

Petroleum Logistics Ltd – Terms and Conditions

1. **Definitions**
 - 1.1 "Seller" means Petroleum Logistics Ltd, its successors or assigns or any person acting on behalf of, and with the authority of, Petroleum Logistics Ltd.
 - 1.2 "Customer" means the person's name in the Application, and if there is more than one Customer, is a reference to each Customer jointly and severally.
 - 1.3 "Application" means the credit account application or other form (as approved by the Seller) that the Customer must complete in order to have an Account with the Seller for the supply of Products on credit and/or the provision of a Fuelcard to the Customer by the Seller.
 - 1.4 "Account" means an account opened by the Customer with the Seller pursuant to an Application. Upon termination of the Customer's Account, all moneys owing to the Seller on that Account are due and payable to the Seller, and interest will accrue in accordance with clause 9.1 on any sum owing by the Customer to the Seller until the total amount outstanding is settled in full.
 - 1.5 "Products" means all goods and services purchased by the Customer (either by use of a Fuelcard or otherwise).
 - 1.6 "Credit Limit" means the maximum amount of credit (as set by the Seller) that the Customer is allowed to remain outstanding on its Account, to be paid in accordance with clause 4.
 - 1.7 "Price" means the Price payable for the Products, as specified on any quotation, order, invoice, sales voucher or EFTPOS receipt.
 2. **Acceptance**
 - 2.1 The Customer acknowledges that all Products purchased by the Customer using a Fuelcard or otherwise, are for the purpose of a business, as defined in the Consumer Guarantees Act 1993, and that this Act does not apply to the supply of Products to the Customer to the extent permitted by the Act.
 - 2.2 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer submits a duly completed Application to the Seller for the provision of an Account. The Seller may, at its sole discretion, accept or decline the Customer's Application by written notice to the Customer.
 - 2.3 These terms and conditions:
 - (a) will apply to the supply of Products by the Seller to the Customer and/or the use of the Fuelcard, and will, subject to sub-clause (d), prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller; and
 - (b) may only be amended with the Seller's consent in writing; and
 - (c) subject to sub-clause (d), supersede and replace any previous or existing negotiations, letters, offers, representations (either verbal or in writing) between the Seller and the Customer in relation to the supply of Products and/or the use of the Fuelcard; and
 - (d) in the event these terms and conditions are inconsistent with the terms of any written supply agreement for the supply of specific Products to the Customer, and of which the Seller has accepted, the terms of the supply agreement will prevail.
 - 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 3. **Change in Control**
 - 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
 4. **Price and Payment**
 - 4.1 At the Seller's sole discretion the Price of Products purchased by the Customer shall be either:
 - (a) as indicated on any invoice and/or statement provided by the Seller to the Customer; or
 - (b) the Seller's quoted Price (subject to clause 4.2), which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 4.2 The Customer acknowledges:
 - (a) that the Price charged for Products may vary, as they are based on changes in wholesale crude oil prices, currency or exchange rates, the oil market generally, or the volume of Products purchased by the Customer; and
 - (b) that the Seller reserves the right to change the Price if a variation to the Seller's quotation is requested; and
 - (c) and agrees that it must not exceed its Credit Limit. The Seller may, at its sole discretion, increase or decrease the Customer's Credit Limit from time to time by providing written notice of such to the Customer; the Customer may decline any increase to its Credit Limit.
 - 4.3 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date determined by the Seller, which may be:
 - (a) where the Customer has a valid Account with the Seller, twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by the Seller.
 - 4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, debit from the Customer's nominated credit card or bank account (plus a surcharge of up to two percent (2%) of the payment amount), or by any other method as agreed between the Customer and the Seller.
 - 4.5 Unless otherwise stated the Price includes GST, an amount the Customer must pay to the Seller which is equal to any GST the Seller must pay for any supply of Products by the Seller under this contract, or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. Unless expressly included in the Price, the Customer must pay, in addition to the Price:
 - (a) any other taxes and duties that may be applicable; and
 - (b) an annual Fuelcard fee, and transaction fee for each Fuelcard transaction; and
 - (c) any minimum order charge the Seller may levy from time to time, depending on the quantity of Products ordered by the Customer; and
 - (d) for any delivery of Products, which may be levied by the Seller depending on the quantity of Products delivered, distance travelled to effect such delivery to the Customer and the date of such delivery.
 - 4.6 To the extent permitted by law, all money received by the Seller from the Customer will be applied in the manner and order determined by the Seller.
