



**DECARBONISED ENERGY SOLUTIONS LTD
STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND/OR SERVICES**

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions for the sale of Goods and/or Services to the Client by the Company.
- 1.2 "Client" means the organisation or person who purchases Goods and/or Services from the Company:
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable:
- 1.4 "Goods" and "Services" means those Goods and Services that form part of this contract, to include Goods parts, components of or materials incorporated in them. Also included are Goods or Services itemised in the Company's Quotations, Order Acknowledgement Form, Delivery Note or Invoice.
- 1.5 "Company" means Decarbonised Energy Solutions Ltd. Company registration number: 8151559. Registered office address: 1 Wesley Street, Pukekohe, Pukekohe, 2120, New Zealand

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of Goods and Services by the Company to the Client.
- 2.2 In the absence of a signed agreement to these Terms and Conditions, their acceptance will be implied by the Client's request that the Company deliver Goods or Services.
- 2.3 If any term of these conditions proves illegal or unenforceable in whole or part, such term shall be deemed excised from these conditions without effect upon the validity of the remainder of these conditions.

3 QUOTATIONS / ESTIMATES / PRICE PROPOSALS

- 3.1 No description, specification or illustration contained in any report, quotation or other sales or marketing literature of the Company and no representation written or oral, correspondence or statement, unless specifically referenced, shall form part of the contract for supply.
- 3.2 Prices provided by the Company in publications, on the Company's website or in catalogues are subject to alteration or withdrawal without notice.
- 3.3 All pricing provided by the Company shall be subject to these Terms and Conditions.
- 3.4 Any pricing provided by the Company will be valid for a period of 14 days, or as otherwise stated, from the date of pricing information or until earlier acceptance by the Client.
- 3.5 Any pricing provided by the Company, whether a quotation, estimate or price proposal, is an indication given in good faith and shall not become binding on the Company unless a project delivery contract confirming a fixed price agreement, is signed by the Company. For clarity, quotations are provided in good faith and in the absence of a fixed price agreement, the Company will endeavour to observe the quoted price during delivery, however the issue of a quote shall not create an obligation on the Company to deliver the project at the price stated. If necessary, the Company reserves the right to seek additional budget from the Client if unforeseen details arise.

4 DELIVERY

- 4.1 Delivery of Services shall be made by the Company making available to the Client the Services contracted or requested.
- 4.2 Delivery of Goods shall be made by the Client collecting the Goods from the Company's premises or, if some other place for delivery is agreed with the Company, by the Company delivering Goods to that place.
- 4.3 The Company assumes that access will be available for delivery. If access is not available at the time of delivery, the Company is entitled to charge the Client any additional costs incurred by the Company in re-delivering the Goods to the original place for delivery or such other place as may be reasonably requested by the Client.
- 4.4 The date of delivery specified by the Company is an estimate only. The Company will use its best endeavours to deliver to the Client's instructions. However, time for delivery shall not be of the essence of the contract and the Company shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Service.
- 4.5 Any claim by the Client arising from any defect in the quality or condition of the Goods or Services, or their failure to correspond to the agreed specification shall be notified to Company in writing within 7 days of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time of the defect or failure becoming apparent.

5 PROPERTY & RISK

- 5.1 Risk of damage or loss will pass to the Client at the time of delivery of Goods or the provision of Services, and will be at the Client's sole risk.
- 5.2 Property in the Goods and/or Services shall not pass to the Client from the Company until:
 - 5.2.1 The Company has received payment in full, inclusive of GST.
 - 5.2.2 No other sums whatsoever are due from the Client to the Company.
 - 5.2.3 Until the property in the Goods and/or Services has passed to the Client in accordance with Clause 5.2.1 & 5.2.2. In respect of Goods, the Client will hold the Goods on a fiduciary basis as bailee for the Goods and store and mark them separately from all other Goods in the Client's possession where possible.

- 5.2.4 Until such time as property in the Goods passes from the Company to the Client, the Client shall upon request deliver up on such Goods as have not ceased to be in existence, whether or not they have become fixed to real property or integrated into another product. If the Client fails to do so, the Company may enter any premises owned, occupied or controlled by the Client where the Goods are situated and reposes the Goods.

