means the customer named in the Application and where the Customer comprises two or more persons, means those persons jointly and severally.
  - (f) "Due Date" means the 20th day of the month following the date of issue of an invoice by EcoCentral Ltd.
  - (g) "EcoCentral Ltd" or "we/us/our" means EcoCentral Limited (NZBN 9429032679212).
  - (h) "Goods" means any goods provided by EcoCentral Ltd to the Customer.
  - (i) "Guarantor" means any Guarantor named in the Application and where the Guarantor comprises two or more persons, means those persons jointly and severally.
  - (j) "Services" means any services provided by EcoCentral Ltd to the Customer.
  - (k) "Terms" means these terms of trade.

## 2. USE OF CREDIT ACCOUNT

- 2.1 Upon EcoCentral Ltd's approval of the Customer's Application (in its sole discretion), EcoCentral Ltd shall notify the Customer of the Credit Limit and Credit Term for the Credit Account.
- 2.2 EcoCentral Ltd may, at any time, decline to provide the Goods and/or Services on credit to the Customer, or vary the terms on which it provides credit to the Customer, including the Credit Limit and Credit Term.
- 2.3 The Customer shall not at any time allow the balance of the Credit Account to exceed the Credit Limit.
- 2.4 The Customer shall be liable for all indebtedness arising from any use of the Credit Account by any person including any person purporting to be an employee, agent or representative of the Customer.
- 2.5 It shall be the Customer's responsibility to notify EcoCentral Ltd in writing if any person is no longer authorised to use the Customer's Credit Account.

## 3. PAYMENTS

- 3.1 All amounts charged to the Credit Account and any interest due thereon shall be paid in full by the Customer on or before the Due Date.
- 3.2 EcoCentral Ltd shall charge default interest of 1.5% per month calculated on a daily basis on all overdue amounts from the Due Date until the date principal and interest has been paid in full, both before and after judgment. The charging of default interest does not imply the granting of an extension of credit, and is without prejudice to any other rights of EcoCentral Ltd.
- 3.3 EcoCentral Ltd shall recover from the Customer (on an indemnity basis and as a debt owing) all costs incurred in attempting to obtain payment, including legal costs, debt collection costs and administrative charges.

- 3.4 EcoCentral Ltd may allocate any payment made by or on the Customer's behalf as EcoCentral Ltd sees fit. The Customer waives any right to receive notice of that allocation.
- 3.5 All payments made by the Customer shall be made free of any deductions, set off, counterclaim or condition of any kind.
- 3.6 If the Customer disputes any item charged to the Credit Account, it must notify EcoCentral Ltd immediately, and not less than seven days prior to the Due Date, and pay the undisputed portion of the Credit Account balance by the Due Date.
- 3.7 The price for Goods and Services shall be the price prevailing at the time of supply as notified to the Customer from time to time and the Customer agrees to pay the price as charged plus goods and services tax.

## 4. DEFAULT

- 4.1 If the Customer breaches any of these Terms and fails to remedy that breach within seven days of receiving notice from EcoCentral Ltd, EcoCentral Ltd may (without prejudice to any other remedies that EcoCentral Ltd may have) suspend or terminate the Credit Account immediately without notice to the Customer.
- 4.2 All amounts owing in respect of the Credit Account shall become due and payable immediately to EcoCentral Ltd if:
- (a) the Customer's Credit Account is suspended or terminated in accordance with clause 4.1 above;
  - (b) any information contained in the Application proves to have been false or misleading;
  - (c) the Customer enters into a composition with its creditors, becomes insolvent, is declared bankrupt, goes into liquidation, a receiver or manager is appointed in respect of the Customer or if any event similar in nature has occurred; or
  - (d) the Customer ceases, or threatens to cease, to carry on any material part of its business.

## 5. ACCOUNT CLOSURE

- 5.1 The Credit Account may be closed by the Customer by written notice to EcoCentral Ltd at any time, and upon payment of any outstanding Credit Account balance.
- 5.2 EcoCentral Ltd may close the Credit Account in its discretion by giving notice to the Customer at any time. The Customer must pay the outstanding Credit Account balance by the 20th of the month following the date of closure of the Credit Account (unless the Customer is in default of these Terms, in which case the outstanding Credit Account balance is payable immediately).

