

## 1. Definitions

- 1.1. 'Terms of Trade' are the terms of contract between a seller of goods or services and the Customer.
- 1.2. 'Company' means Fuel Supply Limited.
- 1.3. 'Customer' shall mean the person (or persons), or entity, (or any person authorised to act on behalf of the Customer) buying the goods or services from the company.
- 1.4. 'Goods and/or Services' means any products and/or services being purchased by the Customer from the Company.
- 1.5. "Fuel" shall mean petrol, diesel, and any other petroleum products supplied by Fuel Supply Ltd.
- 1.6. "Fuel Tank" shall mean any tank or vessel which Fuel is to be deliver to the Customer, together with all associated dispensing equipment and the pipework between the tank/s and dispensing equipment.
- 1.7. "Guarantor" shall mean that person (or persons), or entity, who agree to be liable for the debts of the Customer on a principal debtor basis.
- 1.8. "Contract" means the agreement between Fuel Supply Ltd and the Customer for the purchase or lease of Goods and/or services.
- 1.9. "PPSA" means the Personal Property Securities Act 1999.
- 1.10. "Law" means any statute, act or legislation; any regulations, Order in Council or other delegated legislation; and any district plan requirement, regional plan requirement, by-law, ordinance or the like of any legally constituted public authority. A reference to any law is a reference to the law as amended or substituted from time to time.
- 1.11. "Terms" means the terms and conditions of the supply set out in this document, including any variations to these terms.

## 2. Acceptance

- 2.1. By ordering or accepting any Goods or Services from Fuel Supply Ltd, shall constitute a binding contract, deeming the Customers acceptance and agrees to the terms and conditions contained herein.

## 3. Supply and Delivery

- 3.1. *Delivery:* The Company will deliver Fuel to the Customer in the delivery amounts and to the delivery site specified in the Customers purchase order (or such site otherwise agreed between the Customers and the Company). Delivery of Fuel will be deemed to have been complete at the point at which the Fuel passes the inlet flange of the relevant Fuel tank at the relevant delivery site. The Customer will be issued with a docket recording the quantity, fuel type and customer number. The Company's determination of the quantity of Fuel delivered shall be conclusive.
- 3.2. *Access:* The Customer will provide Fuel Supply and its employees, agents or contractors with access to the delivery site during the Customers normal hours of operation and at such other times as may be necessary for Fuel Supply to deliver Fuel in accordance with these Terms.
- 3.3. *Reporting:* The Customer shall immediately report any issues in respect of the Fuel to the Company.
- 3.4. *Supply Shortage:* If at any time there is a shortage of Fuel, the Company at its sole discretion allocate supply between the Customer and its other customers.
- 3.5. *Delay:* The Company will not be liable for loss or liability suffered by the Customer as a consequence of any delay or failure to deliver any Fuel under these terms.
- 3.6. *Use:* The Customer agrees not to sell the products under the Company's trade mark or by reference to the Company's name.
- 3.7. *Safety and Pollutions:* Each party shall comply with all laws, regulations and orders applicable to the handling, transportation, and the delivery of Fuel. To the extent that products include lubricating oils, The Customer acknowledges the importance of managing the life cycle lubricating oils and once any lubricating oils have fulfilled their use as provided, the Customer shall dispose of them through a government approved means.

## 4. Risk and Title

- 4.1. *Risk and Title:* The risk of loss or damage to the Fuel shall pass to the Customer at the point of delivery. Title to Fuel shall remain with the Company until the Fuel has been paid for in full.
- 4.2. *Repossession:* If the Company does not receive payment for any Fuel or Equipment in accordance with these Terms, then without prejudice to any of the Company's other right and remedies, the Company may retake possession and enter any premises owned or occupied by the Customer to do so.

## 5. Security Interest

- 5.1. *Security Interests:* The Customer grants the Company a security interest in all Goods supplied to the Customer, to secure performance of the Customers obligation under these Terms.
- 5.2. *Combined Goods:* If any Petroleum product is combined, blended or co-mingled with any other products or goods, the Company's security interest will extent to the new or co-mingled goods to the fullest extent permitted under PPSA.
- 5.3. *Waiver of PPSA rights:* The Customer agrees that nothing in section 133 and 134 of the PPSA will apply to these Terms and waives its right under sections 114(1)(a), 116, 120(2), 121, and 148 of the PPSA and its right to receive a copy of any verification statement under the PPSA.
- 5.4. *Changes of Details:* The Customer shall give the Company not less than 14 days prior written notice of any proposed change of ownership of the Customer or any change in the Customers name and/or any other change in the Customers details including but not limiting to, changes in the Customers address, phone number or business practice. The Customer shall be liable for any loss incurred by the Company as a result of the Customers failure to comply with this clause.