6 PAYMENT

- 6.1 Payment for Goods and Services shall be on or before the date stated on the invoice for Clients with an approved credit account from the Company. All other transactions are on a strict cash basis and are to be paid for in full before delivery of Goods and/or Services.
- 6.2 The Company may invoice for a project at stages along the project timeline or as defined by project milestones.
- 6.3 Where equipment must be ordered in advance, the Company reserves the right to request that a deposit be paid prior to such order being processed.
- 6.4 The Company shall be entitled to charge interest and compensation on overdue invoices. Interest will be charged from the date when payment becomes due on a daily basis, until the date payment is received at a rate of 21% per annum above the Reserve Bank of New Zealand OCR.
- 6.5 In the event that the Client's procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase orders before the Goods and/or Services are supplied.
- 6.6 The Client agrees to reimburse the Company all legal costs incurred by the Company in connection with any legal proceedings taken by the Company against the Client to recover sums outstanding under this Agreement.
- 6.7 All invoices submitted by the Company shall be treated as agreed unless the Client notifies the Company of any discrepancies within 14 days of the date of the invoice.
- 6.8 All charges under this Agreement shall be subjected to GST at the prevailing rate.
- 6.9 The Company will, at its discretion, assign each Client eligible for a credit account with a credit limit. In the event the aggregate value outstanding from the Client exceeds this limit, the Company reserves the right to request payment on account to bring the value outstanding under the assigned credit limit or withhold delivery of Goods and or Services.
- 6.10 If any payment is dishonoured or countermanded by the Client, the Company shall have the right to charge an administration fee of \$50.00 (or such other fee as notified to the Client from time to time) in addition to any interest that becomes due.

7 ALTERATIONS TO THE AGREEMENT

- 7.1 No alterations to this Agreement shall be valid unless agreed in writing by a Director of the Company.
- 7.2 Where the Company gives written notice to the Client agreeing to alter the terms different to those already agreed between the parties, the Client shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Company by notice in writing whether or not it wishes the alterations to proceed.

8 INDEMNIFICATION

The Client shall indemnify the Company against all claims, costs and expenses which the Company may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement.

9 LIMITATION OF LIABILITY

- 9.1 Where the Company provides support Services to the Client, the Client shall indemnify the Company for all risks associated with the support Services provided.
- 9.2 Except where limited by applicable law, the entire liability of the Company to the Client in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the amount paid by the Client for the Goods and/or Services to which the claim relates.
- 9.3 In no event shall the Company be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Company had been made aware of the possibility of the Client incurring such a loss.

10 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 10.1 the other party commits a material breach of this Agreement and, in the case of a breach of being remedied, fails to remedy it within 3 (three) months of being given written notice from the other party to do so, whereupon the Client shall immediately pay to the Company any arrears of payments due to the Company and all further sums which would but for determination (other than determination by notice) have fallen due;
- 10.2 the other party passes a resolution for voluntary liquidation or enters bankruptcy or receivership (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 10.3 the other party ceases to or threatens to cease to carry on its business or substantially the whole of its business; or
- 10.4 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 10.5 The Client's financial position deteriorates to such an extent that in the opinion of the Company the Client's capability to adequately fulfil their obligations under this contract with the Company has been placed in jeopardy.

11 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property rights produced from or arising as a result of the performance of this Agreement and the Goods and/or Services supplied under it, shall, so far as not already vested, become the absolute property of the Company, and the Client shall do all that is reasonably necessary to ensure that such rights vest in the Company by the execution of appropriate instruments or the making of Agreements with third parties.

12 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, roading authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

13 INDEPENDENT COMPANY

The Company and the Client are companies independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

14 ASSIGNMENT

The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Company

15 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

16 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

17 NOTICES

Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the quotation or such other address as such party may from time to time have communicated to the other in writing, and if sent by electronic means shall be deemed to be served in accordance with the Postal Acceptance Rule, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

18 ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous Agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

19 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

20 GOVERNING LAW AND JURISDICTION

These terms and conditions shall be governed by and construed in all respects in accordance with the laws of New Zealand and both parties agree to be bound by the jurisdiction of the New Zealand Courts.