



Carbon Trading Terms and Conditions

FEBRUARY 2012

<http://www.bby.com.au>

BBY CARBON TRADING TERMS AND CONDITIONS

These Terms and Conditions apply where you purchase carbon assets (including, but not limited to, Certified Emission Reduction units (CERs))

1. DEFINITIONS

In this schedule

Account means a carbon trading account established by BBY on your behalf;

carbon asset means any type of emissions unit including (but not limited to) Certified Emission Reductions (**CERs**) and other types of carbon credits purchased and sold from either a primary or secondary market (including any emissions trading market).

Client means the person or body corporate for whom BBY establishes an Account;

emissions trading market means an exchange or regulated over-the-counter (**OTC**) trading market wherever located;

BBY means BBY Limited ABN 80 006 707 777, AFSL No: 238 095, and includes its related bodies corporate where the context requires.

you or your means the person or entity recorded as the Account holder of a BBY carbon assets Trading Account.

2. TRADING IN CARBON ASSETS

- 2.1 BBY will provide a service to you for trading and settlement of carbon assets, subject to these terms, and will advise you of the fees and commissions that apply. You must pay to BBY the fees, commissions, taxes and charges at the rates determined by BBY from time to time and notified to you.
- 2.2 BBY requires that if you intend to deal in carbon assets through BBY you must first establish an account with BBY and provide the requisite KYC and AML/CTF document to BBY.
- 2.3 BBY will require payment/settlement arrangements to be in place with you prior to accepting an order to buy or sell carbon assets so that BBY can comply with its settlement requirements.
- 2.4 Confirmation will be provided to you of all trades executed.
- 2.5 BBY will purchase the carbon assets which you instruct us to purchase on your behalf and will procure that all carbon assets are held beneficially for you in the Australian emissions unit registry.
- 2.6 BBY will sell the carbon assets which you instruct us to sell on your behalf and will arrange collection of sale proceeds for you.

3. CLIENT REPRESENTATIONS

- 3.1 You are, and at all times during your dealings with BBY will be, in a position to meet all commitments (financial and otherwise) on your part arising out of dealings with BBY or business conducted by BBY on your behalf. You agree that you and any authorised representatives are over the age of 18 years.
- 3.2 If more than one individual has signed the application for this service, your obligations under these terms are joint and several. Any joint Account will be held jointly with rights of survivorship unless you notify BBY and provide such documentation as BBY requires. If there is more than one Account holder, each of you has the authority, acting alone, to take any action with respect to the Account(s), including, authority to:

- (a) buy and sell carbon assets and other property in the Account(s) and receive and dispose of securities, other property and money in the Account(s);
- (b) receive confirmations, statements and communications relating to the Account(s); and
- (c) generally deal with BBY as if each of you alone was the sole owner of the Account(s), all without notice to the others. Unless otherwise specified in writing, all persons constituting you agree that BBY may act on the instructions of any one of the persons without the necessity to refer to or notify any other person in connection with those instructions. You shall promptly notify BBY in writing if there is any material change in the facts set out in your Account application, including any financial information. In particular, but without limitation, you shall inform BBY in writing if you become a director, 10% shareholder, or policy-making officer of a publicly traded company trading on a foreign stock exchange, or if you become affiliated with or employed by any foreign securities firm, bank, trust company or insurance company.

4. ACKNOWLEDGEMENT

- 4.1 In using the services outlined in these terms, you acknowledge the following:
 - (a) you must maintain at all times sufficient \$A to cover any carbon asset trading before such trade is executed.
 - (b) All carbon assets business transacted by you is not subject to the ASIC Market Integrity Rules, the ASX Operating Rules or any other rules of ASX, and you will not receive the benefit of coverage under the National Guarantee Fund.
- 4.2 BBY may effect foreign exchange transactions on your behalf in order to meet your settlement requirements, and you acknowledge that BBY may use its related body corporate SmarTrader Limited (**SmarTrader**) for this purpose. BBY is not liable for any losses you incur as a result of the conversion of currency undertaken on your behalf.
- 4.3 You acknowledge and assume the risk of fluctuations in the exchange rate between the time of execution and the time at which the exchange rate is determined by BBY and/or SmarTrader and neither BBY nor SmarTrader will be responsible for any loss or damage arising or incurred directly or indirectly from any statement, opinion, representation or advice given by BBY or any of its officers, employees, agents or related bodies corporate to you in connection with any transaction, any foreign exchange rate or price or market (whether relating to historical, present or future circumstances).
- 4.4 You consent to BBY disclosing information in relation to your Account in order to comply with lawful enquiries by relevant US, Australian and other government or self regulatory organisations or agencies.
- 4.5 Transactions and customer assets may be subject to laws and regulations of other jurisdictions.
- 4.6 Where we are required to hold money for you in our trust account, we will retain any interest that is paid on that amount.
- 4.7 Your securities, assets and positions will be commingled with those of other customers of BBY.

