

## Section 5. Standard Terms and Conditions Liberty Oil Australia Pty Ltd ACN 114 544 437 (Liberty)

### Terms of bulk fuel supply, lubricants and related products

#### 1. Definitions

In these terms:

- a. **Application** means this credit application for fuel supply terms document duly completed and signed by the Purchaser.
- b. **Fuel** means petrol, diesel, liquefied petroleum gas, biofuels (including ethanol, ethanol-blends and biodiesel), lubricants and related products offered for sale by Liberty.
- c. **Laws** means legislation and regulations, and determinations, rulings, orders, directions, requirements, standards, policies and guidelines of any government, authority or similar body, applying in Australia.
- d. **Liberty** means Liberty Oil Australia Pty Ltd ACN 114 544 437, its successors and assigns as well as where the context permits or requires, the Liberty Group.
- e. **Liberty Group** means Liberty and its related bodies corporate (as defined in the Corporations Act 2001), and any directors, officers, employees and contractors of those companies, each from time to time.
- f. **PPSA** means the Personal Property Securities Act 2009 (Cth).
- g. **Premises** means the premises specified by the Purchaser for delivery of the Fuel.
- h. **Purchaser** means the entity acquiring the Fuel on these terms (and a trustee is bound personally and as trustee).
- i. **Secured Property** means all Fuel delivered by Liberty to the Purchaser.
- j. **Security** means any mortgage, charge, personal guarantee, bank guarantee, bond or other security held by Liberty on account of the Purchaser.
- k. **Taxes** means all present and future Federal and State Government duties, levies, imposts fees and taxes of whatever nature (excluding income tax).
- l. **Terms and Conditions** means the terms and conditions in this document and any annexures.

#### 2. Binding terms and conditions

- a. The only terms and conditions binding on Liberty in relation to the supply of Fuel to the Purchaser are these terms, any agreed in writing by Liberty, and any imposed by law and not capable of exclusion.
- b. These standard terms and conditions apply to every supply or possible supply of product by Liberty to the Purchaser unless a subsequent formal written agreement between Liberty and the Purchaser expressly supersedes them.

#### 3. Orders and delivery

- a. The Purchaser must order the quantity of each type of Fuel it requires from Liberty according to the ordering procedures specified by Liberty from time to time.
- b. After accepting an order, Liberty will deliver the Fuel to the Premises (unless other arrangements are made by the parties as agreed to and accepting in writing by Liberty).
- c. Delivery occurs and title passes when the Fuel passes into the storage facilities at the Premises (except for lubricants which are delivered when the storage containers are offloaded from the vehicle onto the Premises).
- d. Liberty's calculation or statement of the quantity of Fuel in each delivery is conclusive evidence of the supply of that quantity to the Purchaser.
- e. The volume of Fuel supplied to the Purchaser will only be temperature adjusted if required by and in accordance with law.
- f. Liberty will deliver products ordered by the Purchaser within a reasonable time from acceptance by Liberty of the order, subject to availability and these terms and conditions.
- g. Liberty is not obliged to deliver or sell any Fuel to the Purchaser if the Purchaser has failed to pay (or Liberty has reasons to believe, in its sole and absolute discretion, that the Purchaser will not pay or will no longer pay) for any Fuel previously delivered to the Purchaser by Liberty or if the Purchaser has indicated that the Purchaser will not comply with any of these standard terms and conditions.
- h. Despite anything to the contrary in these terms and conditions but only to the maximum extent permitted by law (including without limitation the Competition and Consumer Act 2010 (Cth)), Liberty is under no obligation to accept any order, may refuse to supply Fuel to the Purchaser, or may withdraw or reduce any credit facility, without notice to the Purchaser and at Liberty's sole discretion.

#### 4. Price and GST

- a. The price payable by the Purchaser to Liberty for each type of Fuel is the ruling price specified by Liberty as applicable to the Purchaser at the time of delivery.
- b. Liberty may also charge fees (as applicable from time to time) for delivery, credit terms, payments made by any method other than direct debit, cheque dishonours and payment rejections.
- c. All Federal and State Government duties, levies, imposts, fees and sales taxes (including without limitation any goods and services tax) which are current or introduced at any time will be charged to each delivery of Fuel ordered by the Purchaser as applicable and are paid solely by the Purchaser on the same terms as the price, unless an approved exemption is provided to Liberty at the time of ordering the applicable Fuel.
- d. Prices notified by Liberty (unless otherwise stated by Liberty) include GST as defined in A New Tax System (Goods & Services Tax) Act 1999.
- e. The Purchaser must pay when due and indemnifies Liberty in respect of:
  - i. Taxes that exist at the date of delivery, except where a price expressly includes those Taxes; and
  - ii. Any costs incurred by Liberty as a direct or indirect result of any mandatory scheme for carbon trading or otherwise relating to the reduction of greenhouse emissions relating to Fuel supplied by Liberty to the Purchaser, whether incurred by Liberty or passed on to Liberty by a supplier, to the extent not already included in the relevant price under this clause 4.

