

# Green Frog Systems - Standard Terms and Conditions

These Standard Terms and Conditions govern transactions by which Customer purchases Green Frog Systems Products, licensed GFS Programs, and acquires Services (including, without limitation, customised development and support, and maintenance Services) from Green Frog Systems ABN 80 150 403 759 (GFS).

## Terms and Conditions Structure

Part 1 - General Terms

Part 2 – Warranties defines applicable Warranties for GFS Products, GFS Software Programs, GFS Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Licence for Software Programs includes Software Program terms regarding Licence, Program Services, and Licence Termination.

Part 4 – Services Terms includes terms regarding Personnel, Materials Ownership and Licence, Customer Resources, Service for Product (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

## Contents

Green Frog Systems - Standard Terms and Conditions .....	1
Terms and Conditions Structure .....	1
1. General Terms .....	3
1.1 Definitions .....	3
1.2 Delivery .....	3
1.3 Charges and Payment .....	3
1.4 Changes to the Agreement Terms .....	4
1.5 GFS Business Partners .....	4
1.6 Limitation of Liability .....	4
1.7 General Principles of Our Relationship .....	5
1.8 Agreement Termination .....	7
1.9 Geographic Scope and Governing Law .....	7
2. Warranties .....	8
2.1 Warranty for GFS Product .....	8
2.2 Warranty for Software Programs .....	8
2.3 Extent of Warranty .....	8
2.4 Items Not Covered by Warranty .....	8
3. Licence for GFS Software Programs .....	10
3.1 Licence .....	10
3.2 Authorised Use .....	10
3.2.1 Customer’s Additional Obligations .....	10
3.2.2 Actions Customer May Not Take For each Software Program, .....	10
3.3 Licence Termination .....	11
4. Services .....	12
4.1 Personnel .....	12
4.3 Customer Resources .....	12
4.3 Service of Products (during and after warranty) .....	12
4.3.1 Service for Machines .....	12
4.3.2 Replacements When Service involves the exchange of a part or Product, .....	12
4.4 Automatic Service Renewal .....	13
4.5 Termination and Withdrawal of a Service .....	13

# 1. General Terms

## 1.1 Definitions

- Depth of Discharge
- Ambient Temperature
- Dimming Profiles
- Built-in Capacity
- Engineering Change
- GFS Software Program

## 1.2 Delivery

Dates and ship dates are estimates unless otherwise specifically agreed and stated on the GFS Quotation or a Contract between Green Frog Systems (GFS) and the Customer pertaining to a specific project.

Transportation charges, if applicable, will be specified in our Quotation. Variations to transportation costs that are outside the control of GFS will be passed on to the Customer as a variation to the Quoted price.

## 1.3 Charges and Payment

### I. Charges

A GFS Quotation specifies the amount payable for Products and/or Services, based on one or more of the following types of charges: in advance, one-time, fixed price, or milestone payments. Additional charges may apply (such as special handling or travel related expenses). GFS will inform Customer in advance whenever additional charges apply.

All charges or other amounts payable under this Agreement are specified to exclude applicable goods and services tax ("GST") unless stated to the contrary.

### II. Payment Amounts

Unless agreed otherwise in writing ahead of GFS receiving the Customer order, payments for goods are due upon receipt of invoice and payable within 14 days or as specified in an GFS Quotation. Customer agrees to pay accordingly, including a late payment fee of 1.5% per month on payments that are not received by the agreed upon date. Payment may be made electronically to an account specified by GFS or by other means agreed to by the parties.

### III. Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on GFS's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. If the rate of GST changes, GFS may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

### IV. Cancellation & Returns

Cancellation charges of 10% or \$1000 (whichever is greater) will apply to orders cancelled in writing within 72 hours of placing the order and prior to goods leaving the GFS warehouse.

Cancellations charges of 25% or \$5,000 (whichever is greater) will apply after goods have left the

GFS warehouse. The customer will be responsible for additional freight costs incurred in returning the goods to the GFS warehouse.

Orders for Custom product cannot be cancelled under any circumstances.

#### 1.4 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, GFS may change these Terms and Conditions by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date GFS specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period.

For transactions with a defined renewable contract period, Customer may request that GFS defer the change effective date until the end of the current contract period. Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above. Otherwise, for a change to be valid, both parties must sign it.

#### 1.5 GFS Business Partners

GFS has signed agreements with certain organisations (called "GFS Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by GFS Business Partners or other suppliers, however, i) this Agreement applies only if an GFS Quotation subject to these Terms and Conditions is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from GFS. GFS is not responsible for the actions or statements of GFS Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

#### 1.6 Limitation of Liability

- I. Items for Which GFS May Be Liable
  - a. Circumstances may arise where, because of a default on GFS's part or other liability, Customer is entitled to recover damages from GFS. Regardless of the basis on which Customer is entitled to claim damages from GFS (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), GFS's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$20,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code. This limit also applies to any of GFS's subcontractors and Program developers. It is the maximum for which GFS and its subcontractors and Program developers are collectively responsible.
  - b. The damages for bodily injury (including death) and damage to real property and tangible personal property for which GFS is legally liable are not subject to a cap on the amount of damages.

