

Air BP Terms & Conditions

1. Terms and Conditions Binding

If BP accepts your application, BP will issue Air BP Card(s) to the Customer. Any person who signs the application form will be jointly and severally liable as the Customer.

By applying for or using the Air BP Card, the Customer acknowledges acceptance of these Terms and Conditions and ensures their observance by the Customer and Authorised Users until all the Customer's Air BP Cards expire, are cancelled or otherwise cease to be valid. The Customer acknowledges that, in the event of such expiry, cancellation or invalidity, it continues to be bound by all obligations and liabilities incurred by it before such expiry, cancellation or invalidity.

2. Definitions

Unless the context requires otherwise:

Affected Party as defined in Clause 27.6

Air BP Card means the card used by Air BP Customers to purchase aviation fuel on credit at general aviation airports on these terms and conditions.

Application means the Air BP credit application form which is to be filled in by the Customer and returned to BP.

Authorised User means persons authorised by the Customer to use the Customer's Air BP Cards and is deemed to be the agent of the Customer.

Authority means a government or government department, a governmental, semi-governmental or judicial person or person (whether autonomous or not) charged with the administration of any Law.

BP means BP Australia Pty Ltd ABN 53 004 085 616.

BP Aviation Fuels means BP's aviation fuel products.

Carbon Cost means any cost, expense, charge, liability, obligation, tax, royalty, rate, duty, levy or penalty (present or in the future) arising from a Carbon Scheme and includes:

- (a) any cost incurred to acquire, account for, register or trade any Permits; and
- (b) any other cost incurred which arises from compliance with the Carbon Scheme, including internal compliance costs and costs arising from the need to record, account for or report any greenhouse gas emissions or related activities.

Carbon Scheme means the national Carbon Pollution Reduction Scheme or such similar statutory emissions trading scheme or other scheme for the purposes of managing, limiting or reducing greenhouse gas concentrations.

Change in Law means:

- (a) the introduction, amendment or repeal of any Law;
- (b) the imposition by an Authority of any tax, levy, duty, impost or charge not in force as at the date of this agreement;
- (c) any variation to the rate of any tax, levy, duty, impost or charge prevailing as at the date of this agreement; or
- (d) any variation in the basis of calculation of any tax, levy, duty, impost or charge prevailing as at the date of this agreement.

Credit Limit means the amount nominated as such by BP from time to time.

Customer means the Customer named in the Application. If more than one person is named, each shall be jointly and severally liable under these Terms and Conditions.

Electronic Invoicing Agreement means the Air BP eNabler Terms of Use agreement attached to these Terms and Conditions.

Law means any law, by-law, statute, regulation, ordinance, judgment, rule of common law or equity, condition of any authorisation or rule of an applicable stock exchange, as amended, consolidated or replaced.

Nominated Aircraft means the aircraft nominated by the Customer under clause 7.

Nominated Premises means premises nominated by BP from time to time as accepting the Air BP Card.

Permit means a permit, credit, offset, allowance or other right under the Carbon Scheme which is capable of being held or surrendered by a person to satisfy an obligation or liability under the Carbon Scheme relating to the emission or reduction of a specified quantity of greenhouse gas.

Product means BP Aviation Fuels.

Restricted Party is any person who is identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by the Buyer and/or its Affiliated Companies are prohibited or restricted.

Trade Restrictions as defined in Clause 27.5

3. Interpretation

Singular words include the plural and vice-versa. A reference to a person includes a company, partnership, joint-venture, government body, association or organisation whether registered or not. Including means 'including without limitation'.

4. Air BP Cards

If BP accepts the Customer's Application, BP will make reasonable quantities of Air BP Cards available for the Customer and Authorised Users to obtain Product at Nominated Premises. Reasonable quantities of additional and replacement Air BP Cards may be available. Each Air BP Card will be marked with the Customer's name and identifying number.

5. Customer's Purchases

Customers and Authorised Users are deemed to purchase BP Aviation Fuels from BP. To the full extent permitted by law, BP shall in no way be held liable in respect of any Product which is not deemed to have been purchased from BP under this clause.