#### 5. Payment

- a. The Purchaser must pay for the Fuel within the time and by the method specified by Liberty from time to time and if no time is specified, prior to delivery.
- b. Payment is only made when Liberty receives cleared funds. Time is of the essence for the Purchaser's obligation to pay for Fuel.
- c. The Purchaser must pay interest on any overdue amounts. Interest accrues daily at the then current 'Cash Rate' published by the Reserve Bank of Australia plus 4% from the date the amount became due until payment is made.

#### 6. Credit

- a. The Purchaser warrants that information provided about its financial position is true and correct and not misleading, must immediately notify Liberty of any change to its position and must provide further information on request from Liberty at any time and from time to time.
- b. Liberty may:
  - i. Allow, withdraw and vary credit terms at its discretion from time to time and at anytime;
  - ii. From time to time set, change, modify a credit limit at Liberty's sole discretion and the Purchaser must ensure that the amount it owes Liberty does not at any time exceed that limit.

#### 7. PPS and Security Interest

- a. In this clause 7, capitalised expressions have the meaning given to them in the PPSA. These terms constitute a Security Agreement for the purposes of the PPSA.
- b. To secure payment of amounts owing by the Purchaser to Liberty under these terms, on signing of this Application the Purchaser grants a Security Interest to Liberty in the Secured Property from the time of delivery until Liberty has been paid in full. This Security Interest operates as a charge and remains in full force and effect whilst this Application remains in force and effect.
- c. The Purchaser consents to Liberty registering one or more Financing Statements or Financing Change Statements in respect of the Security Interest on and from the signing of this Application by the Purchaser.
- d. The Purchaser must promptly do anything required by Liberty to ensure that any Security Interest granted to Liberty is a perfected Security Interest and has priority over all other Security Interests in the Secured Property.
- e. The Purchaser must not cause the registration of a Financing Change Statement in respect of the Secured Property or make any Amendment Demand without Liberty's consent.
- f. These sections of the PPSA do not apply:
  - i. s.95 (notice of removal of accession) to the extent it requires the secured party to give a notice to the grantor;
  - ii. s.96 (when person with an interest in the whole may retain accession);
  - iii. s.125 (obligation to dispose of or retain collateral);
  - iv. s.129 (disposal by purchase);
  - v. s.130 (notice of disposal) to the extent it requires the secured party to give a notice to the grantor;
  - vi. s.132(3)(d) (contents of statement of account after disposal);

- vii. s.132(4) (statement of account if no disposal);
  - viii.s.135 (notice of retention);
  - ix. s.142 (redemption of collateral); and
  - x. s.143 (reinstatement of security agreement).
- g. For the purposes of PPSA s.157, the Purchaser waives its right to receive notice of any verification statement.
  - h. For the purposes of PPSA s.275(6), neither party may disclose information of the kind specified in PPSA s.275(1).
  - i. Liberty may enter Premises where the Secured Property is stored or held free from trespass, to inspect the property or take possession in accordance with these terms.

## 8. Risk and insurance

- a. All risk in the Fuel passes to the Purchaser on delivery.
- b. The Purchaser must obtain and keep current public liability insurance noting Liberty as an interested party for at least \$20 million for any one claim and produce a certificate to Liberty on request. The Purchaser must not do anything to compromise the insurance.

## 9. Quality & Defects

- a. The Purchaser will maintain the quality of all Fuel delivered to the Purchaser and will provide appropriate, safe, and clean storage facilities for each delivery of Fuel. Liberty will not be liable for any loss or damage caused by a failure of the Purchaser to comply with any part of this condition.
- b. If the Purchaser believes (acting reasonably) it has received defective Fuel from Liberty, it must retain a sample of the relevant product, immediately inform Liberty of the defect, notify Liberty of any claim for the alleged defect within five days of delivery and give Liberty a reasonable opportunity to inspect and take samples of the relevant product.

## 10. Termination and breach

- a. Either party may notify the other that it will no longer order or supply Fuel from or to the other.
- b. Upon such notification, or if the Purchaser breaches these terms, Liberty may do one or more of the following (without limitation):
  - i. Require the Purchaser to pay to Liberty all amounts owing by the Purchaser, whether or not in relation to the supply of Fuel and whether or not due for payment;
  - ii. Cancel any order placed by the Purchaser or notify the Purchaser that it must take delivery of the Fuel ordered;
  - iii. To recover amounts owing, exercise its rights under the Security and take possession of any Secured Property (or where it has been sold or disposed of, an equivalent volume of Fuel) held by the Purchaser and sell or retain it.
- c. Without prejudice to Liberty's rights and entitlements hereunder to terminate this agreement, Liberty is entitled to recover, and the Purchaser must pay Liberty on demand all costs incurred by the Liberty Group (including legal costs actually paid or payable) in connection with any breach of these terms by the Purchaser.