## II. Items for Which GFS Is Not Liable

- c. Except as expressly required by law without the possibility of contractual waiver, under no circumstances is GFS, its subcontractors, or developers liable for any of the following even if informed of their possibility: a. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or b. lost profits, business, revenue, goodwill, or anticipated savings.
- d. To the extent permitted by law, where GFS is in breach of a guarantee or warranty implied by the Australian Consumer Law, GFS's liability is limited to, at GFS's discretion: c. for services: (1) the supplying of the services again or (2) the payment of the cost of having the services supplied again; and d. for goods: (1) the repair or replacement of the goods or the supply of equivalent goods; or (2) the payment of the cost of replacing the goods or having the goods repaired.
- e. Where a guarantee relates to the right to sell, quiet possession or clear title of a good under the Australian Consumer Law, or the goods or services are of a kind ordinarily acquired for personal, domestic, or household use or consumption, then none of the limitations in this section apply. Australian Consumer Law means schedule 2 of the Competition and Consumer Act 2010 (Cth).

## 1.7 General Principles of Our Relationship

### I. Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or GFS Quotation. The parties' consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

### II. Compliance with Laws

GFS will comply with laws applicable to GFS generally as a provider of Solar Generation, Lighting, Energy Storage, Management Software. GFS is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that GFS's provision of or Customer's receipt of Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law. Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

### III. Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

#### IV. Other Principles of Our Relationship

Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.

The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.

This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and GFS. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

Each party grants only the licences and rights specified in this Agreement. No other licences or rights (including licences or rights under patents) are granted either directly, by implication, or otherwise. The rights and licences granted to Customer under this Agreement may be terminated if Customer fails to fulfil its applicable payment obligations.

Customer agrees that GFS may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with GFS Products and Services or in furtherance of GFS's business relationship with Customer. This contact information can be stored, disclosed internally and processed by GFS and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to GFS who will then comply with those requests.

No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is GFS responsible for any third-party claims against Customer except as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which GFS is legally liable to that third party.

Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.

Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

Neither party is responsible for failure to fulfil any non-monetary obligations due to events beyond its control.

As reasonably required by GFS to fulfil its obligations under this Agreement, Customer agrees to provide GFS with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to GFS. GFS is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

### 1.8 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or GFS Quotation.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. Licence termination and termination of a Services transaction are described in Parts 5 and 6, respectively. Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to both parties' respective successors and assignees.

### 1.9 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in Australia except that all licences are valid as specifically granted. Both parties agree to the application of the laws of the State or Territory of Australia in which the Agreement is accepted by GFS to govern, interpret, and enforce all of Customer's and GFS's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

## 2. Warranties

### The GFS Warranties

#### 2.1 Warranty for GFS Product

The warranties specified in this Part are in addition to any rights Customer may have under the Competition and Consumer Act 2010 (Cth) or other legislation and are only limited to the extent permitted by the applicable legislation.

GFS warrants that each GFS Product is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a GFS Product is a fixed period, specified in these GFS – Standard Terms and Conditions – including variances for operating conditions. Unless otherwise specified, the Date of Installation is the Warranty Start Date. During the warranty period, GFS provides repair and exchange Service for the GFS Product, without charge, under the type of Service GFS designates for the GFS Product. If an GFS Product does not function as warranted during the warranty period and GFS is unable to either a) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to GFS for a refund.

For further details, refer to GFS Product Warranty Document

#### 2.2 Warranty for Software Programs

GFS warrants that each warranted Software Program, when used in the Specified Operating Environment, will conform to its Specifications. During the warranty period, GFS provides defect-related Program Services without charge. Program Services are available for a warranted Software Program for at least one year following its general availability. The warranty period for our Software Programs expires when its Program Services are no longer available. If a Software Program does not function as warranted during the first year after Customer obtains its licence and GFS is unable to make it do so, Customer may return the Program and the charges Customer paid for the licence will be refunded. To be eligible, Customer must have obtained its licence while Program Services (regardless of the remaining duration) were available for the Software Program. Additional terms regarding Program Services are contained in Part 5.

#### 2.3 Extent of Warranty

If a GFS Product is subject to federal or state consumer warranty laws, GFS's statement of limited warranty included with the Product applies in place of these Product warranties. The warranties, detailed in our document 'GFS Warranty July 2019', will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorised Built-in Capacity or Circumvention of Technological Measures), incorrect installation, vandalism, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper storage of product including storage following deinstallation for warranty claims, improper maintenance by Customer or a third party, or failure or damage caused by a product for which GFS is not responsible. The warranty for GFS Products is voided by removal or alteration of Product or parts identification labels.

