

Standard Terms and Conditions

Supply of Products



1. DEFINITIONS

- 1.1 "Account" means a BP account opened for a Buyer pursuant to an Application.
- 1.2 "Account Credit Limit" means the limit to which the Buyer may purchase Bulk Fuel Products on its Account, as nominated by BP and communicated to the Buyer from time to time.
- 1.3 "Applicable Anti-corruption Laws" means any anti-corruption laws that are applicable to either the Buyer or this Agreement, including the US Foreign Corrupt Practices Act and the UK Bribery Act.
- 1.4 "Application" means the "Credit Application" form or other application form issued by BP that a Buyer has completed and submitted to BP to apply to BP for the supply of Products on credit.
- 1.5 "Amounts Owing" means all amounts owing by the Buyer to BP at the relevant time.
- 1.6 "BP" means, as applicable, Castrol New Zealand Limited in relation to lubricant products, and/or BP Oil New Zealand Limited for all other goods and services.
- 1.7 "BP Motor Fuels" means motor fuels and lubricant products including BP Ultimate, BP Unleaded with up to 10% renewable ethanol, Opal, unleaded and premium unleaded petrol, automotive LPG and diesel purchased by the Buyer under BP trade marks and third party purchased automotive LPG and other fuel products nominated by BP from time to time.
- 1.8 "Bulk Fuel Products" means BP Motor Fuels supplied to the Buyer by the relevant BP entity.
- 1.9 "Buyer" means, in relation to the Application, each Buyer named in it, or any one of them, as the context requires.
- 1.10 "Business Day" means a day (other than a Saturday, Sunday or public holiday observed in New Zealand) on which registered banks are opened for general banking business in New Zealand.
- 1.11 "GST" has the meaning given in the *Goods and Services Tax Act 1985*.
- 1.12 "Guarantor" means any person who executes a personal guarantee relating to the Buyer's obligations to the relevant BP entity or, if there is more than one Guarantor, any one of them.
- 1.13 "Insolvency Event" occurs if:
 - (a) BP reasonably believes that the Buyer or a Guarantor is unable to pay any Amounts Owing as they fall due or is bankrupt or insolvent;
 - (b) a Guarantor disputes the legal effectiveness of the relevant guarantee; and/or
 - (c) any person takes enforcement action against the Buyer's or a Guarantor's property.
- 1.14 "PPSA" means *Personal Property Securities Act 1999*.
- 1.15 "Terms" means these terms and conditions as amended from time to time under clause 20.

2. ACCEPTANCE OF APPLICATION

- 2.1 All applications must be submitted by the Buyer to BP on an Application, which may include an electronic form. BP will use reasonable endeavours to accept or decline an Application (at its sole discretion) by written notice to the Buyer within 21 days of receipt of the Application.
- 2.2 The Buyer acknowledges, by submitting the Application, that the Buyer has received a copy of, and agrees to be bound by, these Terms.
- 2.3 The Buyer represents and warrants that all information it supplies to BP in, or in connection with, the Application is accurate, up to date and not misleading and that the Buyer has not withheld from BP any fact material to the BP's decision of BP to provide credit to the Buyer.

3. ACCOUNT CREDIT LIMIT

- 3.1 A Buyer must not exceed its Account Credit Limit. The Buyer is responsible for monitoring the Amounts Owing on the Buyer's Account to ensure that the Buyer does not exceed the Account Credit Limit.
- 3.2 BP may increase or decrease an Account Credit Limit given to a Buyer from time to time. BP will notify a Buyer in writing of any change to its Account Credit Limit.
- 3.3 BP may charge all Amounts Owing under or in connection with these Terms to the Buyer's Account and all Amounts Owing will count towards the Account Credit Limit.

