

CLIMATE SYSTEMS (2017) LIMITED - TERMS OF TRADE

1. DEFINITIONS

- 1.1 “**CLIMATE SYSTEMS**” shall mean **CLIMATE SYSTEMS (2017) LIMITED**, or any agents or employees thereof.
- 1.2 “**Customer**” shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods from CLIMATE SYSTEMS. Where the Customer comprises more than one person, the obligations of the Customers shall be joint and several.
- 1.3 “**Goods**” shall mean all Goods supplied by CLIMATE SYSTEMS to the Customer and as described in any invoice, quotation and/or any other document provided to the Customer by CLIMATE SYSTEMS.
- 1.4 “**Services**” shall mean all services supplied to the Customer by CLIMATE SYSTEMS and as described in any invoice, quotation and/or any other document provided to the Customer by CLIMATE SYSTEMS.
- 1.5 “**Disbursements**” shall include the cost of any expense incurred on the Customer’s behalf (for example, all reasonable photography, reproduction of drawings, diagrams, sketches and printing).
- 1.6 “**Price**” shall mean the cost of Goods and Services as determined by CLIMATE SYSTEMS
- 1.7 “**Equipment**” shall mean all machinery or other products used by CLIMATE SYSTEMS in supplying the Goods and Services.
- 1.8 “**Premises**” shall mean the property where the Customer has directed CLIMATE SYSTEMS to carry out the Services or the place for delivery of Goods. .
- 1.9 “**Materials**” shall include all fixtures, fittings, pipes or other materials used in the course of CLIMATE SYSTEMS providing the Services or supplying the Goods.

2. ACCEPTANCE & CANCELLATION

- 2.1 Any instructions received by CLIMATE SYSTEMS from the Customer for the supply of Goods and/or Services, or the acceptance of Goods and/or Services provided by CLIMATE SYSTEMS shall constitute acceptance of the terms and conditions contained herein.
- 2.2 CLIMATE SYSTEMS retains the right to terminate any instructions received by the Customer for the provision of Goods and/or Services if the information provided is false or misleading or if any issue arises as to the Customer’s creditworthiness. In the event that an issue arises as to the Customer’s creditworthiness, CLIMATE SYSTEMS may also, at their sole discretion, continue providing Goods and/or Services upon payment in advance of Goods and/or Services being supplied.
- 2.3 CLIMATE SYSTEMS may issue a notice of remedy to the Customer in the event that these Terms of Trade are breached by the Customer. If the breach given in the notice is not remedied by the Customer within 30 days then CLIMATE SYSTEMS may cancel, in whole or in part, any instructions received by the Customer for the supply of Goods and/or Services immediately, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing. CLIMATE SYSTEMS will not be liable for any loss or damage arising from the cancellation.
- 2.4 CLIMATE SYSTEMS may cancel, in whole or in part, any instructions received by the Customer for the supply of Goods and/or Services immediately at any time, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing for any substantial breach of these Terms of Trade. CLIMATE SYSTEMS will not be liable for any loss or damage arising from the cancellation.
- 2.5 In the event that CLIMATE SYSTEMS cancels any instructions (or part thereof) from the Customer, the Customer will remain liable for the full cost of any Goods and/or Services provided up to and including the date of cancellation.
- 2.6 The Customer may cancel any instructions given to CLIMATE SYSTEMS by the Customer by providing 14 days’ notice in writing to CLIMATE SYSTEMS. The Customer will remain liable for the full cost of any Goods and/or Services provided up to and including the date of cancellation. The Customer will remain liable for the full cost of any loss or damage arising from the cancellation.

3. DEPOSIT

- 3.1 CLIMATE SYSTEMS reserves the right to charge a deposit for the Goods and/or Services. This deposit will be invoiced and payable in advance of the provision of Goods and/or Services by CLIMATE SYSTEMS to the Customer.
- 3.2 CLIMATE SYSTEMS may require a deposit to cover a percentage of the Price of any Service and/or Goods before Goods and/or Services are supplied to the Customer.
- 3.3 CLIMATE SYSTEMS reserves the right to withhold the supply of Goods and/or Services until the deposit is received.

