

# AIRFUELS STANDARD TERMS AND CONDITIONS

## 1. Definitions

- 1.1 "Account" means an Airfuels account approved for the Customers by Airfuels following an Application.
- 1.2 "Airfuels" means Airfuels.com Limited and its representatives
- 1.3 "Application" means the Credit Application form that the Customer must complete to make an application to Airfuels for the supply of Products and and/or the use of a Airfuels card.
- 1.4 "Customer" means the applicant named in the Application
- 1.5 "Direct Debit Form" means the direct debit form to be completed as part of the Application.
- 1.6 "Equipment" means the equipment Airfuels agrees to provide to the Customer on loan from Airfuels and which is listed in the Application.
- 1.7 "Airfuels card" means the Airfuels fuel card that is issued to the Customer upon approving the Application in relation to a Airfuels card.
- 1.8 "Minimum Volume Commitment" means the minimum volume of Products the Customer agrees to purchase.
- 1.9 "PPSA" means the Personal Properties Securities Act 1999.
- 1.10 "Products" means the aviation bulk jet 1 fuel and services supplied to the Customer in bulk or the aviation products purchased using the Airfuels card.
- 1.11 "Site" means the delivery address for the Products as specified in the Application.
- 1.12 "Terms & Conditions" means these terms and conditions as varied from time to time in accordance with clause 2.3

## 2. Terms & Conditions, acceptance and Variation

- 2.1 These Terms & Conditions will apply to the supply of all Products to the Customer, loan of all the Equipment and use of the Airfuels card unless otherwise agreed to in writing by Airfuels and the Customer
- 2.2 The Customer acknowledges by signing the Application that the Customer has received a copy of, and accepts these Terms & Conditions.
- 2.3 Airfuels reserves the right to vary these Terms & Conditions from time to time by giving the Customer notice in writing. The use thereafter by the Customer of their Account(s) shall constitute acceptance of any such variation.

## 3. Bulk Products supply and Exclusivity

- 3.1 The terms and conditions set out in this clause 3 only apply to the Customers who are supplied with Products by Airfuels in bulk as specified in the Application and excluding the purchase of Products using the Airfuels card.
- 3.2 Where the Customer's Application for the supply of the Products in bulk is accepted by Airfuels, then the Customer must exclusively purchase from Airfuels the Customer's total requirements of the Products, other than Products purchased using the Airfuels cards.

## 4. Quality of Products

- 4.1 Airfuels will deliver the Products meeting the standards and specifications claimed on its product data sheets, which will be available to the Customer on request.
- 4.2 Airfuels warrants that the Products supplied to the Customer are of merchantable quality. Airfuels will give no other warranty, whether expressed or implied.
- 4.3 The Customer must raise any concerns as to the quality of the Products with Airfuels within 10(ten) working days of the delivery of those Products otherwise Airfuels will be released from any liability. Airfuels limits its liability as to the extent permitted by law and its liability is limited to the replacement and or the replacement cost of the Product at issue.

## 5. Price

- 5.1 The price for the Products payable by the Customer is as notified in writing by Airfuels to the Customer from time to time.
- 5.2 In addition to the price for the Products, Airfuels may charge a delivery differential for deliveries of part loads and for deliveries outside any normal delivery schedule.
- 5.3 All prices listed by Airfuels are "GST exclusive". The Customer shall pay to Airfuels the goods and services tax, and any other applicable taxes and levies, in respect of any payments payable by the Customer.
- 5.4 The price of Products purchased and any additional costs under 5.2 will be charged by Airfuels to the Customer's Account.

## 6. Payment

- 6.1 The Customer will make all payment to Airfuels without any deduction or set-off or counter-claims.
- 6.2 The Customer will pay to Airfuels' bank account by direct debit in accordance with the Customer's Direct Debit Form in the Application.
- 6.3 The Customer accepts that payment of invoices by direct debit will be made by the 20<sup>th</sup> day of the month following the month the Products were supplied.
- 6.4 Unless the Customer disputes the debit with Airfuels within 10 days of the debit, that debit and its amount shall be accepted by the Customer and not open to challenge.
- 6.5 Failure to comply with any payment terms under clause 6 may result in restricted terms or cancellation of the supply of the Products.
- 6.6 Interest shall be charged on the total overdue balance including any interest, and interest shall be payable at 2% per month on a cumulative basis for each day unpaid from the time of delivery. The charging of interest does not imply the granting of any extension of credit by Airfuels.
- 6.7 In the event of default in payment of any monies owing, the Customer (and any Guarantor) will become liable for all costs of collection that are incurred by Airfuels, including all costs prior to any legal action, and shall so pay the same including (but not by way of limitation) collection agency costs, court costs, solicitors' fees and search costs.