4. PRICE

- 4.1 The price payable for a Bulk Fuel Product is the price notified in writing for the relevant Bulk Fuel Product by BP to the Buyer from time to time.
- 4.2 The Buyer acknowledges the prices charged by BP for Bulk Fuel Products may be varied by BP from time to time, including as a result of changes in wholesale crude oil prices, currency or exchange rates, the oil market generally or the volume of Bulk Fuel Products purchased by the Buyer.
- 4.3 In addition to the price of the Bulk Fuel Products, the Buyer is liable to pay:
 - (a) any applicable taxes and levies;
 - (b) ;
 - (c) any minimum order charge BP has notified to the Buyer from time to time, which may vary depending on the quantity of Bulk Fuel Products ordered; and
 - (d) any delivery charge BP has notified to the Buyer from time to time, which may vary depending on the quantity of Bulk Fuel Products delivered, distance travelled to effect delivery to the Buyer and the date of the delivery.

5. PAYMENT

- 5.1 The Buyer must not deduct, withhold or set-off any sum from any Amounts Owing to BP.
- 5.2 Payment of all Amounts Owing will be effected by direct debit from the Buyer's nominated bank account in accordance with the direct debit form in the Application. Unless agreed otherwise in writing between BP and the Buyer or a different date is specified on an invoice, the payment of invoices must be made on the 10th day of the month after the month in which the relevant Bulk Fuel Products are supplied. Unless the

Buyer disputes the debit with BP within 30 days of the debit, that debit and its amount is taken as accepted by the Buyer and not open to challenge.

- 5.3 The Buyer must notify BP immediately of any change to the Buyer's banking details.
- 5.4 The Buyer must ensure that there are sufficient funds available in its nominated bank account to meet its direct debit deductions.
- 5.5 If the Buyer exceeds its Account Credit Limit and/or fails to make payment in accordance with this clause, BP may at its option:
 - (a) refuse to extend further credit to the Buyer;
 - (b) elect to supply further Bulk Fuel Product only on the condition that the Buyer pays for such Bulk Fuel Product in cash upon delivery;
 - (c) stop delivery of any Bulk Fuel Product to the Buyer;
 - (d) cancel and/or suspend the Buyer's Account; or
 - (e) exercise its termination rights pursuant to clause 14.
- 5.6 Without limiting BP's other rights under these Terms, if the Buyer exceeds its Account Credit Limit and/or fails to make payment in accordance with this clause, then the Buyer must:
 - (a) Pay BP all Amounts Owing;
 - (b) pay BP simple interest on the unpaid amount calculated at a rate of 1.5% per month calculated daily from the due date until actual payment on all unpaid amounts; and
 - (c) indemnify BP for any and all expenses incurred by BP in relation to any enforcement of these Terms, or the exercise, preservation or consideration of any rights, powers or remedies under this Agreement 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 Buyer.
- 5.7 To the extent permitted by law, all money received by BP from the Buyer will be applied in the manner and order determined by BP.

6. CREDIT AND SECURITY

- 6.1 BP may, at any time, in its absolute discretion:
 - (a) grant credit to the Buyer;
 - (b) determine the terms on which such credit will be granted; and
 - (c) vary the terms of or withdraw any credit granted to the Buyer at any time and from time to time.
- 6.2 If requested by BP, the Buyer must provide security for the performance of its obligations under these Terms in a form and on terms and conditions reasonably acceptable to BP.
- 6.3 If requested by BP, the Buyer must provide BP with:
 - (a) information in the form and for the period requested by BP relating to the Buyer's financial position. This information may include a balance sheet, profit and loss statement, and cash flow statement; and
 - (b) information in the form and for the period requested by BP in relation to the financial position of any prospective Guarantor.
- 6.4 The Buyer must give BP written notice of any change in its contact details, ownership, legal identity or directors within 7 days of the change.