BBY CARBON TRADING TERMS AND CONDITIONS

4.8 You will be liable for all taxes, including but not limited to any withholding taxes or estates taxes, goods and services taxes, assessments, duties and other governmental and statutory charges, including any interest or penalty (if any such tax is payable) with respect to the services.

4.9 BBY will not act on a discretionary basis on your behalf or for your benefit.

5. DEFAULT

5.1 If:

(a) you fail to pay or provide security for, amounts payable to BBY; or

(b) any other event occurs which constitutes a breach of these terms by you,

BBY may in addition to any other rights which BBY may have against you, take any reasonable action, or refrain from taking any action, which BBY considers reasonable in the circumstances in connection with transactions under your Account and BBY may:

(c) enter into one or more transactions to sell or effect the close out of one or more transactions; and

(d) exercise any other rights conferred by these terms and perform any other obligations arising under these terms in respect of those transactions.

5.2 You will be liable for any losses, costs and expenses incurred by BBY as a result of BBY exercising its rights under clause 5.1. However, BBY shall remain liable for any losses, costs or expenses caused by its own neglect or default.

6. LIMITATION OF LIABILITY

You agree that trading in carbon assets involves the use of emissions trading markets and registries and you assume full responsibility for any losses resulting from the use of, or failure of, any emissions trading market or registry.

BBY, its directors, officers, employees, agents, contractors, affiliates, third party vendors, information providers, and other suppliers providing information or data services do not warrant that the emissions trading markets and registries will be uninterrupted or error free nor do they make any warranty as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the use of the emissions trading markets and registries.

BBY and its service providers will not accept any form of liability including any loss or damage to you or to any other person for:

(a) transmission, delivery, inaccuracies, errors or delays in, or omission of any data, information or messages;

(b) non-performance;

(c) interruptions in data, information or message transmission, due to any negligent act or omission, including any "force majeure" event or any other cause, whether or not within BBY's control.

Force majeure events include among other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction.

7. AMENDMENT AND TERMINATION

BBY may amend this agreement from time to time. BBY will give you 10 days notice of any amendment, after

which time, the amendment will become effective.

BBY may terminate this agreement immediately if you engage in any market manipulation, fraudulent conduct or conduct in breach of the Corporations Act. BBY may terminate this agreement at any time and without any reason by giving you five Business Days notice. Termination does not affect outstanding obligations under this agreement which are undischarged at the time of termination. Each indemnity in this agreement survives the termination of this agreement.

BBY NOMINEE TERMS AND CONDITIONS

8. INTRODUCTION

8.1 These are the terms on which BBY agrees to hold your carbon assets and other financial products nominated from time to time (**carbon assets**) and the holding on your behalf all certificates and other documents or evidence of title relating to the carbon assets.

8.2 Subject to you completing the relevant application form, BBY will arrange for BBY Nominees Pty Ltd, ABN 30 007 001 443 (**BBY Nominees**) to hold the carbon assets as bare trustee and nominee for you in accordance with the following terms and conditions.

8.3 BBY may arrange another nominee appointed to hold certain carbon assets as bare trustee and nominee for you, in which case a reference in this agreement to BBY Nominees is also a reference to the nominee appointed under that clause unless the context otherwise requires.

9. PROVISION OF BBY NOMINEES SERVICES

9.1 You acknowledge that, in the case of carbon assets which may be held on a register, the carbon assets may be held in the same register holding under which BBY Nominees holds carbon assets and financial products for other persons.

9.2 Where BBY Nominees acts as nominee for any of your carbon assets:

(a) BBY Nominees will be registered as the holder of the carbon assets; and

(b) all certificates and other documents or evidence of title relating to the carbon assets held in custody will be retained by BBY Nominees.

9.3 BBY may in its absolute discretion:

(c) decline a request from you that BBY Nominees hold any particular carbon assets on your behalf; and

(d) at any time procure that BBY Nominees discontinue to hold any particular carbon assets on your behalf and procure that BBY Nominees transfer those carbon assets to you (or at your direction).