## 7. Bulk Delivery & Risk Only

- 7.1 The risk in the Products supplied shall pass to the Customer upon delivery of the Products (save and except the quality of the Products is as agreed in clause 4 herein).
- 7.2 The Customer must make available safe and unrestricted access for the delivery of the Products at the Site nominated in the Application.
- 7.3 Any claim by the Customer for alleged short delivery of the Products must be made in writing and received by Airfuels within 10(ten) days after delivery of the Products.
- 7.4 Delivery shall be made at the Site indicated by the Customer in the Application and shall (subject as hereinafter provided) occur upon the discharge of the Products from Airfuels' delivery vehicle(s) into the permanent hose connection at the filling point at the Site.
- 7.5 Airfuels reserves the right to deliver the Products by instalments.
- 7.6 The Customer shall provide suitable access to the Site in all weather conditions for Airfuels delivery vehicle(s). Damage to footpaths, kerbs, drains, verges or other property cause by

any of Airfuels' vehicles in the course of deliveries beyond the kerbline, charges payable in returning any of Airfuels' vehicles to the roadway and the removal of mud, clay and other materials tracked onto footpaths, roads or verges in the course of delivery shall be the Customer's responsibility and the Customer shall indemnify Airfuels from and against all costs, expenses, claims, actions and liabilities whatsoever in connection therewith.

## 8. Title

- 8.1 The ownership and property of the Products and the Equipment (whether in their original form, incorporated in, comingle with or attached to other personal property) shall remain with Airfuels until the Customer has paid in full for the Products and the Equipment and all other amounts owing to Airfuels for any reason.
- 8.2 The Customer will keep the Products free of security interests (as defined in the PPSA) other than in favour of Airfuels until the ownership (title) in the Products passes to the Customer.

## 9. PPSA

- 9.1 In relation to the Personal Property Securities Act 1999 (PPSA) the Customer:
  - 9.1.1 grants a security interest to Airfuels in the Products and the Equipment being proceeds of same to secure payment of all money owing to Airfuels and the performance of all of the Customer's obligations.
  - 9.1.2 agrees that the security interest granted hereunder covers the Products and Equipment together with all of the proceeds (of any kind) including where same have become accessions to other goods or processed or commingled into or mixed with other goods.
  - 9.1.3 agrees that any of the Products and the Equipment or proceeds of same that come into existence upon these Terms & Conditions being accepted will be subject to the security interest granted hereunder without the need for any further action by either party.
  - 9.1.4 agrees that Airfuels may register a financing statement under the PPSA in respect of the security interest granted hereunder in such manner as Airfuels considers desirable and the Customer further undertakes:
    - 9.1.4.1 to provide all information and do all things reasonably necessary to enable Airfuels to register and perfect such finance statement.
    - 9.1.4.2 to advise immediately (in writing) of any changes to information supplied to Airfuels including (where applicable) at least 12 days prior notice before the Customer changes its name, its company name or its trading name.
- 9.2 Pursuant to section 148 of the PPSA, the Customer irrevocably waives the right to receive a verification statement in respect of any financing statement or financing change statement registered in respect of the security interest granted hereunder.
- 9.3 Acknowledges and agrees that Airfuels may exercise any rights available to it pursuant to these Terms & Conditions under statute, at law or in equity in any manner it determines, including by taking any and all action it deems appropriate under the PPSA or any other applicable statute

## 10. Force Majeure

- 10.1 Neither party shall be liable to the other in any way for failure to perform or observe any of its obligations where the failure arises from any cause beyond its control.
- 10.2 If there is a shortage of the Products or if Airfuels reasonably believes that there will be a shortage, Airfuels may allocate among its Customers (including the Customer) its available supplies of the Products in such quantities and manner as Airfuels decides is prudent in the exercise of its business judgment, provided that Airfuels' plan of allocation shall not unreasonably discriminate between the Customer and Airfuels' other customers.