#### 2.4 Items Not Covered by Warranty

GFS does not warrant uninterrupted or error-free operation of a Product or Service or that GFS will correct all defects. GFS will identify GFS Products and Software Programs that it does not warrant. Unless otherwise specified in an Attachment or GFS Quotation, GFS provides Materials, non-GFS Products (including those provided with, or installed on, a GFS Product at Customer's



request), and non-GFS Services WITHOUT WARRANTIES OF ANY KIND. However, non-GFS manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

## 3. Licence for GFS Software Programs

### 3.1 Licence

When GFS accepts Customer's order, GFS grants Customer a nonexclusive licence to use the Software Program only within Customer's Enterprise in Australia. Software Programs are owned by GFS, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

### 3.2 Authorised Use

Under each licence, GFS authorises Customer to:

- a. run or execute the Software Program only on the Designated Products specified by the Customer to GFS under the terms of Section 3.2.1 below;
- b. use the Software Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorised by GFS, make and install copies of the Software Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the Software Program GFS i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of GFS") only to: (1) resolve problems related to the use of the Software Program, and (2) modify the Software Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

#### 3.2.1 Customer's Additional Obligations

For each Software Program, Customer agrees to:

- a. provide its GFS representative with the type/model and serial number of the Designated Product, and provide advance written notice and the effective date of any change from one Designated Product to another Designated Product;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or GFS Quotation;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorised use and complies with GFS's terms regarding Software Programs; and
- d. maintain a record of all copies and provide it to GFS at its request.

3.2.2 Actions Customer May Not Take For each Software Program, Customer agrees not to:

- a. modify the Software Program except as GFS expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Software Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the Software Program or transfer it outside Customer's Enterprise.

### 3.3 Licence Termination

Customer may terminate the licence for a GFS Software Program at any time on 30 calendar days' written notice to GFS. GFS may terminate Customer's licence for a Software Program if Customer fails to comply with:

- a. the terms of this Section 3,
- b. the licence terms for Software Code applicable to the Designated Products to which the Software Program is licensed,

If a Software Program's licence is terminated, Customer's authorisation to use the Software Program is also terminated. Customer agrees to promptly destroy all copies of the Program after either party has terminated the licence.

## 4. Services

### 4.1 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors. GFS may engage subcontractors to provide or assist in providing Services, in which case GFS remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

### 4.3 Customer Resources

If Customer is making available to GFS any facilities, software, hardware or other resources in connection with GFS's performance of Services, Customer agrees to obtain any licences or approvals related to these resources that may be necessary for GFS to perform the. GFS will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licences or approvals. Customer agrees to reimburse GFS for any reasonable costs and other amounts that GFS may incur from Customer's failure to obtain these licences or approvals.

### 4.3 Service of Products (during and after warranty)

#### 4.3.1 Service for Machines

GFS recommends certain types of Service to keep Products in, or restore them to, conformance with their Specifications. GFS will inform Customer of the recommended types of Service for a Product. Failure to complete these recommended services can void warranties and subsequent services and freight costs will be the sole responsibility of the Customer.

When the type of Service requires that Customer deliver the failing Product to GFS, Customer agrees to ship it suitably packaged (prepaid unless GFS specifies otherwise) to a location GFS designates. After GFS has repaired or exchanged the Machine, GFS will deliver it to Customer at GFS's expense unless GFS specifies otherwise.

GFS is responsible for loss of, or damage to, Customer's Product while it is

- I. in GFS's possession or
- II. in transit in those cases where GFS is responsible for the transportation charges.

Customer agrees:

- a. where applicable, before GFS provides Service, to -- (1) follow the problem determination and service request procedures that GFS provides, and (2) inform GFS of changes in a Products location; and
- b. to follow the Service instructions that GFS provides (which may include installing Code and other software updates either downloaded from an GFS Internet Web site or copied from other electronic media); and

4.3.2 Replacements When Service involves the exchange of a part or Product, The item GFS replaces becomes GFS's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced

item. Before GFS exchanges a part or Product, Customer agrees to i) ensure that the part or Product is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to GFS. Service for GFS Products involves GFS providing Customer with an exchange replacement for installation by Customer.

When return is required, return instructions are shipped with the replacement, and Customer may be charged for the replacement if GFS does not receive the failing Product within 21 calendar days of Customer's receipt of the replacement.

The exclusions specified in this section 4.3 do not limit any rights Customer may have under the Competition and Consumer Act 2010 (Cth) or other legislation. Such rights are only limited to the extent permitted by the applicable legislation.

#### 4.4 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew. During an automatic renewal period, Customer may terminate the Service on one month's written notice, and GFS will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

#### 4.5 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service. Customer may terminate a Service, on notice to GFS provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and GFS Quotation.

Customer agrees to pay GFS for i) all charges for Services GFS provides and any Products and Materials GFS delivers through Service termination, and ii) reimbursable expenses GFS incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses GFS incurs as a result of such termination (which GFS will take reasonable steps to mitigate).

GFS may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If GFS withdraws a Service for which Customer has prepaid and GFS has not yet fully provided it to Customer, GFS will give Customer a prorated refund. Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.