## 11. Exclusions and limitations

- a. The only conditions and warranties binding on Liberty in respect of the state, quality or condition of the Fuel and/or the advice, information or services supplied by any of the Liberty Group to the Purchaser regarding the Fuel are those imposed and required to be binding by statute and to the extent permitted by statute all other conditions and warranties are excluded.
- b. To the extent permitted by statute, Liberty may discharge any liability arising from the breach of the conditions or warranties referred to in clause 11(a) by supplying equivalent Fuel or replacing the Fuel supplied or supplying the advice, information or services again.
- c. The Purchaser does not rely (and it is unreasonable for it to rely) on the skill or judgment of Liberty as to whether the Fuel supplied are fit for any purpose.
- d. Except to the extent provided in this clause 11(a), the Liberty Group has no liability to any person:
  - i. For any loss or damage suffered or incurred by that person in relation to the Fuel and/or advice, recommendations, information or services; and
  - ii. Without limiting the above, for any loss of profits, income, revenue, contracts or production, business interruption or increased costs in operations, damage to goodwill or reputation or indirect losses or expenses or consequential damage whether suffered by the Liberty Group or any third party.
- e. Liberty will not be liable for any loss or damage resulting from any failure by Liberty to perform its obligations under these terms and conditions to the extent that such failure is caused in any part by compliance with any order, request or control of any government or government authority or person purporting to act for either, or by anything beyond Liberty's immediate control, including but without limitation, strikes lockouts, government imposed lock downs or restrictions, employment difficulties, acts breakdowns and plant shutdowns.

- f. Despite anything else in these terms, Liberty is not liable for loss or damage resulting from any delay or failure supply Fuel.
- g. Nothing in these terms and conditions allows the Purchaser to use any trademark, image, logo, branding or insignia (without limitation) of Liberty or the Liberty Group without Liberty's prior written consent.
- h. To the extent permitted by law (and in particular, but without limitations, the Trade Practices Act 1974 and the Sale of Goods Act), any liability of Liberty to the Purchaser in respect of Fuel delivered including without limitation for breach of any condition or warranty, is limited to any one or more of the following at Liberty's option:
  - i. replacement of the Fuel;
  - ii. the supply of the Fuel again; or
  - iii. the payment of the cost of replacing the Fuel of acquiring the equivalent Fuel.

## 12. Safety and compliance with laws

The Purchaser:

- a. Must provide suitable and safe facilities for receiving and handling Fuel;
- b. Must comply with all applicable Laws (including those relating to the environment, health and safety, and those relating to fuel storage systems);
- c. Is solely responsible for the safety of its employees, agents and contractors;
- d. Must ensure that all persons engaged in relation to Fuel observe a safe system of work complying with all Laws; and
- e. Must notify Liberty immediately on becoming aware of a leak or spill of Fuel.

## 13. Property

- a. Property in the Fuel will not pass from Liberty to the Purchaser until the Purchaser has paid for the Fuel in full. The Purchaser will take custody of the goods as trustee, fiduciary agent and bailee for Liberty until such time the Purchaser has paid Liberty:
  - i. the price for the Fuel invoiced; and
  - ii. any other monies due and payable to Liberty by the Purchaser in relation to the Fuel.
- b. Until payment in full is received the Purchaser must:
  - i. not mortgage, charge, pledge or otherwise encumber the Fuel; and
  - ii. use all reasonable endeavours to keep and maintain sufficient records as to the storage and maintenance of Liberty's Fuels such that same may be properly identifiable separate from any other fuel and properly marked, stored, protected and insured as far as reasonably possible.
- c. The Purchaser shall have the right to resell the Fuel, but only as fiduciary agent, trustee and bailee for Liberty by way of bona fide sale at full market value and in the ordinary course of business.

## 14. Right of Re-Entry and Resale

- a. Liberty may at any time and without need to give notice to the Purchaser take possession of and resell the Fuel which remains the property of Liberty and for that purpose, the Purchaser:
  - i. authorises Liberty to enter any premises where Liberty's Fuel may be situated and to use such reasonable means as may be required to enter such premises;
  - ii. undertakes to Liberty to procure the consent of all persons having an interest in the premises where Liberty's Fuel may be situated to entry to the premises by Liberty; and
  - iii. indemnifies and will keep indemnified Liberty from all claims, actions, suits, of whatsoever kind or nature arising out of or in connection with or in relation to the entry by Liberty to any premises where Liberty's Fuel may be situated.

