

TERMS AND CONDITIONS OF SALE



Key Terms:

SUPPLIER:	Ekos.	PURCHASER:	Person purchasing Ekos Units.
PURCHASE PRICE:	As displayed on the Ekos website for the Ekos Unit, unless otherwise specified in writing by Ekos.	SPECIFIED UNITS:	Ekos Units, Verified Emission Reduction Units, Habitat Hectare Units.
Ekos Unit:	Payment for ecosystem services unit produced by an Ekos supply programme.	EKOS REGISTRY:	Markit Environmental Registry, London.
Verified Emission Reduction unit:	One tCO2e reduced, avoided or removed from the atmosphere.	Habitat Hectare Unit:	One ha of ecosystem protected for one year.

Sale And Purchase

- 1. Sale and purchase of Specified Units:** The Supplier agrees to sell, and the Purchaser agrees to purchase, the Specified Units in accordance with the terms and conditions set out in these Terms and Conditions.
- 2. Ekos Units:** All units purchased from Ekos are termed 'Ekos Units' for the purpose of these Terms and Conditions of Sale. Ekos Units include Verified Emission Reduction units (VERs) and/or Habitat Hectare units (HHs). All Ekos Units are issued *ex post* as 'Payment for Ecosystem Service' units, following a verification audit to an international standard.
 - (a) VER Units:** If the Specified Units include any VER Units, then the provisions of Schedule 1 shall apply in respect of those VER Units.
 - (b) HH Units:** If the Specified Units include any HH Units, then the provisions of Schedule 2 shall apply in respect of those HH Units.
- 5. When the Purchaser purchases more than one unit type in the same transaction a single Ekos Certificate will be issued for the combined unit types unless otherwise requested by the Purchaser;**
 - (a) the VER Units (if any) purchased that comprise the Specified Units, in accordance with Schedule 1; and/or**
 - (b) the HH Units (if any) purchased that comprise the Specified Units, in accordance with Schedule 2; and/or**
 - (c) an invoice for the Specified Units (such invoice being in the form of a tax invoice for GST purposes) if purchased via an online form;**
- 6. Payment:** The Purchaser shall pay the Purchase Price to the Supplier prior to the issuance of Ekos certifying badges and certificates. All payments shall be made in full, without deduction or set-off.

Unit Retirement And Payment

- 3. Retirement:** The Purchase of Ekos Units comprises the retirement of the specific units (VERs, HHs) in the Ekos Registry. This prevents these same units from being sold to any other buyer or operating in a secondary market. Ekos executes unit retirements monthly and presents a monthly summary of sales and unit retirements on the Ekos website to facilitate traceability. The retirement date for each transaction is by the end of the month following each transaction (but can occur prior).
- 4. On or before the Retirement Date the Supplier shall deliver to the Purchaser:**
 - (a) Certifying badges specifying the certification achieved through purchasing Ekos Units.**
 - (b) If elected by the Purchaser - a Certificate in respect of the Ekos Units purchased that comprise a description of the quantitative environmental outcomes represented by the Specified Units.**
- 7. VERs Only:** The Purchaser acknowledges and agrees that Specified Units:
 - (a) are not New Zealand Units (NZUs);**
 - (b) cannot be surrendered by the Purchaser (or any other person) to satisfy (in full or in part) any obligations under the Climate Change Response Act 2002, or otherwise used in conjunction with the New Zealand Emissions Trading Scheme (NZ ETS) or any other jurisdictional compliance emissions trading programme in any country unless otherwise stated in the trading rules of that jurisdictional emissions trading programme;**
 - (c) are verified emission reduction units as defined in the international voluntary carbon offset markets and can be used for voluntary GHG assertions.**
- 8. All Ekos Units:** The Purchaser acknowledges and agrees that Specified Units:
 - (a) are not debt securities, equity securities, managed investment products, derivatives or any other type of investment or financial product (for the purposes of**

the Securities Act 1978, the Financial Markets Conduct Act 2013, or otherwise);