6. Credit Limit

The Customer must ensure that its Credit Limit is not exceeded. Any Excess is immediately payable to BP. BP reserves the right to suspend all of the Customer's Air BP Cards, without notice, until such time as any excess is paid and the account is within its Credit Limit.

7. Nominated Aircraft

For each Air BP Card issued, you must specify a Nominated Aircraft and grade of aviation fuel. The Air BP Card will be embossed with the registration number of the aircraft, and shall only be used to purchase aviation fuel for the Nominated Aircraft, provided a fuel grade decal is present and visible on the Aircraft.

8. Unauthorised Use

Except as expressly provided in these Terms and Conditions, the Customer is responsible for and BP is not liable for any unauthorised use whatsoever of any Air BP Card. If BP considers that an Air BP Card has been used other than as permitted or contemplated by these Terms and Conditions, BP may at any time retain that Air BP Card and forthwith cancel all privileges attaching to that Air BP Card and/or the account to which it relates.

9. Supply of Product

On presentation of a valid Air BP Card, supplies of Product will be made available to the Customer and Authorised Users at Nominated Premises, subject to hours of business and availability of supplies. To the fullest extent permitted by law, BP shall not be liable in respect of any loss, damage or cost whatsoever, however arising, under or in connection with these Terms and Conditions and, in respect of any liability which can not be so excluded, such liability shall be fully discharged by BP either (in its sole discretion):

- (a) supplying the Product;
- (b) re-supplying that Product; or
- (c) supplying equivalent product or services.

This clause can only be varied by a subsequent written agreement signed by BP and the Customer. Without limiting the generality of this clause, if BP is prevented from or delayed in delivering any Product or service by an event beyond its reasonable control or by any computer program or computer processor failure, BP's obligations are suspended for the duration of that event.

10. BP Contacts and Enquiries

The following contacts should be used for:

- (a) notification of lost or stolen Air BP Cards or unauthorised use;
- (b) queries;
- (c) requests for new or replacement Air BP Cards; and
- (d) notification of any change in the Customer's contact details, bank account details, ownership, directors or legal identity.

BP Customer Service Centre (During Melbourne business hours)

Phone: 1800 024 727

Fax: (03) 9667 7792

Post: GPO Box 5222, Melbourne VIC 3001

11. Price

Unless otherwise notified by BP, you will be charged:

- (a) the relevant Posted Airfield Price as set by BP from time to time. The relevant Posted Airfield Price may be obtained by contacting BP. The aggregate amount of purchases made on the Air BP Card issued to you must not exceed any credit limit notified by BP;
- (b) fees including transaction fee or monthly card fee as specified in the Customer's current agreement with BP; and
- (c) government taxes/charges.

12. Receipt

- (a) The Air BP Card may be used at any of the Nominated Premises. At manned premises, you may be required to sign a delivery receipt acknowledging receipt of the quantity of products supplied. At premises with electronic terminals, it is your responsibility to ensure that the details on the receipt are correct, especially that regarding the quantity supplied.
 - (b) BP will have no liability if, for any reasons beyond its control, you are unable to obtain supply from any Nominated Premises.
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13. Charges and Payment

Any purchase with the Air BP Card will be charged to your account. BP will periodically make available an itemised invoice of the Customer's Air BP Card transactions and any applicable fees or charges as appropriate for the relevant period. Subject to clause 6, the Customer must pay to BP the purchase Price for Products supplied to the Customer in the preceding month by the invoice due date unless otherwise agreed by the parties in writing. The Customer must pay the stated amount due by the due date. Unless otherwise agreed, payment must be by allowing BP to direct debit the Customer's nominated bank account. If the debit day falls on a day that is not a Business Day, i.e. a weekend or public holiday, BP may direct your Financial Institution to debit your Account on the prior Business Day when amounts owing are due at month end.

The Customer must do all things necessary to allow direct debit and must not revoke the authority. Should BP be unable to activate direct debit, payment must be made immediately and BP may cancel or suspend the Air BP Cards. Amounts received by BP will be applied in the following order: interest, enforcement and legal expenses, government charges or duties, amounts due for Air BP Card transactions. The Customer shall immediately notify BP in writing of any change to bank account details.