 5. **Supply of Bulk Products**
 - 5.1 The terms and conditions set out in this clause 5 apply where the Customer is supplied with Products by the Seller (via bulk delivery or otherwise), excluding the purchase of Products using the Fuelcard.
 - 5.2 The Seller warrants that the Products supplied will be of a merchantable quality. No other warranty, expressed or implied, is given by the Seller.
 - 5.3 The Seller will be relieved of all liability in respect of any claims relating to the quality of the Products if such claims are not made by the Customer within seven (7) days of the delivery of those Products by the Seller to the Customer. To the extent permitted by law, the Seller limits its liability to the replacement, or the replacement cost, of the relevant Products.
 - 5.4 Delivery ("Delivery") of the Products is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Products to the address nominated by the Customer on the Application ("Site"), even if the Customer is not present at the Site. The Customer must provide the Seller with safe and unrestricted access for Delivery at the Site, or otherwise as agreed by the Seller, and provide not less than three (3) working days prior notice of its required Delivery.
 - 5.5 Whilst the Seller will use reasonable endeavours to deliver the Products ordered to the Site within three (3) working days after receipt of the Customer's order (excluding the day the order was received), this timeframe is an estimate only. The Customer must still accept Delivery even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.
 - 5.7 Risk of damage to or loss of the Products passes to the Customer on Delivery, and the Customer must insure the Products on, or before, Delivery.
 6. **Title**
 - 6.1 The Seller and the Customer agree ownership of the Products shall not pass until:
 - (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Seller has met all of its other obligations to the Seller.
 - 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Seller's rights and ownership in relation to the Products, and this contract, shall continue.
 - 6.3 The Customer will keep the Products clearly identifiable as the property of the Seller until such time as they may be used in the ordinary course of business. This provision is inserted solely for the benefit of the Seller and does not entitle the Customer to return or require the return of any Products that have not been paid for.
 - 6.4 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 6.1:
 - (a) the Customer shall not charge or grant an encumbrance or security interest over the Products, nor grant, nor otherwise give away, any interest in the Products while they remain the property of the Seller; and
 - (b) the Seller may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Customer; and
 - (c) the Seller may, in the event of any breach of these terms and conditions by the Customer, for the purpose of recovery of the Products, enter any site where the Products are stored (or where the Seller reasonably believes they are stored) and take possession of them, and the Customer shall co-operate with the Seller to provide or procure such access as the Seller requires; and
 - (d) in the event the Products have been on-sold by the Customer, the Customer shall (at the request of the Seller) assign to the Seller within seven (7) days, all rights against the person/s to whom the Products have been sold.
 7. **Personal Property Securities Act 1999 ("PPSA")**
 - 7.1 Upon agreeing to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Products that have previously been supplied, and that will be supplied in the future, by the Seller to the Customer.
 - 7.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of the Seller; and
 - (d) immediately advise the Seller of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sale.
 - 7.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 7.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 7.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.
 8. **Security and Charge**
 - 8.1 In consideration of the Seller agreeing to supply Products, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 8.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
 - 8.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Customer's behalf.
 9. **Default and Consequences of Default**
 - 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 9.2 If the Customer owes the Seller any money, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
 - 9.3 Further to any other rights or remedies the Seller may have under this contract, if the Customer has made payment to the Seller by credit card (or direct debit from a credit card or bank account), and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 9 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
 - 9.4 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Products to the Customer, and/or the Customer's Account, with (or without) notice. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
 - 9.5 Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all, or any part of, any order of the Customer, which remains unfulfilled, and/or terminate the Customer's Account (with or without notice), and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
 10. **Termination**
 - 10.1 In addition to the Seller's rights to terminate under clause 9, the Seller may, by providing the Customer two (2) days' written notice, terminate the Customer's ability to purchase Products on credit terms, or suspend or terminate the Customer's Account, and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable. The Seller shall not be liable for any loss or damage whatsoever arising from such termination.
 - 10.2 The Customer may close its Account by providing the Seller thirty (30) days written notice to the Seller. For the avoidance of doubt, this termination right is in substitution for any right of cancellation under the Contractual Remedies Act 1979.
 11. **Privacy Act 1993**
 - 11.1 The Customer authorises the Seller or the Seller's agent to:
 - (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing goods and services to the Customer;
 - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
 - 11.2 Where the Customer is an individual the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 11.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.