## 11. Environmental Liability

- 11.1 In this clause the "Act" means the Resource Management Act 1991 and any word or expression used in this clause which is defined in the Act has the same definition for the purposes of this clause.
- 11.2 The Customer is responsible for obtaining all licenses and consents necessary for the storage, dispensing or other dealings with the Products.
- 11.3 The Customer must comply at all times with the provisions of the Act.
- 11.4 The Customer must:
  - 11.4.1 not discharge any contaminant onto or into the outlet or into air or water from the outlet and must immediately clean up any contaminant as soon as it occurs or becomes known to the Customer;
  - 11.4.2 take all steps to minimise the risk of the Equipment leaking; and
  - 11.4.3 immediately notify Airfuels of any leaks or suspected leaks.
- 11.5 The Customer must promptly provide Airfuels with copies of all declarations, enforcement orders, abatement notices or other correspondence received or sent in connection with the Act and must immediately comply with any such declarations, orders or notices or take such other action at the cost of the Customer as Airfuels may reasonably require.
- 11.6 In addition to any other rights Airfuels has, Airfuels may at any time enter and remain on the outlet to:
  - 11.6.1 remedy any breach of clause 11.0; or
  - 11.6.2 remedy any breach of the Act; or
  - 11.6.3 remedy any breach of a condition contained in any resource consent; or
  - 11.6.4 comply with any declaration, enforcement order or abatement notice served upon Airfuels or the Customer. Airfuels is not liable to the Customer for any loss (including loss of profits), disturbance or interruption to the business or damage to the outlet arising out of the exercise of this right.
- 11.7 The Customer is liable for any loss, damage or injury resulting from the Customer's failure to comply with clause 11.0 and indemnifies Airfuels and its employees against all claims, actions, losses, and expenses of any nature for which Airfuels and/or its employees becomes liable for arising from any activity or inactivity of the Customer which contravenes the Act or clause 11.0.

## 12. Liability

- 12.1 Except as otherwise stated in these Terms & Conditions, and to the extent permitted by laws, Airfuels will not be liable to the Customer for any loss or damage arising, whether directly or indirectly, out of the supply of Products, loan of Equipment or the performance or non-performance by Airfuels of any obligation under these Terms & Conditions.

## AIRFUELS STANDARD TERMS AND CONDITIONS

### 13. Breach and Termination

- 13.1 The Customer may close any or all of the Customer's Accounts on 21 days' notice to Airfuels. This right in substitution for any right of cancellation under the Contractual Remedies Act 1979.
- 13.2 Airfuels may terminate the Customers ability to purchase Products on credit terms, or suspend or terminate any Account held by the Customer, without notice if the Customer breaches these Terms and Conditions. In any other case Airfuels may terminate the Customer's ability to purchase Products on credit terms on 5 days written notice to the Customer.
- 13.3 In the event of any breach of these Terms & Conditions by the Customer, Airfuels may take such action as it is entitled to take by law, and, for the purpose of recovery of its Products and/or Equipment, enter any Site where the Products are stored and/or the Equipment is kept and may take such possession of them, and the Customer shall co-operate with Airfuels to provide such access as Airfuels requires.
- 13.4 Upon termination, interest will accrue in accordance with clause 6.6 on any sum owing by the Customer to Airfuels until the total amount outstanding is settled in full.