## 15. Indemnity

- a. The Purchaser indemnifies the Liberty Group against all losses and liabilities (both civil and criminal) incurred by the Liberty Group including legal costs actually payable by the Liberty Group to its own legal representatives (whether or not under a costs agreement) arising directly or indirectly as a result of or in connection with each of the following.
  - i. Negligence or breach of these terms by the Purchaser.
  - ii. A payment under this deed being set aside under the Corporations Act 2001.
  - iii. Contamination at premises to which Fuel is delivered.
- b. Without limiting the above, the Purchaser indemnifies Liberty in respect of all actions, claims, demands, losses, damages, costs and expenses of whatever nature which the Purchaser of Liberty may suffer, incur or sustain in connection with the Fuel, including without limitation any claim for or arising from a breach by the Purchaser of these terms and conditions, the negligence of the Purchaser and claims for or arising from the negligence of Liberty.
- c. The Purchaser must pay to Liberty all liabilities, costs and other expenses referred to in the previous paragraph.
- d. The indemnities in these terms are continuing obligations, separate and independent from the parties' other obligations.

## 16. Set off

If an amount is payable by Liberty to the Purchaser whether or not under these terms, Liberty is entitled to set-off that amount against any amount payable by the Purchaser to Liberty under these terms.

## 17. Severability

If any part of these terms and conditions, being a whole or part of a clause, is held to be unenforceable or invalid then it is severed without affecting any other part of these terms and conditions.

## 18. Waiver

Liberty does not waive any breach of rights under these terms and conditions or otherwise if it fails to exercise or delays exercising a right, gives a concession or indulgence to the Purchaser or accepts money from the Purchaser.

## 19. Security

- a. The Purchaser, if requested by Liberty, must provide Security or further Security in respect of its obligations to Liberty under these terms as required and deemed appropriate by Liberty in its sole discretion from time to time.
- b. Despite any other matter referred to in this Application, the Purchaser hereby charges all of its/their right, title and interest in any present or future personal property and real property held by the Purchaser for the performance of its obligations under this Application and hereby consents to the registration by Liberty of a charge or caveat against the title to such personal and/or real property. The Purchaser shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where Liberty registers such interest pursuant to this Application. This chargeable interest accrues and is applicable under the Personal Property Securities Act 2009 (Cth) and/or the Real Property Act 1900 (NSW), applicable interstate land registration Acts and under the Common Law. Subject to Liberty's rights under clause 7 herein which irrevocably apply and override this clause 19 from the date that Liberty's receives this Application duly signed by the Purchaser, the parties to this Application agree that Liberty's rights under this clause 19 only arise in circumstances where the Purchaser has breached any of its obligations hereunder.

## 20. Assignment

The Purchaser must not assign or otherwise deal with its rights or obligations under these terms (including but not limited to any directorship, shareholding, and/or unitholding changes contemplated in the Purchaser entity or any holding entity therein) except with Liberty's consent in its absolute discretion. Liberty may at any time assign any of its rights or obligations under these terms.

## 21. Confidentiality

Except as stated in these terms, the Purchaser must not disclose any of the information disclosed to it by Liberty in connection with the supply of Fuel to any person without Liberty's consent, except to the extent the information is generally available to the public (other than as a result of the wrongful disclosure by the Purchaser) or is required to be disclosed by law.

## 22. Changes to the terms

- a. Liberty may change or replace these terms on seven days' notice.
- b. No variation to these terms and conditions is binding on Liberty unless Liberty has agreed to variations in writing. Liberty may vary these standard terms and conditions at any time by notice in writing

## 23. Force majeure

If Liberty is prevented from or delayed in complying with an obligation by an event beyond its reasonable control, its obligation to perform is suspended while the event continues.

## 24. Notice

A notice or other communication connected with these terms must be:

- a. If to Liberty, must be mailed or delivered to it at 39 Burleigh Street, Newport, Victoria 3105 and emailed to [jgrey@libertyoil.com.au](mailto:jgrey@libertyoil.com.au) (or as subsequently notified); and
- b. If to the Purchaser, must be mailed or delivered to the Purchaser's last known address or registered office and emailed to the Purchaser's last-known email address.
- c. If mailed, the communication is taken to be received 2 days after posting.

## 25. Governing law and jurisdiction

These terms and conditions are governed by the laws of the state of Victoria and the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the courts of the state of Victoria and the Commonwealth of Australia.

## 26. Purchaser Warranty

The Purchaser warrants to Liberty that the information given in this Application is true and correct and not misleading or deceptive.