4. PRICE & PAYMENT

- 4.1 CLIMATE SYSTEMS may issue a quote to the Customer before work is undertaken. Any quotation issued remains valid for 20 working days. CLIMATE SYSTEMS may withdraw that quotation at any time before the Customer accepts that quotation. The quotation is based on the costs and charges indicated to CLIMATE SYSTEMS at the day of quotation. Any changes in costs arising from sources beyond the control of CLIMATE SYSTEMS, such as changes in the price charged by suppliers or for any other reason, is payable by the Customer. Factors beyond CLIMATE SYSTEMS's control include (but are not limited to) supply issues and price fluctuations as a result of a pandemic, act of God, global economic crisis, political tensions between trading countries and trade embargos.
- 4.2 CLIMATE SYSTEMS will invoice the Customer for the Price of the Goods and/or Services based on the Goods and/or Service actually supplied. The Customer acknowledges that there may be discrepancies from the quotations and that CLIMATE SYSTEMS shall provide reasonable explanation for the final charge in each invoice where the invoice is inconsistent with the quotation for any reason
- 4.3 CLIMATE SYSTEMS requires full payment of the Invoice within three days of the date of the invoice unless otherwise agreed to in writing.
- 4.4 If the Customer holds more than one account with CLIMATE SYSTEMS, these may be combined by CLIMATE SYSTEMS and the balances may be set off against each other.
- 4.5 CLIMATE SYSTEMS may transfer any overdue accounts owing by the Customer to a third party for the purpose of collection after notice is given to the Customer.
- 4.6 CLIMATE SYSTEMS reserves the right to invoice for Goods and/or Services in a staged approach. An invoice may be issued at each stage of Goods and/or Services being provided by CLIMATE SYSTEMS as determined by CLIMATE SYSTEMS.
- 4.7 CLIMATE SYSTEMS may, at their sole discretion, allow for a payment schedule to be implemented for the provision of Goods and/or Services to a Customer.
- 4.8 CLIMATE SYSTEMS reserves the right to recover from the Customer any expenses, disbursements and legal costs incurred by CLIMATE SYSTEMS due to the enforcements of any rights contained in these Terms of Trade including any reasonable solicitor's fees or debt collection agency fees.
- 4.9 CLIMATE SYSTEMS price is the cost of Goods and Services exclusive of Goods and Services Tax (unless stated otherwise). GST will be stated on any invoice issued by CLIMATE SYSTEMS and is payable by the Customer to CLIMATE SYSTEMS.

5. VARIATION/WAIVER

- 5.1 No variation or waiver of these Terms of Trade shall be valid, including any oral representations by CLIMATE SYSTEMS or a representative, which is inconsistent with these Terms of Trade unless the variation or waiver is in writing.

6. CUSTOMER'S RESPONSIBILITIES

- 6.1 The Customer will ensure that all information provided to CLIMATE SYSTEMS is complete and accurate.
- 6.2 The Customer will update CLIMATE SYSTEMS when the Customer's information changes (for example, if the Customer's contact details or address for service changes).
- 6.3 The Customer will provide CLIMATE SYSTEMS and their contractors safe access on to, while attending, out of and around the Premises. The Customer will ensure that the Premises are free from hazards that may cause harm to CLIMATE SYSTEMS, their contractors or their equipment. The Customer will be liable for any costs, expenses or losses reasonably incurred by CLIMATE SYSTEMS in repairing or replacing any equipment and/or to anyone else's property that is damaged due to hazards at the Premises.
 - 6.3.1 The Customer will ensure that the Premises comply with all relevant Health and Safety requirements.
 - 6.3.2 The Customer will ensure that the Premises are free from hostile behaviour toward and/or around CLIMATE SYSTEMS.
- 6.4 The Customer will pay CLIMATE SYSTEMS the full Price for all Goods and Services provided to the Customer by CLIMATE SYSTEMS as per any invoice issued by CLIMATE SYSTEMS.
- 6.5 The Customer will use the Goods and/or Services provided by CLIMATE SYSTEMS for lawful purposes only.

7. CLIMATE SYSTEM'S RESPONSIBILITIES

- 7.1 CLIMATE SYSTEMS will use all reasonable skill and care in providing Goods and/or Services to the Customer.

7.2 CLIMATE SYSTEMS will act in a competent and professional manner. CLIMATE SYSTEMS will only direct employees and contractors with the necessary qualifications and/or training and skills in providing Goods and/or Services to the Customer.

7.3 CLIMATE SYSTEMS gives no guarantees, representations or warranties to the Customer other than those set out in writing from CLIMATE SYSTEMS or those required by law.

8. CUSTOMER INFORMATION

8.1 The Customer authorises CLIMATE SYSTEMS to collect and hold such commercial, financial and personal information about the Customer as is necessary for assessing creditworthiness, trading status, obtaining credit statements, marketing any Goods and/or Services provided by CLIMATE SYSTEMS, or enforcing CLIMATE SYSTEMS' rights under these Terms of Trade.