- (b) do not involve any right to be paid or to receive any amount or convey any right to participate in any activity or matter (or any interest that converts, or may convert, to such any right);
 - (c) do not generate any financial or economic return if retired at the point of sale;
 - (d) do not grant the Purchaser (or any other person) any rights or interests in, or control over:
 - (i) the relevant Programme or the underlying Environmental Protection Outcome; or
 - (ii) any land and/or property to which the Ekos Unit, the Programme and/or the underlying Environmental Protection Outcome relate; and
 - (e) are non-exchangeable and non-refundable.
9. **Ekos Units:** Without limiting clause 7, the Purchaser acknowledges and agrees that Ekos Units:
- (a) that are not VERs are not verified or certified emission units or assigned amount units (or any other type of emission reduction unit), and cannot be traded or exchanged.
 - (b) that are VERs are verified emission reduction units as defined in the international voluntary carbon market, and can be used for carbon-related claims provided that the claim does not contravene the New Zealand Commerce Commission 'Guidelines on Green Marketing and Carbon Claims', the New Zealand Fair Trading Act (1986) or equivalent legislation or guidelines in the country of the Purchaser.
10. **Marketing:** The Purchaser shall not:
- (a) make any claims, representations or statements about, or based on, the Specified Units or the Programme that are misleading or deceptive (or likely to mislead or deceive), unsubstantiated, or in breach of any law (including the Fair Trading Act 1986);
 - (b) without limiting clause 9(a), make any claim, representation or statement to the effect that any Ekos Units that are not VERs:
 - (i) offsets any carbon emissions, or achieves or contributes to voluntary carbon neutrality or low carbon assertions;
 - (ii) reduces the Purchaser's (or any other person's) carbon footprint, environmental footprint, or environmental impact; or
 - (iii) has any similar environmental effect.
 - (c) without limiting clause 9(a), make any claim, representation or statement to the effect that any Ekos Units that are VERs:
 - (i) reduces or offsets the Purchasers environmental footprint other than their GHG footprint.

Intellectual Property

- 11. **Intellectual property:** All intellectual property, which is owned by, or is proprietary to, a party will remain owned exclusively by that party.
- 12. **Ekos IP:** All intellectual property, which is owned by, or is proprietary to, Ekos will remain owned exclusively by Ekos.
- 13. **No rights:** Nothing in these Terms and Conditions grants either party the right to use any intellectual property belonging to the other party or to Ekos.
- 14. **Trade marks:** Without limiting clause 12, neither party shall have the right to use:
 - (a) any of the other party's trade marks or certification market without the other party's prior written consent in each instance; or
 - (b) any of Ekos' trade marks or certification marks without Ekos' prior written consent in each instance.

Warranties And Liability

- 15. **Warranties:** The Supplier warrants to the Purchaser that, as at the Retirement Date, each Ekos Unit:
 - (a) represents part of an Environmental Protection Outcome; and
 - (b) has been certified by Ekos as meeting the Environmental Standards of the relevant Ekos supply programme.
- 16. **Exclusion:** Other than as expressly set out in clause 14, all warranties, conditions and representations (express, implied, statutory or otherwise) in respect of the Specified Units are excluded to the fullest extent permitted by law. In particular, the Supplier makes no representation or warranty of any kind (express, implied, statutory or otherwise) that:
 - (a) the relevant Environmental Protection Outcome will continue forever, or exist for any specified period of time;
 - (b) the Specified Units are fit for any particular purpose; or
 - (c) the Supplier is able to make any marketing claims or other representations or statements about, or based on, the Specified Units or the Programme.
- 17. **Exclusions:** In no circumstances shall the Supplier be liable to the Purchaser or any other person for:
 - (a) any indirect or consequential loss of any kind whatsoever, or for any loss of profits, revenue, business, reputation or goodwill of any person, including the Purchaser;
 - (b) any loss, liability, claim, cost and expense to the extent attributable to any breach of these Terms and Conditions or negligence of the Purchaser or any other person; or
 - (c) any amount in connection with any claim, representations or statement about, or based on, the

Specified Units made by the Supplier or any other person.

18. **Limitation:** The Supplier's maximum aggregate liability to the Purchaser under or in connection with these Terms and Conditions (including to the extent that any warranties, conditions or representations are unable to be excluded at law) is limited to the amount of the Purchase Price paid by the Purchaser to the Supplier pursuant to these Terms and Conditions.
19. **No liability for Ekos:** Ekos makes no warranties or representations (express, implied, statutory or otherwise) in respect of the Specified Units or the Programme. In no circumstances shall Ekos be liable to the Purchaser, the Supplier, or any other person under or in connection with these Terms and Conditions and/or any Ekos Unit for any amount or in any way whatsoever.