## 6. COMPLIANCE BY CUSTOMER

- 6.1 The Customer agrees that for so long as it is a Credit Account Customer of EcoCentral Ltd it will:
- (a) comply with the requirements and directions of EcoCentral Ltd in connection with all activities carried out on property owned or controlled by EcoCentral Ltd; and
  - (b) comply with all applicable statutes, regulations and bylaws relating to its operations, including EcoCentral Ltd's health and safety policies and

procedures, and all relevant industry codes of practice.

### 7. INDEMNITY

The Customer shall indemnify EcoCentral Ltd against all claims, penalties, costs, expenses, damages and liabilities, including legal fees, arising out of or connected with a breach by the Customer of these Terms.

### 8. VARIATION OF TERMS

EcoCentral Ltd may, in its sole discretion, vary these Terms from time to time by posting the updated terms on EcoCentral Ltd's website or by notifying the Customer in writing of the change. Such variation will apply from the date of posting or notification.

### 9. RISK AND OWNERSHIP

9.1 The Customer acknowledges and agrees that:

- (a) risk in respect of all Goods passes to the Customer at the earliest of the Customer's collection of the Goods or delivery of the Goods to the Customer or to a carrier nominated by the Customer;
- (b) ownership of the Goods remains with EcoCentral Ltd until the Customer pays EcoCentral Ltd the price for those Goods;
- (c) the retention of title in clause 9.1(b) constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 (*PPSA*);
- (d) the security interest will continue until the Customer has paid all amounts owing; and
- (e) the Customer waives its right to receive a verification statement under section 148 of the *PPSA*.

9.2 The Customer:

- (a) will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to maintain the perfection of our security interest (including by registering a financing statement or financing change statement);
- (b) indemnify (and if requested by EcoCentral Ltd reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing Goods charged by the statement; and
- (c) will give EcoCentral Ltd 14 days' prior written notice of any change in its name, business practice or any other details, and use its best endeavours to ensure that any applicable financing change statement is registered disclosing its new details.

9.3 To the fullest extent permitted by law, the Customer and we contract out of sections 114(1)(a), 133 and 134 of the *PPSA*, and out of the Customer's rights referred to in sections 107(2)(a) and (c) to (i) of the *PPSA*. If and for so long as we are not the secured party with priority over all other secured parties in respect of any particular Goods, the Customer and

we agree that section 109(1) of the *PPSA* does not apply to those particular Goods.

### 10. ASSIGNMENT

10.1 EcoCentral Ltd may at any time assign, subcontract or transfer its rights or obligations (including the right to receive payment) under these Terms to any other person.

10.2 The Customer may not assign, subcontract or transfer any of its rights or obligations under these Terms. An assignment for the purposes of this clause shall be deemed to occur upon a change of control in respect of the Customer. These Terms will be binding on the Customer's and Guarantor's successors and permitted assigns.

### 11. LIABILITY

11.1 In relation to the supply of goods or services by EcoCentral Ltd under these Terms, all warranties (descriptions, representations or conditions) whether implied by law or otherwise are, and all other liability of EcoCentral Ltd, whether in tort (including negligence), contract or otherwise is expressly excluded to the fullest extent permitted by law.

11.2 In so far as EcoCentral Ltd may be liable notwithstanding clause 11.1, to the extent permitted by law, the total liability of EcoCentral Ltd whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in Goods, any failure in respect of the Services supplied (or omitted to be supplied) or any breach of EcoCentral Ltd's obligations to the Customer under or in connection with these Terms is limited to the price of the relevant Goods or Services.

11.3 If the Goods or Services do not comply with these Terms, EcoCentral Ltd's sole liability to the Customer (at EcoCentral Ltd's option) is:

- (a) in respect of Goods, the repair, replacement, or refund of the relevant Goods; and
- (b) in respect of Services, the reperformance or refund of the relevant Services,

and in each case, EcoCentral Ltd's liability to the Customer will not exceed the price for those Goods and/or Services.