14. Disputes

If the Customer disputes any amount appearing on an invoice, the Customer must notify BP in writing no later than 30 days after the date of the invoice is made available to the Customer and must provide details of the disputed amount and the reasons for the dispute. Where a Customer has lodged such a dispute with BP, the Customer must provide to BP such evidence as BP requests in relation to the dispute, including a statutory declaration if so required by BP.

15. Payment Default

If payment of any amount owing by the Customer to BP is not made by the due date, the Customer must pay on demand simple interest on the amount due at a rate equal to the rate prescribed as at the due date under the Penalty Interest Rates Act 1983 (Victoria) calculated daily by BP on the principal amount due, payable from the due date. The Customer shall also indemnify and/or reimburse BP on demand for any and all expenses incurred by the exercise, preservation or consideration of any rights, powers or remedies under these terms and conditions and including in each case, legal costs and expenses on a full indemnity basis and the costs of any agents or contractors acting on BP's behalf in respect of any recovery or attempted recovery of any amount due by the Customer to BP.

16. Third Party

The Customer acknowledges that BP may pay to or receive from any third party, fees or benefits relating to the Customer's use of Air BP Card or purchases of Product or otherwise.

17. Cancellation

BP may cancel any or all of the Customer's Air BP Cards for any reason at any time and without notice. BP may close your account without notice if you do not observe any of these terms and conditions, or if you fail to pay your debt. The Customer must return cancelled or expired Cards to BP forthwith. On cancellation of all the Customer's Air BP Cards, the debit balance of the Customer's Air BP Card account becomes immediately due and payable to BP. Should a Customer account be inactive for a period of 18 months the account will be subject to automatic closure.

18. Property and Loss

All Air BP Cards remain the property of BP. The Customer must immediately notify BP and confirm the notification in writing within 24 hours of any Air BP Card lost, stolen, no longer required or subject to possible unauthorised use by telephone or facsimile. BP will take responsibility for unauthorised use once an Air BP Card has been reported lost, stolen or cancelled. The Customer must forthwith return to BP all Air BP Cards no longer used, expired, cancelled or otherwise invalid.

19. Financial Information

At BP's request from time to time, the Customer must provide to BP information in the form and for the period required by BP in relation to the Customer's financial position including a balance sheet, profit and loss statement and cash flow statement and, where the Customer is a corporation, information in relation to the Customer's officers from whom BP has or seeks guarantees.

20. Risk and Property

The Risk and Property in the product shall pass to the Customer in the case of a delivery in bulk when on discharge it passes the hose connection of the contained, storage tank, aircraft or fill-line (as the case may be) provided by the Customer. In the case of barrel, drum or other packaged deliveries the risk and property in such package and in any property in such package and in any product contained therein shall pass to the Customer at the time of off-loading when the package is removed from the delivery wagon provided by BP for delivery of such package.

21. Delivery

Bulk Delivery into Aircraft

- (a) Delivery shall be made in accordance with Air BP Fuelling and Quality Control regulations current at the time.
- (b) Subject to local airport regulations BP may deliver the Customer's request into aircraft tanks while passengers are on board or embarking or disembarking or otherwise the Customer shall be solely responsible for ensuring that the provisions of the local airport regulations relating to such delivery are strictly observed. The Customer shall indemnify, defend and save BP and its servants and agents harmless from and against all claims, demands, proceedings, damages and liabilities for death of or injury to any passengers or other persons on board or embarking or disembarking and against all associated direct costs (including reasonable legal fees), losses and expenses, caused by or arising out of such delivery, whatever the cause of such injury or death including negligence, gross negligence or wilful misconduct of BP.
- (c) The Customer warrants and undertakes that there will, at the time of delivery, be sufficient ullage in the aircraft tanks and facilities for the safe and proper reception of the quantity of product ordered and accepts responsibility for any loss, leakage or contamination of the Product which may occur in any such aircraft tanks or facilities or in any pipelines or equipment of the Customer.
- (d) The Customer shall have sole responsibility for operating all appropriate aircraft fuelling switches, valves and pre-set quantities gauges. The Customer agrees to indemnify, defend and save BP and its servants and agents harmless from and against all claims, demands, proceedings, damages and liabilities for loss or damage to property or for death of or injury to any person and against all associated direct costs (including reasonable legal fees), losses and expenses, arising out of or related to BP's action or inaction in such operation except to the extent caused by the gross negligence or wilful misconduct of BP.