Miscellaneous

20. **Disputes:** The parties shall attempt to resolve any dispute or difference arising under or in connection with these Terms and Conditions by negotiation between the parties. If the dispute or difference is not resolved within 10 Business Days of either party notifying the other in writing of the dispute or difference, either party may take such legal steps as it considers appropriate to resolve the dispute or difference.
21. **Notices:** Any notice or communication to be given under, or in connection with these Terms and Conditions shall be in writing and served on the other party at its registered address or via contact details supplied to Ekos by the Purchaser. Any such notice or communication shall be deemed to have been given:
- (a) on the day of delivery, where the notice or communication is delivered during business hours on a Business Day; and
 - (b) on the following Business Day, where the notice or communication is delivered after the end of business hours or on a day that is not a Business Day.
22. **Confidentiality:** To the extent that any confidential information is disclosed by one party to the other, that other party must keep such information confidential, and not disclose it to any other person without the first party's prior written consent, unless required by law or the rules of any recognised stock exchange.
23. **Contracts Privity Act:** These Terms and Conditions (including this clause 23) which contain reference to Ekos are given for the benefit of, and are enforceable in terms of the Contracts (Privity) Act 1982 by, Ekos, and such terms may not be varied by the parties without Ekos' prior written approval.

24. **Consumer Guarantees Act:** The parties agree that the Specified Units are being acquired for business purposes and the Consumer Guarantees Act 1993 does not apply.
25. **No waiver:** No waiver of any breach, or failure to enforce any provision, of these Terms and Conditions at any time by either party in any way affects, limits or waives the right of such party thereafter to enforce and compel compliance with the provisions of these Terms and Conditions.
26. **Counterparts:** These Terms and Conditions may be executed in two or more counterparts, each of which is deemed an original and all of which constitute one and the same agreement. These Terms and Conditions shall be effective upon the execution of:
- (a) an online sale transaction by the Purchaser,
 - (b) a sale transaction facilitated by an online form on the Ekos website,
 - (c) a sale transaction executed by bank to bank transfer of funds.
27. **Entire agreement:** These Terms and Conditions are the entire agreement between the parties in relation to the subject matter of these Terms and Conditions and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
28. **Governing law:** These Terms and Conditions shall be governed by and construed in accordance with New Zealand law. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand.
29. **Commerce Commission Guidelines:** The parties shall adhere to and avoid breach of the New Zealand Commerce Commission Guidelines for Carbon Claims under the Fair Trading Act 1986.

Interpretation

30. **Definitions:** In this Agreement unless the context otherwise requires:

"Agreement" means these Terms and Conditions for sale and purchase of Ekos Units, and includes the Key Terms and all schedules to this agreement.

"Business Day" means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand.

"Ekos" means the incorporated charitable trust of that name (incorporation number 2558660).

"Ekos Unit" means a certified and identifiable part of an Environmental Protection Outcome, representing:

- (a) one hectare of land that has been protected against pollution, destruction, deforestation or degradation;
- (b) the reduction, or avoidance or removal of one tonne of CO₂ or CO₂ equivalent emissions to the atmosphere; or
- (c) such other measure as may be applicable to a particular unit,

in each case, certified by Ekos as meeting the Environmental Standards and recorded in an Ekos Certificate, if elected by the Purchaser.

"Ekos Certificate" means a certificate issued by Ekos representing an Ekos Unit or collection of Ekos Units.

"Ekos Registry" means the third party environmental unit registry, as stated in the Key Terms, used by Ekos to record the issuance, retirement or transfer of Ekos units.

"Environmental Protection Outcome" means the quantifiable environmental outcome achieved as a result of a particular Ekos supply Programme, which may include:

- (a) the protection against pollution, destruction, deforestation or degradation of an area of land;
- (b) the reduction or avoidance of CO₂ and/or CO₂ equivalent emissions into the atmosphere; or
- (c) such other environmental benefit or protection as may be applicable to a particular Programme.

"Environmental Standards" means the environmental management standards and methodologies used by Ekos from time to time to measure, report and verify the achievement of a particular Environmental Protection Outcome.

"HH Unit" means a "Habitat Hectare unit" which relates to the same Environmental Protection Outcome as an Ekos Unit, and has been verified by an independently accredited agency selected by the Supplier.

"Key Terms" means the terms set out under the heading "Key Terms" on the front page of these Terms and Conditions.

"Programme" means an environmental protection programme undertaken by the Supplier, the relevant environmental protection programme associated with the Specified Units.

"Purchase Price" means the amount payable by the Purchaser to the Supplier in respect of the Specified Units, as set out in the Key Terms.

"Purchaser" means the "Purchaser" as set out in the Key Terms.

"Specified Units" means:

- (a) the Ekos Units (if any) described in the Key Terms;
- (b) the Verified Emission Reduction Units (VERs) (if any) described in the Key Terms;
- (c) the Habitat Hectare Units (HH) (if any) described in the Key Terms; and

"Supplier" means the "Supplier" specified in the Key Terms.

"Retirement Date" means the retirement date specified in Clause 3.