### 14. Bulk Equipment

- 14.1 The Customer acknowledges and agrees that the Equipment, together with any substituted or additional Equipment or alternations, will remain at all times the property of Airfuels and will only be used for the storage and dispensing of the Products.
- 14.2 The Customer agrees to follow Airfuels reasonable instructions as to the operation and maintenance of the Equipment. The Customer agrees to complete regular checks of the Equipment.
- 14.3 The Customer will be responsible for the proper care of the Equipment, fair wear and tear accepted. The Customer accepts that the Customers use the Equipment at the Customer's own risk.
- 14.4 Airfuels expressly forbids the Products from other suppliers being filled and used in the Equipment. Only Products supplied by Airfuels are to be filled and used in the Equipment.
- 14.5 Airfuels reserves the right not to deliver any Products to Equipment that is not appropriately maintained as per clause 14.2 and/or to Equipment that is non-compliant with any licence, consent or compliance certificate.
- 14.6 The customer copy of any certificate of compliance of the Equipment must be attached to and displayed on the Equipment to be viewed by Airfuels before completing delivery of the Products as per 7.4
- 14.7 The customer grants to Airfuels and its agents an irrevocable right to enter the premises (and must procure the right to enter any other place where the equipment is situated from time to time) at all reasonable times (but at any time in the case of an emergency) to view and inspect the condition of the equipment, to maintain, test, repair, replace or remove any or all of it or to repossess it at the termination of this agreement. Airfuels is not liable to the customer for any direct or indirect loss (including loss of profits), disturbance or interruption to the customer or damage to the premises arising from the exercise of this right.

### 15. Insurance for Equipment & Products supplied in bulk

- 15.1 The Customer must maintain a public liability insurance policy with an insurance company approved by Airfuels (such approval not to be unreasonably withheld) indemnifying Airfuels and the Customer for at least 1 million dollars for any one incident. If requested by Airfuels, the Customer must maintain an environmental insurance policy with an insurance company approved by Airfuels (such approval not to be unreasonably withheld) indemnifying Airfuels and the Customer for the risks and amount stipulated by Airfuels.
- 15.2 The Customer must provide Airfuels with copies of the insurance policies referred to in clause 15.1 and from time to time with certificates of currency for those policies.
- 15.3 The Customer must not do anything or allow anything to be done which may render void or voidable any insurance policy referred to in clauses 15.1 and 15.2.

### 16. Consumer Guarantees – Commercial Transaction

- 16.1 The Customer acknowledges that the Products supplied, and the Equipment sold (if any) under these Terms & Condition are for the purposes of a business and the guarantees contained in the Consumer Guarantees Act 1993 are excluded.

### 17. Indemnity

- 17.1 The Customer indemnifies Airfuels and its employees against all claims, actions, losses and expenses of any nature made or brought against Airfuels and/or its employees or the Customer (or any of them) arising out of or in connection with the supply of the Products (save for any negligence by Airfuels) or arising from a breach by the Customer of any of the terms of these Terms & Conditions.

### 18. Guarantee

- 18.1 In consideration of Airfuels, at the Guarantor's request, agreeing to supply the Customer with the Products and/or the Customer using the Equipment the Guarantor:
- 18.1.1 unconditionally guarantees to Airfuels the payment by the Customer of all monies required to be paid by the Customer under this Agreement when due; and
- 18.1.2 covenants with Airfuels to observe, perform and keep the covenants and agreements of the Customer to be observed, performed and kept.
- 18.2 Between the Guarantor and Airfuels, the Guarantor is liable as principal debtor for all monies payable under this Agreement and as a principal contracting party for all other obligations of the Customer under these Terms & Conditions to the intent that any giving of time, release, compromise, forbearance or other indulgence granted by Airfuels to the Customer shall not discharge, release or otherwise affect the Guarantor's liability. This guarantee is a continuing guarantee and is not discharged by any settlement.

### 19. Credit Information Privacy Policy

- 19.1 The Customer authorises any person, company or organisation to provide Airfuels with such information as Airfuels may require in response to Airfuels' credit enquiries. Any information obtained by Airfuels under this clause will be confined to that reasonably required by Airfuels.
- 19.2 The Customer authorises Airfuels to furnish any third party with details of the Application and any subsequent dealings that Airfuels may have had with a Customer as a result of the application being actioned. Any disclosure made by Airfuels under this clause will be confined to that reasonably required by the third party.

- 19.3 Under the Privacy Act 1993 the Customer and the Guarantor have the right of access to and correction of their personal information held by Airfuels.