11.4 Notwithstanding clause 11.2, except where statute expressly requires otherwise, EcoCentral Ltd is not liable in any event for any loss of profits or revenue or any consequential, indirect, incidental or special damage, loss or injury of any kind suffered by the Customer or any other person. The limitations and exclusions in this clause 11 apply irrespective of the basis of the claim, including in contract, tort (including negligence), equity, statute, or otherwise.

### 12. WAIVER

EcoCentral Ltd's failure or delay to exercise or enforce any right under these Terms shall not operate as a waiver of its rights to exercise or enforce such right or any other right in the future.

### 13. PRIVACY

The Customer and the Guarantor authorise EcoCentral Ltd to collect, use and disclose their personal information for purposes related to EcoCentral Ltd's provision of Goods and Services. EcoCentral Ltd will collect, use and disclose such personal information in line with all applicable

privacy laws (including the Privacy Act 2020) and EcoCentral Ltd's privacy policy which applies at the time, available at <https://ecocentral.co.nz/legal/>. Where the Customer and/or Guarantor provides personal information about another person to EcoCentral, each of the Customer and/or Guarantor warrants that it has all consents necessary to collect, use and disclose that personal information.

**14. CONSUMER GUARANTEES**

14.1 To the extent permitted by law, the Customer agrees that:

- (a) where the Goods and/or Services are being acquired for business purposes, the Customer acknowledges and agrees that, having regard to all relevant circumstances, it is fair and reasonable that the statutory guarantees under the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to these Terms, and accordingly they not apply in that circumstance; and
- (b) the provisions of Part 3 of the Contract and Commercial Law Act 2017 do not apply to these Terms.

**15. CONFIDENTIALITY**

The Customer agrees that it will take all steps necessary to ensure that its subcontractors, employees and agents will, keep strictly confidential the existence and contents of these Terms, except to the extent required by any act, regulation or statutory requirement. EcoCentral Ltd may suspend or terminate the Credit Account immediately upon any breach of this obligation of confidentiality.

**16. NOTICES**

All notices are to be delivered by hand or sent by email or mail. In the case of email, the notice will be deemed to have been received on the earlier of the sender's receipt of confirmation of successful delivery and one business day following its dispatch (provided the sender does not receive any indication of the failure of, or delay in, delivery within one Business Day after) and in the case of mail, the notice will be deemed to have been received on the 3rd day following posting. Any notice will be deemed to have been given to the Customer and Guarantor if sent to the address or email address specified on the Application or such other email address or address as is advised in writing.

**17. DISPUTE RESOLUTION**

If a dispute arises out of or relates to these Terms the parties agree to meet and discuss in good faith the dispute and endeavour to reach an agreed resolution. If the dispute is not resolved by agreement, the parties agree to resolve the dispute by use of mediation, without prejudice to any other rights held, prior to legal proceedings being commenced. A dispute concerning these Terms shall not prevent the remaining Terms of this Agreement remaining binding and effective.

**18. FORCE MAJEURE**

EcoCentral Ltd will not be liable for any delay or failure by EcoCentral Ltd to perform its obligations under these Terms to the extent caused by any event or circumstance beyond EcoCentral Ltd's reasonable control.

**19. ENTIRE AGREEMENT**

Together with the Application, the provisions of these Terms constitute the entire agreement between the parties and supersede all previous agreements and communications, whether verbal or written, between the parties with respect to the subject matter of these Terms.

**20. SEVERABILITY**

If any provision in these terms is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, that provision will be amended to the extent necessary to make it legal, valid and enforceable without altering its meaning or intent. If that is not possible, that provision will be severed from these terms and the enforceability of the remaining provisions will not be affected.

**21. GOVERNING LAW**

The laws of New Zealand govern these Terms and the Customer and EcoCentral Ltd agree to submit to the exclusive jurisdiction of the Courts of New Zealand.