Bulk Delivery into Static and Portable Tanks

- (e) The Customer warrants and undertakes:-
 - (i) that the receiving tank is suitable and safe for receiving delivery without risk to property or persons;
 - (ii) to take responsibility for any loss, leakage or contamination of the product deliverable which may occur in any tank or in any pipeline or equipment of the Customer;
 - (iii) to ensure that at the time of delivery all connections to the tank are properly secured;
 - (iv) in the case of a delivery into a static tank to ensure that before delivery commences a competent representative of the Customer who is in charge of the storage installation of the purpose of delivery:-
 - (aa) takes from each compartment of the vehicle making such delivery samples to satisfy himself upon a visual inspection that the product therein is in accordance with the grade of product ordered, the grade of Product indicated on the relevant compartment and the documentation supplied by BP; and

(bb) signs a form or Permission to Discharge or release note provided by BP where appropriate in the case of a highly inflammable Product. Where the Customer does not sign a Permission to Discharge or release note where it is provided by BP, the Customer assumes all risk relating to the delivery.

(v) in case of delivery into a portable tank to be transported offshore ensure that a competent representative of the Customer provides certification that such tank is at the time of delivery in a clean and fit condition to receive and convey the product.

(f) A competent representative of the Customer shall, during the whole time of delivery into a tank, keep a constant watch thereon.

(g) BP reserves the right to refuse to deliver into any tank in the event of the Customer failing strictly to observe the sub-clauses (e) (iv) or (v) as appropriate or if there is not, at the time of delivery, properly fixed and prominently displayed at the permanent hose connection of each tank the correct grade label or additional in the case of a portable tank to be transported offshore it does not, or appears not to, conform to any relevant specifications of BP from time to time of the specifications laid down by any competent authority as to its construction. In the event of such refusal to make a delivery so that BP has to return to its premises with the load, BP shall be entitled to charge such amount as BP considers reasonable and equitable in all circumstances.

General

(h) The Customer shall indemnify, defend and save BP and its servants and agents harmless from and against all claims, demands, proceedings, damages and liabilities for death of or injury to any person including the parties hereto, their servants or agents, loss of or damages to property and any other loss, damage claims, costs and expenses in any way arising, directly or indirectly as a result of the Customer's non-observance of these delivery conditions or otherwise out of or in connection with the delivery of any product save only as a direct result of the negligence of BP or BP's servants or agents. The liability of BP for any loss, damage, claim or other expenditure arising out of or in connection with the failure by BP to perform its obligations under this

Agreement shall be limited to:-

(i) the reimbursement of the cost of or, at the option of the Customer, the replacement free of charge of any product supplied which is not in accordance with this contract; and

(ii) the reasonable repair costs of any property and equipment damaged as a result of any delivery; and

(iii) those arising from the death or personal injuries to any person caused by BP's failure to perform this contract in a safe and careful manner in accordance with proper operating standards, subject to the specific exclusions included in this contract.

Liability for any other loss damage claim or other expenditure howsoever arising whether as a result of any breach of this contract or negligence, gross negligence or wilful misconduct or breach of statutory duty on the part of BP or its affiliates, agents or sub-contractors and their respective directors, officers and employees is hereby executed.

(i) The Customer is wholly responsible for ensuring that it orders or selects the correct grade of fuel for its aircraft, including for the avoidance of doubt and without limiting the generality of the foregoing if the Customer uses any self-serve pumps or other fuel delivery equipment. To the extent permitted by law BP excludes all liability whatsoever for the selection of the correct fuel grade by the customer. BP makes no representation of any kind as to which grade of fuel is appropriate for any particular aircraft. The Customer agrees to indemnify and does indemnify BP for all losses, liabilities, damages, costs (including lawyers' fees), expenses, demands and proceedings arising out of or in connection with or related to the Customer's selection of fuel grade.