8.2 The Customer authorises CLIMATE SYSTEMS to disclose the information in clause 8.1 to other parties for the purposes stated in clause 8.1.

8.3 The Customer acknowledges that any information given is true and correct, and that the Customer will notify CLIMATE SYSTEMS if the Customer's information changes. This notification shall be at least seven days in advance when possible, or as soon as practicable in all other circumstances.

8.4 If the Customer is a natural person then the authority given under clause 8 shall constitute sufficient authority for the purposes of the Privacy Act 1993. The Customer also acknowledges that they have the right to access that information and request corrections to it.

9. CLAIMS AS TO GOODS AND/OR SERVICES

9.1 The Customer shall inspect all Goods and/or Services supplied upon supply of the Goods and/or Services. The Customer will advise CLIMATE SYSTEMS in writing within 14 days of the Goods and/or Services being supplied of any defect, shortage in quantity, damage, or failure to comply with description or sample.

9.2 The Customer will provide CLIMATE SYSTEMS with an opportunity to inspect the Goods and/or Services within a reasonable timeframe following receipt of the notice under clause 9.1 and before any use is made of the Goods and/or Services supplied.

9.3 CLIMATE SYSTEMS will accept the return of Goods from the Customer where they are defective in quality. Where possible, CLIMATE SYSTEMS will replace or repair those Goods. A credit note may be issued for the Goods at the sole discretion of CLIMATE SYSTEMS.

9.4 CLIMATE SYSTEMS will take all reasonable steps to remedy any defect, shortage in quantity, damage, or failure to comply with description or sample from any Service provided (where notice of such is sufficiently provided). CLIMATE SYSTEMS shall be responsible for any reasonable costs associated in remedying the issue where the issue has resulted directly from CLIMATE SYSTEMS' actions. CLIMATE SYSTEMS reserves the right to charge the Customer any additional sums where further costs are incurred in remedying the issue. CLIMATE SYSTEMS shall make the Customer aware of such additional costs and the reasons for the additional costs prior to incurring such costs.

9.5 In the event that the Customer does not comply with clause 9, Goods and/or Services supplied by CLIMATE SYSTEMS will be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the Goods and/or Services. The Customer will be deemed to have accepted the Goods and/or Services and have waived any and all claims arising from any unidentified defect(s) in the Goods and/or Services.

10. DISPUTES

10.1 CLIMATE SYSTEMS will not consider any dispute regarding Goods and/or Services unless the issue with the Goods and/or Services was raised in accordance with clause 9.

10.2 The above clause 9 applies without prejudice to CLIMATE SYSTEMS, who may claim a dispute against the Customer, at any time, by giving the Customer notice in writing specifying the nature of the dispute.

10.3 If CLIMATE SYSTEMS or the Customer have been notified of a dispute, both parties will endeavour, in good faith, to resolve the dispute referred to in the notice, by using informal dispute resolution techniques.

10.4 If the parties do not agree on a dispute resolution technique within 14 days after the date of notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand

Incorporated (Lawyers Engaged in Alternative Dispute Resolution) and the Chair of LEADR (or chair's nominee) will select the mediator and determine the mediator's remuneration.

10.5 The parties agree that pending final resolution of any dispute hereunder, neither of them shall make any press release, public announcement or statements concerning the subject matter of the dispute to any person or organisation (save as expressly or by implication authorised herein).

11. SECURITY AGREEMENT

11.1 By accepting these Terms of Trade the Customer is entering into a valid security agreement under the Personal Property Securities Act 1999 (the "PPSA"). The Customer accepts that CLIMATE SYSTEMS may register a financing statement of the Personal Property Securities Register to give CLIMATE SYSTEMS a Perfected Security Interest in any Goods supplied or the proceeds from the sale of Goods.

11.2 Any Goods supplied by CLIMATE SYSTEMS shall remain the property of CLIMATE SYSTEMS until paid for in full or while any money is due to CLIMATE SYSTEMS.

11.3 If any money remains unpaid to CLIMATE SYSTEMS or the Customer is in breach of any obligation to CLIMATE SYSTEMS, then CLIMATE SYSTEMS or their agents are authorised by the Customer to enter the Premises to recover and resell any or all of the Goods to recover the unpaid amount.

11.4 The Customer agrees that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall not apply on the enforcement by CLIMATE SYSTEMS of any security interest created or provided for by this clause to which Part 9 of the PPSA applies. The Customer also waives any rights they may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement.

12. RISK & LOSS

12.1 All risk in Goods and/or Services shall pass to the Customer upon delivery or confirmation of completion of the Service. Any loss arising from theft, destruction or damage from whatever cause shall be borne by the Customer.