10. INSTRUCTIONS IN RELATION TO CARBON ASSETS

10.1 You agree that you must give all instructions to act in relation to the carbon assets held in custody under this agreement either directly to BBY or to your advisor (if your advisor is not a BBY advisor) who will then pass on those instructions to BBY.

10.2 You authorise BBY to accept and act without any inquiry on any instruction or other communication given to BBY (whether by email, fax, telephone or otherwise) which appears to have been given by your advisor.

- 10.3 If you owe BBY settlement obligations in respect of the sale of carbon assets of the kind held in custody under this agreement, BBY is authorised to apply such carbon assets held in custody under this agreement to satisfy those settlement obligations of you.
- 10.4 BBY is not obliged to take any step or other action in relation to the carbon assets held in custody (including, without limitation, the payment of amounts owing or payable in respect of any financial product held in custody) if:
- (a) BBY requests from your advisor instructions (to be given on behalf of you) within a stipulated time and no instructions are received by it within that time; or
 - (b) BBY requests from your advisor moneys within a stipulated time in order to carry out your advisor's instructions (given on behalf of you) and those monies are not received by BBY in full within that time.
- 10.5 You acknowledge and agree that a failure by your advisor (as your agent) to instruct BBY to pay calls on any carbon assets held in custody or the failure to provide BBY with any moneys so requested for payment of any such calls may result in the relevant carbon assets being forfeited.

11. NO MORTGAGE

You must not mortgage or otherwise encumber the carbon assets held in custody without the prior written consent of BBY.

12. FEES AND EXPENSES

- 12.1 BBY shall be entitled to charge fees notified by BBY to you from time to time BBY may vary the fees payable by you by giving you at least 14 days written notice.
- 12.2 All taxes, stamp duties, other duties, imposts, costs and other out of pocket expenses payable or incurred by BBY or BBY Nominees arising out of or relating to this arrangement (including, without limitation, any transaction undertaken on your behalf in respect of the carbon assets held in custody or the transfer of such carbon assets, whether on termination of this arrangement or otherwise) must be paid by you to BBY upon request.
- 12.3 BBY may debit any account maintained on your behalf by BBY or any of its related bodies corporate with:
- (a) all fees and other moneys payable to BBY by you under these terms and conditions; and
 - (b) any call or other moneys owing or paid in respect of any carbon assets held in custody.
- 12.4 If any amount owing or payable by you to BBY on any account is not paid by the due date for payment BBY may (without prejudice to any other rights of BBY under these terms and conditions or at law) sell any carbon assets held by it or BBY Nominees in custody for you. BBY shall not be liable or be responsible for any loss or damage so caused. BBY may apply the proceeds in reduction of your liability to BBY.

13. LIABILITY

Except to the extent to which it is not permissible by law to exclude, restrict or modify liability and except for any liability arising primarily from BBY's or BBY Nominees' wilful misconduct or gross negligence, neither BBY nor BBY Nominees is liable or responsible for any loss, expense or damage incurred or suffered by you as a result of any act or omission of BBY, BBY Nominees or your advisor or any other person resulting from or arising out

of or in connection with this agreement.

14. INDEMNITY

Except for any liability arising primarily from BBY's or BBY Nominees' wilful misconduct or gross negligence, you agree to indemnify, keep indemnified and save harmless each of BBY and BBY Nominees and their respective officers, employees and agents from and against all actions, claims, costs, demands, liabilities and proceedings resulting from or arising out of or in connection with this arrangement, including without limitation resulting from BBY acting on any information, instructions or other communication provided to BBY as contemplated by these terms.

15. TAX FILE NUMBER

Collection of Tax File Numbers (**TFN**) is authorised by law and Australian taxation laws and the Privacy Act strictly regulate their use and disclosure. It is not an offence if you choose not to supply your TFN. For more information about the use of TFNs, please contact the Australian Taxation Office.

Once provided to your advisor and BBY, until you tell them otherwise, your TFN will automatically be applied to any future investments that are held by BBY Nominees for you.

Where you have contracted your advisor's and BBY's services in the course of an enterprise carried on by you, your Australian Business Number (ABN) if applicable, may be supplied in addition to or instead of your TFN.

Where no TFN or ABN has been supplied nor exemption claimed, tax may be taken out of your income distributions at the highest marginal tax rate plus Medicare and any other applicable Government taxes or levies. For joint accounts, each individual must supply a TFN, otherwise the account will be taxed as if no TFN has been supplied.

If you are a non-resident of Australia, or a party to a joint account with a resident, the account will be taxed at the applicable rate for overseas residents as long as the other party has quoted their TFN.