7. TITLE AND RISK IN BULK FUEL PRODUCTS

- 7.1 In relation to purchases of Bulk Fuel Products:
 - (a) risk of damage to or loss of the Bulk Fuel Products passes to the Buyer on collection or delivery (as applicable);
 - (b) title in the Bulk Fuel Products will remain with the relevant BP entity until all Amounts Owing by the Buyer to that BP entity have been paid in full; and
 - (c) until title in the Bulk Fuel Products passes to the Buyer, the Buyer must keep all Bulk Fuel Products clearly identifiable as the property of the relevant BP entity and must keep all Bulk Fuel Products free of security interests (as defined in the PPSA) other than any security interests granted in favour of BP.
- 7.2 Notwithstanding clause 7.1(c), the Buyer may mix the Bulk Fuel Products with other products and/ or use the Bulk Fuel Products in the ordinary course of Buyer's business.
- 7.3 If an Insolvency Event occurs, BP may revoke the authority granted under clause 7.2 on notice to the Buyer.
- 7.4 Until ownership of Bulk Fuel Products passes to the Buyer, the Buyer grants irrevocable authority to BP or BP's agents, to enter any premises owned or occupied by the Buyer at any reasonable time but without notice, to remove any Bulk Fuel Products, including Bulk Fuel Products which have been mixed with products. BP will not be liable for costs, damages or expenses or any other losses suffered or incurred by the Buyer or any third party as a result of this action.
- 7.5 This section 7 is inserted solely for the benefit of BP and does not entitle the Buyer to return any Bulk Fuel Products which have not been paid for. BP may bring an action for any Amounts Owing even where ownership of the Bulk Fuel Products has not passed to the Buyer.

8. SUPPLY OF BULK FUEL PRODUCTS

- 8.1 The Buyer must make available safe and unrestricted access for delivery at the site nominated for delivery in the Application, or otherwise as agreed by the relevant BP entity (the "Site") and provide not less than 3 Business Days prior notice of its delivery requirements. BP will use reasonable endeavours to deliver the Bulk Fuel Products ordered to the Site within 3 Business Days after receipt of the Buyer's order (excluding the day the order was received).
- 8.2 Delivery of the Bulk Fuel Products is made and risk will pass to the Buyer:
 - (a) for liquid Bulk Fuel Products delivered by hose connection, when they pass into the permanent hose connection at the filling point at the Site; and
 - (b) for packed or other Bulk Fuel Products, upon the removal of such Bulk Fuel Products from the delivery vehicle at the Site.
- 8.3 The relevant BP entity will provide to the Buyer, at the time of delivery or as soon as

practicable after delivery, a delivery docket (the "Delivery Docket") specifying the type and quantity of the Bulk Fuel Products delivered.

- 8.4 The Buyer may submit to the relevant BP entity a six-month reconciliation of Bulk Fuel Products delivered by BP for the purposes of assessing apparent loss or disparity between measured and actual delivery quantities. If the Buyer submits such a reconciliation to the relevant BP entity, the relevant BP entity will make an adjustment of the amount invoiced for the relevant Bulk Fuel Products delivered to the Buyer for that reconciliation period, if BP determines that any disparity is a result of short delivery or other cause (excluding leakage from the Buyer's own equipment), provided that:
- (a) the Buyer will not withhold payment for any delivery which is under consideration under this clause;
 - (b) if any adjustment results in an increase in the amount payable for Bulk Fuel Products supplied, the Buyer will pay that increase within 7 days;
 - (c) if any adjustment results in a decrease in the amount payable for Bulk Fuel Products supplied, BP will credit the Buyer's next invoice with that amount; and
 - (d) any reconciliation provided by the Buyer for consideration for adjustment of the invoiced amount under this clause must be submitted to the relevant BP entity within 30 calendar days of the final day of the relevant reconciliation period, in order to qualify for such consideration by BP under this clause.

9. CONSUMER GUARANTEES ACT AND FAIR TRADING ACT

- 9.1 For the purposes of section 5D of the Fair Trading Act 1986 (FTA) and section 43 of the Consumer Guarantees Act 1993 (CGA), the parties acknowledge and agree that, if the Buyer is acquiring, or holds itself out as acquiring, the Bulk Fuel Products in trade, to the extent permitted by law:
- (a) they are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by these Terms);
 - (b) it is fair and reasonable for the parties to be bound by this clause 9.1; and
 - (c) they have received legal advice in relation to these Terms (or had the opportunity to seek such advice but decided not to).
- 9.2 Nothing in these Terms will affect any right any person may have under the CGA if they are a consumer (as defined in the CGA) and are not acquiring, or holding themselves out as acquiring, the Bulk Fuel Products in trade.