12.2 The Customer assumes product risk during shipping and delivery unless otherwise stated by CLIMATE SYSTEMS in writing to the Customer prior to shipping and delivery.

13. MATERIALS

13.1 The Customer acknowledges that there may be variation to the Material provided in the quotation to the Material install. CLIMATE SYSTEMS shall take reasonable steps to notify the Customer of the variation in Material and the reason for the variation.

13.2 In the event that CLIMATE SYSTEMS considers any Materials supplied by the Customer to be unfit for purpose in carrying out Services, CLIMATE SYSTEMS reserves the right to refuse to use these Materials. This does not create an obligation on CLIMATE SYSTEMS to advise the Customer as to the fitness for purpose of Materials supplied by the Customer.

13.3 In the event that Materials supplied by the Customer cause loss, damage or are defective in any way, the Customer will be liable to pay, as a variation of the original agreement, all costs associated with remedying the damage, loss or defect.

14. DELIVERY OF GOODS

14.1 At CLIMATE SYSTEMS' sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by CLIMATE SYSTEMS).

14.2 The delivery of the Goods to the Customer is considered complete when the Goods are given to the carrier, courier or other person for the purpose of transmission to the Customer (in the event that the Goods are delivered by a third party).

14.3 The costs of delivery shall be in addition to the Price of Goods and will be invoiced to the Customer.

14.4 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise, in writing, to make timing of the essence.

14.5 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then CLIMATE SYSTEMS shall be entitled to charge a reasonable fee for redelivery which will be invoiced directly to the Customer.

14.6 The Customer cannot cancel the whole or any part of an order due to CLIMATE SYSTEMS being unable to comply with the Customer's delivery requirements for any reason and/or if there are minor variations to the Goods due to changes in the manufacturer's process.

15. LIABILITY

15.1 In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon CLIMATE SYSTEMS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on CLIMATE SYSTEMS, CLIMATE SYSTEMS' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

15.2 Except as otherwise provided by clause 15.1 CLIMATE SYSTEMS, any and all of its suppliers, vendors, service providers, and all other persons or business associated directly or indirectly with CLIMATE SYSTEMS shall not be liable for:

15.2.1 Any loss or damage of any kind whatsoever including consequential, indirect or special loss and personal injury, whether suffered or incurred by the Customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods and/or Services provided by CLIMATE SYSTEMS to the Customer. For the sake of clarity, this includes but is not limited to loss and damage caused by: failure, abuse, lack of maintenance, unintended use, unqualified use, unauthorised modifications, delay and/or over extended use of the Goods and/or Services; and

15.2.2 The Customer shall indemnify CLIMATE SYSTEMS against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of CLIMATE SYSTEMS or otherwise, brought by any person in connection with any matter, act, omission, or error by CLIMATE SYSTEMS, its agents or employees in connection with the Goods and/or Services.

15.3 In the event that CLIMATE SYSTEMS is ever liable, to the Customer or any other person, then the liability of CLIMATE SYSTEMS in all cases is limited to the Price of the Goods and/or Services supplied by CLIMATE SYSTEMS.

16. COMPLETION TIMEFRAME

16.1 CLIMATE SYSTEMS will work within a reasonable timeframe and will endeavour to meet any target date which the Customer makes known to CLIMATE SYSTEMS.

16.2 CLIMATE SYSTEMS will not be liable for any delay or damage caused, directly or indirectly, by weather conditions, labour disputes, strikes, accidents, fire, and/or failure of manufacturers to deliver or any other events beyond the reasonable control of CLIMATE SYSTEMS.

16.3 Should it be necessary for CLIMATE SYSTEMS to work outside of ordinary working hours to meet the completion date as set by the Customer, the Customer shall be liable for any extra costs incurred in association with this. These costs will be invoiced to the Customer.

17. CONSENTS, PLANS & SPECIFICATIONS

17.1 The Customer is responsible for obtaining any consent or other authority necessary for the Services to be carried out, and will provide proof of that to CLIMATE SYSTEMS upon request.

17.2 CLIMATE SYSTEMS shall be entitled to rely on the accuracy of any plans, specifications and other information supplied by the Customer. CLIMATE SYSTEMS shall not be obliged to check any of these.

17.3 CLIMATE SYSTEMS shall bear no responsibility for any Goods and/or Services supplied in reliance on and compliance with those plans, specifications and other information.

18. CONSUMER GUARANTEES ACT

18.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and/or Services from CLIMATE SYSTEMS for the purposes of a business in terms of section 2 and 43 of that Act.