 12. **Notices**
 - 12.1 Subject to clause 12.4, a notice or other communication will be deemed to have been duly received:
 - (a) if delivered by hand, at the time of delivery; or
 - (b) if sent by pre-paid post, two (2) Business Days after posting; or
 - (c) if sent by facsimile, on the day of transmission; or
 - (d) except that is a notice or other communication is delivered by hand, or received by mail or facsimile on a day which is not a day being Monday to Friday, inclusive, ("Business Day"), or after 5:00pm on a Business Day, then the notices or other communication will be deemed to have been received on the next Business Day.
 - 12.2 For the avoidance of doubt, the notice provisions in this clause 12 replace sections 185-189 of the PPSA.
 - 12.3 This clause 12 does not apply to a notice given under clause 14.11 of these terms and conditions, which shall be given when the Seller actually received notice.
 - 12.5 All communications directed to the Seller should be made to: the Office Manager, Petroleum Logistics Ltd, Private Bag 2039, New Plymouth 4342.
 13. **General**
 - 13.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. 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.
 - 13.2 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.
 - 13.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).
 - 13.4 The Customer:
 - (a) hereby disclaims any right to rescind, or cancel any contract with the Seller, or to sue for damages or to claim restitution, arising out of any inadvertent misrepresentation made to the Customer by the Seller, and the Customer acknowledges that the Products are purchased relying solely upon the Customer's skill and judgment; and
 - (b) agrees to indemnify the Seller, its officers, employees and agents against any claims or losses incurred by the Seller arising out of, or in connection with, the supply of Products (other than by reason of the Seller's negligence).
 - 13.5 The Customer shall not be entitled to set off against, or deduct from the Price, or counter-claim for any sums owed (or claimed to be owed) to the Customer by the Seller, nor to withhold payment of any invoice because part of that invoice is in dispute. Unless the Customer notifies the Seller within thirty (30) days of receipt, any invoice
 - 13.6 The Customer's rights and obligations under these terms and conditions are personal and may not be assigned. However, the Seller may assign, license or sub-contract all or any part of its rights and obligations hereunder without the Customer's consent.
 - 13.7 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change by posting the amended terms on the Seller's website. The Customer:
 - (a) is advised hereby to consult the Seller's website regularly for any changes; and
 - (b) will be taken to have accepted such changes if the Customer makes a further request for the Seller to supply Products to the Customer.
 - 13.8 Neither party shall be liable for any default (including any failure to supply by the Seller) due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of the defaulting party.
 - 13.9 The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.
 - 13.10 Unless otherwise specified, each party will (at its own expense and when requested by the other party) do, sign and deliver everything reasonably required to give full effect to these terms and conditions and the transactions contemplated by these terms and conditions, and will take all practical steps to ensure relevant third parties do the same.
14. **Terms and Conditions Applicable to the Fuelcard**
 - 14.1 **General Use of the Fuelcard**
 - 14.1.1 The Fuelcard is issued by the Seller for the person and/or vehicle nominated in the Application. The Customer, as the Account holder, is responsible for the use of the Fuelcard (including the Pin) by the person/s who use the Fuelcard and have knowledge of the Pin ("Authorised Users").
 - 14.1.2 The Fuelcard must be endorsed with the signature of the person named on the Fuelcard, or imprinted with the registration number of the vehicle identified on the Fuelcard, in the relevant space provided on the Fuelcard. By using or endorsing the Fuelcard, the Customer acknowledges that it is bound by these terms and conditions.
 - 14.1.3 A personal identification number ("Pin") is assigned to each Fuelcard. For all electronic transactions using a Fuelcard, the Customer or Authorised Users must enter the Pin, which shall not be written on the Fuelcard or kept as a written record with the Fuelcard. It is solely the Customer's responsibility to ensure that they, and the Authorised Users, use the Fuelcard and the Pin.
 - 14.1.4 The Fuelcard remains the sole property of the Seller at all times, and the Seller may (at any time) require the return of the Fuelcard.
 - 14.1.5 The Customer agrees to comply with all guidelines and manuals issued by the Seller relating to the use of the Fuelcard.
 - 14.1.6 The Fuelcard may be used to purchase Products from participating retailers and automatic facilities approved by the Seller. The Fuelcard cannot be used to obtain cash, or cash equivalent, or cash for refund of Products.
 - 14.1.7 The Fuelcard may be issued with a purchase limitation. The Customer is responsible for:
 - (a) ensuring any Authorised Users do not exceed the purchase limitation; and
 - (b) any purchase in excess of the purchase limitation. The Seller is not liable to the Customer for any Fuelcard purchase in excess of the purchase limitation.