"VER Unit" means a "Verified Emissions Reduction unit" which relates to the same Environmental Protection Outcome as an Ekos Unit, and has been verified by an independently accredited agency selected by the Supplier.

References: In these Terms and Conditions, unless the context otherwise requires:

- (a) headings are to be ignored in construing these Terms and Conditions.
- (b) the singular includes the plural and vice versa;
- (c) references to money are to New Zealand dollars, unless otherwise specified;
- (d) a reference to law includes all statutes, regulations, bylaws, decrees, orders, ordinances, treaties or other legislative measures and instruments (and all consolidations, amendments, re-enactments or replacements of any of them);

"including" and similar words do not imply any limitation.

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SCHEDULE 1: ADDITIONAL TERMS FOR VERIFIED EMISSION REDUCTION (VER) UNITS

1. **Additional terms:** The terms set out in Schedule 1 apply where the Specified Units include VER Units.
2. **Retirement:** On or before the Retirement Date the Supplier shall retire those VER Units in the Ekos Registry.

The Supplier and the Purchaser shall provide each other with such assistance as the other reasonably requests in order to effect the delivery or retirement of the VER Units in accordance with this paragraph 1.

3. **Retirement Disruption Event:** If an event beyond the Supplier's control results in the VER Units being temporarily incapable of retirement from the Supplier to the Purchaser on the Retirement Date ("Retirement Disruption Event"), the Supplier shall effect the retirement of the VER Units on the next Business Day on which the Retirement Disruption Event is no longer subsisting.
4. **Notice of Retirement:** The Supplier shall make available to the Purchaser, within 10 Business Days of the date of any retirement, a copy of the notice of retirement relating to the retirement of the relevant VER Units. The notice of retirement shall include, and may be restricted to, an electronic record of the retirement action in the Ekos Registry.
5. **Title:** Ownership and title to the VER Units sold pursuant to these Terms and Conditions shall pass to the Purchaser on the Retirement Date.
6. **VER Units:** Without limiting any other provision in these Terms and Conditions, the Purchaser acknowledges and agrees that:
 - (a) Ekos Units issued as VERs are not certified emission units or assigned amount units for any jurisdictional emissions trading programme operated by an international, national, or sub-national jurisdiction.
 - (b) the Supplier makes no representation or warranty of any kind (express, implied, statutory or otherwise) that the VER Units meet the standards set out in the Kyoto Protocol (or any other regulatory standard operated by an international, national or sub-national jurisdiction).
 - (c) Ekos Units issued as VERs are Verified Emission Reduction Units (VERs) as defined in the international voluntary carbon market and have been issued by a certified voluntary VER unit issuing body.

SCHEDULE 2: ADDITIONAL TERMS FOR HABITAT HECTARE (HH) UNITS

1. **Additional terms:** The terms set out in Schedule 2 apply where the Specified Units include HH Units.
2. **Retirement:** On or before the Retirement Date the Supplier shall:
 - (a) retire those HH Units in the Ekos HH registry, or
 - (b) retire the corresponding number of VER units in the Ekos VER Registry if the HH units are derived from an Ekos supply project that also issues VERs from the same land area as the HH units (to avoid double counting).

The Supplier and the Purchaser shall provide each other with such assistance as the other reasonably requests in order to effect the delivery or retirement of the HH Units in accordance with this paragraph 2.
3. **Retirement Disruption Event:** If an event beyond the Supplier's control results in the HH Units being temporarily incapable of retirement from the Supplier to the Purchaser on the Retirement Date ("Retirement Disruption Event"), the Supplier shall effect the retirement of the HH Units on the next Business Day on which the Retirement Disruption Event is no longer subsisting.
4. **Notice of Retirement:** The Supplier shall make available to the Purchaser, within 10 Business Days of the date of any retirement, a copy of the notice of retirement relating to the retirement of the relevant HH Units. The notice of retirement shall include, and may be restricted to, an electronic record of the retirement action in the Ekos Registry.
5. **Title:** Ownership and title to the HH Units sold pursuant to these Terms and Conditions shall pass to the Purchaser on the Retirement Date.
6. **HH Units:** Without limiting any other provision in the Agreement, the Purchaser acknowledges and agrees that:
 - (a) Ekos Units issued as HH Units are not certified emission units or assigned amount units for any regulatory carbon market operated by an international, national, or sub-national jurisdiction.
 - (b) the Supplier makes no representation or warranty of any kind (express, implied, statutory or otherwise) that the HH Units meet the standards set out in the Kyoto Protocol (or any other regulatory standard operated by an international, national or sub-national jurisdiction relating to greenhouse gases).