19. CONSTRUCTION CONTRACTS ACT 2002

19.1 In the event that these Terms of Trade are different to the terms provided by the Construction Contracts Act 2002, the clauses in these Terms of Trade will apply (provided that it is a term of the Construction Contracts Act 2002 that may be contracted out of).

20. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 20.1 If the Customer is a company, other entity (whether incorporated or not) or trust, the director(s), agent(s) or trustee(s) accepting these terms, in consideration for CLIMATE SYSTEMS agreeing to supply Goods and/or Services to the Customer, also accept these terms in their personal capacity and jointly and severally personally guarantee and undertake to CLIMATE SYSTEMS the payment of any and all other monies now or hereafter owed by the Customer to CLIMATE SYSTEMS.
- 20.2 As the natural person engaging CLIMATE SYSTEMS (whether on behalf of another entity or not), the natural person acknowledges that they are authorised to accept these Terms of Trade on behalf of the Customer.
- 20.3 Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms of Trade. The guarantors and Customer shall be jointly and severally liable under the terms and conditions of these Terms of Trade.

21. DEFAULT

- 21.1 Without prejudice to any other rights or remedies that CLIMATE SYSTEMS may have against the Customer, the Customer agrees that in the event of default in payment by the Customer, then the Customer will pay on demand:
- 21.1.1 All costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by CLIMATE SYSTEMS in recovering any amounts payable by the Customer to CLIMATE SYSTEMS;
- 21.1.2 Overdue payments shall attract interest at the rate of 2.5% per month calculated daily and compounding on the 1st day of each month with such a rate applying after, as well as before, any judgment; and
- 21.1.3 A monthly administration fee of twenty-five dollars (\$25.00) by way of damages payable on the last day of each month in which you are in default.
- 21.2 CLIMATE SYSTEMS may, at their discretion, stop further performance of Services and/or supply of Goods and require payment in cash before any further performance of Services and/or supply of Goods, or terminate any instructions received from the Customer for the performance of Services and/or supply of Goods, without notice to the Customer upon any of the following:
- 21.2.1 The Customer defaults in payment due under these Terms of Trade;
- 21.2.2 The Customer is insolvent or take any proceedings to reschedule any indebtedness;
- 21.2.3 In the opinion of CLIMATE SYSTEMS the Customer is unable to pay their indebtedness as it falls due;
- 21.2.4 The Customer has a receiver or manager appointed.
- 21.3 Any failure or delay by CLIMATE SYSTEMS in exercising or enforcing any right they have under these Terms of Trade will not operate as a waiver of their rights to exercise or enforce such rights or any rights in the future.

22. CUSTOMER'S DISCLAIMER

- 22.1 The Customer hereby disclaims any right to rescind, or cancel any contract with CLIMATE SYSTEMS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by CLIMATE SYSTEMS and the Customer acknowledges that the Goods and/or Services are sought and supplied relying solely upon the Customer's skill and judgement.

23. GENERAL

- 23.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3 CLIMATE SYSTEMS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which CLIMATE SYSTEMS notifies the Customer of such change. The most recent version of CLIMATE SYSTEMS can be found at...
- 23.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 23.5 The failure by CLIMATE SYSTEMS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CLIMATE SYSTEMS' right to subsequently enforce that provision.

- 23.6 CLIMATE SYSTEMS may assign, sub-contract or transfer all or any part of its rights or obligations under this Contract without the Customer's consent. For the avoidance of doubt, the Customer cannot assign or transfer all or any part of their rights or obligations under this Contract.
- 23.7 No assignee, sub-contractor or transferee has the authority to agree to any variation of these Terms of Trade on behalf of CLIMATE SYSTEMS.
- 23.8 The termination of these Terms of Trade, for any reason, will not limit, in any way, the obligations and liabilities incurred by the Customer under these Terms of Trade.

<p>Name of Client (entity or person):</p> <p>Date of Birth (if individual):</p> <p>Name of company representative(s):</p> <p>Postal Address:</p> <p>Address for Service:</p> <p>Contact telephone:</p> <p>Email:</p>	<p>I declare that I am authorised to and do accept CLIMATE SYSTEMS' Terms of Trade and that these Terms of Trade constitute a valid security agreement and credit application</p> <p>x _____ Signature of Client(s) (or representative of the Client(s))</p> <p>Date: _____</p> <p>I acknowledge that I am personally liable for any default of the Client in accordance with clause 20 above.</p> <p>x _____ Signature of Client(s)</p> <p>Date: _____</p>
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