16. CLIENT UNABLE TO BE CONTACTED

You acknowledge and agree that:

- (a) it will ensure that BBY and your advisor (if not a BBY advisor) are notified promptly of any change in your usual residential address or postal address;
- (b) if BBY is unable to contact you for 12 months, BBY is entitled to sell (or arrange for the sale of) any carbon assets held in custody for you and to hold the net proceeds of sale on trust for you;
- (c) if BBY continues to be unable to contact you after the sale of any carbon assets as contemplated in clause 1.1(b), BBY may (or may be obliged to) deal with the money in accordance with the requirements of any applicable legislation relating to unclaimed monies; and
- (d) BBY will be taken to be unable to contact you for 12 months if BBY sends to your last known postal address (and, if different, also to your last known usual residential address) a letter by registered post before and after the end of that period which requires a response from you and either you fails to respond to the letter or the letter is returned to BBY as undeliverable or addressee unknown.

BBY CARBON TRADING TERMS AND CONDITIONS

17. TERMINATION

- 17.1 This agreement may be terminated in whole by you or BBY giving to the other at least 14 days written notice of termination.
- 17.2 You must pay all fees to the date of termination.
- 17.3 On termination BBY will arrange for the transfer (subject to being paid all amounts due to it) of all carbon assets held in custody in accordance with the directions of your advisor (as agent for you), or failing any such directions to you. You are responsible to arrange for the registration of any transfer (unless BBY agrees to do so) and to pay all stamp and other duties in respect of the transfer.

18. AMENDMENT

This agreement may be amended by BBY from time to time. BBY will give you 10 days notice of any amendment, after which time, the amendment will become effective.

19. POWER OF ATTORNEY

- 19.1 You irrevocably appoint BBY and each director and secretary of BBY and BBY Nominees severally as your attorney to sign, seal, deliver, execute and do on your behalf and in your name or otherwise as the attorney thinks fit all instruments, writings, matters, acts and things which the attorney may think necessary or desirable to assign or transfer all carbon assets held in custody to you or otherwise to give effect to your obligations under these terms and conditions.
- 19.2 You ratify and confirm and agree to ratify and confirm whatever any attorney does or purports to do by virtue of that power of attorney.

20. GOVERNING LAW

This agreement is governed and must be construed in accordance with the laws of New South Wales and BBY, BBY Nominees and you submit to the exclusive jurisdiction of the courts or tribunals of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

EXECUTED AS AN AGREEMENT

Name of Client

ABN/ACN (if applicable)

IF THE CLIENT IS A NATURAL PERSON:

SIGNED by you named above in the presence of:

Name of Witness

Signature of Witness

Signature of Client

IF THE CLIENT CONSISTS OF 2 NATURAL PERSON, THE SECOND PERSON IS TO SIGN HERE:

SIGNED by you named above in the presence of:

Name of Witness

Signature of Witness

Signature of Client

IF THE CLIENT IS A CORPORATION:

EXECUTED by you named above:

Name

Signature of director/**sole director and secretary
(Cross out whichever option is not applicable)

Name of second director or secretary

Signature of second director or secretary

**This option should only be selected if the company is an Australian proprietary company which has only one director that person is also the only secretary.

SIGNED for BBY Limited, by its duly authorised officer, in the presence of:

Name of witness

Signature of witness

Name of officer

Signature of officer

BBY CARBON TRADING TERMS AND CONDITIONS

SYDNEY - HEAD OFFICE

Level 17
60 Margaret St
Sydney NSW 2000

T +61 2 9226 0000
F +61 2 9226 0066

ADELAIDE

Suite 5, 148 Greenhill Rd
Parkside
Adelaide SA 5063

T +61 8 8291 1111

AUCKLAND

Level 8, 36 Kitchener St
Auckland 1010

T +64 9 3080780

GOLD COAST

Suite E318 Oracle East
3 Oracle Blvd
Broadbeach QLD 4218

T +61 7 5504 2111

LONDON

15 Stratton St
W1J 8LQ United Kingdom

T +44 203 3000 120

MELBOURNE

Level 13, 8 Exhibition St
Melbourne VIC 3000

T +61 3 8660 7222

NEW YORK

Suite 1700, 19 West 44th St
New York, NY 10036

T +(1) 646 454 8600

PERTH

Level 6, 105 St Georges Tce
Perth WA 6000

T +61 8 6436 3111

WELLINGTON

Level 8 Equinox House
111 The Terrace
Wellington 6011

T +64 4 4717600