22. Health, Safety and The Environment

(a) The Customer shall comply with all relevant health, safety and environmental laws, regulations or recommendations operating in any jurisdiction whatsoever in or to which the Customer supplies, delivers, carries, sells or uses product under this contract and with any instructions in relation to HSE given by BP or BP's servants or agents in relation to the delivery, storage or use of the product.

(b) None of BP or BP's servants or agents shall be responsible for any loss, damage or injury resulting from any hazards inherent in the nature of the products delivered under this contract.

23. Barrel/Drum Delivery

Where BP product is deliverable in barrels, drums or other packages and delivery is to be made in such packages, it will be made, at BP's election, to any point served by transportation appropriate for such delivery.

24. Measurements of Deliveries in Bulk

The quantities of product delivered shall be determined by reference of BP's measurements taken at the place of delivery and for the purpose of accounts shall be accepted by the Customer and the Customer may be represented at the taking of measurements in order to verify them if he so desires.

25. Claims

In the event of missing consignments, short delivery or damage BP can only investigate the circumstances if:-

(a) In the case of damage, the Customer notifies the carrier and BP of the damage immediately upon receipt of the damaged Product, such notices to be in writing and to quote the invoice number.

(b) In the case of non receipt or short delivery, the Customer notifies BP in writing on non-receipt or short delivery. Such notice, quoting the invoice number, should be sent within 21 days of date of dispatch.

26. Carbon Cost Pass-Through

If after the effective date of this agreement there is any Change in Law which results in the creation of a Carbon Cost to BP in respect of the goods or services provided under this agreement, and to the extent that the cost is not reimbursed to BP under any other provision of this agreement, then the Price payable to BP under this agreement shall be adjusted accordingly to reflect the impact attributable to the Change in Law. Any Price adjustment shall be effective as of the date of any Change in Law.

27. Trade Restrictions

27.1 BP expressly prohibits payment of bribes and also payment of any so-called "facilitation" or "grease" payments in connection with BP's business operations by any party engaged to provide goods or services to BP or receive goods or services from BP. Therefore, the Customer represents and warrants that it currently complies and will continue to comply with all anti-corruption laws applicable to it and that it will comply with the principles of BP's Code of Conduct in connection with this Agreement.

27.2 The Customer represents and warrants that it has not made, offered, promised or authorised and will not make, offer, promise or authorize any improper or illegal payment, gift or other advantage, whether directly or through any other person or entity, to any third party, including any "government official" (i.e., any person holding a legislative, administrative, or judicial office, including any person employed by or acting on behalf of a public agency, a government-controlled enterprise, or a public international organization) or any political party or political party official or candidate for office, for purposes of influencing official actions or decisions or securing any improper advantage in order to obtain or retain business or where it would otherwise be improper for such advantage to be accepted.

27.3 Except as otherwise disclosed in writing to BP, as at the date of execution of this Agreement and during the term of this Agreement, no “government official” is or will become associated with, or will own or presently owns any interest in the Customer. At the request of BP, the Customer shall allow BP to review or audit the Customer’s books, records and files relating to this Agreement, and relating to the ownership of the Customer and parties that have legal and equitable interests in the Customer. The Customer will provide information and answer any reasonable questions that BP may have relating to:

- (a) the Customer’s performance of this Agreement in order to assess compliance with this clause 1, and
- (b) any ongoing background checks BP may wish to make while this Agreement is on foot in relation to the Customer, and the Customer hereby provides continuing authorisation to BP to make such checks from time to time, including but not limited to inquiries with Government and other government relates bodies.

27.4 BP shall have the right to terminate this Agreement and/or suspend payment and/or suspend supply hereunder with immediate effect if BP reasonably believes that any of the agreements, undertakings, representations or requirements set forth in this clause 1 have not been complied with or fulfilled by the Customer.

27.5 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be interpreted or construed, as inducing or requiring either Party to act in any manner (including failing to take any actions in connection with any sale or delivery of Fuel) which is inconsistent with, penalised or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the United States of America, the United Kingdom, the European Union or other rules or requirements applicable to such Party which relate to international boycotts of any type, and neither Party will be obliged to perform any obligation if it would be in violation of such laws (the ‘Trade Restrictions’).