 - 14.1.8 When purchasing Products by Fuelcard, it is the Customer's responsibility to ensure any sales voucher or EFTPOS receipt correctly records the quantity, price and other details of the purchase. The Customer agrees that, by entry of the Pin, or signature of the person using the Fuelcard on the sales voucher or EFTPOS receipt:
 - (a) the Customer authorises, the purchase of the Products and any costs to be charged by the Seller to the Customer's Account; and
 - (b) the Seller shall be entitled to rely on such as valid authority from the Customer for the purchase of the Products, and the costs of such purchases shall be charged by the Seller to the Customer's Account.
 - 14.1.9 The Seller may, from time to time, issue a duplicate or replacement Fuelcard (including in circumstances where the Customer requests a replacement for a damaged Fuelcard or shortly prior to the expiry of an existing Fuelcard). The destruction of the old Fuelcard is the responsibility of the Customer and the Customer will remain liable for any use of the old Fuelcard, notwithstanding the issue of a duplicate or replacement.
 - 14.1.10 The Seller will provide the Customer with a monthly statement detailing the Fuelcard transactions for the previous month.
 - 14.1.11 If the Fuelcard (including the Pin) is lost, stolen or misused, the Customer must notify the Seller immediately, requesting cancellation of that Fuelcard and confirm that notification in writing to the Seller within twenty-four (24) hours. The Customer will not be liable for any unauthorised transactions of the Fuelcard made after written notification of the cancellation (due to loss or theft or misuse) is received by the Seller. The Seller shall not be liable for any transactions on the Fuelcard effected prior to the Business Day that the Seller receives from the Customer written notification requesting cancellation (due to loss or theft or misuse) of the Fuelcard.
 15. **Credits**
 - 15.1 The purchase of Products on Fuelcard is between the Customer and the participating retailer. The Customer acknowledges that the Seller has no liability to the extent permitted by law, directly or indirectly, in respect of the Products purchased by the Customer using the Fuelcard. In the event the Customer purchases defective Products:
 - (a) it is up to the Customer to resolve this with the participating retailer from which the Products were purchased. If the return of the defective Products is accepted by the participating retailer, the Customer should obtain a copy of the credit voucher, which will be processed by the Seller as a credit against the Customer's Account; or
 - (b) from an automatic facility, the Customer must give the Seller written notice of such purchase within forty-eight (48) hours of the purchase. The Seller will, in good faith, investigate the quality of the Products purchased and may, at the Seller's sole discretion, replace the Products purchased or credit the Customer's Account with the cost of the Products.
 16. **Liability**
 - 16.1 Without limiting any other provision of these terms and conditions, the Seller is not liable to the Customer, whether directly or indirectly, for:
 - (a) the actions of any participating retailer; or
 - (b) any Products purchased on the Fuelcard, in accordance with clause 14 (unless otherwise stated in these terms and conditions); or
 - (c) any fault with any automatic facility used in conjunction with the Fuelcard; or
 - (d) any fault with the Fuelcard (including the Pin) itself; or
 - (e) any fault with the electronic system which process the Fuelcard transaction; or
 - (f) any unauthorised use, misuse or fraud with the Fuelcard and/or Pin, where the Seller has not received written notification of cancellation from the Customer in accordance with either clause 10.2 or 14.11 (and the returned Fuelcard from the Customer in accordance with clause 17.1); or
 - (g) any loss or damage suffered by the Customer arising out of the supply of Products or the performance, or non-performance by the Seller of any obligation under these terms and conditions (unless otherwise stated herein).
 17. **Cancellation**
 - 17.1 The Customer may cancel a Fuelcard where it is no longer required by returning it to the Seller. The Customer must return any cancelled Fuelcard (unless it is lost or stolen), out in half, to the Seller. The Customer shall remain liable for all transaction recorded against the cancelled Fuelcard until such time as the cancelled Fuelcard is actually received by the Seller (except where the Fuelcard is cancelled pursuant to clause 14.11). For the avoidance of doubt, the Fuelcard Account will remain active for any other Fuelcards issued to the Customer (if any).
 - 17.2 In addition to any rights the Seller may have under clause 9, the Seller reserves the right to suspend or cancel the Customer's Fuelcard in the event that:
 - (a) the Customer's account reaches or exceeds its credit limit; or
 - (b) payment is not received from the Customer on the due date.