## 6. Payment

- 6.1. *Price:* The Company set the purchase price for Fuel on a weekly basis (or such other frequency the Company determines). Any changes in pricing shall be effective immediately.
- 6.2. *Payment terms:* The Customer will pay each invoice on the 20<sup>th</sup> of the month following the receipt of Goods and/or Services or on such terms otherwise agreed in writing between the Customers and the Company. The Company may change the required frequency of payment, and may require payment to be made in advance or any other method, by giving five (5) days writing notice to the Customer.
- 6.3. *Tax:* Unless otherwise expressly indicated, all prices quoted or otherwise stated by the Company exclude GST, and other governmental taxes, duties and levies payable by the Company in relation to the relevant Fuel, and transportation costs.
- 6.4. *Late payment:* Without limiting the Company's other right and remedies, the Company may charge a compounding penalty interest on overdue account/s at 2% per month, together with liability for all costs including all debt recovery, and /or legal fees and disbursements incurred by the company, and may suspend delivery of Fuel to the Customer if the Customer is in breach of these Terms or any other contact with the Company.

## 7. Customer Obligations

- 7.1. *Fuel Tanks:* The Customer is responsible for ensuring that each Fuel Tank is at all times fit for purpose, has all necessary licences, permits, certificates and consents required by applicable Law for the receipt, storage and discharge of Fuel in accordance with these Terms, and in maintained in good working condition, in accordance with all applicable Laws and best industry practice. The Customer shall ensure the Fuel Tanks have sufficient capacity to safety hold any Fuel ordered.
- 7.2. *Checks and records:* The Customer shall check the Fuel Tanks on regular basis and in accordance with all reasonable direction issued by the Company, shall keep full and accurate records of the results of all such checks (for at least 24 months afterwards), and shall provide those records to the Company for inspection promptly upon request.
- 7.3. *Inspection:* The Company may at any time inspect or test the Fuel Tank(s) to confirm the Customer is complying with its obligations under these Terms.
- 7.4. *Customer Spillage:* The Customer shall prevent Fuel leaks and spills, and shall notify the Company immediately of any actual or imminent leak or spill and comply with the provisions of all applicable Laws and with the reasonable direction of the Company with regards to remedying any such leak or spill and preventing further occurrences.
- 7.5. *Insurance:* The Customer shall maintain adequate public liability and professional indemnity insurance cover, with a reputable insurer to meet its obligations under these Terms.
- 7.6. *Compliance with Laws:* The Customer shall hold all permits, licences, authorisations, certifications and consent required to perform it obligations under these Terms. The Customer will at all times comply (and ensure that its employees, agents and contractors comply) with all applicable Laws, Permits, licences, authorisations, certifications and consents, and any reasonable directions of Fuel Supply.

## 8. Liability

- 8.1. *Defective Fuel:* To the fullest extent permitted by law, in case of Fuel quality being off specification at the time of delivery (i.e. failing to meet the relevant specifications set out for non-retail sales in the Engine Fuel Specification Regulations 2011 as amended or replaced from time to time), the Customer shall not in any circumstances be entitled to damages exceeding an amount equal to the aggregate purchase price of the Fuel concerned. The Company shall have no further liability for any loss or damage suffered by the Customer or anyone else as a result of any Fuel being off specification.
- 8.2. *Limitation of Liability:* To the fullest extent permitted by law, the maximum combined amount that the Company, including its employees, subcontractors or anyone else for whom it is responsible (together) will have to pay the Customer, including its employees, officers and agents, and to anyone else who suffers any loss or damage as a result of the actions or omissions of the Company whether in connection with these Terms or otherwise, is \$40,000 for any event or for any series of related events, or a total of \$50,000 in aggregate in any 12 month period.
- 8.3. *Consequential and Indirect Loss:* Notwithstanding any other provision of these Terms, neither Party shall be liable under or in connection with these Terms, whether in contract, tort or otherwise, for any indirect or consequential loss or any loss of profit, lost business, loss of goodwill or loss of opportunity.
- 8.4. *No warranties:* To the extent permitted by law, all express or implied warranties or representations of Fuel Supply (and its directors, officers or employees) in relation to the Fuel are excluded. The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980, shall not apply to these Terms.

## 9. Confidentiality and Intellectual Property

- 9.1. The Customer will keep confidential and will not disclose nor use any information at any time communicated by Fuel Supply or any other member of the Fuel Supply group, under or in connection with these Terms or otherwise with respect to the supply of Fuel to the Customer except to the extent required for the performance of these Terms, as otherwise agreed in writing by Fuel Supply, or as required by law or the listing rules of any stock exchange on which its securities are quoted.

## 10. Ownership of Fuel Supply Equipment and the Personal Property Securities Act 1999

## 11. General Provisions

- 11.1. *No waiver:* No failure or delay by a party in insisting on the strict performance of these Terms or to exercise any right under this Agreement will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.
- 11.2. *Further assurances:* The Customer will take all actions and sign all documents reasonably required to give effect to the provisions of these Terms.
- 11.3. *Force Majeure:* The Company will not be liable for non-performance of any obligation under these Terms during the time and to the extent that such performance is wholly or substantially prevented by any event or circumstance beyond the Company's reasonable control.
- 11.4. *No Assignment:* The Customer shall not assign or transfer these Terms, or any rights or obligations under these Terms, without the Company's written consent. A Change in the effective control or ownership of the Customer will be deemed to be an assignment by the Customer.
- 11.5. *Credit Reporters:* If any payment is overdue, the Company may provide information that it holds about the Customer to credit reporters or its debt collector.
- 11.6. *Variations:* The Company may vary these Terms at any time by publishing the varied term on its website – [www.fuelsupply.nz](http://www.fuelsupply.nz)