27.6 Where any performance by a Party would be in violation of, inconsistent with, or expose such party to punitive measures under the Trade Restrictions, such party (the ‘Affected Party’) shall, as soon as reasonably practicable give written notice to the other party of its inability to perform. Once such notice has been given the Affected Party shall be entitled:

- (a) to immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; and/or
- (b) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment,

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

27.7 The Buyer warrants that any party to whom, either:

- (a) the Buyer or any of its Affiliated Companies resells Fuel sold to it by the Seller or one of the Seller’s Affiliated Companies; or
 - (b) the Buyer or any of its Affiliated Companies requires the Seller or one of its Affiliated Companies to deliver Fuel, is not a “restricted party”.
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28. Miscellaneous

- (a) BP may add to or vary these Terms and Conditions (including pricing and payment provisions) from time to time on 7 days' written notice to the Customer.
- (b) A certificate stating the approximate date upon which the Customer was notified of any variation or amendment to these Terms and Conditions or stating the amount owing to BP by the Customer at the date mentioned in a certificate signed by BP or an authorised officer of BP shall be, in the absence of manifest error, conclusive evidence against the Customer of the matter so stated in the certificate.
- (c) No waiver by BP of the Customer's or Authorised User's breach of or failure to comply with these terms and conditions is to be construed as a general waiver.
- (d) Time is of the essence for the performance of the Customer's obligations.
- (e) BP may assign any part of this Agreement to a third party. Rights and benefits of the Customer and Authorised Users relating to Air BP Card are personal and may not be assigned or transferred in any way. Any purported assignment or transfer is null and void.
- (f) BP may charge the Customer any government taxes or other charge applied to the Customer's Air BP Card or its use or the Customer's Air BP Card account including any stamp duties and financial institution duties, and any fees for the use of the Air BP Card. For the avoidance of any doubt, this includes throughput and related fees charged by third parties.
- (g) The Customer must give BP written notice of any change in the Customer's contact details, ownership, directors or legal identity within 7 days of the change.
- (h) These Terms and Conditions are governed by and interpreted in accordance with the laws of the State of Victoria, Australia. The Customer irrevocably submits to the jurisdiction of the Courts of Victoria and waives any objection to such venue and any claim that an action has been brought in an inconvenient forum.
- (i) Notification of any matter is deemed not to have been effective until confirmed or acted upon by BP.

29. GST

If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the Customer must pay to BP an amount equal to the GST payable on or for the taxable supply, subject to the Customer receiving (if required by law) a valid tax invoice in respect of the supply. Payment of this amount must be made at the same time as payment for the taxable supply is required to be made in accordance with these terms and conditions.

30. Communications

BP can rely and act on any facsimile, e-mail or other online communication it receives from the Customer. If the communication was sent without the authority or consent of the Customer:

- (a) The Customer is bound by the contents of the communication so far as it effects BP; and
- (b) BP will not be liable for any loss, damages, cost or expense incurred by the Customer.

31. Notice

31.1 If you wish to notify BP in writing about anything relating to this Agreement, you should write or send a facsimile to:

ADDRESS: Sales Management Team
Air BP Customer Service Centre
GPO Box 5222
Melbourne VIC 3001

31.2 Any notice will be deemed to have been received:

- (a) if sent by mail, five days after it is posted;
- (b) if personally delivered, when delivered;
- (c) if sent by facsimile transmission, when dispatched provided the machine of the sending party has produced a printed record of transmission.

32. Entire Agreement

This contract and the Electronic Invoicing Agreement contain the entire agreement between BP and the Customer in relation to the delivery of BP Aviation Fuels referred to in this contract. BP makes no representations or warranties in respect of the quality, fitness or suitability of the BP Aviation Fuels for any purpose or otherwise other than as expressly set out herein. No representations, warranties or guarantees are to be implied in this contract. Nothing in this clause shall exclude any liability for fraudulent misrepresentation.



Please retain these terms and conditions for your records.