10. PERSONAL PROPERTY SECURITIES ACT

- 10.1 Each Buyer will do such acts and provide such information as in the reasonable opinion of the relevant BP entity may be necessary or desirable to enable the relevant BP entity to perfect under the PPSA the security interest (as defined in the PPSA) created in respect of the relevant products as a first-priority interest, or with such other priority as the relevant BP entity may agree to in writing.
- 10.2 The Buyer waives any right to receive a copy of a verification statement under the PPSA and agrees, to the extent permitted by law, that, as between the Buyer and BP:
- (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
 - (b) the Buyer will have none of the rights referred to in paragraphs (a), (c) to (e) and (h) to (j) of section 107(2) of the PPSA; and
 - (c) where BP has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.
- 10.3 The Buyer must pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by BP to comply with the PPSA (including complying with a demand given under section 162 of the PPSA) or to protect its position under the PPSA. The Buyer must pay any costs incurred by BP, including legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Bulk Fuel Products supplied to the Buyer.
- 10.4 The Buyer must not change its name without first notifying BP in writing of the proposed name change and the new name at least 7 days before the change takes effect.

11. COMPLIANCE

- 11.1 The Buyer agrees to comply with all legislation and guidelines, including guidelines and manuals issued by BP, relating to the storage and dispensing of Bulk Fuel Products supplied by BP. BP may cease delivery if BP considers that there are concerns as to the degree of compliance with such legislation, guidelines or manuals.
- 11.2 The Buyer is responsible for obtaining all licences and consents necessary for the storage, dispensing or other dealings with the Bulk Fuel Products.
- 11.3 The Buyer will allow BP access to any site where Bulk Fuel Products supplied by BP are delivered, stored or dispensed upon reasonable notice so that BP can ensure compliance with these Terms.

12. FORCE MAJEURE

BP is not liable for any failure to supply or other default resulting from any event beyond BP's reasonable control, including: riot; civil commotion; war; acts of terrorism; accident; shortened hours of labour, strikes, blockades, lockouts, and other labour disputes; compliance with a government request; storm; fire; natural disasters; national emergencies; pandemic; epidemic; Bulk Fuel Product shortage; or any discontinuance, whether total or partial, permanent or temporary, of any of BP's or BP's suppliers' sources of supply of crude petroleum or Bulk Fuel Product or the means of delivery of any Bulk Fuel Product by any computer program or computer processor failure.

13. LIABILITY AND INDEMNITY

- 13.1 Each BP entity warrants that the Bulk Fuel Products supplied by it will be of merchantable quality. To the extent permitted by law, no other warranty, expressed or implied, is given by any BP entity in respect of the Bulk Fuel Products. Any claims relating to the Bulk Fuel Products not being of merchantable quality must be made by the Buyer within 7 days of the delivery of those Bulk Fuel Products by the relevant BP entity to the Buyer. Claims brought after this period are absolutely barred.
- 13.2 Other than as described in clause 13.1, BP is not liable in respect of any loss, damage or cost whatsoever, however arising, under or in connection with the supply of Bulk Fuel Products under these Terms and, in respect of any liability which cannot be so excluded, BP's liability will be fully discharged by BP either (in its sole discretion):
- (a) supplying the Bulk Fuel Product;
 - (b) resupplying that Bulk Fuel Product; or
 - (c) supplying equivalent product or services.
- 13.3 Except where required by law, in no circumstances shall BP be liable under or in connection with these Terms in contract, under any indemnity or warranty, tort (including negligence), by statute or otherwise for any:

- (a) for any loss of profits, income, revenue, contracts or production;
 - (b) business interruption or increased costs in operation;
 - (c) damage to goodwill or reputation; or
 - (d) indirect losses or expenses or consequential loss.
- 13.4 The Buyer agrees to indemnify BP, its officers, employees and agents (each "Indemnified Person"), against any costs, expenses, claims or losses (including legal costs on a solicitor and own client basis and debt collection agency fees) suffered or incurred by BP arising out of or in connection with the supply of Bulk Fuel Products to the Buyer, except to the extent that an Indemnified Person has caused or contributed to the cost, expense, claim or loss.
- 13.5 This clause 13 can only be varied by a subsequent written agreement signed by BP and the Buyer.