### Additional Terms & Conditions for use of Airfuels card

#### 20. Use of your Airfuels card.

- 20.1 The terms of conditions set out in clauses 20-24 apply to Customers who are issued with an Airfuels card.
- 20.2 The Airfuels card is issued by Airfuels for the person or entity nominated in the Application. The Customer, as the Airfuels card account holder, is responsible for the proper use of the Airfuels card(s) in accordance with these Terms & Conditions.
- 20.3 A PIN is assigned to each Airfuels card. It is solely the Customer's responsibility to ensure that only they and the authorised users use the Airfuels card and the PIN.
- 20.4 Every Airfuels card remains the sole property of Airfuels at all times. Airfuels may, at any time, require the return of any Airfuels card.
- 20.5 The Airfuels card may be used to purchase Products from facilities nominated by Airfuels.
- 20.6 The Airfuels card may be issued with a purchase limitation as set out in the Application. It is the Customer's responsibility to ensure authorised users do not exceed the purchase limitation (if any). The Customer is responsible for any purchase in excess of the purchase limitation. Airfuels is not liable to the Customer for any Airfuels card purchase in excess of the purchase limitation.
- 20.7 By entering the PIN or signing the sales voucher or EFTPOS receipt, the Customer authorises the purchase of the Products and any cost to be charged by Airfuels to the Customer's Airfuels card account. The Customer agrees that the entry of the PIN may be relied on by Airfuels as well as authority from the Customer for the purchase of the Products and the cost of such purchases shall be charged by Airfuels to the Customer's Airfuels card account.
- 20.8 Airfuels may from time to time issue a duplicate or replacement Airfuels card. The destruction of the old Airfuels card is the responsibility of the Customer and the Customer will remain liable for any use of the old Airfuels card notwithstanding the issue of a duplicate or replacement.
- 20.9 If any Airfuels card (including PIN) is lost, stolen or misused the Customer must notify Airfuels immediately, requesting cancellation of that Airfuels card and confirm that notification in writing to Airfuels within 24 hours. The Customer will not be liable for any unauthorised transactions on the Airfuels card made after first notification of cancellation (due to loss or theft or misuse) is received by Airfuels. Airfuels will not be liable for any transaction on an Airfuels card effected prior to the time the Customer first notifies Airfuels requesting cancellation of that Airfuels card.

#### 21. Reporting to Customer

- 21.1 Airfuels will provide the Customer with a monthly tax invoice detailing the Airfuels card transactions for the previous month.

#### 22. Liability:

- 22.1 Without limiting any other provisions in these Terms & Conditions, Airfuels is not liable to the Customer, whether directly or indirectly for:
- 22.2 Any Products purchased on Airfuels card, in accordance with clause 22 (otherwise stated in these terms and conditions)
- 22.3 Any fault with any automatic facility used in conjunction with the Airfuels card:
- 22.4 Any fault with the Airfuels card (including the PIN);
- 22.5 Any fault with the electronic system which processes the Airfuels card transaction;
- 22.6 Any unauthorised use, misuse or fraud with a Airfuels card and/or PIN where Airfuels has not received written notification of cancellation from the Customer in accordance with clause 23.;
- 22.7 Any loss or damage suffered by the Customer arising out of the supply of Products or the performance or non-performance by Airfuels of any obligation under these Terms & Conditions.

#### 23. Cancellation

- 23.1 The Customer may cancel a Airfuels card when it is no longer required by advising in writing to Airfuels and by returning it to Airfuels.
- 23.2 The Customer will remain liable for all transactions recorded against a cancelled Airfuels card until such time as the cancelled Airfuels card is actually received by Airfuels (except where the Airfuels card is cancelled pursuant to clause 20.9). For avoidance of doubt, any other Account the Customer has with Airfuels separate from the Airfuels card Account will remain active for all other supplies of Products to the Customer (if any).
- 23.3 Upon termination of any Airfuels card Account, all monies owing to Airfuels on that Airfuels Account are due and payable to Airfuels. Interest will accrue in accordance with clause 6.

#### 24. Shared Use facility

- 24.1 Airfuels Shared Use Facilities shall only be used for the duration of fuelling your aircraft or any storage containment your are using.
- 24.2 Customers are to move once fuelling is completed and keep the area clear for the next user.
- 24.3 Airfuels Shared Use Facilities are available for use by all customers approved by Airfuels and have a Airfuels fuel card.