14. BREACH AND TERMINATION

- 14.1 The Buyer may terminate its Account on 14 days' written notice to the relevant BP entity.
- 14.2 BP may immediately suspend or terminate the Buyer's Account by giving written notice to the Buyer if:
- (a) the Buyer breaches these Terms;
 - (b) an Insolvency Event occurs; or
 - (c) the Buyer sells, transfers or disposes of its business or there is a change of control of the Buyer, without BP's prior written consent.
- 14.3 In any other case BP may suspend or terminate an Account on 14 days' written notice to the Buyer.
- 14.4 In the event of any breach of these Terms by the Buyer, BP may take such action as it is entitled to take by law, including recovering Bulk Fuel Products in accordance with clause 7.4.
- 14.5 If the Buyer is in breach of its obligations to pay BP in respect of any Bulk Fuel Products but those Bulk Fuel Products have been sold by the Buyer then the Buyer shall, at the request of BP, assign to BP within 7 days all rights against the person or persons to whom the Bulk Fuel Products have been sold.
- 14.6 Upon termination:
- (a) all Amounts Owing will become immediately due and payable to BP; and
 - (b) the Buyer must pay BP interest under clause 5.6(b) and recovery costs under clause 5.6(c), as applicable.
- 14.7 Termination will not affect any provisions of these Terms which expressly or by implication are intended to survive termination.

15. ANTI-BRIBERY AND CORRUPTION

- 15.1 The parties, in performing this Agreement, must comply with any Applicable Anti-corruption Law and must not give or offer to give, receive, or agree to accept, any payment gift or other advantage which violates an Applicable Anti-corruption Law.

16. PRIVACY

- 16.1 The Buyer authorises BP to collect, store, use and disclose personal information (as defined in the Privacy Act 2020) provided by the Buyer and/or collected by BP from third parties ("Personal Information") in accordance with the Privacy Act and BP's Privacy Statement, as updated from time to time.
- 16.2 In addition, the Buyer authorises BP to collect, store, use and disclose Personal Information for:
- (a) the purposes described in clause 16A; and
 - (b) the purposes of assessing the Buyer's creditworthiness from time to time. The Buyer agrees that this may include BP sharing Personal Information with credit reporting and debt collection agencies (including credit default information, if applicable) who may collect and retain such Personal Information and use it to provide their credit reporting and debt collection services.
- 16.3 The Buyer acknowledges and agrees that prior to BP accepting any Application, BP may at its sole discretion require owners, officers or partners of the Buyer to undertake a credit check. In order to undertake a credit check, BP requires each person to provide BP with their consent for BP to undertake the credit check.
- 16.4 The Buyer has a right to access and request correction of Personal Information held by any BP entity by contacting the relevant BP entity at the details set out in BP's Privacy Statement.

16A. INFORMATION EXCHANGE WITH THIRD PARTIES

- (a) The Buyer acknowledges and agrees that BP may exchange the information described in clause 16A(b) below about the Buyer with third parties including industry associations, who may then share this information with their representatives. Where a Buyer is a member of an industry association or customer of another organization, such third parties may use that Buyer information and contact the Buyer directly for the purposes of calculating rebates, commissions, or other payments, or to determine whether that Buyer is taking up an industry association or other organisation offer and to market any industry association or other organisation offers to that Buyer.
- (b) The type of Buyer information that BP may exchange with third parties under clause 16A(a) includes: personal information about the Buyer, contact details (including phone number, email and address), the fact that the Buyer is a BP customer, volumes of petroleum products that the Buyer has purchased from BP in a given period, the Buyer's industry association or other organisation membership number (if applicable), and the Buyer's NZBN and business name.

17. NOTICES

- 17.1 Subject to clause **Error! Reference source not found.**, a notice or other communication will be deemed to have been duly received:
- (a) if delivered by hand, at the time of delivery;
 - (b) if sent by pre-paid post, 2 Business Days after posting;
 - (c) if sent by email or other electronic notice, at the time of sending, except that if a notice or other communication is delivered by hand, or received by mail, email or other electronic means, on a day which is not a Business Day or after 5pm on a Business Day, then the notices or other communication will be deemed to have been received on the next Business Day.
- 17.2 For the avoidance of doubt, the notice provisions in this clause 17 replace sections 185-189 of the PPSA.
- 17.3 If there is more than one Buyer named in an Application, notice to one Buyer will be deemed to be notice to all Buyers.
- 17.4 All communications directed to BP should be made to Buyer Services, BP Oil New Zealand Limited, PO Box 99873, Newmarket, Auckland 1149.
- 17.5 The Buyer consents to BP sending all communications including invoices by electronic means.

18. ENTIRE AGREEMENT

- 18.1 These Terms will apply to the supply of all Bulk Fuel Products to the Buyer by BP (except to the extent they are inconsistent with the terms of any written supply agreement between the Buyer and the relevant BP entity for the provision of specific Bulk Fuel Products to the Buyer by that BP entity). In the event of such inconsistency the terms of the supply agreement will prevail.
- 18.2 Other than any written supply agreement (as specified in clause 18.1):
- (a) these Terms supersede and replace any previous or existing negotiations, letters, offers, representations either verbal or in writing, between BP and the Buyer in relation to the supply of Bulk Fuel Products; and
 - (b) any other terms and conditions proposed or issued by the Buyer shall have no effect.

19. MISCELLANEOUS

- 19.1 Failure or delay by either party in exercising, or partial exercise of, any right, power or remedy under or in connection with these Terms does not constitute a waiver of that right, power or remedy. A waiver, to be effective, must be in writing.
- 19.2 Where there is more than one Buyer, the liability of the Buyers is joint and several.
- 19.3 Should any part or provision of these Terms be held invalid or unenforceable, such invalid or unenforceable part or provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remainder of these Terms.
- 19.4 Unless otherwise specified, each party will, at its own expense and when requested by the other, promptly do, sign and deliver everything reasonably required to give full effect to these Terms and the transactions contemplated by these Terms and will take all practical steps to ensure relevant third parties, including the Guarantor, do the same.

20. ASSIGNMENT AND CHANGES TO THESE TERMS

- 20.1 The Buyer's ability to purchase Bulk Fuel Products on credit terms is personal to the Buyer and may not be assigned.
- 20.2 BP may assign the Buyer's Account, or any of BP's rights in connection with the Buyer's Account, to any third party.
- 20.3 BP may unilaterally change any of these Terms by posting amended Terms on its website www.bp.co.nz, and/or notifying the Buyer of the updated Terms, from time to time: (a) at least 21 days prior to the changes taking effect; or (b) without notice if the changes do not cause detriment (financial or otherwise) to the Buyer or are required by applicable law.
- 20.4 A Buyer may terminate its Account in accordance with clause 14.1 if it does not accept any changes BP makes to these Terms.

21. GOVERNING LAW AND JURISDICTION

These Terms are governed by the laws of New Zealand. Each party irrevocably submits to the exclusive jurisdiction of the courts of Auckland, New Zealand.

22. GENERAL

- 22.1 In these terms a reference to:
- (a) "in writing" includes by email or any other electronic means that creates a permanent record;
 - (b) a statute includes amendments to that statute and any statute to the extent passed in substitution for that statute;
 - (c) a clause is to a clause in these Terms;
 - (d) "including" shall be construed as "including without limitation"; and
 - (e) any agreement or document includes that agreement or document as amended at any time.
- 22.2 In these Terms:
- (a) headings are for convenience only and do not affect interpretation;
 - (b) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust or government agency, in each case, whether or not having a separate legal personality; and
 - (c) all rights and remedies provided in these Terms are cumulative and not exclusive of any other rights or remedies that may be available to the parties; and
 - (d) the singular includes the plural and vice versa.
- 22.3 Any BP entity can exercise its rights and enforce its obligations under these Terms even if it has not signed these Terms. These Terms may be executed in any number of counterparts (including by electronic signature) all of which, when taken together, will be treated as one document. These Terms must not be construed adversely to BP on the basis BP prepared them.

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